THE JURISTIC THINKING OF MR. JUSTICE FERNANDO V. JUGO *

I. Biographical Sketch

Mr. Justice Fernando V. Jugo was born in Bacolod City on May 14, 1891. His parents are Fortunato Jugo and Maria Vinson.

In 1909, he took up courses in philosophy and letters and preparatory law in the University of Santo Tomas. From there, he went to the University of the Philippines for his law studies.[1] Even before graduation, young Fernando felt a desire to earn his own livelihood. He applied for work in the Bureau of Internal Revenue in 1913, was tested, accepted, and was given his first assignment as senior translator. Because of his diligence, usually uncommon among young employees, he was in due time promoted to the position of assistant law clerk in the same office. The next year, the State University awarded him his degree of Bachelor of Laws. He took the bar examinations in the same year and passed it. He was twenty-three years old then.

The life of Justice Jugo from the time he graduated from the university up to the moment he reached the pinnacle of his career with his appointment as Associate Justice of the Supreme Court of the Philippines in 1951, was spent in the long, steady process of mastering the law and learning the difficult art of dispensing justice. He was a law clerk in the City Fiscal's office in 1917. The next year, he returned to the Bureau of Internal Revenue as Chief of the Law Division. Subsequently, he was appointed Assistant City Fiscal of Manila in 1919. The next year, he again transferred to the Bureau of Justice as Assistant Attorney. While serving in this capacity, he handled cases involving revenue and customs.

On September 15, 1921, he married the former Lourdes Jalandoni, with whom he has three living children.

Prior to his appointment to the Bench, the then Attorney Jugo was a member of the Bar Examination Committee in 1925 and 1927. He was the Chairman of the same Committee in 1953.

Mr. Justice Jugo was first appointed to the judiciary in 1928 as an auxilliary judge of the Court of First Instance of Laguna. Five years later he was named District Judge. He was assigned to hold sessions in Pasig, Rizal, in 1936, and from there, he was promoted to the position of District Judge of the Court of First Instance of Manila.

After Liberation, in 1946, he was appointed Associate Justice of the Court of Appeals. He became the presiding justice of the same court

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* Acknowledgment is due Miss Pacita R. Cañizares who furnished the materials for the biographical sketch of this article.

[1] Among his equally distinguished classmates were Ex-Speaker Jose Yulo, Ex-Secretary Jorge Vargas, Ex-President Elpidio Quirino, and Justice Alex Reyes.

in 1950. A year later, in 1951, he was given a seat in the highest court of our land.

As a man, Mr. Justice Jugo is of the cautious and conservative type. He refrains from giving comments or opinions unless he has had the time to think the matter over. He is courteous and understanding, and has a very fatherly way of talking, unaffected and dignified.

The Justice, as is usual with magistrates, devotes most of his time to cases before the court. What leisure time he has, he spends reading books and articles. Physical sciences, most especially nuclear physics, fascinates him, and he has read a lot on the subject. On the lighter side, Perry Mason (a creation of Erle Stanley Gardner) is his favorite detective character. He is also an avid reader of Spanish literature.

II. His Legal Philosophy

In matters of literary style the sovereign virtue for the judge is clearness. Such clearness may be gained through many avenues of approach. The opinion will need persuasive purpose, or the impressive virtue of sincerity and fire, or the mnemonic power of alliteration and antithesis, or the terseness and tang of the proverb and maxim.[2]

For Justice Jugo, clarity is attained through the habit of avoiding inordinate prolixity. The Justice hates long-winded decisions; he believes that a short opinion is often more effective. His decisions are characterized by brevity and simple and sincere straight-forwardness, with a clear insight into the issues, and often sacrificing rhetoric to the barest necessities of a decision — a statement of the facts, the law applicable, and the conclusion. Even in cases where he could have waxed eloquent, the Justice has shown his characteristic restraint, bordering on the conciliatory and modest, although unavoidably interspersed, now and then, by sparks of eloquence.

Sometimes, the Justice, in very obvious cases does not even go to the trouble of mentioning the law involved, leaving it to the reader to locate it himself. The case of *Concordia v. Tolentino*[3] is very much in point. After devoting two short paragraphs to the background of the case — that the petitioner was formerly appointed Nacionalista Party member of the Electoral Tribunal of the House of Representatives; that he was dismissed by the Nacionalista members of the House and substituted by Tolentino, another Nacionalista Congressman, allegedly for voting against Pelaez in the Tribunal; and that he now seeks to be reinstated to and Tolentino ousted from the Electoral Tribunal — the Justice concluded:

> "It appearing that the petitioner Manuel Concordia has already left the Nacionalista Party and joined the Liberal Party, his petition now lacks proper basis."[4]

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[2] Cardozo, B., Law and Literature and Other Essays and Addresses, 7-9 (1934).

[3] G.R. No. L-6482, July 17, 1953.

[4] The reason can be found in Art. VI, Sec. 11, Phil. Const.

This does not mean, however, that Justice Jugo is incapable of the majestic or imperative style. In one of his rare dissents, he portrayed that which is more characteristic of dissent: "dignity, an elevation, of mood and thought and phrase. Deep conviction and warm feeling are saying their last say with knowledge that the cause is lost. The dissenter speaks to the future and his voice is pitched to a key that will carry through the years." [5]

> "It is claimed that the correction may be made by inference. If we cure a deficiency by means of inferences, when are we going to stop making inferences to supply fatal deficiencies in wills? Where are we to draw the line? Following that procedure we could be making interpolations by inferences, implications, and even by internal circumstantial evidence. This would be done in the face of the clear, unequivocal, language of the statute as to how the attestation clause should be made. It is supposed that the drafter of the alleged will read the clear words of the statute when he prepared it. For the court to supply alleged deficiencies would be against the evident policy of the law." [6]

A. *On Labor*

In the three labor cases that Justice Jugo has penned so far,[7] he has unmistakably shown himself to be friendly to labor. This is not to say that he is anti-capital — the guiding principle in deciding cases being still the facts of the case, and the letter and intent of the applicable law — but that in cases of doubt, he would be more inclined to cast his sympathies towards the cause of the working man.

Most illustrative would be the case of *Philippine Long Distance Telephone Co. v. The Philippine Long Distance Telephone Workers' Union (CLO)*,[8] wherein the Supreme Court, voting six to five, upheld the right of a laborer to continue working in the telephone company, in spite of the fact that he was blind in one eye, such blindness being shown to have been present for the past seven years of his employment with the same company. Against the petitioner's contention that "it is its right to choose and fire employees without interference from the Court of Industrial Relations, provided it is not done on account of union activities of the workers," Justice Jugo, speaking for the majority answered:

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[5] CARDOZO, *op. cit.*, 36.

[6] *Herreros v. Gil*, 49 O.G. No. 4, 1459 (1951). The background of the decision in this case is very interesting—one which is highly illustrative of the suspicion that the law is only what the judges say it is. This dissent by Justice Jugo was originally the majority opinion. During the pendency of a motion for reconsideration, Chief Justice Moran, who concurred with the opinion of Justice Jugo, was appointed Ambassador to Spain. Justice Labrador who took his place in the Supreme Court, voted, on the motion for reconsideration, with the minority, thus making them the majority.

[7] *Philippine Long Distance Telephone Co. v. The Philippine Long Distance Workers' Union (CLO)*, G.R. No. L-4157, July 1952; *Luy-A Allied Workers' Association v. CIR and Philippine Federation of Labor*, G.R. No. L-2844, April 27, 1951; *Manila Railroad Co. v.* CIR, G.R. No. L-3868, Aug. 28, 1951.

[8] *Supra*, note 7.

> "That right should not be abused or exercised capriciously, without any reasonable ground with reference to a worker who has worked faithfully and satisfactorily for a number of years and who was admitted with his alleged defect visible and known, for, otherwise, in future cases the exercise of such right might be used as a disguise for dismissing an employee for union adherence."

The case is significant in that it is of first impression in this country. No authorities were cited in either the majority or the minority opinions. In restricting the traditional sphere of an employer's power to determine the competency of his workers, and in rejecting the employer's fears of inefficiency and accident, Justice Jugo took a pragmatic approach, subordinating logic to realism, and adjusting his opinion to the peculiar situation prevailing and the human factor involved.

> "If his blindness in one eye is a great handicap to Labitag, why is it that during the several years that he has worked at said job no accident has happened and no inefficiency has been noted? Natural science is necessarily experimental and all *a priori* reasoning gives way to *a posteriori* results. All the arguments to show that Labitag's defect renders him dangerous and inefficient in his work fall before the happy results of his experience of several years in the same kind of work, results which disprove the rather gloomy but unjustified anticipations of danger and inefficiency. An imagined anticipation cannot overcome the clear and tangible evidence of actual experience."

In his two other labor decisions also, Justice Jugo clearly showed the influence of the sociological movement in jurisprudence, displaying his understanding of, and sensitivity to, the sweat and pulse of life. While the case of *Luy-A Allied Workers' Association v. CIR and Philippine Federation of Labor*,[9] holding that the existence of a collective bargaining contract does not bar another labor union in the same company from petitioning for better working conditions, has been qualified by the Industrial Peace Act,[10] the spirit in which his opinion was written is worthy of note. Forcefully expounding on what he rightly believes is the fundamental function of labor legislation, Justice Jugo wrote—

> "Our laws recognize and protect the rights of laborers to petition for better conditions, to resort to the courts, and even to strike in the proper cases. It is a part of the right to petition. Labor Laws have been enacted to protect the right of laborers to seek better working conditions, creating the Court of Industrial Relations, to pass upon the petitions of laborers for that purpose. This fundamental human right cannot be nullified by contract, especially when the laborers concerned are not parties to it."

From the legal and literary standpoint, there was nothing spectacular in the case of *Manila Railroad Company v. Court*.[11] Writing in his

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[9] *Supra*, note 7.
[10] R.A. 875, approved June 17, 1953.
[11] *Supra*, note 7.

characteristically simple and forthright style, the Justice, in granting a 25 per cent extra pay for night work dismissed petitioner's contention that it was not within the spirit of the Eight Hour Labor Law[12] to grant additional compensation for night work of employees of public service companies for the reason that the same Act did not require the petitioner to pay extra compensation for work on Sundays and legal holidays. After citing favorably the case of *Shell Company v. National Labor Union*,[13] Justice Jugo added his own observations that "it is different to work in the daytime on Sundays and legal holidays from working at night on the same day. It is easier for a man to work in the daytime on Sundays and legal holidays than to work at night on any day."

B. *On Government*

In the early cases of *Planas v. Gil*[14] and *Villena v. Secretary*,[15] the then Justice (now Senator) Laurel, speaking for the Supreme Court, advanced the theory of broad presidential powers. Under such a theory, the President of the Philippines, by virtue of his executive power and his power of supervision as provided for in the Constitution,[16] has also the power to investigate, suspend, and even remove, for causes provided by law, municipal officials. Along with such a broad concept of executive authority is the concomitant decrease in the powers of local government units with reference to disciplinary action against possibly erring public officials.

That Justice Jugo adheres to this theory of broad executive power seems to be the tenor of his decision in the recent case of *Villena v. Roque*.[17] In this case, but without explicitly indicating whether the source of authority is constitutional or statutory, the Supreme Court sustained the power of the President to order the administrative investigation and suspension of Mayor Villena of Makati after he (Villena) had been found guilty by the trial court of the crime of falsification of a public document. To arrive at this decision, Justice Jugo leaned heavily upon, and quoted extensively from, the precedent-setting opinions of Justice Laurel in the early *Planas* and *Gil* cases cited above. As a further justification for the rule, Justice Jugo argued thus: If the President has the power to suspend, and if found guilty of disloyalty, dishonesty, oppression, or misconduct in office, after investigation, to remove any provincial officer including an elective governor,[18] then "it stands to reason that he has also the same power with regard to muni-

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[12] C.A. 444, approved June 3, 1939.
[13] 46 O.G. (Supp. No. 1), 97 (1948).
[14] 67 Phil. 62 (1939).
[15] 67 Phil. 451. (1939).
[16] Art. VII, Secs. 1 and 10 (1).
[17] G.R. No. L-6512, June 19, 1953.
[18] Secs 2078 and 2082, Rev. Adm. Code.

cipal officers." In other words, the power granted by the Revised Administrative Code,[19] vesting the power to investigate and suspend a municipal official in the provincial board "is not exclusive." It is concurrent with the power of the President.

While it is believed that the *Villena* case is a retreat from the trend started in the case of *Lacson v. Roque*,[20] limiting presidential power, wherein Justice Jugo concurred with the majority opinion of Justice Tuason, Justice Jugo differentiates the *Lacson* case from the *Villena* case:

> "(1) Lacson had only been indicted but not yet convicted.
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> (2) Lacson was accused of libel which was not a misconduct in office; whereas in the present case, the petitioner was accused of falsification of a public document essentially in relation to the performance of his duties as mayor.
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> (3) Lacson was not subjected to an administrative investigation; whereas in the order appointing the provincial fiscal of Rizal to conduct the administrative investigation, the fiscal was enjoined to give the petitioner "sufficient notice of the date and place of the investigation, and full opprtunity to defend himself personally or by counsel'."

Apparently, the concurring vote of Justice Jugo in the *Lacson* case did not necessarily include the statement of Justice Tuason that "there is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials." Justice Jugo concurred only in so far as it was held that libel is not one of the grounds provided for by law for the suspension of a municipal official. The truth of this may be found in the subsequent case of *Burgueto v. Mayor*[21] where the Supreme Court, speaking through Justice Jugo, held that slander is not a ground for the suspension of a municipal official. In reiterating the *ratio decidendi* in the *Lacson* case, the Justice opined:

> "The mere filing of an information for libel against a municipal officer is not a sufficient ground for suspending him. The same way be said with regard to serious slander, which is another form of libel. Libel does not necessarily involve moral turpitude."

During the deliberations on the case of *Lacson v. Roque*, the issue was raised as to the scope of the power of the President to suspend, or even remove the Mayor of the City of Manila from office. Such controversy was brought about by the silence, due perhaps to legislative oversight, of the Charter of Manila[22] with regard to the legal grounds therefor. Mr. Justice Tuason, who penned the main opinion in the said *Lacson* case believes that, in accordance with section 64(b) of the Revised Administrative Code, the only ground for the removal of the City Mayor was disloyalty to the Republic of the Philippines. Mr. Justice Jugo, however, was for recognizing a wider area of authority in the Pre-

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[19] Secs. 2188 and 2190.
[20] 49 O.G. 93 (1953); G.R. No. L-6225, Jan. 10, 1953.
[21] G.R. No. L-6538, May 10, 1954.
[22] R.A. 409, approved June 18, 1949.

sident. He reasons that, as the office of the provincial executive is at least as important as the office of the mayor of the City of Manila, the latter officer, by analogy, ought to be amenable to removal and suspension for the same causes as provincial executives, who under section 2078 of the Revised Administrative Code, may be discharged for dishonesty, oppression, or misconduct in office, besides disloyalty.

While Justice Jugo is for the broad exercise of presidential powers, however, he believes that such exercise must find support in law, whether express or implied. Where an act is clearly *ultra vires*, he does not hesitate to exercise his judicial powers to declare such act null and void. Justice Jugo had such an opportunity in the case of *Rodriguez v Gella*,[23] otherwise known as the Emergency Powers case. In this case, the Supreme Court, in setting aside two executive orders[24] of the President appropriating money for public works and relief work declared in unmistakable terms that the effectivity of Commonwealth Act 671, under the supposed authority of which the executive orders were issued, had already lapsed. In thus depriving the then President Quirino of the exercise of the emergency powers originally conferred on the late President Quezon at the start of World War II, Justice Jugo, concurring had this to say:

> The emergency contemplated by Commonwealth Act 671 was not the same emergency in said executive order. . . . The recent typhoons, earthquakes, volcanic eruptions, etc., and the failure of Congress to provide for them have nothing to do with the war mentioned in said Commonwealth Act 671 and are not consequences of said war."

C. *On Procedure*

Rules of procedure have been established to prevent confusion in court proceedings, to insure the steady grind of the wheels of justice, and to "assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."[25] It is for this reason that Justice Jugo believes that Evidence and Trial Technique are two subjects which should be given careful study not only by law students but also by lawyers, especially practising lawyers. He deplores the fact that many lawyers do not even know how or have some difficulty in laying the proper foundation for impeaching a witness by contradictory statements. To this end, he recommends Wellman's *The Art of Cross-Examination* as reading material for trial technique on proper cross-examination.

The whole attitude of Justice Jugo towards the Rules of Court could very well be summed up in the following anecdote which he himself loves to tell.

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[23] 49 O.G. No. 2, 465 (1953).
[24] E.O. Nos. 545 and 546, Nov. 10, 1952.
[25] Rule 1, Sec. 2, Rules of Court.

When the Justice was still Judge of the Court of First Instance, a lady lawyer once complained that he (the Judge) probably did not want her to prove her case because he sustained all the objections raised by the opposing counsel to her questions. The Judge's answer is highly revealing — "It is not that I do not want you to prove your case; but you must establish your case according to the rules of evidence and procedure." This does not in the least intend to suggest that Justice Jugo would insist on a strict interpretation of the Rules. There is no doubt that the Rules of Court must be liberally construed. As a matter of fact, the Justice was liberal in the case of *Feliciano v. Alipio*.[26] While strictly speaking the proper remedy prayed for should have been prohibition, the fact that the petition asked for mandatory injunction was no ground for dismissal. He correctly observed that an injunction is equivalent to an action for prohibition when made against public officers.

While the Constitution guarantees the right to a speedy trial to the accused in a criminal case only, it is also socially desirable that there should be a speedy adjudication of all other types of cases. Rule 1, Section 2 of the Rules of Court reflects just such an end — a trial unhampered by vexatious, unjust and unwarranted delays designed to frustrate the ends of justice. As Justice Jugo would put it:

> "It is the policy of the courts to expedite the disposal of cases to prevent delay. The trail of cases should not be delayed if possible by motions for postponements even with the conformity of the adverse party. Attorneys should cooperate with the courts in the prompt trial of cases by refraining from the filing of motions for continuance unless there are sufficient and strong reasons for them." [27]

A plaintiff, therefore, has no right to assume that his motion for postponement would be necessarily granted by the court even though the defendant has given his conformity to the postponement, and such is not a valid excuse for his non-appearance at the trial on the date set for it. With the same spirit did the Supreme Court uphold the exercise of the lower court's discretion to deny the taking of depositions when the case was already on trial, and it appearing that there was no cogent and plausible reason for its justification. It was obvious that the taking of the deposition at such stage would have led the parties to "no practical result, and hence would simply delay the proceedings." [28]

Speed in the determination of cases would, however, be meaningless if the decisions rendered therein would be subject to question after it has become final and executory. The fact that the decisions was erroneous is of no consequence. As Justice Jugo emphasized in *Daquis v. Bustos*.[29]

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[26] 50 O.G. No. 4, 1548 (1954).
[27] *Salvador v. Romero*, 50 O.G. No. 11, 5279 (1954).
[28] *Jacinto v. Amparo*, G.R. No. L-6096, August 25, 1953.
[29] 50 O.G. No. 5, 1964 (1954).

> "Even assuming that Judge Filamor's decision erroneously declared the sale valid, such error, not being jurisdictional could have been corrected only by a regular appeal. Decisions, erroneous or not, become final after the period fixed by law; litigations would be endless; no questions would be finally settled; and titles to property would become precarious if the losing party were allowed to reopen them at any time in the future."

The speedy disposition of cases does not, however, necessarily mean undue haste or unreasonable promptness. It must be tempered with sound judicial restraint, consistent with delays depending upon the circumstances, lest in the zeal for speedy trials, justice would become a mockery. In the very recent case of *Gil v. Talana*,[30] Justice Jugo had the occasion to prove that the adage "justice delayed is justice denied" is not always true. Judge Bienvenido Tan dismissed a case with prejudice simply because the party plaintiff and his counsel were late fifteen (15) minutes for the trial. In reversing the decision, the Justice took cognizance of the fact that "sometimes a delay of a few minutes is unavoidable . . . and it would be too drastic to make litigants suffer for such short tardiness."

In the precedent-setting case of *Beltran v. Ramos*,[31] the Supreme Court, through Justice Jugo, set the rule for the trial of criminal cases in newly created provinces. In consonance with Section 14A, Rule 106 of the Rules of Court, it was held that the trial must be conducted in the new province, and not in the province of which the new province was formerly a part, even if they belong to the same judicial district, and there is still no court in the new province. In expounding on the evils which the law sought to prevent, the learned Justice displayed a fidelity to the constitutional intent of affording the accused in criminal cases the benefits of every legal right for his proper defense.

> "The Rules of Court expressly provide that a criminal case should be instituted and tried in the municipality or province where the offense was committed or any of its essential ingredients took place. This is a fundamental principle, the purpose being not to compel the defendant to move to, and appear in a different court from that of the province where the crime was committed, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place. Although the judge of a district may hold session in any part of said district, yet he should hold the trial in any particular case subject to the specific provisions of Section 14A, Rule 106, in order not to violate the Rules of Court and disregard the fundamental rights of the accused. Sometimes a judicial district includes provinces far distant from each other. Under the theory of the respondent, the accused may be subjected to the great inconvenience of going to a far distant province with all his witnesses to attend the trial there. This is prohibited by the Rules of Court as being unfair to the defendant."

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[30] 50 O.G. No. 11, 5278 (1954).
[31] 50 O.G. No. 12, 5762 (1954).

D. *On Crime and Punishment*

Under the criminal law decisions which Justice Jugo has penned, there seems to be no definite indication as to the exact theory of punishment which he adheres to — the classical concept of retributive justice, or the modern theory that repression of crime is "applied for social defense, to forestall social danger, to rehabilitate, cure or educate" the violators of penal law.[32] Be that as it may, he certainly has given his share in what Justice Malcolm says is the cardinal object of penal legislation — "to purge the community of persons who violate the laws to the great prejudice of their fellow-men."[33]

Most of the decisions handed down for the Supreme Court by Justice Jugo concern violations occurring during the troubled years of Japanese occupation and the unstable economic and social period of early post-liberation. No new principles were enunciated; reiteration was the rule; and doctrinal stability maintained. In all these, he has shown an absolute fairness, guided solely by his conscience and his sober appraisal of the circumstances in relation to the law.

Where the crime is characterized by acute perversity, society demands that the perpetrators be permanently put out of the way. Justice Jugo has not shirked from such an unpleasant judicial task, as shown by the cases of *People v. Ging Sam*[34] and *People v. Valeriano*[35] wherein he voted for the death penalty.

And when the lower courts have been found wanting in the proper appreciation of the evidence and the applicable statute, Justice Jugo was not recreant in the discharge of his duties. The penalty for the defendant in *People v. Felipe*[36] was increased from *reclusión temporal* to *reclusión perpetua* because of the presence of *alevosía*. Even if the shot was fired in front of the deceased victim, yet the circumstance that the attack with the fatal weapon was sudden and made without warning still constitutes treachery. The same increase of penalty was given in *People v. Escarro*[37] where it was held that the absence of either aggravating or mitigating circumstances in murder makes the penalty applicable *reclusión perpetua*. In *People v. Camay*[38] where the crime committed was multiple murder, the Supreme Court would have raised the penalty of *reclusión temporal* imposed by the lower court to death but for lack of the requisite number of votes, *reclusión perpetua* was imposed. The Supreme Court refused to consider the mitigating circumstance of pas-

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[32] Art. 34, Proposed Code of Crimes.
[33] *Villaflor v. Summers*, 41 Phil. 62 (1920).
[34] G.R. No. L-4287, Dec. 29, 1953.
[35] G.R. No. L-2159, Sept. 19, 1951.
[36] G.R. No. L-4619, Feb. 25, 1952.
[37] G.R. No. L-3647, July 26, 1951.
[38] G.R. No. L-3400, July 24, 1951.

sion and obfuscation in *People v. Aguinaldo*,[39] it having been shown that there was enough time to cool off, several hours having lapsed between the alleged remote cause and the killing. Consequently, the penalty was raised to *reclusión perpetua*.

It was not, however, all increase in penalty. In certain meritorious cases, Justice Jugo took the pleasant task of mitigating punishments meted out. In *People v. Conde*,[40] he did not hesitate to reduce the penalty from life imprisonment to *prisión mayor*, where it was found that there was neither *alevosía* nor premeditation in the offense charged. *People v. Capistrano*[41] is more interesting. Defendant was sentenced to life imprisonment after having been found guilty of treason. The case having been forwarded to the Supreme Court, the attorney *de oficio* prayed for the affirmance of the judment on the ground that after having read and reread and studied the evidence, he finds no substantial error committed by the trial court. The good Justice, however, took note of the fact that the accused was more than nine (9) but less than fifteen (15) years of age at the time that he committed the crime charged. Wtih that fact in mind, he wrote:

> "Although his minority does not exempt him from criminal responsibility for the reason that he acted with discernment, yet it may be considered as a special mitigating circumstance lowering the penalty by two (2) degrees."

The proper appreciation of lack of education as either a mitigating or aggravating circumstance in crimes against national security is a little confused. There appears to be a lack of consistency in its application — some cases taking it into consideration as mitigating, while others do not.[42] Justice Jugo apparently belongs to the school of thought which would treat each case solely on its individual merits. Where the criminal act is attended with such perversity that no amount of education would have changed the offender's concept of the impropriety of his act, lack of instruction will not mitigate. In denying the privilege to the defendant in *People v. Alba*,[43] he emphatically pointed out:

> "It is not necessary to be educated to be able to realize the perversity of the acts committed by the accused in torturing and putting to death people who were fighting for the liberation of their country from the invader."

However, in *People v. Cruz*,[44] where perversity was not apparent, inasmuch as appellant was not shown to have taken part in the killing of the victims, the mitigating circumstance of lack of education was taken into consideration. It would seem a suprise, therefore, that in the case

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[39] 49 O.G. No. 1, 131 (1953).
[40] *People v. Sanches*, G.R. No. L-3084, July 6, 1951.
[41] G.R. No. L-4549, Oct. 22, 1952.
[42] HERNAEZ AND MATHAY, P. CRIMINAL LAW — 1952, 28 Phil. L.J. 41, 54 (1953).
[43] G.R. No. L-2799, April 27, 1951.
[44] G.R. No. L-2236, May 16, 1951.

of *People v. Bautro*,[45] where the defendant participated personally in the massacre of a great number of victims, Justice Jugo, acting for the Supreme Court, failed to reverse the action of the lower court granting in favor of the accused the mitigating circumstance of lack of education.

The stand of Justice Jugo in regard to the defense of duress in treason cases is more edifying:

> "Duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful, or remote fear. A person should not commit a very serious crime on account of a flimsy fear." [46]

TEODORO Q. PEÑA

THE JURISTIC THINKING OF THE HONORABLE CESAR BENGZON — JUSTICE *

"The philosophy of every man betrays his occupation." [1] What has been said of Justice Cardozo of the U.S. Supreme Court may also be said of Justice Bengzon. As it was to Cardozo, the law is a holy grail to Justice Cezar Bengzon.

Although Law was not his first love, it was his last.

Born in Camiling, Tarlac, on May 29, 1896, to Don Vicente Bengzon and Doña Paz Cabrera, both scions of prominent families in that town, Cesar Bengzon displayed such industry and exceptional ability while yet in the grade school in Bautista, Pangasinan, that early prophesied his future ascendancy to national eminence. In the Ateneo de Manila, where he finished his high school and took his A.B. degree, he left an impressive scholastic record by consistently winning honors and medals for excellence in oratory and debate and in recognition of his excellent scholastic standing. At this point in his life he fell in love with Soledad Romulo.[2] That love made him change his early cherished plans of entering the medical school to take up the cause of law.

The love-struck youth applied himself earnestly to his studies in the College of Law, University of the Philippines, so that he was con-

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[45] G.R. No. L-4260, Jan. 21, 1952.

[46] *People v. Quiloy*, G.R. No. L-2343, Jan. 10, 1951.

* Acknowledgment is hereby given to Miss Dolores Garcia who furnished the materials for the biographical sketch.

[2] Soledad Romulo, sister of Ambassador Carlos P. Romulo, is now the wife of Justice Bengzon and the mother of his four children. Justice Bengzon has so dedicated himself to his task that he refused to have the case of his son reconsidered when his son missed the passing mark in the bar examinations. He has also avoided making friends and refrained from attending social gatherings. He said that that a justice must not only be impartial but must appear to be so.

[1] LEVY, CARDOZO AND FRONTIERS OF LEGAL THINKING, p. 22.