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## In this issue




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## *Editorial:*

# A FEARLESS AND INDEPENDENT SUPREME COURT

CHRISTMAS *is with us again with its spirit of joy, its wish of goodwill, its hope for continuing peace and prosperity. We hear Christmas songs, we see Christmas lights, we note people exchanging the greetings of the season. But the natural spontaneity of Yuletide is not there because the people continue to suffer from unemployment, soaring commodity prices, bigger budgets, higher taxes, and needless, excessive government spending.*

*Two years of Macapagal administration have only brought two years of economic upheavals and difficulties. In these two years, there has been only one shining, redeeming feature like a beacon piercing the night—the courage of our Judiciary. To specify, our Supreme Court has decided delicate, fundamental controversies with frankness, wisdom, and great independence of mind. Often it has decided against Presidential wish, opinion and action. Rendered without fear or favor, its resolutions have been warmly received and applauded by the Bar and by the people whose trust and confidence in our Judiciary is implicit and unshaken.*

*Let us review some of these far-reaching decisions and precedents.*

1. *The first is the case of Dominador Aytona vs. Andres Castillo (G.R. No. L-19137, Jan. 20, 1962) which is a warning against abuse of Presidential prerogatives. On Dec. 29, 1961, along with 350 odd appointments he had made, President Garcia appointed Aytona as Governor of the Central Bank. Branding those as "midnight appointments", newly-sworn in President Macapagal cancelled the appointments, including Aytona's, on Dec. 31, and appointed Castillo instead on Jan. 1, 1962. Aytona challenged Castillo's right as Central Bank governor.*

*The Supreme Court ruled that such midnight appointments, including Aytona's, was an abuse of Presidential prerogatives by filling all vacant positions so as to deprive the new Macapagal administration of making its own appointments. Legally, the expiration of the term of the Fourth Congress, which also ended the life of the Commission on Appointments, brought about the lapse and ineffectuality of such appointments. Aytona's appointment had not been confirmed by the Commission on Appointments of the Fourth Congress, hence it ceased, lapsed and expired on Dec. 30, 1961. Castillo was declared the rightful Central Bank governor.*

2. *The high tribunal also served notice that the Commission on Appointments is an independent body whose membership cannot be changed with every change of political parties, in the House particularly, as to affect confirmations of appointments by the Commission. In the case of Carlos Cunanan vs. Jorge Tan, Jr. (G.R. No. L-19721, May 10, 1962), Cunanan was appointed by President Garcia successively in 1961 first as acting deputy administrator, then as deputy administrator of the Reforestation Administration. On April 3, 1962, six senators and seven congressmen, purporting as the Commission on Appointments, rejected Cunanan's ad interim appointment; this resulted in President Macapagal naming Jorge Tan, Jr., in Cunanan's stead.*

*The case involved changes in membership of the Commission that acted on Cunanan's appointment. A Commission was validly constituted when Congress opened on Jan. 22, 1962; however, the House effected a new political lineup on March 21, 1962, hence House membership in the Commission was also revised. The decision is that the Commission is independent of Congress because its powers emanate from the Constitution; so, any change in the House does not suffice to authorize a reorganization of House membership in the Commission. The rejection of Cunanan's appointment was declared null and void.*

3. *Against the present Administration, the Supreme Court prohibited indefinite, prejudicial suspensions of public servants. In Paulino Garcia vs. Juan Salcedo, Jr. (GR No. L-19748, Sept. 13, 1962), Dr. Garcia was the lawful chairman of the National Science Development Board (NSDB) since July 15, 1958. When the Macapagal administration took over, he was asked to resign; then the President designated Dr. Salcedo, Jr. as acting NSDB chairman on Feb. 17, 1962; and for refusing to resign, Dr. Garcia was charged with electioneering and placed under preventive suspension on Feb. 18.*

*According to the Civil Service Law, preventive suspension lasts only 60 days; so, when it expired on April 19, 1962 and his suspension was not lifted, Dr. Garcia brought his case to the Supreme Court. Decision: the 60-day preventive suspension applies to both classified and unclassified civil service. To suspend Dr. Garcia indefinitely until final determination of administrative charges against him would nullify the fixity of his tenure (6 years) and render useless the condition (60-day preventive suspension) imposed by the Civil Service Law. Dr. Garcia was immediately reinstated; subsequently, charges against him were found untrue, hence dropped.*

4. *Freedom of speech and the right to be heard found new vindication in Eliseo Lemi vs. Public Works Sec. Brigido Valencia, et al. (GR No. L-20768, Feb. 28, 1963). Lemi, holder of a radio broadcasting franchise, operated his radio station DZQR, dutifully paid his operation license fees annually down to May 23, 1963. Then on Jan. 11, 1963, the Radio Control Office personnel armed with a court search warrant, interrupted DZQR's program, seized the station's transmitter as not the one authorized for use, and thereby halted the station's broadcasting operations.*

*The seizure, said the high tribunal, amounted to closure of the station, hence it was illegal. No radio station license, according to Sec. 3 of the Radio Control Act, shall be revoked without giving the licensee a hearing. Respondents were ordered to return the transmitter to Lemi and to allow his station to continue broadcasting.*

5. *The Supreme Court sided with the Administration in the case of Genaro Visarra vs. Cesar Miraflor (GR No. L-20508, May 16, 1963). Former President Garcia appointed Visarra as member of the Commission on Elections on May 12, 1960; but President Macapagal named Miraflor in November, 1962 on assumption that Visarra's term had expired in June, 1962. The case involved tenure succession, with Visarra serving only the unexpired balance of Commissioner Gaudencio Garcia's fixed term which expired on June 20, 1962.*

6. *The Supreme Court also differentiated proprietary and governmental functions in relation to declaration of strikes in the case of Associated Workers Union vs. Bureau of Customs as arrastre operator. The tribunal ruled that in impliedly authorizing government employees engaged in proprietary functions to join labor organizations which impose the obligations to strike or to join in strike, the Government has placed itself under the provisions of the Industrial Peace Act insofar as employees are concerned. It then has consented to be sued; furthermore, statutory provisions authorizing the Bureau of Customs to grant by contract to any private party the right to render arrastre services definitely imply that such service are deemed by Congress to be proprietary or non-governmental function.*

7. *The high tribunal dealt the Administration a heavy blow when it declared as illegal the recent foreign-rice importations in deciding the case of Ramon A. Gonzales vs. Secretary Rufino Hechanova (GR No. L-21897, Oct. 22, 1963). Iloilo rice planter Gonzales last Sept. 25, 1963 sought to stop the importation of 67,000 tons of foreign rice by the Armed Forces upon authority of Hechanova. He claimed it was authorized by President Macapagal as commander-in-chief, for "military stockpile purposes."*

*But the importation was rightfully declared illegal. Under Rep. Acts Nos. 2207 and 3452, it is unlawful for any person, association, corporation or government agency—the Armed Forces is a government agency—to import rice and corn into this country. Buffer stocks are only to be held as national reserve to meet the occurrence of calamities or emergencies. There were none such at the time of importation. Under Commonwealth Act No. 1, the Government may obtain resources for national defense only "during national mobilization." There was no such mobilization.*

*Under Comm. Act No. 138 also, requisitions and purchases must be directed to domestic entities, not foreign ones; there must be preference also for materials produced in the Philippines or U.S. This was not done in the case of rice importation. Rep. Act 3452 also specifies that any rice importation is to be done by private parties; it prohibits the Government from doing so.*

8. *The most recent case is that of Lucio Libarnes vs. Executive Secretary et. al. (GR No. L-21505, Oct. 25, 1963) concerning an attempt to terminate illegally the services of a civil service employee. Libarnes was police chief of Zamboanga City since March 11, 1959. But on May 16, 1963, President Macapagal named defendant Miguel Apostol as acting Zamboanga City police chief, and Libarnes was asked to give up his office in favor of Apostol. He refused. The tribunal, siding with Libarnes, declared that he is a member of the civil service, hence he cannot be removed or suspended except for cause. The attempt to terminate his services constitutes illegal removal from office.*

THESE *are Supreme Court decisions of lasting and far-reaching value and significance. They affect national policies, the very life of the Government, and the sacred tenure of public officials and employees. It is to the honor and prestige of our Judiciary that it renders decisions without influence, fear or favor. The Executive may abuse its own powers, Congress may commit errors, but the people can rely on the Supreme Court as their impregnable constitutional garrison of last resort for redress, protection and justice.*

*Well may this Christmas be a happy, merry one for us all as we find judicial integrity and courage in the interest of national welfare!*

# CHRISTMAS MESSAGES

*I consider it my great pride and pleasure to wish my colleagues in the law profession a most blessed Christmas and a prosperous New Year. I also wish to thank the Editors of the Lawyer's Journal for giving me this valuable opportunity to greet my fellow lawyers.*

*Now that we are in that season of the year most cherished by mankind for its spirit of selflessness and love, I wish to recall with you, my esteemed fellow lawyers, the role of the men of law in our country. Looking at the history of our country, from the beginning of our struggle for political freedom and independence, lawyers have always been at the helm of our destiny.*

*The mainstay of our democracy is the rule, not of force but of law. Not of the bullet but the ballot. Not of impulse but of reason. In the execution and interpretation of the rule of law, the government officials as well as the common citizen necessarily must look to the men in the law profession for guidance and direction. So, in a very real sense, we of the law profession are, in effect, the real custodians of democracy.*

*Vigilance, it was once said, is the price of liberty. It is up to us, the men of law, to keep the mainstream of our democracy healthy by constant and unabated vigilance over the civil liberties of our people.*

*On this joyous season of love and selfgiving, therefore, I would like to appeal to your patriotism and love of country. May I exhort each and everyone of you to be your own vigilance committee in safeguarding that precious essense of democracy, the legacy of our fathers and of the West: the supremacy of law over men. On your vigilance may very well hinge the future of our country.*

EMMANUEL PELAEZ
*Vice-President of the Philippines*

*The message of Christmas—Peace to Men of Goodwill—has a particular significance for the Bench and the Bar.*

*There can be no possible peace without goodwill among men. No such goodwill is, however, conceivable without a minimum modicum of contentment, which cannot exist unless human rights and fundamental freedoms are recognized, as well as respected and observed.*

*Upon the other hand, the recognition of those rights and freedoms, and the respect and observance thereof must be promoted within the Rule of Law, for adherence thereto is a condition "sine qua non" to the very existence of every organized society and the same may not, without paving the way to its own dissolution, disregard the law, thereby jeopardizing the cause of peace, which is essential to the well-being of all.*

*Last, but not least, the Rule of Law cannot fully achieve its objectives without the earnest and full cooperation of the people. There must be a climate propitious to the effective operation of the law, which the Bench and the Bar may help create by settling disputes or solving legal problems in such a way as to impart the conviction that adherence to law and to its peaceful processes is the best means to promote the welfare of all, and that, to this end, there must be tolerance and understanding and we must guard ourselves against the evils of the passion, the prejudices, the hate and the bigotry that has brought so much sorrow to the world.*

*Every Christmas is thus a reminder to the Bench and the Bar that their main role in the context of society is that of peacemakers, which they are challenged to play to the best of their ability. In conveying my greetings and best wishes to my brethren in the judiciary and in the legal profession, I wish, also, to express the earnest hope that each one will meet the challenge fittingly.*

ROBERTO CONCEPCION
*Associate Justice*
*Supreme Court*

*In Christmas, the divine tidings is distilled into one word: Peace. So it has been since Nativity was heralded with the biblical message "Glory be to God in the highest and on earth peace to men of goodwill." Triteness could have detracted so much from the import of this expression. Yet the centuries through which it had been echoed and reechoed have not impaired its timeliness and validity. Today, as ever, true and lasting peace still is an elusive ideal and brotherhood among men a cherished dream.*

*It is, perhaps, little realized that we of the Bench and the Bar may also lend a hand to the attainment, limited though it is, of the noble aim—Peace. We are privy, by virtue of our office and profession, to the never ending contests in which parties vie for the advancement of their interests. Rivalries inevitably generate passion, if not animosity and ill-will, amongst the participants. So it is that the avoidance of occasions or misunderstandings and conflicts and the expeditious and just resolution of disputes—which are well within our capacity to achieve—are amongst the seeds from which peace and goodwill could be fostered. They are, indeed, the constant desideratum of our every effort and endeavor. Propitious is it now, the advent of the Yuletide season, for a redédication to this goal.*

*May the Spirit that pervades these Holidays abide with us all throughout the coming New Year.*

CONRADO V. SANCHEZ
*Associate Justice*
*Court of Appeals*

*Never in the history of our country do social problems make the life of an individual so difficult. And Christmas spirit undoubtedly becomes a sort of an oasis. In this spirit, we should turn our eyes towards our Creator for guidance and more or less permanent remedies. At least, during these days, let us forget our problems and enjoy the season.*

*Merry Christmas and a Happy New Year to all.*

MARIANO NABLE
*Presiding Judge*
*Court of Tax Appeals*

*Through the years, Christmas greetings and messages have become stereotyped... and commercialized. The message of Christmas is not any less valid or true because of these—but they have a tendency to be, and to sound, hollow, for the Spirit of the Christ is not in them. The greetings are said only because they are in vogue, in season—as substitutes for "hello" and "goodbye"; and the object of these greetings are conditioned to react accordingly.*

*For my part, I believe in the promise of Christmas—the promise that the coming of Christ was the beginning of the fulfillment of the prophecy at Eden: that even as God sent Man out of Paradise, He promised Man's redemption through Christ. I believe that the true spirit of Christmas cannot be, and is not, turned on at the start of the Season and shut-off at the end of the Year. I believe, instead, that Christmas time is the period during which to rekindle and to strengthen anew that spirit of Love, of Charity, of Hope, and of Joy, that comes from a genuine belief in Christ.*

*I believe, therefore, that Christmas is the time for the Brotherhood of the Bar to rededicate ourselves to our Oath: to seek, above all, Justice for every man; to champion always the cause of truth; and to see that the innocent shall not be condemned. And this is the time for those to whom we have entrusted the powers of government to remember and to ponder upon the old message from the Bible that Justice to be Just should be tempered with Mercy.*

SALVADOR L. MARIÑO
*Secretary of Justice*

*As we usher in the Christmas Season this year we are reminded of the immortal message of the heavenly hosts in the night of the birth of Christ: "Glory to God in the highest, and on earth peace, good will towards men" (Luke 2:14).*

*This should remind us that the goal of justice is peace and good will among men, for the attainment of which Christianity was founded, which goal we seek to achieve in the free world through peaceful settlement of individual or group disputes by bloodless legal combats in our courts. Indeed, the motto of the Philippine Department of Justice, as inscribed on its seal, is: JVSTITIAE PAX OPVS" which, freely translated, means: "The Work of Justice is Peace."*

*But the judicial process can end in peace and good will between litigants only if their disputes be ventilated before judges who are honest, capable, and dedicated to the search for truth in every litigation, assisted by ethical lawyers who present the cases of their clients capably and firmly, but with fairness and gentlemanliness towards adversaries and judges alike; bearing in mind always that decisions obtained through unethical practices and/or rendered by judges who were corrupted by political, financial, or other extraneous influences, cannot hope to create either peace in the minds of the losing parties, or respect in the hearts of the favored agents of judicial corruption.*

*With these in mind, my wish is that the coming Christmas bless all of us with the spirit of peace and good will, and the coming year shower both riches and honor on us all.*

JESUS P. MORFE
*Executive Judge*
*Manila Court of First Instance*

*It has often occurred to me that the coming of Christmas once a year is indeed a divine plan designed to fill a crying need in man's altogether mad pursuit for material well-being the rest of the year. Come Christmas we all suddenly remember to take stock of the fortunes that the Little Child came all the way down to earth to teach us, by exalted word and sublime deed, to live by. Suddenly we pause from the break-neck speed of worldly chores to evaluate, to make inventory, and perhaps to hurriedly enter last-minute corrective and very often exculpatory adjustments before closing the balance sheet of our year's book of deeds. We pause to ask ourselves these questions: What have we contributed towards making our homes happier, our communities safer and gladder, the world freer?*

*Christmas underscores for us the truth that man does not live by bread alone. And in this age of bitter ideological strife thanks to which the world is jolted into the realization that there is, indeed, nothing more precious than human freedom from intellectual, moral and social bondage, Christmas should come as a welcome day of truce for all men and women of good will — a day dedicated to an examination in retrospect of those opportunities they let go which could have been so easily and so effortlessly employed to right a wrong, to gladden a sad heart, to lessen another's burden, to promote a worthy cause, to help eradicate an evil. And in so doing, look forward in anticipation to acomplishing in the coming year that which was left undone this and the past years, to resolving that the coming year will be as fruitful in spiritual wealth as all of us so carefully resolve to make in material riches.*

*To the readers of the Lawyers' Journal in particular, I wish to extend the prayer and the hope that in the coming year you will not by-pass any chance that the profession will surely afford you to contribute your share towards humanizing the law and the legal practices with the end in view of attaining, at least in your very own spheres of contacts and influence, a truly free, just and compassionate world. So that come next Christmas, when once again you linger awhile on matters not of this rude earth and look over your Book of Life you may, like the Angel that wrote thereon, enter a satisfactory judgment.*

*May the Child Jesus bless you and all of your loved ones, and may His guiding hand be with you in all your enterprises throughout the coming year.*

LOURDES P. SAN DIEGO
*Judge*
*Court of First Instance*
*Quezon City Branch*

*My message to the lawyers is this:*

*The lawyers' duty is not to prove the guilty innocent but to help the Court arrive at the truth. A true lawyer is one who places truth and service in the first place and the emoluments of the profession in the second place only. That is, Service, Truth and Justice above all.*

*But, Justice and Wisdom without Fortitude are useless.*

JOSE S. BAUTISTA
*Presiding Judge*
*Court of Industrial Relations*

# THE PHYSICIAN'S ROLE IN THE ADMINISTRATION OF JUSTICE*

By Justice FELIX BAUTISTA ANGELO

As a member of our highest tribunal it is my sworn duty to help protect the life, liberty and property of the people pursuant to a constitutional mandate. Whenever any of your fundamental rights are grossly violated or trampled upon by any individual or public official, you go to the court of justice for redress. You repose on us your faith and trust that justice be dispensed with justly and promptly regardless of your stations in life, religious beliefs, or political affiliations. In short, believing that we are the guardians of justice you put your fate into our hands. That situation, gentlemen, is now reversed temporarily for during the rendition of this program it is my turn to place my life into your hands.

I wish to congratulate you for organizing this association which I reckon is aimed at promoting certain civic and cultural objectives. I believe in organization. Organization is the order of the day. You cannot nowadays accomplish anything of value without the collective efforts of those interested in a common objective. The era of isolationism is a thing of the past. This has given rise to the common saying, "In union there is strength." I wish, therefore, to commend you for organizing "The Catholic Physicians Guild" because only in that way you can fully accomplish the ideal aims and purposes of the profession to which you belong.

Your profession should not be looked upon merely as a means to make a living. It is not a mere trade established for profit or personal enrichment. It has its moral aspect that should not be overlooked but should weigh heavily on the conscience of the physician. Important as he is in the healthy growth of the human specie, a physician should extend his helping hand to the needy who may be found in distress. He should not begrudge his help to them simply because they are in penury or cannot give him reward for his services. There is greater satisfaction coming from service rendered in charity than from one with monetary consideration. Your profesison is humanitarian and should be undertaken having always in mind the general welfare of society.

The functions of a physician are not merely confined to rendering medical aid to a person suffering from physical ailment. While this may be the main purpose of your profession, the role a physician is called upon to play in the community is of much wider scope. He is called upon not only to cure sick people and alleviate their sufferings but also to help in every way in promoting the moral and social welfare of the community. He cannot fold his arms and remain indifferent to the problems that beset the community especially those which affect the health and happiness of the people. He must be alert, assertive and militant in order to make of his community a decent and healthy place to live in. This is specially so in connection with the maintenance of peace and order and the solution of the problems affecting the administration of justice.

One of the greatest problems that our government is now confronted refers to the maintenance of peace and order in our country and this can only be achieved if we maintain a successful administration of justice. This problem is vital and far-reaching not only because it affects the life, liberty and property of the individual but also because it transcends to the community and affects the general welfare of the people. In the administration of justice are involved not only judges, fiscals and other members of the bar **but also the physicians** — the members of your profession. Many of the cases that are brought to the courts have to be threshed out with the indispensable cooperation of the physician. In every case which involves physical injuries, rape, seduction, homicide or murder, the help of a physician is necessary and the role a physician plays is very important, because much of the success of the case depends upon the opinion of the physician. A physician, therefore, is an indispensable ally of the court. Without him the court cannot dispense justice with success and efficiency as demanded by our Constitution. In fact, much of the success of a case involving a medical problem depends upon the honesty, integrity and trustworthiness of the members of your profession.

The intervention of a physician is specially important in workmen's compensation cases which involve the claims of injured or deceased employees. Under the law a claim for compensation is compensable only if it can be proven that the injury giving rise to the claim is caused or suffered in the course of employment or is aggravated as a consequence of the nature of the work performed, and this causal connection between the injury and the employee can only be established thru the testimony of a physician. Invariably, the physician who appears for the claimant testifies in his favor while the physician who appears for the company gives a contrary opinion. This may appear paradoxical considering that the opinions are rendered in relation to the same medical problem, and yet this phenomenon usually happens. This divergence of opinion places the court in a predicament where it has to make use of its own judgment even disregarding the opinions of the physicians. Such a situation is not conducive to the proper administration of justice. This can be avoided if the physician who intervenes should only give an honest and sincere opinion in an objective manner without regard to the interest of the party he is representing. Only in this way can he help in promoting the best interest of justice. Your organization can do much in doing away with this obnoxious practice for in the last analysis our common objective is to find out the truth.

It is noteworthy to state, however, that the opinion of a physician as an expert witness is not conclusive upon the court. He merely acts in an advisory capacity in the sense that the court may draw its own inference from the facts testified to by him and accept or reject the opinion given. But an opinion given by a physician on a matter which does not come within the common knowledge of laymen carries considerable weight and as such must be correct and truthful. Otherwise it becomes deceitful and may lead to a miscarriage of justice.

* Speech delivered before the Catholic Physicians Guild of the Philippines on November 17, 1963.

Should a physician be in doubt as to the matter placed under his consideration he should so inform the court. The expression of such an opinion does not constitute a shameful confession of ignorance. It is merely a revelation of the controversial nature of the case at hand. He should bear in mind that his duty is to testify to what he knows to be true and not merely to help the court in deciding the case. This would give the court sufficient basis to decide the case according to its best judgment always having in view the best interest of justice.

Sincerity on the part of the physician is of utmost importance in the litigation of a case. He should not allow himself to sway his conviction simply because of monetary consideration. Some cases may be cited to illustrate the posture of a physician on this matter. Thus, an accused who is completely sane both from the medical or legal point of view may find that his only hope is to set up the defense of insanity. So he comes to a physician for assistance upon the plea that his only salvation lies in his hands. As unscrupulous physician may submit himself to his bidding for a monetary consideration. Such a situation cannot but bring about a miscarriage of justice. A similar situation may arise when a litigant desires to recover damages in connection with some physical injury he may have suffered by going to court with the assistance of a physician. He may want to recover more than what fairness dictates thru the employment of his technical knowledge. A physician should never lend himself to giving a seemingly expert testimony to accomplish this end merely to earn a substantial remuneration knowing that in doing so he would commit injustice against the adverse party. His motto should always be to help do justice and never to defeat it.

A significant fact that a physician should always remember is that he is a physician, and not an advocate. When a physician is called to testify in court, either as an ordinary witness or as an expert witness, he does not become an advocate; he is a physician and remains a physician. He should not be concerned with the outcome of the case except only in so far as giving a true and full testimony and endeavoring to see that justice prevails.

A physician has a duty to obey subpoena. A physician when subpoenaed may be called as an ordinary witness, a professional witness, or an expert witness. If, for instance, a physician is subpoenaed to testify to something wherein the fact of his being a physician does not enter, he is an ordinary witness; where he testifies on the subject of medicine merely because he treated a certain person during a certain illness, he testifies as a professional or "technical" witness; and where he is asked a question which calls for an opinion evidence, he becomes an expert witness, for he gives an opinion evidence based on his knowledge of medicine.

Yes, my friends, the judiciary needs your whole-hearted cooperation and utmost ability in the administration of justice. You, as an organized body, can improve immensely our medical expert system, not so much for more knowledge among our experts, but especially for more honesty. You should introduce improved methods of procuring and giving expert testimony. And in this regard, allow me to reiterate again the three things which a physician should possess to qualify himself as a medical expert: (1) he must be honest and unbiased in his testimony; (2) he must have real expert knowledge of the particular subject on which he is called upon to testify; and (3) he must study thoroughly the case and must adequately prepare himself by familiarizing himself with the opinions expressed by the authorities on the subject.

Since your profession deals directly with the health of our people the law imposes upon you certain duties and responsibilities which you should observe with care, diligence, skill and ability, lest you may be indicted and held accountable for the consequences of your dereliction and misbehavior. Like other professionals, such as lawyers, nurses and dentists, you may assume civil and criminal liability if you commit gross negligence and misbehavior in the performance of your duties, and if such happens it will mark the end of your career. There is, therefore a great need on your part to observe the canons of morals and ethics that are necessary to enable you to profess your calling with honor and with dignity to insure your success. Our jurisprudence records some pathetic cases which involve the dereliction of some physicians to the great prejudice of your profession.

Our government has recognized the importance of your profession in promoting the health of our people when it approved an Act requiring all schools, public and private, to provide for a physician who may extend free service to our youth. In taking this step our government came to realize that a vigilant and continuous care of our youth is vital to turn out a healthy and robust race. And so it made compulsory the medical clinics in our rural areas for the benefit of our rural people who may not have the means to employ the services of a physician to minister to their ailments. These measures have produced two beneficent effects; one is the health of our youth and our rural folks, and the other a source of employment for our physicians. Our government should be congratulated for having approved these measures which indeed meet a long-felt need in our community.

It may be of interest to you to know whether a physician who has been licensed to practice medicine and surgery can also engage in activities which exclusively belong to the dental profession. A case has arisen in this jurisdiction wherein a physician has engaged in the activities of a dentist upon the claim that his profession also embraces the activities and prerogatives belonging to the profession of a dentist. And so he was investigated and prosecuted and in defending himself against the charge he invoked in his favor some precedents in the United States wherein a physician has been allowed to engage in the activities of a dentist upon the theory that the profession of a physician covers the whole human anatomy and so it can embrace the treatment of the teeth and of the gums which strictly belongs to the profession of a dentist. Indeed, under the laws of some states in the United States the profession of a physician covers that of a dentist and so he only needs to undergo the examination required for a physician. But in this jurisdiction a different situation obtains. The law governing the profession of a physician is different from the law governing the profession of a dentist. These are two distinct and separate professions and our laws require that one should pass an examination for each before he can engage in the practice of both professions, and so the accused was convicted for having encroached on the functions and prerogatives of a dentist. I am bringing this matter to you so that you may know the limitations of your profession and avoid the consequences that such encroachment may heap upon you.

After liberation, the number of schools of medicine in the Philippines increased in an appreciable degree resulting in a substantial increase in the number of those embracing the medical profession. Statistics show that where before the last world war only two medical colleges were in operation the number substantially increased thereafter reaching a total of seven in Manila and in the provinces. As of the school year 1962-1963, the overall number of students enrolled reached a total of 8,798. This increment in the number of medical colleges as well as in the number of graduates that every year are turned out has necessarily swollen to a great degree the roster of physicians in our country during the last decade. Recent data disclose that out of our population of 28 million we have at present 27,572 physicians, male and female, 9,862 dentists, 16,417 pharmacists, and 27,500 lawyers. This shows that there are at present more physicians than lawyers in the Philippines.

(Continued next page)

# SETTLEMENT OF LABOR DISPUTES IN INDUSTRIES AFFECTED WITH A NATIONAL INTEREST*

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RECENTLY WIDELY publicized labor disputes reveal a serious need for re-evaluation of collective bargaining and also of the procedures being used for dealing with critical work stoppages. The initial postulate should be the preservation of the free collective bargaining system. Yet we must be willing to admit honestly that the freedom to bargain cannot be allowed always to prevail. Prolonged strikes in some critical areas cannot be tolerated. Further, we have recently begun to realize that contract settlements without work stoppages in some industries may have such permeating effects on the economy that public concern for the bargain is inescapable.

These considerations make it impossible to define with precision those labor disputes which affect the national interest. There is a broad difference between critical production stoppages and inflationary wage settlements, yet both situations evoke the national interest. In some instances the national interest in labor disputes will be only generally involved, but in others it will be intense and immediately demanding. These differences must guide in the development of solutions to the problems created by these labor disputes.

The first of the two major inquiries in reaching toward the solution of problems posed by labor disputes affected with the national interest is to consider the extent to which collective bargaining can serve this function. The more effective collective bargaining is, the less need there will be for extreme and regimented measures. But the bargaining process will not be effective in every case where the public property is deeply concerned about a work stoppage. So the second major line of inquiry must be into additional needed measures where collective bargaining fails adequately to protect the public interest.

**Collective Bargaining Is Fundamental, but Stagnant**

Collective bargaining has been the fundamental national approach to the resolution of economic disputes between employees and employer for well over a generation.[1] Yet the most noteworthy circumstance surrounding our governmental approach to collective bargaining today is that there has been little attempt to improve the process since its creation. Governmental policy-making has constantly been concerned with balancing bar-

(Continued next page)

1. National Labor Relations Act, 49 Stat. 449 (1935), as amended, 29 U.S.C. Sections 151-167 (1958); Railway Labor Act 44 Stat. 577 (1926), as amended, 45 U.S.C. Sections 151-163 (1958).

* Here is the winning paper in the 1963 Ross Essay competition sponsored by the American Bar Association under a bequest from the late Judge Eskine Mayo Ross. Mr. Williams declares that collective bargaining must be nurtured and strengthened so that the drastic measures that might be necessary to settle national-emergency strikes may be kept within narrow bounds.

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## THE PHYSICIAN'S . . . (Continued from page 358)

Considering the present trend towards the medical profession which beats by a mile other academic professions, the question may be asked: Is there need of **moratorium** in the study of medicine in the Philippines? Many will no doubt give an affirmative answer bearing in mind that in this era of science, technology and industrialization there is more need of technical and scientific men than men of letters, philosophy, law and medicine. Our country is endowed with rich natural resources which remain untapped and await only the hands of technical men to make them productive, thus contributing to our economic advancement. Technology is the thing we need coupled wth the promotion of vocational courses to give impetus to our economic growth and natural wealth. Dr. Juan Salcedo, President of this Association, who is the Chairman of the National Development Science Board, will bear me out in this imperative need for technicians in our country.

But there are many, to be sure, who will differ from this way of thinking, for they know that the study of medicine is as essential to society as the food to men. They will argue that medicine is studied not alone as a **modus vivendi** but to be useful in society and in the healthy growth of our population. In fact, many study medicine not to engage in private practice but to make use of it in the service of the government and in the promotion and conservation of the Filipino race. The truth is that knowledge of medicine is essential to the individual not only for the protection of his health and of his family but also to advance his social stature and culture. Weghty reasons, therefore, exist in favor of the continuation of the study of medicine.

The question may be asked whether physicians who are engaged as college professors or doctors in private enterprises are entitled to organize themselves within the meaning of the Magna Carta of Labor which is Republic Act 875. The answer is in the affirmative. It is now settled that doctors, lawyers, teachers, and other professional people can organize themselves into unions if they want to promote their rights and defend their economic security. Medical societies and bar associations are sometimes referred to by laboring peoples as "doctors' unions" and "lawyers' union." It must, however, be born in mind that such right is qualified by the circumstance that the employing institution must be one operated for profit. If the employer is a non-profit organization it does not come within the purview of the Act. This means that while professors can organize themselves into a union they cannot however make use of a strike as a weapon to enforce their demands nor can they file an unfair labor practice charge against their employer. As an example we may cite physicians who are employed in the Red Cross Organization or in hospitals, public or private, that are organized not for profit but for humanitarian reasons.

As members of a respectable profession in our society, your activities should not be confined to the narrow circle of your calling. You must also do your part in promoting the welfare of your community. You must take part in the crusade to which good citizens are now dedicated for the moral uplift of our people. This is especially so at this time when the moral of our youth is at its lowest ebb. In doing so you will not only contribute to the healthy growth of our youth but to the moral and spiritual regeneration of our people.

gaining strength,[2] limiting union attempts to spread labor disputes through secondary pressures[3] and increasing protection of the rights of individual union members.[4] But there has been no similar continuing drive to infuse bargaining with new life. The bargaining process has largely remained stagnant in an otherwise dynamic area of law and policy.

Much can and should now be done to achieve the potential of collective bargaining. There have been some encouraging developments of a voluntary nature emanating from companies and unions. One of these is the use of third parties, brought in by employers and unions themselves, to participate in the bargaining. This private third party can sit in on the bargaining sessions to serve as an independent, objective mediator.[5] He may well be more effective than a government mediator since he has been voluntarily chosen by the parties and can be expected to know better their interests and situation. He can feel freer to suggest settlement terms.

The use of this third-party device has also appeared in accomplishing impartial studies and analyses of the information underlying the bargain which must be made.[6] Called well in advance of any contract termination, such a person can investigate the economic and other conditions surrounding the bargain and can make recommendations on a sensible pattern of settlement.

There is progress in another facet of voluntary settlements between management and labor. This is manifested in contract terms designed to ease later contract renewals.[7] Cost-of-living wage provisions and automatic productivity increases are examples of these bargaining-easing improvements. The use of a joint committee to make a continuing study of difficult deadlocked issues is a newer, effective development. This was the means of handling the work-rules dispute in settling the prolonged steel strike of 1959.[8] It has also just been used in disposing of the workcrew issue in the longshoremen's labor dispute of 1962.[9]

The committee device achieved a most successful fruition in the relationship between the Kaiser Steel Company and the United Steelworkers. In the 1959 settlement of their bargaining dispute, a tripartite committee was given a broad charge to recommend a plan for equitable sharing of economic progress by employees, the company and the public.[10] The plan was made public in December, 1962. Its goal is to eliminate deadline bargaining over economic issues. In general, wage increases are keyed to a sharing of all increased productivity and all savings in the use of materials. Further, it contains a guarantee to employees against loss of income resulting from automation.[11]

These examples are tangible steps taken by the parties to collective bargaining in attempting creatively to improve it. Such successful efforts undoubtedly lead others to experiment also. Yet in a society which is properly competitive, it cannot be expected that private innovations will of themselves develop the full potential of collective bargaining. The government must step in to give additional stimulus.[12]

**Government Should Provide Better Mediation**

The most obvious means for governmental aid to improve collective bargaining is bettering mediation. A larger staff of professional mediators is needed in the Federal Mediation and Conciliation Service.[13] Infusion of governmental mediation before a crisis in bargaining is reached is another indicated advance. Early mediation proved most effective in the steel settlement of 1962. There the government insisted that bargaining begin four and one-half months before contract deadlines. When the parties broke off negotiations during bargaining, a proper bargaining technique to test strength and determination, the government mediators dogged the parties back to the bargaining table.[14]

The Department of Labor is now undertaking a broader role in providing economic data useful to successful collective bargaining. Cost-of-living statistics and productivity-increase analyses have been a valuable contribution for many years.[15] Further steps are now being taken to make the Department of Labor the source of detailed and intensive economic studies needed for enlightened bargaining.[16] More specifically, the Department has just begun to hold itself open to make studies on precise issues for parties who have been stymied in their bargaining. A study is to be made of workcrew composition, as one aspect of the settlement of the longshoremen's strike of 1962.[17] This development of a governmental role to supply data for collective bargaining is a commendable major advance.[18]

A governmental activity of a different nature should also be mentioned. This is the labor-management "summit" conference.[19] Its current form is the President's Advisory Committee

2. E.g., in the Labor-Management Relations Act, 1947, outlawing the closed shop, Section 8(a) (3), 61 Stat. 40, 29 U.S.C. Section 158(a) (3) (1958); defining and limiting the obligation to bargain, Section 8(d), 61 Stat. 142, 29 U.S.C. Section 158(d) (1958); restricting the nature of bargaining units, Section 9(b), 61 State. 143, 29 U.S.C. Section 159(b) (1958); permitting states to outlaw the union shop, Section 14(b), 61 Stat. 151, 29 U.S.C. Section 164(b) (1958). In the Labor-Management Reporting and Disclosure Act of 1959, regulating organizational picketing and publicity, Section 8(b) (7), 73 Stat. 844, 29 U.S.C. Section 158(b) (7) Supp. III, (1962).

3. E.g., Labor-Management Relations Act, 1947, Section 8(b) (4), 61 Stat. 141, 29 U.S.C. Section 158 (b) (4) (1958).

4. Labor-Management Reporting and Disclosure Act of 1959, Titles I-V, 72 Stat. 522, 29 U.S.C. Sections 411-15, 431-40, 461-66, 481-83, 501-04, 521-31 (Supp. III, 1962).

5. Hildebrand, The Use of Neutrals in Collective Bargaining in ARBITRATION AND PUBLIC POLICY (Proceedings of the Fourteenth Annual Meeting, National Academy of Arbitrators) 135 (1961); Report of the President's Advisory Committee on Labor-Management Policy, Free and Collective Bargaining and Industrial Peace, Sec. III C, 50 LAB. REL. REP. 25, 42 (1962), (LAB. REL. REP. is the Labor Relations Reporter, published by the Bureau of National Affairs.)

6. Chamberlain, Neutral Consultants in Collective Bargaining, in COLLECTIVE BARGAINING AND THE ARBITRATOR'S ROLE (Proceedings of the Fifteenth Annual Meeting, National Academy of Arbitrators) 83 (1962); Report, supra note 5, Sec. III B, at 42.

7. Address of Secretary of Labor Willard Wirtz, National Academy of Arbitrators, 52 LAB. REL. REP. 133, 165 (1963).

8. Steel Memorandum of Agreement, Section 6, 45 LAB. REL. REP. 207, 208 (1960)

9. 52 LAB. REL. REP. 81 (1963).

10. Kaiser Steel Corporation and United Steelworkers, Memorandum of Agreement, Section 6, 45 LAB. REL. REP. 7, 8 (1959).

11. The text of the agreement will be found in 52 LAB. REL. REP. 35 (1963.)

12. Cox, LAW AND THE NATIONAL LABOR POLICY 48 (1960).

13. Report, supra note 5, Sec. III D, at 43.

14. Under urging by the government the parties began bargaining on February 14, 1962. 49 LAB. REL. REP. 359 (1962). Negotiations were broken off indefinitely by the parties on March 2, but were resumed on March 14 in response to a telegram from the President, id. at 460. Settlement was reached on March 29, id. at 523.

15. On the role of the Bureau of Labor Statistics in supplying pertinent economic information, see Clague, the Economic Climate of Collective Bargaining in NEW YORK UNIVERSITY THIRTEENTH ANNUAL CONFERENCE ON LABOR 41 (1960)

16. Wirtz, supra note 7, at 166, Secretary Wirtz suggested the possibility of supplying information and aid through an extension service, as in the Department of Agriculture.

17. See column one, supra.

18. The need for more complete data and for a frank interchange between the parties and the government was stated by the President's Advisory Committee on Labor-Management Policy. See Report, supra note 5, Sec III A, at 42.

19. Kramer, Emergency Strikes, 11 LAB. L.J. 227, 234 (1960).

on Labor-Management Policy.[20] In a report dated May, 1962, this committee referred to collective bargaining as "an essential element of economic democracy."[21] Some of the devices stated above were recommended by the committee. But by its nature it cannot be relied upon to carry much of the burden of strengthening collective bargaining.

**"Guideposts" Issued for Wage Increases**

The means so far described for improving collective bargaining are encouraging developments. By themselves, however, they cannot eradicate all difficulties in the settlement of those labor disputes which can be solved by negotiation. Settlements by collective bargaining may raise questions rather than resolve them. The government may feel it necessary to give attention to the inflationary pressures arising from wage bargains in basic industries. In his economic report to the Congress on January 22, 1962,[22] President Kennedy released and approved the recommendation of his Council of Economic Advisers for "guideposts" in wage price decisions.[23] In brief, the guide invoked was that wage increases should be limited to growth in productivity to avoid the inflationary pressures of higher wages. While there have been general governmental statements in the past concerning the inflationary pressures of wage settlements,[24] outside of wartime this is the first instance of the government's embarking on a definite program.

The over-all productivity increase since the guideposts were stated has almost exactly equalled the percentage increase in wage settlements during the same period.[25] There is some doubt, however, whether the guideposts have been successful or whether admitted signs of stagnation in the economy caused wage increases to be limited.[26] In spite of some opposition to the guidepost concept,[27] it must be accepted as a useful experiment. It is unlikely, though, that something as noncompulsive as the guideposts could be effective in a time of serious inflationary pressures.

**Solicitor General Suggests Governmental Representation**

A step beyond was offered by the Solicitor General of the United States, Archibald Cox, in June, 1962.[28] He proposed developing a means to introduce governmental representation at an early stage in critical wage bargaining and to carry it on throughout negotiations. He made clear that he did not suggest a governmental veto to the economic bargains made. Rather, he asked only that the government be given "an opportunity to be heard as spokesman of the wider public interest while the decision is made".[29] A reciprocal obligation upon the government to be receptive to the pressing interests of the parties was recognized.

Coming on the heels of the steel settlement of 1962 with the price increase later withdrawn under governmental pressure,[30] this plea by Mr. Cox for formalized procedures is persuasive. The abortive steel price increase exposed the disadvantage of the government's remaining out of the economic bargain until its completion, if the bargain is one where the public interest plainly needs protection. Professor Arthur Ross has said that "any influential national wage policy must be impregnated into the collective bargaining apparatus".[31] And he asserted that "there must be a potent, competent, consultative mechanism capable of producing an authoritative consensus"[32] to make wage restraints effective.

The implications of these suggestions admittedly carry overtones of danger to the collective bargaining process. Insofar as the government issues guideposts or attempts to indicate to particular parties what it considers to be an acceptable economic settlement, governmental planning is intruded into bargains. Yet a realistic appraisal of the intricate balance of the market control mechanisms in our economy shows that public needs are entitled to protection. What is quite certain is that in the past there has been a lack of communication between the parties to labor disputes on the one hand and the government on the other, until that moment of highest pressure when the critical strike is about to occur.

**Labor Department Should Develop Industry Sections**

Moving beyond present developments, the Labor Department should create administrative sections for the major industries, which would specialize in the labor problems of those industries. These sections could hold useful conferences from time to time with industry and union leaders. They could also concentrate research on the problems of their industries so that fair exchange between the government and the industries could be effectuated in informal, noncompulsory fashion.

But the government must move carefully in developing these devices, limiting their applicability to the minimum governmental intrusion which will reasonably protect national economic policy.

Secretary of Labor Willard Wirtz has stated dramatically that at this time we are seeing "the last clear chance" of collective bargaining.[33] The pressures against the efficacy of the bargaining device are of a different nature and are more threatening than they have ever been before. There are several reasons why this is so. Probably the most salient reason is the development of automation. The underlying concern of the workers in virtually every critical labor dispute since the steel dispute of 1959 has been the fear of being displaced by machines. From the workers' point of view, impending automation makes their strike far more desperate than a strike which is simply the manifestation of their desire for a wage increase.[34]

The development of strike benefits for employees and strike insurance for employers, greater interdependence within the economy, concentration of bargaining units, bargained settlements by wage leaders which affect the entire economy, and the greater dependence by society on the production of goods deemed necessary, all lead to an increased ability of employers and unions to hold out longer in the strike process and a decreased ability of the public to stand the work stoppage.[35] Involved also are the broadest aspects of international fiscal policy. As our nation leads the Free World in the cold war and faces the intense competition of the Common Market, the complexity of the economic structure and the role that the collective bargaining process is designed to play in that structure become matters of unavoidable moment.

20. The committee was set up under Executive Order No. 10918, 26 Fed. Reg. 1427 (1961).
21. Report, supra note 5, introduction, at 25.
22. 108 CONG. REC. 489 (daily edition, January 22, 1962).
23. The "guidepost" section of the report of the Council of Economic Advisors is printed in 49 LAB. REL. REP. 306 (1961).
24. Ross, Wage Restraints in Peacetime. Address before the Western Economic Association, 51 LAB. REL. REP. 50 (1962).
25. The figure runs three per cent or a little over. 51 LAB. REL. REP. 173, 277 (1962).
26. Ross, supra note 24, at 52.
27. E.g., George Meany, President, AFL-CIO, responding to an address by Secretary of Labor Goldberg, 49 LAB. REL. REP. 436, 437 (1962); Walter Reuther, President, United Automobile Workers, 50 LAB. REL. REP. 49 (1962), J. Ward Kenner, President, B F. Goodrich, 50 LAB. REL. REP. 119 (1962); John Davenport, Assistant Managing Editor, Fortune Magazine, 52 LAB. REL. REP. 64, 66 (1963).
28. Cox, Address at Harvard Law School, Wall Street Journal, June 14, 1962, page 3, column 1.
29. Ibid.
30. 49 LAB REL. REP. 605, 606 (1962).
31. Ross, supra note 24, at 54.
32. Id., at 53.
33. Wirtz, supra note 7, at 163.
34. Killingsworth, Industrial Relations and Automation, 340 ANNALS 69 (1962); Reuther, Policies for Automation: A Labor Viewpoint, Id. at 100.
35. Wirtz, supra note 7, at 162.

Some will assert that the burden is too great. Collective bargaining cannot bear the pressures here briefly suggested. If this is so, governmental planning must take over a large segment of what has been relatively free economic determinism. Certainly this regrettable development should be averted at all reasonable cost. There must be a resolute willingness to strengthen collective bargaining to make it work. This cannot be done simply by asking labor and management not to engage in strikes. There will have to be governmental intervention to a degree. A realistic acceptance of this fact will enable evaluation of the techniques of governmental intervention which can keep it in the posture of protecting and implementing collective bargaining, rather than subverting it. The ferment which has brought about the many nascent developments outlined above is a healthy sign. But much creative improvement lies ahead if the potential of collective bargaining is to be fulfilled.

**Evaluating Work Stoppages in Critical Industries**

The second inquiry must be as to work stoppages in critical industries when the public cannot stand prolonged loss of production. Here it is already accepted that there must be governmental intervention,[36] although to some extent the collective bargaining process is undermined. What is needed is a straightforward, objective evaluation of the right of employers and unions to engage in critical work stoppages.

A fundamental aspect of authentic collective bargaining is the right to strike. Only by the device of withholding labor can the ultimate relative bargaining strength of the parties be determined.[37] While it is unfortunate in a given case that no agreement is reached and a strike occurs, the threat of the strike must always be present or the employees have no bargaining power. So the right to strike, the complete antithesis of totalitarian economic devices, must be preserved wherever possible to do so. This is the first tenet and beginning proposition for any analysis of the problem of emergency strikes.

The second step must be a frank recognition that the right to strike in an absolute sense does not and cannot exist throughout our economy. We recognize this in government employment and forbid strikes against the government.[38] During World War II we prohibited strikes and set up a system of establishing wages and working conditions through a process other than collective bargaining.[39] But there are other situations not so unusual where the right to strike likewise cannot exist.

Pragmatically, there is no right to strike all the nation's railroads at the same time. Such strike action is not forbidden by law, but it simply cannot be tolerated,[40] as some past experiences show.[41] A work stoppage for a few days might be allowed, but the right to strike for a few days is not a right to strike effectively. In the coal and steel industries, the right to strike is directly related to the size of the stockpile. If there is a large stockpile, there is a right to strike. If there is no stockpile, then a strike simply cannot be tolerated.[42] A demonstration of this principle was given in 1959 when the steel production stoppage was permitted to continue for 116 days because of the stockpile. As soon as the stockpile was gone, the national emergency occurred, and the Taft-Hartley injunction was invoked to force the employees back to work.[43]

A more extreme and more dramatic example of the practical disappearance of the right to strike is made evident by considering what would be the effect of cutting off electric power in any major city. Unions engaged in this and other similar critical production seem to realize that there is no right to strike, and they work out some sort of soft strike technique which causes discomfort, but keeps essential services flowing. Can there be a right to strike in any real sense today in the aerospace industry? Surely not. In the cold war and the race for space, the strike which runs its course cannot be permitted.[44]

**Intervention Might Furnish Bargaining Impetus**

The next proposition in a step-by-step analysis is that collective bargaining is not fully available in all of its connotations where there is no complete right to strike. Bargaining can still be carried on, but the bargaining cannot be based on the threat of strike. Rather it must be based upon the threat of governmental intervention to resolve the dispute. This threat constitutes an effective pressure upon the bargaining parties in many instances. Yet these pressures simply are of neither the same nature nor magnitude as the ultimate threat of strike, and the bargaining is less satisfactory for this reason.

In spite of the extent to which the efficacy of collective bargaining is undermined, it is necessary that governmental intervention be accepted in these disputes. Without something to take the place of the right to strike, the union would be forced into the position of trying to bargain without bargaining strength. Insistence upon bargaining under these conditions would surely lead to a complete loss of faith in bargaining and a demand by workers for drastic governmental controls.[45]

36. Labor Management Relations Act, 1947, Sections 206-10, 61 Stat. 155, 29 U.S.C. Sections 176-80 (1958) (the "national emergency" provisions of Taft-Hartley); Railway Labor Act, Section 10, 44 Stat. 586 (1926), as amended, 45 U.S.C. Section 160 (1958).

37. Frey, Democracy, Free Enterprise, and Collective Bargaining, in LABOR RELATIONS AND THE LAW 24, 30-31 (2d ed, Wollett and Aaron, eds., 1960).

38. Labor Management Relations Act, 1947, Section 305, 61 Stat. 160, repealed by Act of August 9, 1955, 69 Stat. 624, 5 U.S.C. Section 118p (1958), which continues the prohibition against strikes by government employees.

39. War Labor Disputes Act of 1943, 57 Stat. 163.

40. Smith, The Effect of the Public Interest on the Right To Strike and Bargain Collectively, 27 N.C.L. REV. 204, 208 (1948).

41. The history of the many crises in threatened and actual nationwide railroad strikes is detailed in LETCHT, EXPERIENCE UNDER RAILWAY LABOR LEGISLATION, Chapters X-XIV (1955); Kaufman, Emergency Boards under the Railway Labor Act, 9 LAB. L.J. 910 (1958). The history of the most recent crisis, that concerning work rules, is told in Brotherhood of Locomotive Engineers v. Baltimore & Ohio Railroad, 372 U.S. 284 (1963), upholding the right of the railroads to act in accordance with the report of the presidential commission.

42. Williams, The Steel Seizure: A Legal Analysis of a Political Controversy, 2 J. PUB. L. 29, 35 (1953).

43. The history of this dispute is related in the joint concurring opinion of Justices Frankfurter and Harlan in United Steelworkers of America v. United States, 361 U.S. 39, 44 (1959). See also, Seidman, National Emergency Strike Legislation, in SYMPOSIUM ON LABOR RELATIONS LAW 474, 480-84 (SLOVENKO ed. 1961).

44. Brief work stoppages at missile sites have been much in the news the last two years. On May 26, 1961, the President created the Missile Sites Labor Commission, Exec. Order No. 10946, 26 Fed. Reg. 4629 (1961). Senator McClellan has introduced a bill to outlaw strikes at missile sites and other defense facilities. S. 288, 88th Cong., 1st Sess. (1963). He has introduced similar bills in earlier sessions. In August, 1961, Secretary of Labor Goldberg warned that the administration would seek strike-banning legislation if work stoppages continued in the missile construction field. 48 LAB. REL. REP. 423 (1961). For a thorough study, see Van de Water, Applications of Labor Law To Construction and Equipping of United States Missile Bases, 12 LAB. L.J. 1003 (1961).

45. After the National Aeronautics and Space Administration obtained an injunction against picketing of a missile site, President Neil Haggerty of the AFL-CIO Building and Construction Trades Department said: "Labor must have a place to go with its problems if it is to abide by the no-strike pledge." 51 LAB. REL. REP. 209 (1962).

The question, then, is as to the nature of the governmental intervention. Here there should be no opposition to the basic proposition that governmental intrusion should be kept to the minimum needed to prevent strikes which cannot be tolerated.

In evaluating the various techniques of governmental intervention, the tendency must be resisted to fasten upon a supposed panacea. The current demand for placing unions under the antitrust laws is such a shibboleth. Much of the earlier monopolistic aspects of union activity, such as the secondary boycott, have been specifically eliminated by statute.[46] The push for placing unions under the antitrust laws appears to result from the desire to limit each labor union to existence in only one company, thus eliminating industry-wide bargaining.[47] This would unquestionably mean that there would be fewer critical industry-wide work stoppages, because all production in a given commodity normally would not cease.

The great weakness of this approach has been revealed in the recent New York newspapers strike. Only four of the New York newspapers were struck. The other five shut down voluntarily.[48] In industries where there are only a few producers, one cannot afford to be shut down while his competitors are operating. So the producers join together to avoid partial showdown. This has been the great spur to the development of industry-wide bargaining.[49]

It has been proposed that the transportation industry be placed under the antitrust laws to avoid industry-wide transportation strikes.[50] But the kind of pressures which are involved in round-robin strikes, with each competitor being struck separately and at a different time, have led the American Trucking Association to take a firm stand in favor of industry-wide bargaining.[51]

If unions are to be fragmented, the constant economic turmoil caused by employer-by-employer work stoppages,[52] together with the lessening of union bargaining strength which might put it significantly out of balance with employer strength, [53] would almost surely lead to political remedies. This is the past history of unbalanced collective bargaining, and in any democratic country it can be expected that the government will play the role of equalizing undue disparities in bargaining power.

Another sweeping proposal is the so-called nonstoppage strike, which would set up monetary penalties to create bargaining pressure upon both employers and unions.[54] The complex problem of creating and defining the penalties makes its utility most doubtful. Pressures on the parties should be related to the bargaining strength of the parties. In the nonstoppage strike they are not, but are simply a legislative fiat applicable to all disputes.

### Taft-Hartley Postpones, But Doesn't Resolve

The present Taft-Hartley procedures have a history of successes and failures.[55] The most obvious weakness of the procedures is that they have no terminal point. While they postpone a strike, they have no way of ultimately resolving one. If the proposition is accepted that strikes simply cannot be tolerated in certain phases of our national life, then having as our only procedure one which cannot terminate such a dispute is a serious weakness.

In addition, any procedure which takes away the right to strike even temporarily, substituting nothing for it, is bound to alter sharply the relative bargaining strength of the parties. Failure of the Taft-Hartley provisions to authorize the fact-finding body to make recomendations is an example of the operation of the law with an uneven hand. Senator Taft realized this weakness and later recommended that the board be empowered to suggest settlement terms.[56]

There are several unwieldly facts to the Taft-Hartley provisions. The last-offer vote has not been successful.[57] The requirement that the President must go to court to get an injunction seems unjustifiably indirect.[58] Of far greater concern is the fact that the statute leaves the government largely impotent until the emergency occurs. Only then is the fact-finding board created, and it must hurry to report at once before the strike can be postponed by injunction. All of these matters establish an undue rigidity in the Taft-Hartley provisions.

Critical labor disputes differ. Each has its own stumbling-blocks to settlement. The impact upon the public differs. Sometimes the public can tolerate a work stoppage for quite a while, even though in a critical industry. At other times a strike for one minute, as in the case of electric power, could be disastrous. These considerations indicate that there should be a choice of procedures for use in resolving critical work stoppages.[59]

There might well be concern that the choice-of-procedures approach leaves too much to the discretion of the President. But power must be lodged somewhere, and it cannot be lodged in a more responsible place than in the executive. To have these procedures available is not to give the President a bludgeon consisting of threats of many different kinds of procedures. The

46. Levitan, **An Appraisal of the Antitrust Approach**, 333 ANNALS 108 (1961); Sovern, Address before National Association of State Labor Relations Agencies, 51 Lab. Rel. Rep. 68, 80 (1962).

47. Ladd Plumley, President of the United States Chamber of Commerce, has strongly urged putting unions under the antitrust laws. 52 LAB. REL. REP. 103, 104 (1963). Joseph L. Block, a member of the President's Advisory Committee on Labor-Management Policy, expressed a similar views in the May, 1962, report of that body. See Report, supra note 5, at 45.

48. Wall Street Journal, December 10, 1962, page 2, column 3.

49. Cox, op. cit. supra note 12, at 51.

50. S. 2573, 87th Cong., 1st Sess. (1961), sponsored by Senators McClellan, Byrd (Virginia), Thurmond, Curtis, Case (South Dakota) and Bennett

51. Report, Industrial Relations Committee, American Trucking Association, 52 LAB. REL. REP. 91 (1963).

52 Kramer, supra note 19, at 232; McPherson, Cooperation Among Auto Managements in Collective Bargaining, id. at 607, 608. Pierson, Cooperation among Managements in Collective Bargaining, id. at 621. See also McDowell, Labor and Antitrust: Collective Bargaining or Restraint of Trade? 20 FED. B.J. 18 (1960)

53. Cox, op cit. supra note 12, at 52.

54. Marceau & Musgrave, Strikes in Essential Industries: A Way Out, 27 HARV. BUS. REV. 286 (1949); Goble, the Nonstoppage Strike, 2 LAB. L.J. 105 (1951). But cf. Marshall & Marchall, Nonstoppage Strikes and National Labor Policy — A Critique, 7 LAB. L.J. 299 (1956).

55. Pierson, An Evaluation of the National Emergency Provisions, in EMERGENCY DISPUTES AND NATIONAL POLICY 129 (Bernstein; Enarson and Fleming, eds. 1955); Taylor, The Adequacy of Taft-Hartley in Public Emergency Disputes, 333 ANNALS 76 (1961).

56. Seidman, supra note 43, at 478.

57. Id. at 479

58. The President's Advisory Committee on Labor-Management Policy proposed that the injunction be eliminated and the President be empowered to direct the continuation of operations subject to judicial review. Report, supra note 5, Sec. IV, at 44.

59. The literature on the choice of procedures approach is voluminous. Of particular value are Cox, op. cit supra note 12, at 56; Wirtz, The "Choice of Procedures" Approach to National Emergency Disputes, in EMERGENCY DISPUTES AND NATIONAL POLICY 149 (Bernstein, Enarson and Fleming, eds. 1955); Fleming, Emergency Strikes and National Policy, 11 LAB. L.J. 267, 336 (1960).

The Schlichter Law in Massachusetts is a choice of procedures law. MASS. GEN. LAWS, Ch. 150B (1957); Shultz, The Massachusetts Choice of Procedures Approach to Emergency Disputes, 10 IND. & LAB. REL. REV. 358 (1957).

power should be given to the President, instead, because of the need for flexibility, since the disputes differ so much in their attributes.

**Variety of Procedures Should Be Available**

The remaining issue, then, is the nature of the procedures which should be available in handling critical labor disputes. Properly, the most usually recommended procedure is the development and refinement of the process of fact finding by an independent board, coupled with the additional power of that board to suggest terms of settlement.[60] The theory is that there will be strong pressures upon the parties to settle in close conformity to the recomendations, if the recomendations are reasonable. Public opinion, reacting to a sensible proposal for settle, could make it quite difficult for the parties to refuse to accept it.

One serious need is for the fact finding boards to be activated before the emergency develops. The investigation should be made and the recomendation should be ready before the strike occurs. Earlier governmental intervention is receiving increasing acceptance, as is shown through its approval by the President's Labor-Management Committee.[61] We should experiment with the operation of fact-finding boards, and the details need not be explored here.[62]

From time to time the government has used the device of seizing businesses to bring about the end of critical strikes.[63] But seizure as the sole governmental intervention disregards the rights of employees. It takes away the source of bargaining strength, the right to strike, and gives nothing to take its place. Seizure should be used only as an enforcement device to aid in effectively carrying out other procedures, such as fact finding with recommendations. Seizure was used merely as an enforcing device during World War II.[64]

It is necessary to accept the need to have available additional means for the governmental intervention more stringent than fact-finding. There are some work stoppages in which, because of the nature of the goods withdrawn from the market, the public automatically opposes those who strike, regardless of the merits of the dispute. In these situations employers would be enabled effectively to hold out against any board-recommended settlement properly favorable to workers. It follows that when necessary the government should have the power to introduce a fact-finding board's recomendations as the work conditions actually to be used for a temporary period.[65] It is true this device would tend strongly to establish the recommended settlement as the final settlement of the dispute, since the parties would be forced to operate under these conditions for a time. Yet where the strike cannot tolerated, some such procedure is justified. It must be stressed again that in this kind of situation collective bargaining in the usual sense cannot exist. Since it cannot, wages working conditions must ultimately be established in another way if the parties fail to reach agreement under the threat of governmental intervention.

**Compulsory Arbitration May Be Justified**

Even the final step, so bitterly opposed both by management and labor, is justified by the analysis here set forth. The compulsory arbitration of wages and working conditions to settle a dispute in an industry in which a work stoppage would be disastrous to the national interest is a proper procedure to have available. We used compulsory arbitration in wartime because we could not tolerate strikes.[66] It needs to be an available ultimate weapon in those instances in which the right to strike simply cannot exist.

Compulsory settlement procedures should not ever be the only available procedures in a given industry, no matter how critical. Often mechanisms short of compulsory settlement could bring the parties to a resolution of the labor dispute. It must be frankly realized that the availability and use of compulsory arbitration tends seriously to weaken bargaining; the party most likely to benefit from a forced settlement may negotiate only perfunctorily.[67] But the premise here stated is that at least sometimes there can not be a right to strike. When this is so, bargaining is not available as the ultimate solution to the dispute, and the fact that compulsory settlement seriously weakens the bargaining does not outweigh the necessity that a means of settlement without stoppage must be ready for use, although only in the most extreme situations.[68] If the right to strike is gone, something else must take its place.

The most common objection stated both to compulsory arbitration and to fact finding with recommendations is that they put the government in the business of fixing wages, leading inevitably to a managed economy.[69] We already have enough ex-

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60. Authorization of the fact-finding board to make recommendations has been the established procedure under the Railway Labor Act. On fact finding with recommendations generally, see Fleming, supra note 59, at 275; Seidman, supra note 43, 487; Wallen, National Emergency Disputes, 12 LAB. L. J. 61, 64 (1961).

61. Report, supra note 5, Sec. IV, at 43.

62. Solicitor General Archibald Cox has proposed the setting up of Boards of Public Responsibility in major industries. The function of the boards would be to organize and expedite bargaining procedures to try to head off emergency disputes. This could well take the form of early fact finding with recommendations. Cox, op. cit. supra note 12, at 55.

63. Justice Frankfurter's concurring opinion in Youngstown Sheet & Tube Company v. Sawyer, 343 U.S. 579 (1952), contains two valuable appendices giving the history of governmental seizure of business enterprises. Appendix I is an analysis of legislation authorizing seizure (page 615); Appendix II lists the instances of seizure (page 619).

On seizure generally see Cox, Seizure in Emergency Disputes, in EMERGENCY DISPUTES AND NATIONAL POLICY 224 (Bernstein, Enarson and Fleming, eds. 1955); Teller, Government Seizure in Labor Disputes, 60 Harv. L. REV. 1017 (1947).

64. War Labor Disputes Act of 1943, Section 3, 57 Stat. 164.

65. Cox, op. cit. supra note 12, at 56; Givens, Dealing with National Emergency Labor Disputes, 34 TEMP. L.Q. 17 (1960); Seidman, supra note 43, at 491.

66. War Labor Disputes Act of 1943, Section 7, 57 Stat 166; Boudin, The Authority of the National War Labor Board over Labor Disputes, 43 MICH. L. REV. 329 (1944). On the history of the development and use of the compulsory arbitration device see Williams, Compulsory Settlement of Contract Negotiation Labor Disputes, 27 TEXAS L REV. 587, 591-619 (1949).

67. The Cole Committee in New Jersey, which recommended the repeal of that state's public utility arbitration law in favor of a choice of procedures approach, found a serious weakening of collective bargaining. Document, 8 IND. & LAB. REL. REV. 408, 415; 423 (1955). Seidman, supra note 43, at 488; Secretary of Labor Wirtz, address before National Academy of Arbitrators, 52 LAB. REL REP. 133, 164 (163).

68. Impartial observers tend to accept, albeit reluctantly, the principle of compulsory arbitration in the ultimate situation where a work stoppage must be absolutely forbidden. The Committee on Labor Arbitration Law, Section of Labor Relation Law, American Bar Association, in 1960 took a position opposed to compulsory arbitration, yet recognized that "national interest may be so imperiled as to make some form of compulsion essential". PROCEEDINGS, SECTION OF LABOR RELATIONS LAW, 166, 167 (1960). To the same effect are Feinsinger, Comment on National Emergency Strike Legislation in SYMPOSIUM ON LABOR RELATIONS LAW 493, 495 (Slovenko ed 1961); Seidman, National Emergency Strike Legislation, id. at 489; Smith, supra note 40, at 210. The American Trucking Association officially favors compulsory arbitration, 52 LAB. REL. REP. 104 (1963).

69. Frey, The Logic of Collective Bargaining and Arbitration, 12 LAW AND CONTEMPT. 1/4ROB 264, 275 (governmental enforcement of wage rates "would open a Pandora's box of governmental regulation . . ."). A recent statement in opposition to recommendations as part of fact finding, seeing the procedure as an undue governmental intrusion, was made by Henry Ford II as a member of the President's Advisory Committee on Labor-Management Policy. Report, supra note 5, Sec. IV (footnote), at 44, and separate statement, at 46.

I

**Lucio Libarnes, petitioner vs. The Hon. Executive Secretary, et al., respondents, G.R. No. L-21505, Oct. 24, 1963, Concepcion, J.:**

1. PUBLIC OFFICERS; REMOVAL OR SUSPENSION; CHIEF OF POLICE OF ZAMBOANGA CITY; CANNOT BE REMOVED OR SUSPENDED EXCEPT FOR CAUSE.—It is conceded that the Chief of Police of Zamboanga City is a member of our civil service system (Section 5, Republic Act No. 2260). Hence, he cannot be "removed or suspended except for cause as provided by law and after due process" (Sec. 33, Republic Act No. 2260).
2. ID.; ID.; CASE COMPARED WITH CASES OF LACSON VS. ROMERO AND DE LOS SANTOS VS. MALLARE.—It cannot be denied that the attempt to terminate the services of plaintiff herein, as de jure holder of the office of Chief of Police of Zamboanga City, entailed his removal therefrom. even more than the attempt to transfer the provincial fiscal of Negros Oriental and the City Engineer of Baguio City without their consent was held in Lacson vs. Romero (47 Off. Gaz. 1778) and De los Santos vs. Mallare (87 Phil. 289) to constitute illegal removal from their respective offices.
3. ID.; ID.; POWER OF PRESIDENT TO REMOVE CHIEF OF POLICE OF ZAMBOANGA CITY AT PLEASURE UNDER SEC. 34, COMMONWEALTH ACT 39 ELIMINATED BY SEC. 5, REP. ACT 2259.—Defendants argue that the provision of Section 5 of Republic Act No. 2259 is inapplicable to the case at bar because plaintiff herein has not been removed from office, his term of office having merely expired when the President terminated his services. Suffice it to say, that this attempt to terminate plaintiff's services was predicated upon said Section 34 of Commonwealth Act No. 39, pursuant to which the Executive may "remove at pleasure" the Chief of Police of Zamboanga City, and that this is the reason why section 5 of Republic Act No. 2289 speaks, also, of removal to indicate that it seeks to withdraw or eliminate precisely such power to "remove at pleasure" under Commonwealth Act No. 39, among other pertinent legislations.
4. ID.; ID.; STATUTORY CONSTRUCTION; REPEAL; WHEN MAY A SPECIAL LAW BE REPEALED OR AMENDED BY SUBSEQUENT GENERAL LAW.—The question whether or not a special law has been repealed or amended by one or more subsequent general laws is dependent mainly upon the intent of Congress in enacting the latter. The discussions on the floor of Congress show beyond doubt that its members intended to amend or repeal all provisions of special laws inconsistent with the provisions of Republic Act No. 2259, except those which are expressly excluded from the operation thereof. In fact, the explanatory note to Senate Bill No. 2, which, upon approval; became Republic Act No. 2259, specifically mentions Zamboanga City, among others that had been considered by the authors of

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SETTLEMENT . . . (Continued from page 364)

perience to show that this is not necessarily so. We have had a number of past instances of fact finding with recommendations forming the basis of settlement.[70] There is a clear distinction to be made. The wage settlement proposed with regularity by a government agency is a far greater intrusion by the government than is the recommendation of an ad hoc fact-finding board or board of arbitration which has been chosen to bring about settlement of one particular dispute. Insofar as the independent board can approximate the settlement that the parties themselves would have reached if the strike had been allowed to run its course, the settlement has no more effect upon the economy than would the settlement of the parties themselves. Of course, just what the settlement of the parties would have been can never be known exactly. But there is enough experience with collective bargaining settlements and voluntary arbitrations of wage disputes to know that, given the facts, the economic pattern which should be followed can be ascertained.[71]

**Collective Bargaining**

**Is Absolute Requisite**

The key to the resolution of the emergency dispute problem is therefore revealed. The matter of pressure in settlements by governmental intervention through emergency-dispute processes will not disrupt the role of collective bargaining so long as the settlements brought about follow collective bargaining patterns rather than establish them. The maintaining and strengthening of effective collective bargaining then becomes the absolute requisite to the keeping of emergency procedures in narrow bounds. If the basic labor-cost decisions in the American economy are made by collective bargaining, we have little to fear from the occasional emergency settlement dictated by ad hoc governmental intervention. The dictated settlements can follow the pattern established by bargaining.

So it is that the newly awakened emphasis on improving collective bargaining is as significant a part of the solution to the emergency strike problem as are the techniques for dealing with such strikes. Governmental intervention in emergency work stoppages need not bring about governmental management of the economic bargains in our society if collective bargaining is strengthened to maintain its proper role in making these economic decisions.

We must endeavor to reach this balanced approach. Realistically speaking, we cannot continue to hold a false belief that the right to strike is unlimited. We cannot insist that all bargains must be made through the collective bargaining process. We can and must make every effort to hone the keen edge of collective bargaining so that it is an effective tool in all but the very hardest of cases. But we must be courageous enough to handle the hardest cases another way.

The alternative is facing the resolution of each crisis after the crisis occurs. Drastic measures which will destroy the process of collective bargaining seem the inevitable outgrowth of such a passive approach when the spectrum of the kinds of crisis which can arise is viewed. Advance preparation for emergencies by creating the structures to meet them is needed to preserve our economic freedom. Freedom does not flourish in chaos, but in enlightened order.

70. See note 41, supra for citations to the fact-finding-with-recommendations experience under the Railway Labor Act. In the 1949 steel pension dispute, President Truman bypassed the Taft-Hartley provisions and appointed a fact-finding board empowered to recommend. The dispute was settled in close compliance with the recommendations. The Board report is printed in 13 L.A. (BNA) 46 (1949). A recent example of the fact-finding board empowered to recommend terms is the Missile Sites Labor Commission, see note 44, supra.

71. There is extensive literature on wage patterns. E.g., BERNSTEIN, ARBITRATION OF WAGES (1954); NEW CONCEPTS IN WAGE DETERMINATION (Taylor and Pierson, eds 1957).

the bill in drafting the same. Similarly, Section 1 of Republic Act No. 2259 makes reference to "all chartered cities in the Philippines", whereas Section 8 excludes from the operation of the Act "the cities of Manila, Cavite, Trece Martires and Tagaytay," and Section 4 contains a proviso exclusively for the City of Baguio, thus showing clearly that all cities not particularly excepted from the provisions of said Act — including, therefore, the City of Zamboanga— are subject thereto.

5. ID.; ID.; RULING IN CASE OF FERNANDEZ VS. LEDESMA NOT IN POINT.—The case of Fernandez vs. Ledesma, L-18878 (March 30, 1963), relied upon by the defendants herein, is not in point, the termination of the services of the officer involved in the Fernandez case having taken place on April 28, 1959, or **prior** to the approval of Republic Act No. 2259, on June 19, 1959, whereas plaintiff herein was advised of the attempt to terminate his services on May 23, 1963, or almost four (4) years after said legislation had become effective.

6. CONSTITUTIONAL LAW; BILL; SUBJECT SHOULD BE EMBRACED IN TITLE OF A BILL; PURPOSE OF; EXCEPTION.—It is contended that the provision in Section 5 of Republic Act No. 2259, to the effect that "all other officials now appointed by the President of the Philippines may not be removed from office except for cause" is a rider violative of the constitutional injunction that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill", that of Republic Act No. 2259, being: "AN ACT MAKING ELECTIVE THE OFFICES OF MAYOR, VICE-MAYOR AND COUNCILORS IN CHARTERED CITIES, REGULATING THE ELECTION IN SUCH CITIES AND FIXING THE SALARIES AND TENURE OF SUCH OFFICES".—It is claimed that the contents of Section 5 of Republic Act No. 2259 are alien to the subject of this title and that consequently said provision is unconstitutional. This pretense is untenable. As stated in the explanatory note to the aforementioned Senate Bill No. 2, the purpose thereof is to establish "uniformity in the number of city officials, in the manner in which they are to be chosen, in the extent of their powers, duties and functions", as well as "equality in the rights and privileges enjoyed by the residents of said cities, particularly the right to choose the officials who should be at the helm of their respective city governments". Obviously, the matter of the conditions under which local officials appointed by the President may be removed from office not only is germane to such purpose, but, also, forms an essential part thereof. "One purpose of the constitutional directive that the subject of a bill should be embraced in its title is to appraise the legislators of the purpose, the nature and scope of its provisions, and prevent the enactment into law of matters which have not received the notice, action and study of the legislators or of the public." (Inchong vs. Fernandez, G.R. No. L-7995, May 31, 1957). In the case at bar, the provisions of Section 5 of Republic Act No. 2259 was debated upon on the floor of Congress, whose members were actually aware of its existence.

## DECISION

This is an original petition for quo warranto and injunction, with preliminary injunction and/or mandatory injunction.

Plaintiff Lucio Libarnes was, on January 29, 1959 nominated by the President of the Philippines for the office of Chief of Police of Zamboanga City. The nomination having been confirmed by the Commission on Appointments on February 25, 1959, Libarnes assumed the aforementioned office on March 11, 1959, and continued discharging the duties of said office ever since. On May 16, 1963, the new Executive designated defendant Miguel Apostol as Acting Chief of Police of Zamboanga City. On May 18, 1963, Apostol took his oath of office as such acting chief of police before the Speaker of the House of Representatives, in Manila, and soon thereafter, or on May 23, 1963, defendant Tomas Ferrer, as City Mayor of Zamboanga, transmitted to Libarnes a letter of the Acting Assistant Executive Secretary, Office of the President, Malacañan, dated May 16, 1963, informing him (Libarnes) that "under the provisions of Section 34 of the Charter of Zamboanga City, as amended, the President" had terminated his "services as Chief of Police of said City effective immediately and x x x designated Major Miguel Apostol" in his stead and stating that it would "be appreciated if" he (Libarnes) could "turn over the office in question to Major Apostol upon receipt" of said communications. Mayor Ferrer, furthermore, requested Libarnes to turn over his "property responsibility" with the property custodian of the police department. In a memorandum of the same date (May 23, 1963) Mayor Ferrer, likewise, informed all members of the police force of Zamboanga City of the appointment of Apostol and oath taken by him as acting head of said force, and requested them to "take orders from the new Chief of Police." However, Libarnes refused to turn over his office to Apostol— who tried to take possession thereof—as well as his (Libarnes') property responsibility, and, soon thereafter, or, on July 5, 1963, he (Libarnes) initiated the present action for the purpose of nullifying the aforementioned designation of Apostol as Acting Chief of Police of Zamboanga City and of restraining him, as well as its mayor, the Executive Secretary and their subordinates, assistants or persons acting under them, or for or in their behalf, from molesting Libarnes in the possession of the office in question or in the exercise and enjoyment of the functions and prerogatives thereof. Plaintiff's complaint is anchored upon the theory that, under the provisions of Section 5 of Republic Act No. 2259 and of the Civil Service Law (Republic Act No. 2260), he is entitled to hold said office until removed for cause, which is not claimed to exist in his case, and "after due process", which, he asserts, has been denied him.

Upon the other hand, defendants maintain that the disputed designation of defendant Apostol is perfectly valid because, as Chief of Police of Zamboanga City, plaintiff held said office at the pleasure of the President, pursuant to Section 34 of the Charter of said City, or Commonwealth Act No. 39, reading:

> **"Appointment and removal of officials and employees —Compensation.**—The President shall appoint, with the consent of the Commission on Appointments of the National Assembly, the Judges of the Municipal Court, the city treasurer, the city engineer, the city assessor, the city attorney, **the chief of police** and the other heads of the city departments as may be created from time to time, and he may removed at pleasure any of the said appointive officials, except the judges of the Municipal Court, who may be removed only according to law."

and that this provision has not been amended by said Republic Acts Nos. 2259 and 2260.

Defendants' contention cannot be upheld, for said Section 34 of Commonwealth Act No. 39 is inconsistent with Section 5 of Republic Act No. 2259, which provides:

> "The incumbent appointive City Mayors, Vice-Mayors and Councilors, unless sooner removed or suspended for cause, shall continue in office until their successors shall have been elected in the next general elections for local officials and shall have qualified. Incumbent appointive

city secretaries shall, unless sooner removed or suspended for cause, continue in office until as elective city council or municipal board shall have been elected and qualified; thereafter the city secretary shall be elected by majority vote of the elective city council or municipal board. All other city officials now appointed by the President of the Philippines may not be removed from office except for cause."

and Section 9 of said Republic Act No. 2259 expressly repeals "all acts or parts of acts x x x inconsistent with the provisions" thereof.

It is conceded that the Chief of Police of Zamboanga City is a member of our civil service system (Section 5, Republic Act No. 2260). Hence, he cannot be "removed or suspended except for cause, as provided by law and after due process" (Section 33, Republic Act No. 2260). It cannot be denied that the attempt to terminate the services of plaintiff herein, as de jure holder of said office, entailed his removal therefrom, even more than the attempt to transfer the provincial fiscal of Negros Oriental and the City Engineer of Baguio without their consent was held in Lacson vs. Romero (47 Off. Gaz., 1778) and De los Santos vs. Mallare (87 Phil. 289) to constitute an illegal removal from their respective offices.

Defendants argue that the above quoted provision in Section 5 of Republic Act No. 2259 is inapplicable to the case at bar because plaintiff herein has not been removed from office, his term of office having merely expired when the President terminated his services. Suffice it to say that this attempt to terminate plaintiff's services was predicated upon said Section 34 of Commonwealth Act No. 39, pursuant to which the Executive may "remove at pleasure" the Chief of Police of Zamboanga City, and that this is the reason why Section 5 of Republic Act No. 2259 speaks, also, of removal to indicate that it seeks to withdraw or eliminate precisely such power to "remove to pleasure" under Commonwealth Act No. 39, among other pertinent legislations.

Again, the question whether or not a special law has been repealed or amended by one or more subsequent general laws is dependent mainly upon the intent of Congress in enacting the latter. The discussions on the floor of Congress show beyond doubt that its members intended to amend or repeal all provisions of special laws inconsistent with the provisions of Republic Act No. 2259, except those which are expressly excluded from the operation thereof. In fact, the explanatory note to Senate Bill No. 2, which, upon, approval, became Republic Act No. 2259, specifically mentions Zamboanga City, among others that had been considered by the authors of the bill in drafting the same. Similarly, Section 1 of Republic Act No. 2259 makes reference to "all chartered cities in the Philippines," whereas Section 8 excludes from the operation of the Act "the cities of Manila, Cavite, Trece Martires and Tagaytay," and Section 4 contains a proviso exclusively for the City of Baguio, thus showing clearly that all cities not particularly excepted from the provisions of said Act—including, therefore, the City of Zamboanga—are subject thereto.

The case of Fernandez vs. Ledesma, L-18878 (March 30, 1963), relied upon by the defendant herein, is not in point, the termination of the services of the officer involved in the Fernandez case having taken place on April 28, 1959, or prior to the approval of Republic Act No. 2259, on June 19, 1959, whereas plaintiff herein was advised of the attempt to terminate his services on May 23, 1963, or almost four (4) years after said legislation had become effective.

It is next urged, however, that the provision in Section 5 of Republic Act No. 2259, to the effect that "all other officials now appointed by the President of the Philippines may not be removed from office except for cause" is a rider violative of the constitutional injunction that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill", that of Republic Act No. 2259, being:

"AN ACT MAKING ELECTIVE THE OFFICES OF MAYOR, VICE-MAYOR AND COUNCILORS IN CHARTERED CITIES, REGULATING THE ELECTION IN SUCH CITIES AND FIXING THE SALARIES AND TENURE OF SUCH OFFICES."

It is claimed that the contents of the aforementioned provision are alien to the subject of this title and that consequently said provision is unconstitutional. This pretense is untenable. As stated in the explanatory note to the aforementioned Senate Bill No. 2, the purpose thereof is to establish "uniformity in the number of city officials, in the manner in which they are to be chosen, in the extent of their powers, duties and functions", as well as "equality in the rights and privileges enjoyed by the residents of said cities, particularly the right to choose the officials who should be at the helm of their respective city governments". Obviously, the matter of the conditions under which local officials appointed by the President may be removed from office not only is germane to such purpose, but, also, forms an essential part thereof.

Furthermore, as stated in Inchong vs. Fernandez, G. R. No. L-1995 (May 31, 1957):

"One purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purpose, the nature and scope of its provisions, and prevent the enactment into law of its matters which have not received the notice, action and study of the legislators or of the public. In the case at bar it cannot be claimed that the legislators have not been apprised of the nature of the law, especially the nationalization and prohibition provisions. The legislators took active interest in the discussion of the law x x x."

In the case at bar, the provision in question was, similarly, debated upon on the floor of Congress, whose members were, therefore, actually aware of its existence.

WHEREFORE, we hold that said provision in Section 5 of Republic Act No. 2259 is constitutional and valid; that as Chief of Police of Zamboanga City, plaintiff Libarnes is entitled to the benefits of the aforementioned provision; and that, pursuant thereto and to Section 32 of Republic Act No. 2260, he no longer holds the office at the pleasure of the Executive, and may be removed therefrom only "for cause as provided by law and after due process," and, accordingly, judgment is hereby rendered declaring that plaintiff Lucio C. Libarnes is still the de jure Chief of Police of Zamboanga City, and that, as such, he is entitled to continue holding said office and discharging the powers and duties thereof, and, consequently, enjoining the defendants herein, as well as their subordinates or persons acting in their behalf, to refrain from molesting the plaintiff, or otherwise interfering in the possession of said office, and in the discharge of the powers and duties attached thereto, with costs against said defendants.

IT IS SO ORDERED.

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

II

**People of the Philippines, plaintiff-appellee vs. Pascual Curiano, et al., defendants-appellants, G.R. Nos. L-15256 and L-15257, October 31, 1963, Barrera, J.:**

1. CRIMINAL PROCEDURE; NEW TRIAL; RETRACTIONS OF WITNESSES; WHEN NOT GROUNDS FOR NEW TRIAL. —Evidence which merely seeks to impeach the evidence upon which the conviction was based (U.S. v. Smith, 8 Phil. 674; U.S. v. Valdez, 30 Phil. 290; U.S. v. Lee, 38 Phil. 466; U.S. v. Singuimoto, 3 Phil. 176), or retraction of witnesses (People v. Olfindo, 47 Phil. 1; U.S. v. Dacir, 26 Phil. 503; People v. Follantes, 64 Phil. 527), will not constitute grounds for new trial, unless it is shown that there is no evidence sustaining the judgment of conviction except the testimony of the retracting witness (U.S. v. Dacir, supra; People v. Gallemos, 61 Phil. 884; People v. Cu Unjieng, 61 Phil. 906.

2. ID.; ID. ID.; ID.; REASON FOR THE RULE.—The reason for this rule is that if new trial should be granted at every instance where an interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation (Reyes v. People, 71 Phil. 598).

3. ID.; ID.; AFFIDAVIT OF A PERSON CONVICTED OF A CRIME EXECUTED SUBSEQUENT TO CONVICTION; WHEN NOT GROUND FOR NEW TRIAL.—It has been held that an affidavit, which a person convicted of a crime (as in the instant case) executed subsequent to his conviction, to the effect that another person, also convicted of criminal participation in the same offense, did not actually take part therein, furnishes no ground for a new trial (U.S. v. Smith, 8 Phil. 674).

4. ID.; ID.; WITNESSES; RETRACTIONS; WHEN PRESENTATION THEREOF NOT GROUND FOR NEW TRIAL.— It is unnecessary to grant a new trial when there is no assurance that the witness to be introduced could not have been presented at the original hearing; and his testimony will not materially improve defendant's position (People v. Torres, 73 Phil. 107).

5. ID.; ID.; ID.; TESTIMONIES TAKEN BEFORE COURTS OF JUSTICE; DANGEROUS RULE TO REJECT THEM UPON RETRACTIONS OF WITNESSES.—In People v. Ubina (G. R. No. L-6969, prom. August 31, 1955), it was held that "it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses."

6. ID.; ID.; AFFIDAVITS OF RETRACTIONS OF WITNESSES; PREPARED FOR MONEY CONSIDERATION; NOT GROUND FOR NEW TRIAL.—The Supreme Court has consistently refused to entertain motions for new trial based on improbability of the alleged new versions of the commission of the crime, and the easiness and facility with which such affidavits are obtained (People v. Monadi, G.R. Nos. L-3770-71, pro. September 27, 1955 ;People v. Aguipo, G. R. No. L-12655, prom. June 30, 1960), and the probability of their being repudiated later (People v. Galamiton, G. R. No. L-6302, prom. August 25, 1954). It is likewise not improbable that such schemes are conceived and carried out for a consideration, usually monetary (People v. Francisco, G.R. No. L-5900, prom. May 14, 1954). There is, therefore, no reason for acceding to appellants' motion for new trial.

7. ID.; CRIMINAL EVIDENCE; **ALIBI**; REQUISITE FOR ADMISSIBILITY AS EVIDENCE.—In the long line of cases, it had been held that in order to establish an **alibi**, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place. (People v. Alban, G. R. No. L-15203, prom. March 29, 1961, citing People v. Oxiles, 20 Phil. 587; People v. Palamos, 49 Phil. 601; People v. Resabal, 50 Phil. 80; People v. Niem, 75 Phil. 668.)

8. ID.; ID., WITNESSES; CREDIBILITY; FINDINGS OF TRIAL COURT NOT DISTURBED BY APPELLATE COURTS; EXCEPTIONS.—Where the appeal merely involves the credibility of the various witnesses, the rule is well-established that appellate courts will not generally disturb the findings of the trial court, as the latter is in a better position to decide the question, having seen and heard the witnesses themselves and observed their behavior and manner of testifying during the trial, except when it is shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case (People vs. Alban, G. R. No. L-15203, March 29, 1961, citing People vs. Berganio, G.R. No. L-10121, prom. January 22, 1957). The trial court in the case at bar has made a complete and through analysis of the various testemonies which we found to be properly and well-supported by the evidence adduced.

9. ID.; ID.; **ALIBI**; WHEN **ALIBI** IS OVERCOME BY IDENTIFICATION OF ACCUSED BY AN EYEWITNESS.— The **alibi** of the appellants cannot overcome the testimony of a wtness and eyewitness to the bloody incident who testified in a clear, credible, straightforward, and convincing manner and who positively indentified appellants as the perpetrators of the crimes in question.

10. CRIMINAL LAW; MURDER; AGGRAVATING CIRCUMSTANCE; SUDDEN AND UN-EXPECTED ATTACK OF VICTIMS.—There was treachery, which qualified the killing of the four victims, to murder, as the attack was so sudden and unexpected, thereby insuring the accomplishment of the crimes, without risk to appellants arising from the defense which they (victims) might have offered (People v. Alban, supra, citing People v. Godines Martinez, G.R. No. L-12268, prom. November 28, 1959; People v. Ambahang, G. R. No. L-12907, prom. May 30, 1960).

11. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ACCUSED ALL ARMED WITH DEADLY WEAPONS AND SUPERIOR IN NUMBERS.—Abuse of superior strength was also attendant, it appearing that appellants, aside from being all armed with deadly weapons, were decidedly superior in number- [8 in all] in relation to the number of the assaulted parties [only 3 and a boy of 2 years] (U.S. v. Tandoc, 40 Phil. 954; People v. Caroz, 68 Phil. 521).

12. ID.; ID.; KILLING IN DWELLING OF VICTIMS.—The circumstance of dwelling may, further, be considered as to the killing of Daniel Errabo, Engracia Salazar, and Mario Errabo, as it occurred in their dwelling place (the hut) or on the ground thereof (U.S. v. Macariñas, 40 Phil. 1).

13. ID.; ID.; NIGHTTIME ABSORBED IN TREACHERY.—The aggravating circumstance of nighttime, although present, may not be taken into account, inasmuch as it is absorbed in treachery (People v. Balagtas, 68 Phil. 675).

14. ID.; ID.; CRUELTY; NUMBER OF WOUNDS FOUND UPON CORPSE; WHEN CONSIDERED AS AGGRAVATING CIRCUMSTANCE OF CRUELTY.—Neither may the circumstance of cruelty as found by the trial court be considered, be-

cause there is no showing that the other wounds found on the bodies of the victims were inflicted unnecessarily while they were still alive in order to prolong their physical suffering. The number of wounds found upon the corpse does not, by itself alone, justify the acceptance of the circumstance of cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims (People v. Aguinaldo, 55 Phil. 610; See also People v. Dayug, 49 Phil. 423; People v. Daquiña, 60 Phil. 279).

15. ID.; ID.; LACK OF PROVOCATION; NOT AGGRAVATING CIRCUMSTANCE ENUMERATED BY THE REVISED PENAL CODE.—The circumstance of lack of provocation was incorrectly considered by the trial court as aggravating in the killing of the Errabos; the same is not one of the aggravating circumstances enumerated in the Revised Penal Code.

DECISION

Pascual Curano alias Paping, Candido Violante, Francisco Tafalla, Marcelo Tafalla, Santos Tafalla, Herminigildo Tafalla, Olimpio Tafalla, and Pamfilo Balasbas, were charged in the Court of First Instance of Samar with the crimes of murder (Crim. Case No. 4535),[1] for the killing of Rafael Yboa and multiple murder (Crim. Case No. 4565)[2] for the killing of Daniel Errabo, Engracia Salazar, and Mario Errabo. On arraignment, they pleaded not guilty and, upon motion of the Provincial Fiscal consented to by defense counsel, the cases were jointly tried in said court. After trial, defendants were found guilty of the crimes of murder and multiple murder as charged and, considering the presence of four (4) aggravating circumstances in the murder case and five (5) aggravating circumstances in the triple murder case, without any mitigating circumstance in either of the two cases, were sentenced each to the maximum penalty of death, with the accessory penalties inherent in said crimes, and to pay indemnity (jointly and severally) in the sum of ₱5,000.00 to the heirs of Rafael Yboa, ₱5,000.00 to the heirs of Daniel Errabo, ₱5,000.00 to the heirs of Engracia Salazar, and ₱5,000.00 to the heirs of Mario Errabo, and to pay the corresponding costs.

Both cases are now before us for review, in accordance with Section 9, Rule 118 of the Rules of Court.

Pending appeal in this Court, counsel for appellants submitted a motion for new trial, based on newly-discovered evidence, consisting of the affidavits of (1) appellant Herminigildo Tafalla, to the effect that only he and three others who are still at large, namely, Sebastian Loyo, Rodolfo Catalan, and Jose Catalan, were the real authors of the murder [Annexes A and A-17; Remedios Rojas, Herminigildo's common-law wife, corroborating to a substantial degree said affidavit of appellant Herminigildo Tafalla [Annexes B and B-17; (3) Andres Caber, to the effect that said Rodolfo Catalan told him and several others that only he [Rodolfo], his brother Jose Catalan, Sebastian Loyo, and appellant Hermenigildo Tafalla committed the murders [Annexes C and C1]; (4) Cornelia Chan, wife of accused Francisco Tafalla, to the same effect substantially as the affidavit of Andres Caber [Annexes D and D-1]; (5) Floro Opiniano, relating how his cousins Jose and Rodolfo Catalan came to him in Ormoc City looking for jobs, and how seeing them restless, asked Rodolfo what the matter was, and the latter confided that he and Hermenegildo Tafalla participated in the killing of Rafael Yboa [Annex E]; and (6) appellant Santos Tafalla, to the effect that it was not true, as he was wrongfully advised to state in court, that he saw that Olimpio, Lucilo and Hermenigildo Tafalla sailing in a banca towards the scene of the crime [Annexes F and F-1]. Action on said motion for new trial was deferred by resolution of this Court on July 13, 1959.

These affidavits, we now find, are without merit. Appellant Herminigildo Tafalla's affidavit is, evidently, a last-minute attempt to save the lives of his co-appellants, most important of whom are his brothers Francisco, Olimpio, and Lucilo Tafalla, who with him have been sentenced to death for the commission of the gruesome crimes at bar. Likewise, since the crimes could not have been committed by only one person as observed by the trial court, it has been deemed expedient to implicate the Catalan brothers (Jose and Rodolfo) who, anyway, could not be apprehended since their whereabouts are unknown. Appellant Herminigildo Tafalla, also, had to implicate Sebastian Loyo, who according to witness Sgt. Primitivo Gonzales, has been of so much help in the solution of the cases. It is to be noted that the conviction of the other appellants had not been based on appellant Herminigildo Tafalla's testimony, since the latter had all along relied on an alibi. It is, therefore, now too late for him to present for the first time a different theory of the said cases. Besides, the story of these affiants can not be considered as newly discovered evidence because it appears from the affidavits that as early as June, 1957, or only over a month after the incident, the admission of the Catalans was already known to the wives of two of the accused, but nothing has been done to present the evidence to the court until long after the conviction of the appellants. In fact the motion for new trial was only filed here in this Court.

Evidence which merely seeks to impeach the evidence upon which the conviction was based (U.S. v. Smith, 9 Phil. 674; U.S. v. Valdez, 30 Phil. 290; U.S. v. Lee, 38 Phil. 466; U.S. v. Singuimoto, 3 Phil. 176), or retractions of witnesses (People v. Olfindo, 47 Phil. 1; U.S. v. Dacir, 26 Phil. 503; People v. Follantes, 64 Phil. 527), will not constitute grounds for new trial, unless it is shown that there is no evidence sustaining the judgment of conviction except the testimony of the retracting witness) U.S. v. Dacir, supra; People v. Gallemos, 61 Phil. 684; People v. Cu Unjieng, 61 Phil 906). The reason for this rule is that if new trial should be granted at every instance where an interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation (Reyes v. People, 71 Phil. 598). It has been held that an affidavit, which a person convicted of a crime as in the instant case) executed subsequent to his conviction, to the effect that another person, also convicted of criminal participation in the same offense, did not actually take part therein, furnishes no ground for a new trial (U.S. v. Smith, 8 Phil. 674). And, it is unnecessary to grant a new trial when there is no assurance that the witness to be introduced could not have been presented at the original hearing; and his testimony will not materially improve defendant's position (People v. Torres, 73 Phil. 107.) In People v. Farol (G. R. Nos. L-9424, prom. May 30, 1956), we declared:

> "x x x resort to the use of affidavits of recantation x x x is becoming rather common. Appellate courts must therefore be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in the court of justice and under conditions calculated to discourage and forestall falsehood, these conditions being as pointed out in the case of U.S. v. Dacir (26 Phil. 507) that such testimony 'is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of a solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his atti-

[1]G.R. No. L-15256.
[2]G.R. No. L-15257.

tude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intention of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness. Unless there be special circumstances which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to a criminal litigation and the administration of justice would be at the mercy of criminals and the unscrupulous. x x x."

In People v. Ubiña (G. R. No. L-6969, prom. August 31, 1955), we said that "it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses". We have consistently refused to entertain motions for new trial based on improbability of the alleged new versions of the commission of the crime, and the easiness and facility with which such affidavits are obtained (People v. Monadi, G. R. Nos. L-3770-71, prom. September 27, 1955; People v. Aguipo, G. R. No. L-12655, prom. June 30, 1960), and the probability of their being repudiated later (People v. Galamitan, G. R. No. L-6302, prom. August 25, 1954). It is likewise not improbable that such schemes are conceived and carried out for a consideration, usually monetary (People v. Francisco, G. R. No. L-5900, prom. May 14, 1954). There is, therefore, no reason for acceding to appellants' motion for new trial.

Coming now to the merits of the cases, according to the evidence for the prosecution, and as found by the trial court, in the early morning of April 30, 1957, Rafael Yboa (of Barrio Mercedes, Catbalogan, Samar) and his wife Juanita Yboa went to Sition Cagutsan, Bario Mahacob, Tarangan, Samar; where they have a big parcel of land. At said sitio, the only dwelling place was the little shabby hut, where their tenant Daniel Errabo lived with his wife Engracia Salazar and their two-year old son Mario Errabo. Rafael Yboa and Juanita Yboa arrived at the hut at around 10:00 o'clock in the morning. Said hut, which was partly walled by roughly woven coconut leaves, measured 10 feet on the frontage, by about 6 feet wide, with a floor made of course bamboo splits 15 inches above the ground. It had a very low roof made of nipa. It was erected near the still standing posts of a destroyed house of Rafael Yboa (Exh. NN). It was only 85 feet away from the shoreline. (Exh. MM).

Rafael Yboa and his wife went to Sitio Cagutsan that day to verify the information given by Daniel Errabo that appellant herein Pascual Curiano had been cutting some trees for posts from Rafael Yboa's land in Sitio Talabon not far from Sitio Cagutsan, which property was the subject of a pending litigation between Rafael Yboa and appellant Pascual Curiano Rafael Yboa, his wife, and Daniel Errabo proceeded to the land at Sitio Talabon where they found some trees already cut. But only the stumps were there; the trunks were already carried away. Having been told by Daniel Errabo that appellant Herminigildo Tafalla also cut some trees, they hastened to said appellant's house at Sitio Sogod, a place very near and adjoining Sitio Cagutsan. They found on the yard of appellant Herminigildo Tafalla's house some split wood intended for firewood. Rafael Yboa confronted said appellant, who angrily retorted saying "These splits of wood are not from your land but from our land."

From the house of appellant Herminigildo Tafalla at Sitio Sogod, the trio proceeded to Barrio Mahacob, one kilometer away, to report to the barrio lieutenant about the cutting of the trees. Rafael Yboa requested the latter to admonish appellant Pascual Curiano to stop cutting the trees in the land while the litigation was pending. The time was about 4:00 o'clock in the afternoon. Leaving Barrio Mahacob at dusk, the trio proceeded to Sitio Cagutsan.

Sitio Cagutsan is a short and narrow tongue of land extending northward to the sea. From the shore on the West where the hut was located to the opposite shore on the East, is a trail 138 regular paces long (Exh. MM). The nearest dwelling place to that hut is another hut in the adjoining sitio, with a distance of more than 100 meters, which is covered by tall trees and thick shrubs growing wild. The way from the one place to the other is along the seashore. Said way is reached by the water during high tide.

At around 8:000 o'clock in the evening of the same day (April 30, 1957) while Rafael Yboa, Juanita Yboa, Daniel Errabo, and Engracia Salazar were taking their supper inside the hut, appellants Francisco Tafalla, Pamfilo Balasbas, and Candido Violante, stealthily approached the hut, snatched the basket which was by the door, and ran away with it. Daniel Errabo ran after them, but was not able to overtake them. The basket contained some rice and tobacco and the eyeglasses of Rafael Yboa.

At around 11:00 o'clock that night, the inmates of the hut stopped conversing, put out the lights, and prepared to retire. Rafael Yboa was seated on the floor with his back against the north wall of the hut (point 6 on Exh. G). Juanita Yboa was also in that position on his left, while Daniel Errabo and Engracia Salazar were leaning against the other wall. Only the little boy Mario Errabo was lying on the floor. Suddenly, Juanita Yboa observed light-beams from flashlights, and heard repressed voices from the nearby beach. After calling the attention of her husband, she and Engracia peeped through the holes or slits in the walls and observed the approaching group of people, eight in number. As they came nearer they were flashing their flashlights and from these light beams as well as the glow of the many lights from the several fishing boats along the beach, Juanita recognized the appellants who were all residents in the place, headed by accused Curiano who was bearing a firearm. As they got at a short distance from the hut, Curiano fired his gun, hitting Rafael Yboa who was then in a kneeling position reaching for matches in thee pockets of his trousers perched on the wall. Appellants Candido Violante, Santos Tafalla, and Pamfilo Balasbas, stood behind appellant Pascual Curiano. Rafael Yboa fell to the floor. Juanita Yboa jumped out of the hut, ran a short distance and bid. Daniel Errabo, Engracia Salazar, and Mario Errabo, also jumped out of the hut, but appellants caught up with them. From her hiding place, Juanita Yboa heard Daniel Errabo and Engracia Zalazar crying aloud thus "Aroy, Paping (referring to appellant Pascual Curiano), please do not kill us because we have not committed any fault", and saw appellant Pascual Curiano standing by with the butt of his rifle (Exh. 3) resting on the ground, while the latter's companions, including appellants Olimpio Tafalla and Herminigildo Tafalla (who earlier were left at the seashore, but by now had joined their companions), hacked and stabbed to death with their boloes Daniel Errabo, Engracia Salazar, and their two-year old son Mario Errabo behind the hut, near the tamarind tree. Juanita Yboa

then heard appellant Pascual Curiano directing his companions to look for and kill her, whereupon, appellants Santos Tafalla; Olimpio Tafalla, and Francisco Tafalla searched the vicinity with their flashlights, but failed to locate her. Moments later, Juanita Yboa saw appellants dragging the bodies of the victims to the beach. Juanita Yboa thereafter crawled from her hiding place until she reached the opposite shore, following the shore line northward and, upon reaching the point, crossed to the islet called Moropuro (Exh. MM) and there hid about the cemetery until dawn. From that point of Sitio Cagutsan to the islet Moropuro is about 200 meters. The water was shallow. From Moropuro, she retraced her steps to Sitio Cagutsan from where she hiked to Barrio Mahayag, went to the house of her son Severino Yboa, and informed him of the tragic incident. Juanita and Severino Yboa hurried to Catbalogan and immediately reported the gory incident she had witnessed to the Philippine Constabulary authorities.

A Constabulary patrol was dispatched to Sitio Cagutsan that same day (May 1, 1957) to investigate. Arriving at the scene of the crime, they made the sketch (Exh. G), found the slug (Exh. I at point 7), the empty shell (Exh. I-1 at point 8), blood stains, and the traces on the ground to the seashore, left by the bodies of the victims (Rafael Yboa, Daniel Errabo, Engracia Salazar, and Mario Errabo) as they were dragged by appellants to the beach (Exh. G).

Three days after the killing, or on May 3, 1957, at around 12:00 o'clock noon, the bodies of the victims were found floating on the sea, about 200 brazas from Cagutsan beach. Rafael Yboa's neck was tied to a rope the other end of which weighted with stone. About 100 brazas from Rafael Yboa's body, were the bodies of Daniel Errabo, his wife Engracia Salazar, and their two-year old son Mario Errabo, joined together by a piece of rope tied around their stomachs and necks, while the other end was tied to four big stones. It appears that after the victims were killed and their bodies dragged to the beach, they were loaded on a banca, tied to heavy stones to constitute as sinkers, and cast into the sea away from the beach for the purpose of concealment. But the sinkers could not hold the bodies at the bottom of the sea after the process of putrefaction had started. For the formation of gas brought about by the decay of the bodies, caused them to swell, making them more buoyant. Hence, their coming to the surface and their recovery.

On May 3 and 4, 1957, a post-mortem examination of the cadavers was performed by Dr. Tomas O. Ricalde, municipal health officer of Catbalogan, Samar. He made the corresponding reports of his findings, drew the sketches showing the location of the wounds sustained by each of the victims, and issued their respective death certificates. His findings are as follows:

(1) Rafael Yboa: 72 years old, in advance state of decomposition, with the following wounds:

1. Wound, gunshot, left midclavicular region; about 1/2 inch below the left nipple.
2. Wounds, gunshot, 7 in number located closed to each other at the region of the right breast and epigastric region.
3. Wound, stabbed, penetrating, epigastric region.
4. Wound, stabbed, penetrating, right iliac region.
5. Wound, gunshot (point of exit), right scapular region.
6. Wound, gunshot (point of exit), left lumbar region.

Cause of death: Shock due to severe hemorrhage, secondary to the above-mentioned wounds. (Exh. A).

(2) Daniel Errabo: 30 years old, in advanced state of decomposition, with the following wounds:

1. Wounds, 16 in number, stabbed scattered at the posterior portion of the body.
2. Wound, stabbed, penetrating, left supra-clavicular region.
3. Wound, stabbed, penetrating, one inch to the right of the right nipple.
4. Wound, stabbed, penetrating, right hypochondriac region.
5. Wound, stabbed, penetrating, right iliac region.
6. Wound, stabbed, left wrist, dorsal surface.
7. Wound, stabbed, right wrist, ventral surface.

Cause of death: Shock due to severe hemorrhage due to above wounds. (Exh. B)

(3) Engracia Salazar: 25 years old, in advanced state of decomposition, with the following wounds:

1. Wound, stabbed, penetrating, left lumbar region.
2. Wounds, stabbed, penetrating, 6 in number, located at the right iliac and lumbar region.

Caused of death: Shock due to severe hemorrhage due to above wounds. (Exh. C)

(4) Mario Errabo: 2 years old, in advanced state of decomposition, with the following wounds:

1. Wound, stabbed, left upper arm cutting the humerus and almost severing the left arm.
2. Wound, stabbed, right hypochondriac region, penetrating the liver.

Caused of death: Shock due to severe hemorrhage due to due to above-mentioned wounds. (Exh. D)

Appellants Pascual Curiano, Herminigildo Tafalla, Santos Tafalla, Francisco Tafalla, Candido Violante, and Pamfilo Balasbas were arrested on May 1, 1957, after Juanita Yboa narrated the incident. Appellants Olimpio Tafalla and Marcelo Tafalla were arrested on May 4, 1957.

Sometime prior to the date of the killing, there existed serious land troubles between the deceased Rafael Yboa and appellants, as disclosed by the following complaints which were filed in court: On January 21, 1955, a complaint for theft of bamboos was filed by the deceased Rafael Yboa against appellants Pascual Curiano and three (3) others in the Justice of the Peace Court of Tarangan, Samar (Exh. FF). On April 1, 1955, a complaint for forcible entry and detainer was filed by the deceased Rafael Yboa against appellant Pascual Curiano in the Justice of the Peace Court of Tarangnan, Samar (Exh. DD-1). On February 23, 1956, complaint for theft (cutting of timber trees) was filed by the deceased Rafael Yboa against appellant Pascual Curiano and seven (7) others in the Justice of the Peace Court of Tarangnan, Samar (Exhs. GG and GG-1). On the same date, a complaint for theft of bamboo post and firewood was filed by the deceased Rafael Yboa against appellants Pascual Curiano and Candido Violante and one Mateo Balasbas in the Justice of the Peace Court of Tarangnan, Samar (Exhs. HH and HH-1). On March 16, 1957, a complaint for theft was filed by the deceased Rafael Yboa against appellant Pamfilo Balasbas and one Rufino Versoza in the Justice of the Peace Court of Tarangnan, Samar (Exhs. JJ and JJ-1). Lastly, on April, 1957, the deceased Rafael Yboa filed a complaint for theft (cutting of timber trees) against appellants Pamfilo Balasbas and Candido Violante, and one Lucio Balasbas in the Justice of the Peace Court of Tarangnan, Samar (Exhs. II and II-1).

On the other hand, appellant Pascual Curiano and two others as plaintiffs, filed on March 2, 1950, a complaint against the deceased Rafael Yboa as defendant, which was docketed as Civil Case No. 4512 of the Court of First Instance of Samar,

involving the piece of land which is the subject matter of the forcible entry and detainer case (Exh. EE) aforementioned.

Appellants' defense is **alibi**, to wit:

Pascual Curiano in the evening of April 30, 1957, rode in a motor boat to a fish corral out in the sea of Mahocob, Tarangnan, Samar, about 2 kilometers from Sitio Cagutsan. After dropping the net at about 9:00 o'clock in the evening, he and his companions in the motor boat, as well as the men who were in charge of the fish corral, went to sleep until 5:00 o'clock of the following morning. Then they loaded 4 **canastas** of fish in the boat, proceeded to another fish corral in Calbo, where they loaded another 3 **canastas** of fish, after which, they sailed for Catbalogan, where they sold all the fish to one Vicente Alabat for ₱60.00. As witnesses he presented Jorge Cortan, Maximo Latoja, Jaime Acain, and Vicente Alabat. Their narrative follows: Appellant Pascual Curiano and Sgt. Acain of the PC stationed at Catbalogan, Samar, were co-owners of the fish corral, the motorboat, and the fish business which was then managed by appellant Pascual Curiano. The fish corral was about 2 kilometers from Sitio Cagutsan. To that fish corral went Jorge Cortan and his 7 helpers, leaving Barrio Silanga on a big banca (sampan) on the night of April 30, 1957. Upon reaching it at about 9 p.m., they dropped the net to catch fish. Shortly after, the motorboat manned by appellant Pascual Curiano, Maximo Latoja, Jaime Acain and one Julian arrived. It was moored to the fish corral and the crew went to sleep. Cortan slept soundly and woke up at 5 a.m. May 1, 1957. Latoja woke up at about 12 p.m. midnight and Jaime Acain at about 2 a.m. and the last two, to urinate. Both Latoja and Acain saw appellant Pascual Curiano sleeping at the time each stood up to urinate. Both returned to sleep after urinating and woke up at about 5 a.m. May 1, 1957. After loading the catch in that fish corral (4 canastas) and buying 3 canastas of fish in Talbo, they sailed to Catbalogan arriving at 7 a.m. and sold their load of fish to one Vicente Alabat for ₱60.00.

The alibi of appellant Pascual Curiano deserves no credit. As observed by the trial court:

"x x x the alibi of Pascual Curiano has all the aspects of fabrication. It has all the characteristics of a story designed to fit the intended purpose of showing the whereabouts of the defendant to be in a place other then that where the crime was committed at the time of its commission. The uniformity of the declarations (of his witnesses), the lack of documentary record, and the omission of the necessary witnesses prove it to be made-up story.

"It is strange that in spite of more than one and a half years that had elapsed, the witnesses could be so accurate not only as to the different hours of their movement, but also as to the quantity and the quality of the fishes which were alleged to have been taken by them from two different fish corrals. As was said above, such uniformity even in the details given by the several witnesses, connotes an agreement among them on the story they would tell the Court.

"If it were true that Curiano had fish corral and was engaged in the business of selling fish on April 30, 1957, he should have exhibited a license for the said fish corral, or a license for the business he claims to have had. Such documents cannot be fabricated. If he had them he would have shown them. By not showing them, the inference is that he had no business on April 30, 1957. It might be that he had it another time: and the story now given could have referred to that other time.

"No one of the seven men alleged to have been with Jorge Cortan was presented to testify. It was not shown that they could not be available. Since an alibi needs all the possible evidence because it can easily be fabricated, those men should not have been omitted. Again, it can be said that from their omission logically arises the inference that if they testified they would have told that the fish corral they served with Jorge Cortan was one in business before April 30, 1957.

"Even conceding that at that time Curiano had a fish corral and arrived thereat at nine o'clock that evening of April 30, 1957, slept in the motorboat at ten o'clock and was found by Cortan. Acain and Latoja to be still there when they woke up at five o'clock the following morning, still the alibi is imperfect. The witnesses said to have slept at ten o'clock and Cortan claimed to have woke up at five o'clock in the morning; Latoja woke up at twelve midnight, stood up to urinate, saw Curiano, slept again, and woke up at five o'clock in the morning; and Acain woke up at two o'clock to urinate, saw Curiano slept again, and woke up also at five in the morning. The declarations of Latoja that he woke up and saw Curiano when he urinated at twelve o'clock and that of Acain at two o'clock are declarations without any support to keep them upright as a good and credible proof. Both are without corroboration. Each stands by itself. How and why could they remember that they urinated at those hours? That they saw Curiano? Could it not be another? The evidence adduced had no answer to these questions. It is believed that in an alibi, these points are relevant indeed. Only their declarations that they woke up at five o'clock in the morning have some color of proof; each corroborated the other. Such being the case, they slept from ten to five o'clock or for seven hours. **Considering the distance of the fish corral to the scene of the crime, even a period of two hours was sufficient for one to go from the fish corral and return to it after the assault.** His companions could have done the disposal of the bodies." (Emphasis supplied, pages 49-52).

Candido Violante and Pamafilo Balasbas loaded 260 bundles of firewoods in their banca in the afternoon of April 29, 1957 and sailed for Catbalogan at about 3 a.m. April 30 to sell those firewood. They failed to sell them to one Marcelino Tuazon of Catbalogan as the latter had plenty of them in stock. So, they carried and peddled them around the town and were able to dispose of 100 bundles on the same day April 30. In the evening, until the morning (May 1), appellant Pamfilo Balasbas and his wife slept in the kitchen of Marcelino Tuazon's house at Catbalogan, while appellant Candido Violante slept in the banca to watch the remaining firewood. On May 1, 1957, they sold the remaining 160 bundles of firewood, after which, they went shopping and left Catbalogan at 7 a.m. of the same day, reaching their house at noontime.

As witnesses they presented Marcelino Tuazon, Encarnacion Bolos, and Porfiria Bellasana. Their narrative follows: Appellants Candido Violante and Pamfilo Balasbas were together in Catbalogan, Samar, from the morning of April 30, to the morning of May 1, 1957. Violante and Balasbas had 260 bundles of firewood in the yard of their houses at Sitio Dalongdong, Mahacob, Tarangnan, Samar, to be brought to Catbalogan. They loaded them in the banca in the afternoon of April 29, 1957. At about 3 a.m. April 30, Violante and Balasbas sailed for Catbalogan. Porfiria Bellasana, wife of Villante, went with them. They arrived at Catbalogan at 8:00 a.m. that morning and docked near the house of Marcelino Tuazon, a firewood dealer at Catbalogan. The latter did not buy the

firewood as he had still some in stock. Violante and Balasbas then peddled them around the town and then went to the market the whole day until all of the firewood were sold. In the meantime, Porfiria Bellasana went to a photographer to have her picture taken (Exh. 8-a) and then proceeded to the Justice of the Peace Court for the contract Exhibit 6 which she made with a recruiter of an employment agency. Violante, Balasbas and Porfiria ate their 3 meals that day at the house of Tuazon. After taking their supper at 7 p.m., Violante and his wife Porfiria slept in the kitchen of Tuazon's house and Balasbas slept in the banca. They left Catbalogan at 7 a.m. May 1, 1957 and reached their homes in Dalongdong at noon. Porfiria Bellasana took that trip to Catbalogan to make the necessary arrangement with the recruiter about the employment of her cousin Engracia Cabarles. On that trip, Engracia was in another boat with Peling, Cleto and Filomena. The banca where Engracia and other companions boarded and that where Porfiria, Violante, and Balasbas were, sailed together from Dalongdong until Catbalogan. The two vessels were side by side and only about 5 meters apart during the whole trip.

Also, the alibi of appellants Candido Violante and Pamfilo Balasbas is unconvincing. We agree with the following observation of the trial court:

"The story is faulty. The declaration of the witnesses show that the story is fabricated. It has the following flaws and cracks:

"1. Marcelino Tuazon lied throughout his declaration. He claims to be engaged in business dealing in firewood. x x x But he had no license for that business x x x nor kept any record of his transactions. x x x In all his answers, in the direct as well as the cross-examination, he could not give dates, much less hours, when he purchased firewood from several dealers. But yet he could give not only the date, April 30, 1957, but also the hours; and further, the movements of Violante and Balasbas even if he did not buy firewood from them. And no reasons were shown for so remembering that particular date, the hours and their movements.

"2. If it were true that they were at Tuazon's house during the whole night of April 30-May 1, 1957, Violante, Balasbas, and/or Porfiria could have told the constables who held the first two that afternoon for the murder that took place in Cagutsan. None of them told the soldiers. Not even when they were kept in the Constabulary barracks whch was only a few meters to the house of Tuazon. Even Tuazon was not informed of their arrest by any one of them although they could do so had they wanted to. They could not make that information because it did not happen. They had to fabricate an alibi, the only feasible defense in these case. Tuazon was the only stranger available for the fabricated story. Encarnacion Bolos and Perfiria Bellasana are the wives of the two accused.

"3. Why Engracia Cabarles and/or any of her companions in the other banca (Feling, Cleto, Filomena) were not called to testify, was not shown; they knew them; and they know where they were at the time of the trial of the case. x x x Porfiria Bellasana who was used to make trips to Catbalogan without her husband was alleged to have a trip with him for the first time only that day; and for a purpose which had no concern with him x x x Porfiria accompanied her cousin Engracia to Catbalogan. She was her guardian; and she expected money from the transaction she was to have with Peling. x x x Peling was interested in her recruitment work. Porfiria was interested in the money she could get out of the deal. Peling hired Cleto to bring them to Catbalogan. Filomena, the wife of Cleto, accompanied her husband. So in the early morning of April 30, 1957, Cleto and the four women (Porfiria Vellasana, Engracia, Peling, and Filomena) in one banca, left Dalongdong for Catbalogan on April 30, 1957, when the contract Exhibit G was executed. Engracia, Peling, Filomena and Cleto would have thus testified if called to the witness stand. Hence, their omission.

"4. Porfiria's declaration about the picture-taking she and Engracia had on April 30, 1957, proved her to be lying. x x x The figure on the right of the picture marked Exhibit 8-A is that of Porfiria, and that on the left marked Exhibit 8-B is that of Engracia. Porfiria referred to this picture when she declared that she and Engracia posed for it before the photographer. The figure below Porfiria's figure (Exh. 8-A) is the head of a woman. It is clear that the picture was not posed by Porfiria and Engracia alone as claimed by Porfiria in her declaration, but one taken from a group picture of at least three women.

"That declaration of Porfiria about she and Engracia only posing on April 30, 1957, is of substance as it affect the date which is relevant to the issue. It is therefore a material declaration; one which tries to make evident a point of consequence. Having lied, and knowingly, on a material point, she made her whole testimony incredible. (Falsus, in uno, falsus in omnibus).

**"Our experience shows that several persons witnessing an incident and later give a decription of it, they will surely differ widely as to details or collateral matters while agreeing on the particular thing which is the incident itself. But in this alibi of Violante and Balasbas, we have the declarations of all the witnesses agree on all the details and regarding the movements of the persons concerned and the time when such movements were alleged to have taken place; and, in spite of the lapse of one year and seven months. Such a perfect narration connotes an agreement among the witnesses of the story to be told; a fabrication of the alleged alibi."** (Emphasis supplied; pages 40-41, Decision.)

Olimpio Tafalla and Marcelo Tafalla attended a meeting held in the house of Councilor Joaquin Nanaunag at Barrio Mahacob, Tarangnan, Samar, from 8 to 12 p.m. April 30, 1957, after which. they went home and slept till the next morning May 1, 1957.

As witnesses, appellants presented Joaquin Nabaunag, Leoncio Beato, and Paciencia Molito, whose story follows: Nabaunag was the municipal councilor for Barrio Mahacob; Beato was the assistant barrio lieutenant of Mahacob; and Paciencia Molito is the wife of appellant Olimpio Tafalla. On April 30, 1957, from 1 to 4 p.m., the councilors of Tarangnan were at Mahacob and had its session attended by many residents of the barrio including women and, among those who attended, were appellants Olimpio Tafalla and Marcelo Tafalla. Thereafter, the residents of the barrio returned to their homes; after the merienda, the visitors left Mahacob. Then at about 8 p.m., Nabaunag called the officials of the barrio to his house to talk about means to be used in gathering funds needed to defray the expenses for the transportation of a driller to Mahacob. Among those present thereat were appellants Olimpio Tafalla and Marcelo Tafalla. The last persons to leave the house at around 12 p.m., midnight, were five, including appellants Olimpio Tafalla and Marcelo Tafalla.

Likewise, appellants' alibi is unworthy of belief. We concur with the following findings of the trial court:

"x x x x there is nothing in the testimony of the witnesses to show they could not have been mistaken about the time. Could the meeting referred to not have been some time before April 30, 1957? What categorical proof was shown that it was on that day and not on another? Could it have been that the municipal council did not hold any session in Mahacob? Or if it had, was it not on a day other than April 30, 1957? The human memory is short. A meeting must have some minutes. It may be argued that the alleged meeting from eight o'clock to midnight was one without need of any written reminder. But there was an alleged session of the municipal council. It must not be without minutes. Since the testimony of the witnesses was intended to show that the alleged meeting of the barrio residents followed a session of the municipal council, proof of such council session should be produced for precision as to time to avoid uncertainty.

"And the unreliability of the memory of the witnesses is shown by the discrepancy of their testimony about the date when the constables went to Mahacob to arrest Olimpio Tafalla and Lucilo (Marcelo) Tafalla. While Olimpio Tafalla said that he was taken by the soldiers on May 4 (p. 414, t.s.sn.) and Lucilo on May 11 (p. 439, t.s.n.), the municipal councilor Joaquin Nabaunag said that they were on May 1; and he was present when they were so taken (p. 349, t.s.n.)." (Pages 53-54, Decision).

Santos Tafalla attended the same meeting aforementioned from 6 to 10 p.m. on April 30, 1957.

As witnesses, he presented his father-in-law Elias Magallanes, whose narrative is as follows: After taking supper in the night of April 30, 1957, appellant Santo Tafalla went to attend the meeting in the house of councilor Nabaunag.

On this **alibi** of appellant Santos Tafalla, the trial court aptly observed:

"With respect to his going to the house of the councilor that evening of April 30, 1957, Santos Tafalla contradicted his father-in-law who said that he (Santos) went after taking supper.x x x But yet none of those four persons he mentioned was called to testify to his alibi; and no reason was shown for that omission. It can be said that if called, they would belie him.

"Then he went on in his direct testimony that he went home from the house of Councilor Nabaunag at about ten o'clock that evening, and before going up the house he stopped to urinate. x x x Still in direct examination, Santos Tafalla admitted having executed the affidavit Exhibit U (translation Exh. U-1).

"Santos Tafalla who knew the commission of the crime is now excusing himself by throwing the blame to some of his co-defendants. But his alibi is indeed very poor. Since an alibi can easily be fabricated, it should have a strong support in the way of all available proofs. Failure to present such proofs without justifiable excuse, makes this kind of defense suspicious. In an alibi, the testimony of disinterested persons is the most needed. Elias Magallanes is certainly a person who is very much interested in the liberty of Santos Tafalla. Circumstances make him so." (Pages 45-48, Decision.)

**Francisco Tafalla** went home to Barrio Mahacob, Tarangnan, Samar, at 7 p.m. on April 30, 1957, took supper, and went to sleep until 8 p.m. the following day May 1, 1957.

As witnesses, he presented his wife Cornelia Chan, Aniceto Camas, and Dolores Aquil, whose narrative is to this effect: Cornelia Chan, wife of appellant Francisco Tafalla went to get Dolores Aquil at 7 p.m. on April 30, 1957, and brought her to their house because her grandmother was complaining of severe stomach pain. At that hour, Dolores entered the house, administered to the sick woman, and she saw Francisco Tafalla sleeping thereat. Aniceto Camas stated that the stains in the trousers (Exh. V) of appellant Francisco Tafalla was caused by chicken blood.

We agree with the observation of the trial court as to the incredibility of appellant Francisco Tafalla's **alibi**, to wit:

"How the trousers Exhibit 'V' of Francisco Tafalla happened to be stained with blood as narrated by him and Aniceto Camas is somewhat unusual; some happening that does not run parallel to the ordinary way of man's behavior. It is much of a coincidence that Francisco Tafalla would cut the neck of a dying and beaten chicken and splashed his trousers with blood only several hours before the blood of four persons (the victims) was split. However, he was not picked because his pair of trousers had bloodstains. The trousers were found to have the stains after he was pointed out to be one of the assailants. x x x

"Granting that Dolores went to Francisco's house for the sick woman, could if not be that she went on a night other than the night of April 30? It could have been possible. For with respect to dates, both Cornelia and Dolores were not attentively particular. Neither could tell the date when their patient died. In fact Dolores even went to admit repeatedly that it was on March 30 and not on April 30, when she went to Francisco's house to administer to the sick woman (p. 331, t.s.n.) which she repeated after she tried to show that she knew to remember dates (p. 337, t.s.sn.).

"And on May 1, when the constables went to take along Francisco Tafalla for the murders committed the previous night, both Cornelia and Dolores were there face to face with the constables. Dolores did not say anything; and Cornelia did not make any move to make known to the arresting soldiers the presence of her husband and Dolores in the house that evening. Cornelia persisted on being evasive in her answers until the last moment she was on the witness chair." (Pages 55-57, Decision.)

Lastly, **Herminigildo** Tafalla went home from his farm, slept beside his wife and children in their house at Sitio Sogod, Tarangnan, Samar, from 8 p.m. April 30, to 6 a.m. May 1, 1957. In the afternoon of the latter date (May 1) he was arrested by soldiers.

He did not present any witness to support his alibi, and we are with the trial court that said alibi should not be believed.

Apart from the trial court's observations above-quoted regarding the incredibility of appellants' **alibi** in this case, we note from a cursory examination of the map (Exh. OO) showing the relative distances between the scene of the crimes at bar in Sitio Cagutsan and the sea near Barrio Mahacob, Tarangnan, Samar, where appellant Pascual Curiano allegedly was, and Barrio Mahacob, where appellants Olimpio, Marcelo, Santos, and Francisco Tafalla allegedly were at the time of the commission of said crimes, will clearly show that it has not even established by said appellants' **alibis** that it was physically impossible for for them to be present in nearby Sitio Cagutsan. In a long line of cases, it had been held that in order to establish an **alibi**, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time, that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place. (People v. Alban, G. R. No. L-15203, prom. March 29, 1961, citing People v. Oxiles, 20 Phil. 587;

People v. Palamos, 49 Phil. 601; People v. Resabal, 50 Phil. 780; People v. Niem, 75 Phil. 668.)

The appeal presents no issues of law. It merely involves the credibility of the various witnesses, and the rule is well-established that when the issue involves credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, as the latter is in a better position to decide the question, having been and heard the witnesses themselves and observed their behavior and manner of testifying during the trial, except when it is shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case (People v. Alban, supra, citing People v. Berganio, G. R. No. L-10121, prom. January 22, 1957). The trial court in the case before us has made a complete and thorough analysis of the various testimonies, which we find to be properly and well-supported by the evidence adduced.

Said alibi of appellants, to our mind, cannot overcome the testimony of Juanita Yboa, wife of the deceased Rafael Yboa an eyewitness to the bloody incident, who testified in a clear, credible, straightforward, and convincing manner and who positively identified appellants as the perpetrators of the crimes in question. On this point, the trial court observed:

> "The direct evidence come only from the widow of the deceased Rafael Yboa (Juanita de Yboa), the lone survivor in the group. **Considering her intelligence, her opportunity of knowing the fact, her memory, the heart-rending ordeal she passed, the probabilities and improbabilities of her testimony, the character of her testimony, the long hours of taxing and confusing cross-examination, and her way of answering the question and general behavior while testifying, the Court finds no reason to doubt her declaration.** x x x
>
> Juanita de Yboa recognized six of the accused immediately preceding the fatal moment. When she heard low voices and saw light-beams from flashlights on the beach immediately in front of the hut, she looked through the holes of of the wall of the roughly woven coconut leaves. She recognized the six men approaching the hut from the beach to be Pascual Curiano, Francisco Tafalla and Pamfilo Balasbas, Lucilo (Marcelo) Tafalla, Santos Tafalla, and Candido Violante. Pascual Curiano was holding the rifle that fired at her husband. At the time she was hiding in the bushes, she saw Olimpio Tafalla stab Engracia Salazar and Herminigildo Tafalla stabbed Daniel Errabo.
>
> **"The Court went to the scene of the crime after the testimony of Juanita de Yboa. From the observation of the Court about the make of the hut and the field around, the declaration of Juanita was possible."** (Emphasis supplied, Pages 58-59, Decision.)

Needless to say, said testimony of Juanita Yboa regarding the incident is amply supported by "strong circumstantial proofs which took place before and after" the commission of the crimes. Said the trial court:

> **"That direct evidence is supported by strong circumstantial proofs which took place before and after the incident."**
>
> **"As was said above, the motive of the crime was resentment against Rafael Yboa who continuously annoyed, harassed and humiliated the defendants.** That resentment is briefly expressed by Pascual Curiano in paragraph 9 of his complaint Exhibit 'EE', to wit:
>
> '9. That every time the plaintiffs herein and their laborers are cutting lumber and gathering bamboos and forest products and firewood from the said land of Ramona Moreno, the herein defendant is continuously molesting them by filing either criminal or civil cases against the said plaintiffs particularly Pascual Curiano and his laborers.
>
> "Earlier on that fatal day, Rafael Yboa, Juanita and Daniel Errabo went to that part of the land to verify the report about the recent cutting of trees by Pascual Curiano; then they went to the house of Herminigildo Tafalla who was confronted thereat by Yboa about the pieces of trees on his yard and then they proceeded to the barrio to report to the barrio lieutenant about the recent cutting of trees. Yboa requested the barrio lieutenant to stop Curiano from further cutting any thing in the land until the termination of their litigation about the land pending in court.
>
> "And then at around eight o'clock that evening Sebastina Loyo saw the four accused (Pascual Curiano, Herminigildo Tafalla, Olimpio and Lucilo [Marcelo] Tafalla) pass by his house in Sogod walking toward Cagutsan. Herminigildo Tafalla was carrying a rifle. At about three o'clock following the time when they passed by his house, he met them again. This time it was on the beach. They were in a banca which docked in front of the house of Herminigildo Tafalla. Afraid of the threat of Pascual Curiano, he allowed the rifle to be left in his house. The presence of the rifle therein made him and his family move to Dalongdong.
>
> "On May 16, 1957, Herminigildo Tafalla revealed to Sergeant Gonzales that the gun was hidden in the house of Loyo. It was found in that house. The gun is now marked Exhibit 'E'.
>
> "A ballistic examination showed that the slug (Exh. 'I') and the empty shell (Exh. I-1) which were found about the scene of the incident, were fired from the rifle Exhibit 'E'.
>
> "On May 2, 1957, Olimpio Tafalla, referring to the blood-stains in the banca told Encarnacion Bolos to tell any one who might inquire about those blood-stains that a butchered pig was loaded in the banca.
>
> "The laboratory examination showed the stains to be 'positive for blood'.
>
> "It is important to note that Olimpio Tafalla was one of the four who was seen by Sebastian Loyo at about three o'clock boarded in a banca.
>
> "And Josef Nabaunag said so in Exhibit 'KK' that he saw Olimpio Tafalla at about two or three o'clock that morning sailing in the banca of Encarnacion Bolos.
>
> "Two events are noteworthy: (1) It was about eight o'clock that evening when Juanita saw Francisco Tafalla, Pamfilo Balasbas, and Candido Violante snatched the basket from the door of the hut; (2) it was also about that time when Sebastian Loyo saw Pascual Curiano, Herminigildo Tafalla, Olimpio Tafalla and Lucilo Tafalla passed by his house in Sogod walking towards Cagutsan. So that while some of the accused were on their way to Cagutsan the others were already there to perform some preliminaries for the main objective.
>
> "The examination about the presence of the blood stains on the trousers Exhibit 'U' of Candido Violante and on the trousers Exhibit 'V' of Francisco Tafalla, were silly.
>
> **"Against the strong and convincing proofs which clearly and directly point at the accused to be the perpetrators of the heinous and savage murders, the defendants put in several and separate alibi which were made incredible by the absurd stories told to support them.**

**"By the evidence, there is no doubt in the mind of the Court that the defendants are guilty of the crimes they stand charged in both informations."** (Emphasis supplied, Pages 59-62, Decision.)

There was conspiracy on the part of appellants in the commission of the crimes, which make each of them liable for the crimes committed and for as many victims killed. As pointed out by the trial court:

> The manner of the commission of the crime shows a concerted action by several persons who conspired and confederated together and helped each other in its execution.
>
> "That there was a previous planning about the execution of the crime, is clear enough. The perpetrators must have met that evening at a given place, and from there went together to the place where they knew their victims were to be found at the time. The act was impelled by revenge. Robbery could not have been the motive. There was nothing to take with intent to gain from the intended victims. Nothing of value would be kept in such a frail hut which was in an isolated place. x x x" (Pages 9-10, Decision.)

There was treachery, which qualified the killing of the four victims, to murder, as the attack was so sudden and unexpected, thereby insuring the accomplishment of the crimes, without risk to appellants arising from the defense which they (victims) might have offered (People v.Alban, **supra**, citing People v. Godinez Martinez, G.R. No. L-12268, Prom. November 28, 1959; People v. Ambahang, G. R. No. L-12907, prom. May 30, 1960). The trial court stated thus:

> "That the act was committed with treachery, cannot be doubted. The victims were surprised. They were not given the least warning. The attack was instantaneous. They were not afforded the least chance to escape. They fired at Rafael Yboa. When the other inmates jumped from the hut to escape, the offenders were around to meet and assault them at that time when they could not offer any resistance or defense. The offenders employed means which tended to insure the execution of the intended crime. x xx." (Page 11, Decision.)

There was evident premeditation in the commission of the crimes. According to the trial court:

> "x x x The pieces of rope and stones were objects which could not have been picked up anywhere at that time of the night and in that isolated place. The rope and the stones were in the banca before they went to the place of the incident. This was another part of the plan. The synchronized movements of the actors which made possible the successful termination of their acts from the killing so the disposal of the bodies, during such a brief period, must be the result of a pre-conceived plan. All the preparations to carry out the conceived plan could not have been effected in a short expanse of time. It could have taken at least hours, possibly days. In premeditation, there is no fixed period of time. The period of time necessary to justify the inference that there is known premeditation is a period sufficient in the judicial sense to give the accused full opportunity for meditation and reflection, and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to harken to its warnings. (U.S. v. Blanco, 18 Phil. 208.) x x x." (Pages 10-11, Decision.)

Abuse of superior strength was also attendant, it appearing that appellants, aside from being all armed with deadly weapons, were decidedly superior in number [8 in all] in relation to the number of the assaulted parties [only 3 and a boy of 2 years] (U.S. v. Tandoc, 40 Phil. 954; People v. Caroz, 68 Phil. 521).

The aggravating circumstance of uninhabited place attended the commission of the crimes. On this point, the trial court pointed out that—

> "Considering the trees that abound and the thick shrubbery which was growing between the place of the incident and the nearest house which was more than one hundred meters away, the circumstance of uninhabited place has to be taken into account as it was apparent that at such a place the victims did not have a chance of being seen and helped by another person." (Page 12, Decision.)

The circumstance of dwelling may, further, be considered as to the killing of Daniel Errabo, Engracia Salazar, and Mario Errabo, as it occurred in their dwelling place (the hut) or on the ground thereof (U.S. v. Macariñas, 40 Phil. 1).

The aggravating circumstance of nighttime, although present, may not be taken into account, inasmuch as it is absorbed in treachery (People v. Balagtas, 68 Phil. 675). Neither may we consider the circumstance of cruelty as found by the trial court, because there is no showing that the other wounds found on the bodies of the victims were inflicted unnecessarily while they were still alive in order to prolong their physical suffering. The number of wounds found upon the corpse does not, by itself alone, justify the acceptance of the circumstance of cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims (People v. Aguinaldo, 55 Phil. 610; See also People v. Dayug, 49 Phil. 423; People v. Daquiña, 60 Phil. 279). Lastly, the circumstance of lack of provocation was incorrectly considered by the trial court as aggravating in the killing of the Errabos; the same is not one of the aggravating circumstances enumerated in the Revised Penal Code.

In the circumstances, we find each of the appellants guilty of four (4) crimes of murder in the two (2) cases reviewed. However in view of the lack of the required number of 8 votes, the death penalty imposed by the trial court upon each of the appellants is hereby reduced to life imprisonment for each of the four crimes committed, the maximum of which shall not exceed forty years. The indemnity adjudged by the trial court is, however, increased from ₱5,000.00 to ₱6,000.00.

Modified, as above indicated, the judgment of the trial court, is affirmed, with costs against the appellants.

SO ORDERED.

Bengzon, C.J., Bautista Angelo, Concepcion Reyes, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

**REPUBLIC ACT No. 3600**

AN ACT TO PROHIBIT THE EMPLOYMENT OF STRIKE BREAKERS AND THE TRANSPORTING OR ESCORTING BY PEACE OFFICERS AND/OR ARMED PERSONS OR PERSONS SEEKING TO REPLACE STRIKERS IN ENTERING AND/OR LEAVING THE STRIKE AREA, AND TO PROVIDE PENALTIES THEREFOR.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Hereafter, it shall be unlawful for any employer to employ any strike breaker, or for any person to be knowingly employed as a strike breaker.

"Strike breaker" shall mean any person knowingly employed for the purpose of obstructing or interfering by force or threats peaceful picketing by employees during any labor controversy affecting wages, hours or conditions of labor; or the exercise by employees of any of the rights of self organization or collective bargaining.

SEC. 2. It shall be unlawful for any commanding officer of troops in the Armed Forces of the Philippines or individual soldier or any member thereof or any peace officer and/or armed person to bring in, introduce or escort in any manner any person who seeks to replace strikers, in entering and/or leaving the premises of a strike area or to work in place of the strikers.

"Strike area" shall mean the establishment of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in marching to and fro before all points of entrance and exit to and from said establishment.

Nothing in this Act shall be interpreted to prevent any commanding officer of troops in the Armed Forces of the Philippines or any member thereof or any peace officer from taking any measure necessary to maintain peace and order and/or protect life and property.

SEC. 3. Any of the persons mentioned above violating the provisions of Section two hereof shall be deemed guilty of a felony and shall upon conviction thereof, be fined not more than five thousand pesos or imprisoned for not more than two years, or both, at the discretion of the court.

If the violation is committed by a firm, association or corporation, the manager, or in his default, the persons acting as such, shall be liable.

SEC. 4. In case the strike be judicially declared illegal, any criminal liability arising from violation of any of the provisions of this Act shall be deemed extinguished: Provided, That during the pendency of the legality or illegality of the strike prosecution for violation of any provision shall be deemed suspended or held in abeyance.

SEC. 5. This Act shall take effect upon its approval.

Approved. June 22, 1963.

**REPUBLIC ACT No. 3677**

AN ACT TO AMEND CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX, OTHERWISE KNOWN AS "THE JUDICIARY ACT OF 1948," AS AMENDED.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. The seventh, twelfth and fifteenth paragraphs of Section forty-nine of Republic Act Numbered Two hundred and ninety-six, as amended, are hereby further amended to read as follows:

"The Seventh Judicial District, of the Province of Rizal, Quezon City, Pasay City and Caloocan City, the Province of Cavite, City of Cavite, the City of Tagaytay, Trece Martires City and the Province of Palawan;

"The Twelfth Judicial District, of the Province of Occidental Negros, the Cities of Bacolod, Silay and San Carlos, the Province of Oriental Negros, Dumaguete City, and the Subprovince of Siquijor;

"The Fifteenth Judicial District, of the Province of Surigao del Norte, Surigao del Sur and Agusan, Butuan City, the Province of Oriental Misamis, Cagayan de Oro City, the Provinces of Bukidnon, Lanao del Norte and Lanao del Sur, and the Cities of Iligan and Marawi; and"

SEC. 2. The first, second, fourth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth and sixteenth paragraphs of Section fifty of the same Act, as amended, are hereby further amended to read as follows:

"Ten judges shall be commissioned for the First Judicial District. Four judges shall preside over the Courts of First Instance of Cagayan, Batanes and the Subprovince of Apayao in the Mountain Province, and shall be known as judges of the first, second, third, and fourth branches thereof, respectively, the judge of the first branch to preside also over the Court of First Instance of the Subprovince of Apayao and the Judge of the second branch to preside also over the Court of First Instance of Batanes: four judges shall preside over the Court of First Instance of Isabela, and shall be known as the judges of the first, second, third and fourth branches thereof; and two judges shall preside over the Court of First Instance of Nueva Vizcaya, to be known as the judges of the first and second branches thereof.

"Sixteen judges shall be commissioned for the Second Judicial District. Four judges shall preside over the Court of First Instance of Ilocos Norte; four judges shall preside over the Court of First Instance of Ilocos Sur; one judge shall preside over the Court of First Instance of Abra; one judge shall preside over the Court of First Instance of the City of Baguio and the Subprovince of Benguet; three judges shall preside over the Court of First Instance of Mountain Province with jurisdiction covering the whole Mountain Province, except the City of Baguio and the Subprovince of Benguet; three judges shall preside over the Court of First Instance of La Union and shall be known as judges of the first, second and third branches thereof, respectively.

"Nine judges shall be commissioned for the Fourth Judicial District. Six judges shall preside over the Courts of First Instance of Nueva Ecija and Cabanatuan City and shall be known as judges of the first, second, third, fourth, fifth and sixth branches thereof, respectively; and three judges shall preside over the Court of First Instance of Tarlac, and shall be known as judges of the first, second and third branches thereof, respectively.

"Twenty-five judges shall be commissioned for the Sixth Judicial District. They shall preside over the Court of First Instance of Manila and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth branches thereof, respectively.

"Eighteen judges shall be commissioned for the Seventh Judicial District. Twelve judges shall preside over the Courts of First Instance of the Province of Rizal, Quezon City, Pasay City and Caloocan City and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth branches thereof, respectively: four judges shall preside over the Courts of First Instance of the Province of Cavite and the Cities of Cavite, Tagaytay and Trece Martires, and shall be known as judges of the first, second, third and fourth branches thereof respectively; and two judges shall preside over the Court of First Instance of Palawan.

"Nine judges shall be commissioned for the Eighth Judicial District. Four judges shall preside over the Courts of First Instance of Laguna and the City of San Pablo, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; three judges shall preside over the Courts of First Instance of Batangas and the City of Lipa, and shall be known as judges of the first, second and third branches thereof, respectively; one judge shall preside over the Court of First Instance of Mindoro Oriental; and one judge shall preside over the Court of First Instance of Mindoro Occidental: Provided, That the incumbent judge of the Courts of First Instance of Mindoro Oriental and Mindoro Occidental shall be given the privilege of selecting which court of first instance of said provinces he prefers to preside over.

"Six judges shall be commissioned for the Ninth Judicial District. Four judges shall preside over the Court of First Instance of Quezon, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; one judge shall preside over the Court of First Instance of the Subprovince of Aurora; one judge shall preside over the Court of First Instance of Camarines Norte.

"Thirteen judges shall be commissioned for the Tenth Judicial District. Five judges shall preside over the Courts of First Instance of Camarines Sur and Naga City and shall be known as judges of the first, second, third, fourth and fifth branches thereof, respectively; three judges shall preside over the Court of First Instance of Albay and shall be known as judges of the first, second, and third branches thereof; one judge shall preside over the Court of First Instance of Catanduanes; two judges shall preside over the Court of First Instance of the Province of Sorsogon; and two judges shall preside over the Court of First Instance of Masbate.

"Fifteen judges shall be commissioned for the Eleventh Judicial District. Three judges shall preside over the Courts of First Instance of Capiz and Roxas City and shall be known as judges of the first, second and third branches thereof, respectively; one judge shall preside over the Court of First Instance of the Province of Romblon; one judge shall preside over the Court of First Instance of Marinduque; two judges shall preside over the Court of First Instance of Aklan; seven judges shall preside over the Courts of First Instance of the Province of Iloilo and the City of Iloilo and shall be known as judges of the first, second, third, fourth, fifth, sixth and seventh branches thereof, respectively; and one judge shall preside over the Court of First Instance of the Province of Antique.

"Ten judges shall be commissioned for the Twelfth Judicial District. Seven judges shall preside over the Courts of First Instance of Occidental Negros and the Cities of Bacolod, Silay and San Carlos and shall be known as judges of the first, second, third, fourth, fifth, sixth and seventh branches thereof, respectively; and three judges shall preside over the Courts of First Instance of Oriental Negros, Dumaguete City, and the Subprovince of Siquijor.

"Seventeen judges shall be commissioned for the Thirteenth Judicial District. Eight judges shall preside over the Courts of First Instance of Samar and Calbayog City and shall be known as the judges of the first, second, third, fourth, fifth, sixth, seventh and eight branches thereof, respectively; and nine judges shall preside over the Courts of First Instance of Leyte, Southern Leyte and the Cities of Ormoc and Tacloban, and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth branches thereof, respectively.

"Fourteen judges shall be commissioned for the Fourteenth Judicial District. Eleven judges shall preside over the Courts of First Instance of the Province of Cebu, the City of Cebu and Toledo City, and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth, nineth, tenth and eleventh branches thereof, respectively; and three judges shall preside over the Court of First Instance of Bohol.

"Thirteen judges shall be commissioned for the Fifteenth Judicial District. Three judges shall preside over the Court of First Instance of Surigao del Norte; one judge shall preside over the Court of First Instance of Surigao del Sur; two judges shall preside over the Courts of First Instance of Agusan and Butuan City and shall be known as judges of the first and second branches thereof, respectively; four judges shall preside over the Courts of First Instance of Oriental Misamis, Cagayan de Oro City and Bukidnon, and shall be known as judges of the first, second, third and fourth branches thereof, respectively; and three judges shall preside over the Courts of First Instance of Lanao del Norte, Lanao del Sur and the Cities of Marawi and Iligan, and shall be known as judges of the first and second branches thereof.

"Eighteen judges shall be commissioned for the Sixteenth Judicial District. Four judges shall preside over the Courts of First Instance of Davao and Davao City to be known as judges of the first, second, third and fourth branches thereof; four judges shall preside over the Court of First Instance of Cotabato, to be known as judges of the first, second, third and fourth branches thereof; three judges shall preside over the Courts of First Instance of Occidental Misamis and Ozamis City to be known as judges of the first, second and third branches thereof; two judges shall preside over the Court of First Instance of Zamboanga del Norte to be known as judges of the first and second branches thereof; one judge shall preside over the Court of First Instance of Zamboanga del Sur; one judge shall preside over the Court of First Instance of Basilan City; and two judges shall preside over the Court of First Instance of Sulu, to be known as judges of the first and second branches thereof."

SEC. 3. The first, second, third, fourth, fifth, seventh, eigth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth and sixteenth paragraphs of Section fifty-two of the same Act, as amended, are hereby further amended to read as follows:

"For the first Judicial District, the judge of the first branch of the Court of First Instance of Cagayan and Batanes and the Subprovince of Apayao in the Mountain Province shall be stationed in the Municipality of Tuguegarao, Province of Cagayan; the judge of the second branch, in the Municipality of Aparri, same province; the judge of the third branch, in the Municipality of Sanchez Mira, same province; and the judge of the fourth branch, in the Municipality of Tuao, same province; one judge shall be stationed in the Municipality of Ilagan, Province of Isabela; one judge shall be stationed in the Municipality of Cabagan, same province; one judge shall be stationed at Cauayan, same province; the judge of the fourth branch shall be stationed in the Municipality of Roxas, same province ;and two judges, in the Municipality of Bayombong, Province of Nueva Vizcaya.

"For the Second Judicial District, three judges shall be stationed in the Municipality of Laoag, Province of Ilocos Norte; one judge shall be stationed in the Municipality of Batac, same province; one judge in the Municipality of Vigan, Pro-

vince of Ilocos Sur; one judge in the Municipality of Narvacan, same province; two judges in the Municipality of Candon, same province; one judge in the City of Baguio; one judge in the Municipality of Bontoc, Subprovince of Bontoc; one judge in the Municipality of Kiangan, Subprovince of Ifugao; one judge in the Municipality of Tabuk, Subprovince of Kalinga; one judge in the Municipality of Bangued, Province of Abra; two judges in the Municipality of San Fernando, Province of La Union; and one judge in the Municipality of Agoo, same province.

"For the Third Judicial District, two judges shall be stationed in the Municipality of Lingayen, Province of Pangasinan; three judges shall be stationed in the City of Dagupan: two judges, in the Municipality of Urdaneta, Province of Pangasinan; one judge in the Municipality of Tayug and another in the Municipality of Alaminos, same province; the judge of the first branch of the Court of First Instance of Zambales shall be stationed in the Municipality of Olongapo, Province of Zambales, and the judge of the second branch, in the Municipality of Iba, same province.

"For the Fourth Judicial District, three judges shall be stationed in the City of Cabanatuan; one judge in the Municipality of Guimba, Province of Nueva Ecija; one judge in the Municipality of Gapan, same province; one judge in the Municipality of Sto. Domingo, same province: Provided, That as soon as the courtroom is constructed in the barrio of Baloc, Municipality of Sto. Domingo, same province, the judge shall be stationed in the said barrio; and three judges, in the Municipality of Tarlac, Province of Tarlac.

"For the Fifth Judicial District, two judges shall be stationed in the Municipality of San Fernando, Province of Pampanga; and one judge shall be stationed in the Municipality of Guagua, Province of Pampanga; one judge in the Municipality of Balanga, Province of Bataan; two judges in the Municipality of Malolos, Province of Bulacan; and the judge of the third branch, in the Municipality of Valenzuela, same province.

"For the Seventh Judicial District, six judges shall be stationed in the Municipality of Pasig, Province of Rizal; two judges shall be stationed in Pasay City; three judges in Quezon City; and one judge in Caloocan City; one judge, in the Municipality of Puerto Princesa, Palawan; one judge in the Municipality of Brooke's Point, same province; two judges, in the City of Cavite; one judge in the City of Trece Martires; and one judge in Tagaytay City.

"For the Eighth Judicial District, one judge shall be stationed in the Municipality of Biñan, Province of Laguna; two judges shall be stationed in the Municipality of Sta. Cruz, same province and one judge, in the City of San Pablo; the judge of the first branch of the Court of First Instance of Batangas shall be stationed in the Municipality of Batangas, Province of Batangas; and those of the second and third branches, in the City of Lipa and the Municipality of Balayan, Province of Batangas, respectively; one judge, in the Municipality of Calapan, Province of Mindoro Oriental; and one judge in the Municipality of Mamburao, Province of Mindoro Occidental.

"For the Ninth Judicial District, the two judges shall be stationed in the Municipality of Lucena, Province of Quezon; one judge each shall be stationed in the Municipalities of Gumaca and Calauag, in the same province; one judge, in the Municipality of Baler, Subprovince of Aurora; and one judge, in the Municipality of Daet, Province of Camarines Norte.

"For the Tenth Judicial District, three judges shall be stationed in the City of Naga; one judge each shall be stationed in the Municipalities of Tigaon and Libmanan, Province of Camarines Sur; three judges, in the City of Legaspi, Province of Albay; one judge in the Municipality of Virac, Province of Catanduanes; one judge each in the Municipalities of Sorsogon and Gubat, Province of Sorsogon; and one judge each, in the Municipalities of Masbate and Cataingan, Province of Masbate.

"For the Eleventh Judicial District, two judges shall be stationed in Roxas City; one judge in the Municipality of Mambusao, Province of Capiz; one judge in the Municipality of Romblon, Province of Romblon; one judge in the Municipality of Boac, Province of Marinduque; and two judges in the Municipality of Kalibo, Province of Aklan; seven judges in the City of Iloilo; and one judge, in the Municipality of San Jose de Buenavista, Province of Antique.

"For the Twelfth Judicial District, four judges shall be stationed in the City of Bacolod; one judge in the City of Silay; one judge in San Carlos City; and one judge in the Municipality of Himamaylan, Province of Occidental Negros; and three judges in the City of Dumaguete.

"For the Thirteenth Judicial District, one judge shall be stationed in the Municipality of Catbalogan, Province of Samar; one judge in the Municipality of Borongan, same province; one judge in the Municipality of Laoang, same province; one judge in the Municipality of Catarman, same province; one judge in the City of Calbayog; one judge in the Municipality of Guiuan, Province of Samar, one judge in the Municipality of Allen, same province, and one judge in the Municipality of Oras, same province; three judges shall be stationed in the City of Tacloban; one judge in the Municipality of Maasin, Province of Southern Leyte; one judge in the City of Ormoc, who shall hold court sessions in the Municipality of Palompon at least two months every year; one judge in the Municipality of Carigara, Province of Leyte; one judge in the Municipality of Baybay, same province; one judge in the Municipality of Burauen, same province; and one judge in the Municipality of Naval, Subprovince of Biliran.

"For the Fourteenth Judicial District, six judges shall be stationed in the City of Cebu; one judge shall be stationed in Toledo City; one judge each shall be stationed in the Municipalities of Barili, San Francisco, Bantayan and Bogo; Province of Cebu, one judge in the Municipality of Tagbilaran, Province of Bohol, one judge in the Municipality of Tubigon, same province; and one judge in the Municipality of Talibon, same province.

"For the Fifteenth Judicial District, two judges shall be stationed in the Municipality of Surigao, Province of Surigao del Norte; one judge shall be stationed in the Island of Siargao, Municipality of Dapa, same province; one judge shall be stationed in the Municipality of Tandag, Province of Surigao del Sur; one judge shall be stationed in the City of Cagayan de Oro; one judge in the Municipality of Malaybalay, Province of Bukidnon; one judge in the Municipality of Medina, Province of Misamis Oriental; and one judge shall be stationed in the Municipality of Catarman, Camiguin Island, subject to call for service by the Secretary of Justice to Cagayan de Oro City; one judge shall be stationed in the City of Marawi; one judge shall be stationed in the Municipality of Ganassi, Province of Lanao del Sur; one judge in the City of Iligan; and two judges in the City of Butuan.

"For the Sixteenth Judicial District, three judges shall be stationed in the City of Davao; one judge in the Municipality of Mati, Province of Davao; one judge shall be stationed in the City of Cotabato; one judge shall be stationed in the Municipality of General Paulino Santos, Province of Cotabato; one judge each shall be stationed in the Municipalities of Pagalungan and Sultan as Barongis; two judges shall be stationed in the Municipality of Oroquieta, Province of Occidental Misamis; one judge shall be stationed in Ozamis City; two judges in the Municipality of Dipolog, Province of Zamboanga del Norte; one judge in the Municipality of Pagadian, Province of Zamboanga del Sur; one judge in the City of Zamboanga; one judge in the City of Basilan; one judge in the Municipality of Jolo, Province of Sulu; and one judge in the Municipality of Siasi, same province.

(Continued on page 384)

# 1963 BAR EXAMINATION QUESTIONS
*(Continuation)*

## REMEDIAL LAW

I.

(a) State the rule on splitting a cause of action, and the effect on the respective rights of the parties for failure to comply with the same.

(b) May different causes of action be joined or alleged in a complaint? In the affirmative, what should be the basis for determining the jurisdiction of the court as to the amount of the demand?

II.

(a) What actions do not survive the defendant? In case the defendant dies before final judgment is rendered by the Court of First Instance in an action that does not survive, what must be done with such action, and where must the claim sought to be enforced by the action be prosecuted or presented?

(b) When may the deposition of any person, whether a party or not, be taken without leave of court, and when must such leave be first obtained? If the party upon whom notice of the taking of his deposition is served be not agreeable to the time scheduled or fixed in the notice, what step or steps should be taken by him to protect his interests?

III.

(a) What property sold upon execution may be redeemed, who may redeem it, and within what time must the redemption from the purchaser be made by the judgment debtor or his successors in interest, or by the redemptioner?

(b) May the Court of First Instance, instead of dismissing a case tried by an inferior court without jurisdiction over the subject-matter, and appealed to it, proceed with the trial thereof in the exercise of its original jurisdiction? In the affirmative, state in what instances may the court exercise such original jurisdiction and what step should the party concerned take to prevent the court from legally exercising it.

IV.

(a) May a defendant who has been declared in default appeal from the judgment taken against him by default? What remedy or remedies are available to said defendant for the protection of his interests?

(b) State how and within what time may a party appeal to the Supreme Court from a judgment of the Court of Appeals. What question or questions may the parties raise in the appellate court, and when must the Court of Appeals be made a party to the action?

V.

(a) "A", an alien who arrived at the City of Manila from Hongkong, asked that he be allowed to land as an American citizen. After hearing, the board of special inquiry found "A's" claim unfounded and denied his petition. The decision was affirmed by the Commissioner of Immigration. After said denial, "A" filed in the Court of First Instance of the city a petition for a writ of **habeas corpus** alleging that the decision of the board of special inquiry, affirmed by the Commissioner, was erroneous, and that for that reason he claimed that he was illegally detained. After due hearing, the court denied "A's" petition. Two days after the attorney of "A" had been served with notice of the order of denial of his petition, he filed a motion for reconsideration of the order. This motion was likewise denied by the court. Upon receipt of the order of denial of his motion for reconsideration, "A" appealed to the Supreme Court from the judgment of the Court of First Instance denying his petition for a writ of **habeas corpus**. The Solicitor-General moved that "A's" appeal be dismissed, on the ground that it was not taken within the period prescribed by the Rules of Court. Is the position of the Solicitor-General well-taken? Reason out your answer.

(b) State what is sought to be secured or obtained by a petition for a writ of **certiorari**, prohibition, mandamus and **quo warranto**, and against whom and upon what showing may the writ issue in each?

VI.

(a) On what grounds may the last will and testament of a person be disallowed?

(b) Who may intervene in the proceedings for the probate of a will? May a person, who has a contingent interest in the will, be allowed to intervene in the proceedings for the probate of said will?

VII.

(a) In what place or places should criminal actions be instituted and tried? Where may the crime of piracy be prosecuted?

(b) In what instances may the offended party intervene personally or by counsel in the prosecution of an offense? State the reason for the rule, and the limitations on the offended party's right to intervene.

VIII.

(a) Is the right of the defendant to be present at every stage of the proceeding waivable? In the affirmative, state in what instances may said right be waived, and when it may not be waived?

(b) Under what conditions or when may the accused in a criminal case invoke double jeopardy?

IX.

(a) When and on what grounds may one of several defendants in a criminal case be discharged to be a witness for the prosecution, and what is the effect of such discharge?

(b) "A" and "B" were charged in an information filed in the Court of First Instance with the crime of murder. Before arraignment, "A" was, on motion of the prosecution, discharged to be a witness for the government. Subsequently, the fiscal filed in the case an amended information in which he included "A" as defendant together with "B", "C" and "D", charging them with the same crime. Counsel for defendant "A" moved to quash the information in so far as said defendant is concerned, on the ground that the latter previously had been acquitted of the crime charged. The fiscal objected to the motion, contending that "A" was not entitled to the benefits of his previous discharge, because when the prosecution discovered that he, among his co-defendants, was the most guilty of the crime charged, it no longer availed itself of his testimony. If you were the trial Judge, how would you decide the incident? State the reasons on which you would ground your opinion or judgment.

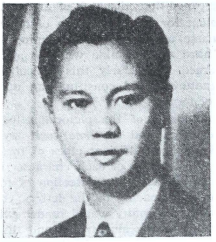
X.

(a) When may a witness be allowed in the course of his testimony to read a memorandum? What rights, if any, over said memorandum are reserved to the adverse party?

(b) By what evidence may a witness be impeached by the party against whom he was called? May said witness be impeached by evidence of particular wrongful acts committed by him?

(c) Before a witness may be impeached by evidence of inconsistent statements previously made by him, what must be done by the party impeaching his testimony? How is the process called?

# A NOVEL CASE



Judge Alberto J. Francisco

**In the Matter of the Change of Name of Moises Tumale Bueno; Moises Tumale Bueno, petitioner, Sp. Proc. No. SC-121; In the Matter of Change of Name of Francisco Perez Javier. Sp. Proc. No. SC-122; Court of First Instance of Laguna, Branch II, Francisco, J.**

D E C I S I O N

Petitioners Moises Tumale Bueno and Francisco Perez Javier seek the authorization of the Court for a change of their names from Moises Tumale Bueno to TStststststststststs-THthththththththth TH-th-TS-th, and from Francisco Perez Javier to Zzz-zzzzzzzzzzzzzz Z-z Z-z, respectively. Both are allegedly the founders of a religious sect known as "Iglesia Ygy-Nygy Philippinanas" with a membership of around one hundred followers at present, of both sexes.

These two petitions were heard jointly.

It is the pretension of herein petitioners that while delving into the mysteries and revelations of their religion — in the studies of which they had supposedly adverted to the sciences of Horology and Numerology in conjunction with the Bible as translated in the vernacular — they have been imbued with the sincere belief that in order to enjoy an auspicious existence on this earth and to attain succes in life their newly established religion requires of its votaries to adopt or assume a name consisting of a series of a letter or letters of the alphabet, either vowels or consonants, of a number unlimited, i.e., from two and so forth ad infinitum as long as to their belief and intent, there appears a conformation of the number of letters with the position of the heavenly bodies — the planets and the stars with the time, date, day, hour, month and year of their birth.

Counsel for petitioners contends in his memorandum that these petitions for the change of names are based "on petitioners' religious sect or affiliation", "a matter purely of belief which is strictly personal to them", and "that this fundamental right of freedom of worship and religion is a constitutional right guaranteed to everyone."

It should be made clear outright that this Court does not presume to indulge into an abstract and metaphysical theological disputation or dissertation of the viridity or the irrationality of the tenets and precepts of this religion — which are matters not justiciable and hence beyond judicial cognizance; neither does it intend to pass upon the sincerity of the convictions of the founders and followers of this religion; nor does it attempt to lay down a criterion by which the validity, the propriety or impropriety for the establishment of such religion may be gauged or determined. The task of dabbling into the abstruse study of the mystics and mysteries of this religion and of imparting them to its converts properly falls within the competence of its founders.

In short, the Court does not concern itself with the question of the free exercise of religion guaranteed by the constitution which connotes freedom of belief and worship. Insofar as these matters are concerned they are of no moment in these proceedings since they are not in issue; hence irrelevant. However, when attention is focused to the details in motivation of the devotees of such religion as when such religious beliefs or theories are sought to be actualized or translated into overt acts — in the present cases by an attempt to change baptismal names and surnames to those consisting of a long series of a particular letter of the alphabet — they may collide with certain interests which the State for reasons of public policy and welfare has a right to intervene and protect. Consequently, while the freedom to entertain a particular religious belief is absolute and falls within the meaning and protection of the constitutional precept, yet freedom to act in accordance therewith cannot always be unbridled and should accordingly be deemed subject of appropriate legislation; hence, the existence of statutory regulations governing the matter, viz., Articles 376; 380; 408(16); 412 of the Civil Code; Rule 103, Rules of Court. The juridical basis or rationale of these legal provisions cannot be circumvented by the pretense that their wise and proper application would result in a denial of the freedom of religion vouchsafed by the constitution. Indeed, while the latter guarantees liberty as concerns religious beliefs, worship or expression it does not necessarily negate, nor does it exclude by implication the right of the State to establish such safeguards against the abuse of such right albeit sincerity of motives, so long as they may affect adversely the public weal or traduce public policy. It has been held that public policy is the "community common sense and common conscience extended and applied through the state to matters of public morals, public health, public safety, public welfare and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow men having due regard to all the circumstances of each particular relation and situation." (Pittsburg, C.C. & St. L. Ry. Co. vs. Kinney, 115 N. E. 505, 506, 95 Ohio St. 64 L.R.A.). An act as to the consideration or thing to be done is contrary to or against public policy when it "has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liberty or of private property." (Gabriel vs. Monte de Piedad, 40 Off. Gaz., 14th. Suppl., p. 67).

Let us consider the case of herein petitioners, the co-founders of the aforementioned religious sect — and parenthetically, its followers who may file similar petitions for change of name — from the viewpoint of their personality as natural persons. As such physical entities they have the aptitude to be subjects of rights and obligations and are endowed with the power and capacity to enter into juridical relations, and to perform acts with legal effects, e.g., to enter into contracts; to make wills; to borrow money; to dispose or acquire property; to marry; etc.

It is an acknowledged fact that man is beset by limitations and is insufficient to obtain by himself alone the means for the satisfaction of his necessities, either personal or social.

Hence, for the realization of his individual and social ends, and to attain the means required for common life and social cooperation he has often to enter into or engage in manifold dealings with others, sometimes with those residing within his own community; at times with others dispersed throughout the length and breadth of the archipelago; and, under certain circumstances with those residing outside the Islands even to the extent of his being impelled to leave his own country and settle in a foreign land. Consequently, it is likewise an undeniable fact that man's activities are not limited or circumscribed within the premises of his own home; nor within the walls which enclose the bethel where he worships or conducts the ceremonial rites of his religion; nor within the confines of the community wherein he lives; nor even within the territorial boundaries of his own country. In resume, when pursued down to its essentials, man — with a view to satisfying or complementing his individual ends — has to enter into civil agreements, transact business, execute contracts, issue negotiable papers, may bring suits or may even be sued, civilly or criminally.

According to herein petitioners those who are affiliated with this religion, including their children, are not prohibited from assuming identical style of names and surnames, that is, consisting of a similar series of any of the letters of the alphabet as already adopted by another or others, the differentiating factor that would serve to distinguish one individual from the other being the numbers or frequency of that particular letter of the alphabet in the series constituting the name or surname. Hence, one follower may procure as his name twenty-eight in number of the letter Z and as his surname thirty-one in number of the letters Th; another may assume twenty-nine of the letter Z as his name and thirty-two of the letters Th as his surname. By the same token, one of them may adopt ninety-nine letters S as his name and ninety-eight letters H as his surname. In effect therefore several persons may adopt as their praenomen or Christian name a series of the same letter of the alphabet, e. g., T; as their nomen or middle name a series of the same letter of alphabet, e.g. X and as their cognomen or surname a series of the same letter of the alphabet, e. g.; Z — the only mode of distinguishing or identifying one from the other being the frequency or the number of times that particular letter appears or is written as applied to one individual in contradistinction to the other individual. Thusly: A follower of this sect may bear as his Christian name the letter T multiplied sixteen times; and as his surname the letter T multiplied eighteen times. Another may carry the same letter T multiplied seventeen times as his Christian name; the same letter X multiplied eighteen times as his middle name; and the same letter Z multiplied nineteen times as his surname. A third individual may adopt the name and surname, respectively, multiplied into a different number of times, with one letter more or one letter less to constitute a shade of variation; and so forth ad nauseam.

To compound the confusion it may be stated here without peradventure of doubt that the use of the agnomen or nickname may not even be availed of.

Let us now analyze the impact of such disquieting atmosphere upon the various facets of normal human activities. Certainly, it would be rational and justifiable to conclude that such situation would breed in most likelihood chaos and confusion that could serve to seriously undermine or impair stability in juridical relations. Thus:

a.) Incertitude on the binding effects of contracts or agreements.—If one or two letters of the alphabet written repeatedly in series were to constitute the name and surname then the determining factor for identification of the individual would be the numerous frequencies in which the same letter appears in such name and surname. Consequently, all of said letters would have to be counted in order to determine the number of repetitions of that particular letter so as to identify or differentiate the individuals transacting business from other or others bearing as their names and surnames identical letters of the alphabet but with a shade of variation in their frequencies, consisting in a letter less or in a letter more. Under such queasy circumstances it would not be a far-fetched conclusion to state that a mistake in the exact number of the same letter of the alphabet either in the name or in the surname, whether inadvertently made or with malice aforethought, would be conducive to or would afford ample opportunity for one of the contracting parties to renege on an agreement or to disavow liability thereon as not the person signatory thereto; let alone the delay in the expeditious dispatch of mercantile transactions.

b.) Inducement for the commission of forgery. — In affixing a person's name and surname by signing in such style it would be very hard to determine whether a particular signature has been forged. Conversely, this difficulty in verifying simulation of signature would constitute an open invitation to the commission of forgery.

From the standpoint of the pictorial effect of the whole signature of the name and surname such styling in signing would easily fail to yield sufficient clues of forgery. A fortiori, even a scrutiny and analysis of each character in the signature would make just as difficult the detection of forgery inasmuch as the connection and spacing of the letters; their alignment; their irregularity or conformity would render extremely arduous the task of determining the similarities and dissimilarities; the significant differences or divergencies between a genuine signature and a simulated one. In short, the adoption of such style of names and surnames, and apropos, the affixing of such signatures would greatly detract from arriving at a fair and reasonable conclusion whether a particular signature is an authentic or a spurious one, considering the lack of continuity or consistency of the various parts of the signature with itself — which would be otherwise if there were a variation in the employment of several different letters of the alphabet and from which a fairly accurate deduction may be derived on the qualities, elements, features and characteristics of the handwriting constituting the signature.

c.) Indecisiveness of judicial orders, decrees and judgments;—In judicial proceedings such styling of appellations would necessitate the outmost precision in writing down the name and surname of the person who may be involved in the litigation, whether criminal or civil. This would be especially true in cases where there might be several persons who bear in common identical names and surnames consisting of a series of the same letter of the alphabet with only a slight modification or difference in the number of their repetition or consistency. In the issuance of warrants of arrests, subpoenas or summonses a detraction from or an addition of a letter in the correct name or surname of the subject of the writ would constitute a substantial difference that would render difficult service thereof. In like manner, an oversight or a slight mistake due to inadvertence in writing down the correct number of the same letters of the alphabet constituting the name and surname of a party-litigant would render effete the orders, decrees and decisions of the Court which otherwise, under normal circumstances, should have binding effect on the party sought to be affected thereby.

d.) Overriding the doctrine of idem sonans. — Under the doctrine of idem sonans — which is addressed to the auricular sense-if two or more names, though spelled differently, sound alike; they are to be regarded as the same and hence pertaining to a particular individual. This doctrine would become completely useless and nugatory when sought to be applied to the circumstances obtaining in the case at bar. Moreover, such set-up might tend to encourage the commission of crimes due to the facility in the concealment of the offender's identity and the consequent difficulty in his apprehension.

e.) Undermining the legal presumption of identity of persons from identity of names. — From the viewpoint of the law on evidence the presumption of "identity of person from identity

of name" (Rule 123, section 69 /w/, Rules of Court) — which has reference to the visual sense — would be extremely difficult of application. Inasmuch as the name and surname would be composed of a series of an identical letter of the alphabet written in succession, the existence of the slightest variation in the number of frequencies or in the continuity in which that particular letter might appear in the written name and surname would necessarily result in a vast difference in the identity of the persons who may have adopted the same alphabetical character, differing only in the number in which it is repeated. In effect, under such circumstances this would be tantamount to an indirect abrogation of the aforecited rule.

f.) Turmoil in the political field. — There is no gainsaying the fact that herein petitioners and the followers of this religious sect are and would not be barred from actively engaging in partisan political activities, even to the extent of launching their candidacy for elective public offices.

Once such style of name and surname sought to be adopted by the petitioners — and for that matter by others who may follow suit — carry the badge of judicial sanction there is no telling the extent of the deleterious effect that same would have in this aspect of political affairs. It would not do to dismiss as purely speculative the great probability that two or more candidates for an elective office may bear the same names and surnames consisting of an identical letter of the alphabet written in series but differing only in the number of frequencies. A single mistake in writing down the precise and correct number of letters in both names would nullify as stray votes, the ballots purportedly cast for these candidates since it would not avail to advert to the doctrine of idem sonans. Moreover, such disconcerting situation would demand an undue strain on the part of the voters in filling out the ballots and on the election inspectors in ascertaining for whom the votes had been cast. To say the least, the logical outcome of such situation would be chaos and confusion.

g.) Embarrassments in normal social intercourse. — Even in the ordinary pursuit of the amenities of social life, should perchance there would be a gathering of a group of persons affiliated with this religious sect bearing as their appellations the identical letter of the alphabet, e.g., "Z", though varying in the frequency in which such letter is repeated, it would be a frustrating experience to address, call or summon any one of them in particular for what would emit in pronouncing the individual's name would be a hizzing sound.

h.) Indetermination of gender. — Human individuals, are by virtue of their natural state, either males or females. Hence, it has been determined by implied agreement and general assent among civilized nations to give to either sex such Christian or proper name as would serve to distinguish one from the other. Under the unorthodox style in the use of names advocated by herein petitioners such conventional distinction which has ripened into custom and tradition would be totally eradicated. This new system would seem to connote the idea or to create the impression of the existence of a sexless aggroupation of individuals in the human species.

i.) Difficulty in tracing the lineage or parentage. — As testified to by one of herein petitioners their religion does not forbid, hence it sanctions, the adoption of similar style of names and surnames by the offsprings, whether males or females of its members; even by utilizing another sundry letter of the alphabet other than that already appropriated by their parents. This would be a drastic departure from the orthodox practice observed throughout the civilized world of conferring on a descendant at least the surname of his immediate ascendant or to be baptized with the patronymic or patrilineal name of his forbears. Furthermore, this would constitute a crass disregard of the legal requirement that children should bear the surname of either their father or mother, as the case may be. (Arts. 364, 366, 367, 368, 369, Civil Code).

Hence, to accede to the petitions would be to put a premium to the creation of perplexing situations in endeavors to trace or to identify either the lineage or ancestry of the persons concerned whether through the ascending, descending or collateral lines. These difficulties would be more patent and pronounced in cases involving wills, descent and succession; paternity and filiation; and, compulsory acknowledgment of children.

Before concluding it would not be amiss to dwell upon the nature and purpose of the name and surname. To all legal practical purposes a man's name is the designation by which he lives and is best known. A person's name consists, in law, of a Christian name and a family surname. A Christian name or first name or proper name is one that is used to distinguish a particular individual from his fellowmen; while a surname is that portion of the name of the individual which is employed by him in common with other members of the family.

It has been the practice which has ripened into custom and usage in all civilized countries, founded on a well-entrenched social order, that a person's name consists of a combination of letters or characters of the alphabet that spell out or denote a syllable or syllables such that a particular individual could be addressed, designated or identified by the distinct phonetic and limpid enunciation emitted by the syllabification of his name.

The names sought to be adopted by herein petitioners are unquestionably of a different version, constituting a violent departure from established practice, and borrowed independently from a source contrived to be impregnated with a tinge of religious motive. In addressing or identifying them — and by the same measure many others who may later seek to adopt similar style of appellations — one would have to sibilate; and this sibilation must perforce have to be produced by a stock of a similar letter of the alphabet repeated in successive frequencies resulting in a hissing sound, with ubiquitous and equivocal effects.

That the adoption of such style in name could easily lead to the commission of mistakes, and the creation of confusion and chaos, must have to be admitted. For, one of the petitioners himself, Tumale, had committed outright an error in writing down the very name he desires to assume, in lieu of his original baptismal name. Thus:

Cross—examination by Asst. Fiscal Tengco:

Q. Will you please write in this Exhibit "5" which is Exhibit "1" for Bueno and Exhibit "3" for Javier, now you will write your official signature based upon the supposed to be adopted name? How will you write your signature?

Atty. Plantilla:

Your official signature. If you are granted that name, what will be your official signature?

Court:

Make it of record that after writing down the letters, the witness has been counting the number of the letters supposed to be his signature.

Asst. Fiscal Tengco:

There is a statement which was made by this witness which we will request that the interpreter to please interpret the same.

Interpreter:

The witness wants to call the attention of the Court that he made a mistake in Exhibit "1-A" and he is making the proper correction and he writes the same in line with . . .

Asst. Fiscal Tengco:

I will request that the same be marked as Exhibit "8"

for the oppositor.

Interpreter:

Witness wants to call the attention of the Court that in Exhibit "A-1" in writing his surname, he committed an error and wants to point to the Court that the correct figure will be . . .

Asst. Fiscal:

We will request that the same be marked as Exhibit "8-A" — Moises and as Exhibit "8-B" — Tumale. (T.s.n., June 18, 1963; pp. 2-3).

Moreover, there is one important factor which the Court can not discount nor be oblivious of. It should be emphasized that to grant the herein petitions would be to establish a precedent that would pave the way for similar petitions on the part of others, who may be fascinated and intrigued by this new fangled idea, whether under claim of religious convictions ingeniously feigned or otherwise. To limit the grant of such petitions to those who may be affiliated with this religious sect would not only lay the Court open to the charge of discrimination and inconsistency but would, moreover, controvert the very contention of counsel for herein petitioners that freedom in the choice of religious beliefs is beyond the pale of legislative regulation or judicial determination. Furthermore, such circumscription to affiliates of this sect would be violative of the injunction that a person should not be unduly deprived of the exercise of his prerogatives on account of his religious belief or political opinion (Art. 39, Civil Code).

Pursued down to its ultimate conclusions, one need not necessarily be endowed with a fervid imagination to be able to envisage the perplexing situations; the unpleasant predicaments; the chaos, confusion and disorders that would be generated by the frequent repetition of such unimaginative device in the style of names, in substitution of conventional appellations. Such, indeed, would be the resultant and far-reaching chaotic effects were the Court to acquiesce to these arbitrary permutations of the letters of the alphabet. What may be a novelty for the present, could in the future, be a parody of the past.

To grant the petitions at bar would be to subserve sound public policy in place of emphasis to details of personal motivations under the simple expedient that the same are blended with certain religious connotations.

In concluding, the Court wishes to reiterate that, as heretofore stated, the issue in the present cases does not concern the establishment of a particular religion nor with the question of one's views of his relations to his Creator, and to the obligations they impose of reverence for His Being and character, and of obedience to His will. Neither is the Court concerned with the free exercise thereof and the form of worship that is imposed to the followers of this particular religious sect as approved by their judgment and conscience; nor to the mode by which they may exhibit their sentiments in relation thereto insofar as they do not undermine public policy or subvert the welfare of the rest of the community.

Parenthetically, neither are the votaries of his religion denied the right to appropriate to themselves a shibboleth to identify or designate the particular religious denomination to which they may belong, as for example, that of being Lutheran, a Calvinist, a Baptist, a Methodist or an Aglipayan.

Premises alluded to, it is the considered opinion of the Court that two or more detached and separated letters of the alphabet do not constitute a name; and, that the intent by which any specific combination of letters is used is immaterial provided their use tends, as a matter of fact, to deceive or to confuse.

As the declared purpose of proceedings for change of name is the prevention of fraud, rules enacted in connection therewith are valid exercise of the police power of the State; and, since the change of name of person may affect his business and social relations, the rule allows any interested person, besides the Solicitor General or the proper provincial fiscal, to appear at the hearing and oppose the petition. (Rule 103, sec. 4, Rules of Court).

Furthermore, it is settled doctrine that an order changing the name of the applicant is a matter of judicial discretion and not of right and that the Court is not subject to the whims of every petitioner, hence, it may make an order dismissing the application, as the Court may deem right and proper. (38 Am. Jur., p. 610; 45 C.J., p. 382).

In view of all the foregoing considerations, the Court is constrained to deny, as it hereby denies, the two herein petitions for change of names. Without pronouncement as to costs.

SO ORDERED.

Sta. Cruz, Laguna, November 1, 1963.

ALBERTO J. FRANCISCO
Judge

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REPUBLIC . . . (Continued from page 379)

SEC. 4. The eleventh and thirteenth paragraphs of Section fifty-four of the same Act, as amended, is hereby further amended to read as follows:

"Eleventh Judicial District: At Culasi, Province of Antique, on the first Tuesday of December of each year, a special term of court shall be held at least once a year on dates to be fixed by the district judge. Special terms of court shall also be held at San Agustin, Province of Romblon, on the third Tuesday of August, December and April of each year; and at Odiongan and Cajidiocan, same province, at least once a year on dates to be fixed by the judge.

"Thirteenth Judicial District: The Calbayog branch to hold court at Basey, Samar, on the first Tuesday of January of each year; the Laoang branch, at Gamay, same province, on the first Tuesday of July of each year."

SEC. 5. Section seventy-one of the same Act, as amended, is hereby further amended by adding another paragraph thereto which shall read as follows:

"No person shall be appointed judge of the municipal court of any chartered city or justice of the peace of any provincial capital unless he is (1) at least thirty years of age; (2) a citizen of the Philippines; (3) of good moral character and has not been convicted of any felony; (4) has been admitted by the Supreme Court to the practice of law; and (5) has practised law in the Philippines for a period of not less than five years."

SEC. 6. Wherever an additional branch or branches of the Court of First Instance is or are established in this Act in the same place where there is an existing court or courts of first instance, all cases already filed in the latter court or courts shall be heard, tried and decided by such latter court or courts.

SEC. 7. The stenographer of a Court of First Instance shall receive a compensation of not less than four thousand eight hundred pesos per annum except the stenographers of the Courts of First Instance of the City of Manila, Pasay City, Quezon City, Caloocan City and the Provinces of Rizal, Cebu, Negros Occidental, Iloilo, Leyte and Davao who shall receive a compensation of not less than six thousand pesos per annum: Provided, That no salary shall be paid to a court stenographer unless he submits a sworn statement to the effect that he has given requesting parties copies of transcript of stenographic notes upon payment of proper fees, and transcripts have been completed and attached to the records of every appealed case within sixty days after receipt of notice from the appellate courts.

SEC. 8. Such sums as may be necessary to carry out the purposes of this Act is hereby appropriated out of any funds in the National Treasury not otherwise appropriated.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 22, 1963.

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