"STATISTICAL IMPROBABILITY" AS A GROUND FOR ANNULLING ELECTION RETURNS *

RENATO S. CORPUS**

"To question all things; — never to turn away from any difficulty; to accept no doctrine either from ourselves or from other people without a rigid scrutiny by negative criticism; letting no fallacy, or incoherence, or confusion of thought, step by unperceived; above all, to enlist upon having the meaning of a word clearly understood before using it, and the meaning of a proposition before assenting to it; — these are the lessons we learn from ancient dialecticians."

John Stuart Mill

"There are three kinds of lies: lies, damned lies, and statistics."

B. Disraeli

I. INTRODUCTION

New doctrines begin as heresies. This is one reason why it is a risky enterprise to take the lead in the introduction of new ideas, especially if the same are radically inconsistent with or seriously destructive of the current beliefs and established principles prevailing in a given community. Anything that deviates from the usual and familiar order of things is frowned upon and is a ready-made subject for criticism — if not outright anathematization. To survive the natural hostility, jealousy or distrust on the part of those who are interested in the preservation of the *status quo*, justification of said new doctrines is imperative. Otherwise, they are bound only to confuse and to sow dissension among the people.

It was, therefore, to be expected, that eyebrows were raised when our Supreme Court handed down its resolution in the case of *Lagumbay v. Commission on Elections, et al.*[1] wherein *for the first time*, the High Tribunal resorted to the novel theory of statistical improbabilities in nullifying contested election returns. Dissents, naturally, were made with much sound and fury. Various

* Submitted in partial fulfillment of the requirements for the LL.B. degree, College of Law, University of the Philippines.

** LL.B. (1966).

1 G.R. No. L-25444, January 31, 1966.

quarters[2] aside from the actual parties-in-interest registered their doubts and fears regarding the tenability and far-reaching consequences of the said resolution. Everybody was confounded. Even the High Court itself was caught in the entangling web of confusion that it unintentionally spun.

II. BRIEF HISTORICAL SKETCH

The controversy arose from an original petition[3] filed by the Nacionalista Party in the Commission on Elections asking the Commission to retabulate the votes for senatorial candidates Wenceslao Rancap Lagumbay and Cesar Climaco and to recount the votes for the provinces of Cotabato, Lanao del Sur, and Lanao del Norte on the ground that there were some errors committed therein which resulted in the increase of votes obtained by Climaco. The petition was later amended[4] whereby the Nacionalista Party prayed for the *non-inclusion* in the canvass of votes for senators in specified election returns from the three provinces above-mentioned, or as an alternative remedy, to order the recounting of the ballots cast in the precincts involved, on the ground that the election returns prepared for the precincts (listed in its Bill and Supplemental Bill of Particulars) of certain municipalities in the afore-mentioned three provinces were manufactured or not genuine returns.

The petition was denied as per resolution of the Commission on Elections principally on the basis of the rule that the Commission as a canvassing board has only the ministerial duty of counting the votes appearing in the election returns, that is, after having satisfied itself as to the genuineness of said returns, it is empowered only to accept as correct the returns submitted to it in due form, and to ascertain and declare the result as it appears therefrom.[5] A proviso, however, is added in the said resolution to the effect that "where the returns are obviously manufactured, as when they show a great excess of votes over what could legally have been cast, the Commission as a canvassing board will not be compelled to canvass them."[6]

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2 N. G. Rama, "A Case of Statistical Improbabilities", **Philippine Free Press**, January 8, 1966, p. 5; **Chronicle Magazine**, January 8, 1966, p. 13.

3 Re: Petition requiring Commission on Elections to retabulate votes senatorial candidates Lagumbay and Climaco and for the recount of the votes for the provinces of Cotabato, Lanao del Sur and Lanao del Norte, December 6, 1965.

4 Re: Amended Petition, December 7, 1965.

5 In the matter of petition of the Nacionalista Party for the non-inclusion in the canvass of votes for senators specified election returns, or in the alternative to recount the ballots cast in the precincts involved, December 15, 1965.

6 **Ibid.**

On December 17, 1965, Lagumbay brought the case before the Supreme Court,[7] alleging that the Commission on Elections committed grave abuse of discretion amounting to excess of jurisdiction in refusing to exclude from the canvass of the results of the last senatorial elections a large number of election returns from the three provinces of Cotabato, Lanao del Sur, and Lanao del Norte which on their very faces appear to have been fabricated or manufactured; and denying his request for recount. The petition sought to prohibit the respondent Commission from proclaiming Climaco as the eighth-place winner over him allegedly "on the basis precisely of said patently false, spurious and fictitious returns."

The Supreme Court held that the election returns for some fifty precincts in the three provinces of Cotabato, Lanao del Sur and Lanao del Norte should be classified as "obviously manufactured returns" within the meaning of *Nacionalista Party v. Commission on Elections*,[8] and, therefore, within the power and duty of the Commission to reject, "it appearing that — contrary to all statistical probabilities — in the first set,[9] in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for *each and every* candidate of the Liberal Party, the party in power; whereas all the candidates of the Nacionalista Party got exactly *zero*; and in

[7] Petition for Certiorari and Prohibition with Preliminary Injunction, December 17, 1965.

[8] 85 Phil. 149.

[9]

FIRST SET

		PRECINCT	VOTES FOR	
MUNICIPALITY	PROVINCE	NUMBER	LAGUMBAY	CLIMACO
Andong	Lanao del Sur	3	0	648
"	"	13	0	340
Bayang	"	1	0	437
"	"	2	0	406
"	"	5	0	491
"	"	7	0	727
"	"	9	0	610
"	"	10	0	400
Datu Piang	Cotabato	25	0	438
Karomatan	Lanao del Norte	5	0	470
"	"	7	0	345
"	"	11	0	437
"	"	12	0	401
"	"	15	0	270

second set,[10] — again contrary to all statistical probabilities — all the reported votes were for candidates of the Liberal party, all of whom were credited with *exactly the same* number of votes in each precinct, ranging from 240 in one precinct to 650 in another precinct; whereas, all the candidates of the Nacionalista Party were given exactly zero in all said precincts."

The Supreme Court opined that the election result in said precincts as reported, was utterly improbable and clearly incredible. For it is not likely in the ordinary course of events, *that all the electors* of one precinct would, as one man, vote for *all the eight* candidates of the Liberal Party, without giving a single vote for one of the eight candidates of the Nacionalista Party. Such extraordinary coincidence, according to the Supreme Court, was quite impossible to believe, knowing that the Nacionalista Party had and has a nationwide organization, with branches in every province, and was, in previous years, the party in power in the Philippines. Besides the fact that there is no longer block voting nowadays, the Supreme Court said that experience shows that a large portion of the electors *do not fill all the blanks* for senators in their ballots as shown by the big difference in the votes cast and received by

"	"	18	0	500
"	"	20	0	253
"	"	21	0	400
"	"	23	0	431
"	"	24	0	403
Lumbatan	Lanao del Sur	3	0	359
Maganoy	Cotabato	16	0	381
Maguing	Lanao del Sur	1	0	463
Pagalungan	Cotabato	23	0	280
Parang	"	9	0	315
"	"	26	0	316
Pualas	Lanao del Sur	5	0	480
Tubaran	"	1	0	360
"	"	11	0	244
"	"	19	0	300
"	"	22	0	244
Taguya	"	8	0	300

[10]

SECOND SET

		PRECINCT	VOTES FOR	
MUNICIPALITY	PROVINCE	NUMBER	LAGUMBAY	CLIMACO
Andong	Lanao del Sur	1	0	587
"	"	8	0	650
Lumbatan	"	2	0	346
Malabang	"	14	0	301

the eight winning senators.[11] Noting that this case is not an instance wherein *one* return gives to *one* candidate all the votes in the precincts, while it gives *zero* to the other; nor a case where some senatorial candidates *obtain zero* exactly, while some others receive *a few* scattered votes; but a case where *all the eight* candidates of one party garnered *all the votes*, each of them receiving *exactly the same* number, while *all the eight* candidates of the other party got precisely nothing, the Supreme Court concluded that said returns were manifestly fabricated or falsified and, accordingly, should be denied of *prima facie* recognition. While agreeing that as a general rule, frauds in the holding of the election should be handled — and finally settled — by the corresponding courts or electoral tribunals, e.g., where testimonial or documentary evidence is necessary, it ruled that there is no reason to accept the returns herein questioned and give them *prima facie* value because the fraud in them is so palpable. (*Res ipsa loquitor* — the thing speaks for itself.) The Court then queried: "What happened to the vote of the Nacionalista inspector? There was one in every precinct." Did he betray his party? Was he made to sign a false return by force or other illegal means? "If he signed voluntarily, but in breach of faith, the Nacionalista Inspector betrayed his party; and, any voting or counting of ballots therein was a sham and a mockery of national suffrage."

Citing the case of *Mitchell v. Stevens*[12] where the returns showed an apparent excess of votes over the number of registered voters and was consequently rejected by the court as obviously

Hunungan	Lanao del Norte	2	0	540
"	"	4	0	250
Pagalungan	Cotabato	9	0	437
"	"	12	0	283
"	"	13	0	335
"	"	24	0	286
Tanghal	Lanao del Norte	1	0	305
"	"	2	0	373
"	"	3	0	331
"	"	4	0	331
"	"	5	0	380
Tubaran	Lanao del Sur	18	0	366
"	"	20	0	240
Tumbao	Cotabato	6	0	416
"	"	10	0	306

11 The eight received 3,629,834; 3,472,689; 3,463,159; 3,234,966; 3,191,000; 3,037,666; 3,014,618; 2,972,525 respectively.

12 23 Kans. 456; 33 Am. Rep. cited in 18 Am. Rep. and Nacionalista Party v. Commission on Elections.

"manufactured", the Supreme Court pondered and theorized as to what could have caused such "excess" of votes: (1) the election officers wrote the number of votes as their fancy dictated, in which case, according to the Court, the return was literally "manufactured" or "fabricated"; or (2) persons other than voters were permitted to vote; or (3) registered voters were allowed to cast more than one ballot each; or (4) persons in charge of the tally sheet falsified their count. All these possibilities and/or probabilities were, again according to the Court, plain fraudulent practices resulting in the misrepresentation of the result of the election. Hence, the returns were "not true returns... but simply manufactured evidences of an attempt to defeat the popular will." This same ratio decidendi (?) was applied by the Supreme Court in the returns from the precincts enumerated in the present case. The returns, said the Court, were obviously false or fabricated — *prima facie.* The Supreme Court gave the following illustration: Precinct 3 of Andong, Lanao del Sur where there were 648 voters. But the returns showed that *all the eight* candidates of the Liberal Party got 648 votes each,[18] while the eight Nacionalista Party candidates got exactly *zero.* According to the Supreme Court, such return was evidently false because of the "inherent improbability of such a result — against statistical probabilities — especially because *at least* one vote should have been received by the Nacionalista candidates, i.e., the vote of the Nacionalista inspector." The Supreme Court further said:

> "It is, of course, "possible" that such inspector did not like his party's senatorial line-up; but it is not probable that he disliked all of such candidates, and it is not likely that he favored all of the eight candidates of the Liberal Party. Therefore, most probably, he was made to sign an obviously false return, or else he betrayed his party, in which case, the election therein — if any — was no more than a barefaced fraud and a brazen contempt of the popular polls."

III. POINTS OF CONTROVERSY

To avoid confusion and doubts over the strength of our institutions, uniformity and continuity in law should be maintained. Thus, judges are particularly expected to uphold the Constitution, to abide with the statutes, and to respect the ancient precedents.

[18] One hundred per cent voted. Yet according to the Court, statistics show that all over the Islands, the percentage of voting was only 79.5%.

For faithful adherence to existing rules of law and time-honored principles on the part of our public officials is the best guarantee that keeps men in transacting their affairs with confidence. Remove this vital mooring, and society would, in one way or another, drift into the sea of chaos and disorder.

It is claimed that the Supreme Court's resolution in the case of *Lagumbay v. Commission on Elections* is a precedent-shattering ruling[14] and a decision "fraught with grave perils."[15] Are there merits to these charges? This paper is an attempt to answer these accusations. More specifically, this paper will discuss the following points of controversy regarding the tenability of the Supreme Court's adoption of the novel theory of statistical probabilities:

1. Does the resolution conform or deviate from the ruling in *Nacionalista Party v. Commission on Elections?*

2. Does the resolution violate the accepted rules governing canvassing, when it annuls the Climaco votes in fifty precincts based on "satistical probabilities"?

3. Does the resolution violate the Constitution, the Revised Election Code, and the accepted jurisprudence on the function of a canvassing body in rejecting fifty election returns as "contrary to all statistical probabilities," when the same had been found by the Commission on Elections as "regular and genuine returns"?

4. Does the resolution provide or fix a definite standard as to what constitutes "contrary to all statistical probabilities"?

IV. DISCUSSION OF THE PROBLEMS.

The foregoing points of controversy are so intimately related that it is impractical to consider one point apart from the others. For purposes, therefore, of convenience and easy understanding of

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14 N. G. Rama, **supra.**
15 Motion for Reconsideration (of the S.C.'s Resolution.)

the problems involved, it behooves this writer to discuss them together in so far as they have some relevant connections.

The resolution cited as basis thereof the decision of the Supreme Court in the case of *Nacionalista Party v. Commisson on Elections* decided on December 13, 1949. Surprisingly, however, the resolution drastically and substantially deviates from the proper ruling enunciated in said decision. Of course, the Supreme Court is not to be denied of its right to abandon legal precedent, especially if the doctrine therein proclaimed "does not prove to be in consonance with the law or is not a fair construction of the terms thereof on the point under consideration."[16] For "the value and weight of a legal precedent is not dependent upon the authority of the court that established the same, but upon the merits and cursory power of the reasons adduced in support thereof."[17] But the ruling in the case of *Nacionalista Party v. Commission on Elections* is not against the law, nor an unfair construction of the terms thereof. On the contrary, that ruling conforms with the Constitution, the Revised Election Code, and the accepted jurisprudence on the point under consideration. This circumstance, coupled with the lack of "merits and cursory power of reasons adduced in support" of the present resolution divest the Supreme Court of its right to abandon a binding precedent.

A. *The case of Nacionalista Party v. Commission on Elections.* The Nacionalista Party case was a petition for mandamus to compel the Commission on Elections to *exclude* (not to count) the votes cast for senators in the provinces of Negros Occidental and Lanao in the 1949 elections in the canvas to be performed by it pursuant to Section 166 of the Revised Election Code. Sometime before the November 1949 national elections, the Commission acting upon the representations of the Nacionalista Party and upon the evidence presented to it, recommended to the President, in accordance with Section 8 of the Election Law, the suspension of election in the two provinces because of terrorism and frauds that would have defeated the free and honest expression of the voter's will. The President did not heed the recommendation of the Commission,

[16] Hilario v. Dilla, CA-G.R. No. 5266-R, February 28, 1951.

[17] El Hogar Filipino v. Olviga, 60 Phil. 17; Jingco v. Gasendo, GA-G.R. No. 5222-R, December 18, 1950.

and elections were held throughout the country as scheduled. Upon the canvassing of the votes for senatorial candidates, the Nacionalista Party petitioned the Commission to annul the elections not only in the two provinces referred to, but also in five others, allegedly because there was a 'state of terrorism and political persecutions," "rampant violation of Election Law... consisting among others of the padding of electoral census in many of the muncipal districts"; and that "the *number of voters exceeded the number of inhabitants*". The jurisdiction of the Commission to act on the petition was elevated to the Supreme Court. The issue presented before the Court was whether the Commission on Elections was empowered *to annul* an election because of alleged terrorism or fraud committed in connection therewith. In other words, does the power vested in the Commission "include the power to annul an election which may not have been free, orderly or honest?"

Holding that the Commission does not have the power to annul the elections, the Supreme Court denied the petition. And citing Section 2, Article X and Section 11, Article VI of the Constitution[18] and Section 8 and 166 of the Revised Election Code,[19] the Court reasoned as follows:

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18 "Sec. 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conducts of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court. Art. X.

"Sec. 11. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members....." Art. VI.

19 "Sec. 8. Postponement of Election. — When for any serious cause the holding of an election should become impossible in any political division or subdivision, the President, upon recommendation of the Commission on Elections, shall postpone the election therein for such time as he may deem necessary. **Revised Election Code.**

"Sec. 166. Canvass of votes for.....Senators. — Thirty days after the election have been held, the Commission on Elections shall meet in session and shall publicly count the votes cast for Senators. The registered candidates in the number of Senators required to be elected who obtained the highest number of votes shall be declared elected....." **Ibid.**

"It seems clear from the context of the Constitutional provision in question as well as from other provisions ..... that such power (to annul elections) is preventive only and not curative also; that is to say, it is intended to prevent any and all forms of election frauds and violation of the Election Law, but if it fails to accmplish that purpose, it is not the Commission on Elections that is charged with the duty to cure or remedy the resulting evil but some other agencies of the government. We note from the text that the power to decide questions involving the right to vote is expressly withheld from the Commission although the right to vote is provided in the Election Law, the enforcement and administration of which is placed in the exclusive charge of the Commission. Parallel to the withholding of such power from the Commission is the **vesting in other agencies of more inclusive power to decide all contests relating to the election, returns**, and qualifications **of members of the Congress, namely, the Electoral Tribunal of the Senate**..... and the Electoral Tribunal of the House of Representatives. ..... Election contests involving provincial and municipal officials are entrusted to the courts. ..... The power to decide election contests necessarily include the power to determine the **validity** or **nullity** of the votes questioned by either of the contestants.

"Thus, insofar as contests relating to the election of senators and representatives are concerned, **not even this Court is empowered to intervene.**" (Emphasis supplied.)

B. *The Senate Electoral Tribunal.* Previous organic laws of the Philippines constituted each house of the legislature the sole judge of the election, returns, and qualifications of its elective members. This is the procedure provided for by American constitutions for the settlement of election contests of members of legislative bodies in the United States. The Constitution of the Philippines, however, has adopted a different method. At first it established a body called the Electoral Commission which acted as the judge of contests relating to the election, returns, and qualifications of the members of the National Assembly. Then an Electoral Tribunal, with practically the same membership as that of the Electoral Commission, was created for each House of Congress, when the National Assembly was superseded by the Congress of the Philippines by constitutional amendments adopted in 1940. This new system was adopted with the end in view of securing decisions rendered with a greater degree of impartiality and fairness to all parties, and also to enable Congress to devote its full time

to the performance of its proper function, which is legislation, rather than spend part of its time acting as a judge of election contests.[20]

The Constitution as amended specifically provides in Article VI, Section 11, that "the Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of the respective Members." The grant of this power to the Electoral Tribunal, just as the grant of similar authority to each House of the Philippine Legislature under the old organic laws, is full, clear, and complete. Courts have no authority whatever to hear and determine those questions.[21] They may not legally order the opening of ballot boxes for the purpose of making a canvass and determining the true number of votes cast for members of Congress in an election.[22] The decision of the Electoral Tribunal declaring a candidate duly elected to Congress is final and may not be questioned before the courts except when it is arbitrary as to constitute a denial of due process.[23]

An election contest is not similar to an ordinary action in court where purely private interests are involved. Rather, public interests are considered. Says one author: "An election contest differs from an ordinary action at law in that it is not looked upon as a suit between two persons for a seat in Congress, but as a public matter in which the interests of the constituents are involved. It is therefore not permissible that such a contest be settled by stipulation between the parties, nor can judgment be taken by default; but the case must be decided after a thorough investigation of the evidence."[24] This power to decide election contests devolves to the courts, in case of contests between or involving provincial and municipal officials; to the Electoral Tribunal of the House of Repre-

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20 Sinco, Philippine Political Law, 11th Ed., 1962, pp. 153-154; Tañada v. Cuenco, GR No. L-10520, Feb. 28, 1957.

21 **Ibid.**

22 Veloso v. Board of Canvassers, 39 Phil. 889; Rafols v. Court of First Instance of Cebu, 47 Phil. 736.

23 Suanes v. Accountant and Disbursing Officer of the Philippine Senate, 81 Phil. 818.

24 Reinsch, **American Legislature**, p. 216, citing Follet v. Delano, 2 Bart. Elect. Cas., 113; Arnedo v. Liongson, 18 Phil 257.

sentatives, in case of contests relating to the election, returns, and qualifications of Congressmen; and to the Electoral Tribunal of the Senate, in case of Senators.

The causes of election contests may be lack of qualifications, the commission of fraud, bribery and any other corrupt practices. The power to decide election contests necessarily includes the power to determine the *validity* or *nullity* of the votes questioned by either of the parties. To this end, the proper tribunal is authorized and duty-bound to examine the *appearance and character of the ballots.*[25] Thus, the Supreme Court ruled in one case that the question of whether or not there had been terrorism, vote-buying and other irregularities in the election should be ventilated in a regular election protest pursuant to Section 174 of the Revised Election Code, and not a petition to enjoin the board of canvassers from proclaiming the winning candidates.[26]

A question may be asked: Can the Supreme Court or the the Commission on Elections forestall or decide an impending protest? It is maintained that neither the Commission nor the Supreme Court has the power to do so. As aptly put by the Court in the *Nacionalista Party v. Commission on Elections*:

> "Thus in so far as contest relating to the election of senators and representatives are concerned, not even this Court is empowered to intervene.
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> "..... At this stage the obvious intent of the petitioners is to avoid, if possible, the necessity on their part of filing an election protest before the Electoral Tribunal of the Senate. But as we construe the pertinent provision of the Constitution and the Election Law, **neither the Commission on Elections nor this Court is empowered to forestall and much less decide an impending contest.** The jurisdiction over such case is expressly and exclusively vested by the Constitution in the Electoral Tribunal of the Senate.....

It is clear, therefore, that the duty to pass upon the legality of an election alleged to have been tainted with fraud, intimidation, and other violation of the Election Law is beyond the power of the Commission and the Supreme Court. Thus the Court said in the Nacionalista Party Case: "Whether the voters for Senators in Negros Occidental and Lanao are *valid or invalid* is a question

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25 Sinco, **supra**, p. 393.

26 The City Board of Canvassers (Tacloban City) v. Judge Moscoso, G. R. No. L-16365, September 30, 1963.

which neither the Commission nor this Court is empowered to decide."

In the Lagumbay case, it was equally clear that an election protest was imminent. Under that situation the Supreme Court should not have entertained the petition enjoining the Commission on Elections from performing its ministerial duty of counting the ballots and proclaiming the result thereof. In the first place, the Supreme Court, under the Constitution, has no general power of supervision over the Commission except those specifically granted to it, i.e., to review the decisions, orders and rulings of the latter which may be brought up properly before it.[27] Since there was no appeal[28] properly brought up to the Supreme Court from the decision or ruling of the Commission, the former could not question the actuations of the latter regarding its refusal to entertain the petition of the Nacionalista Party for a recount of votes. And even if there had been an appeal, still the Supreme Court could not act on the matter because that would have the effect of arrogating unto itself the power that is expressly and exclusively vested by the Constitution to the Senate Electoral Tribunal — the power to judge all questions relating to the election, returns and qualifications of Senators. It cannot escape the conclusion, therefore, that when the Supreme Court took cognizance of Lagumbay's petition and annulled the questioned returns, the Court, "in effect, exercised, and authorized boards of canvassers to exercise the power to annul votes on the ground of fraud or irregularity in the voting — a power that (is) .. alien to the functions of a canvassing body and proper only to a tribunal acting in an election protest."[29] Neither could the Supreme Court order a recount of votes cast for Senators. The only provision in the Revised Election Code which provides for "judicial recount" is Section 163 which reads as follows:

> "Sec. 163. **When statements are contradictory.** In case it appears to the provincial board of canvassers that another copy or other copies of the statement submitted to the board give to a candidate a different number of votes and the difference affects the result of

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27 Nacionalista Party v. De Vera, 85 Phil. 126.

28 The present case is clearly a petition for a certiorari under Rule 65, not an appeal by certiorari under Rule 43 of the **Rules of Court** because its basis is an alleged "grave abuse of discretion amounting to excess jurisdiction". Such a ground is proper only in a petition for certiorari as a special civil action and does not cavil the fact that it seeks an extra-ordinary suit. Prohibition cannot be joined with appeal because such a remedy can be resorted only when appeal does not lie. (See dissenting opinion of Mr. Justice Bengzon, Lagumbay case, **op. cit.**; also Sec. 5, par. of the **Revised Election Code.**

29 Mauyag Matanog v. Alejandro, G.R. No. L-2202-03, June 30, 1964:

> the election, the **Court of the First Instance** of the province, upon motion of the board or any candidate affected, may proceed to **recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of votes cast** in said precinct for the office in question....." (Emphasis supplied.)

Another question may be asked in this regard: Suppose in the recount of the ballots, the CFI finds that fraud has been committed, e.g., ballots were filled by the same person as shown by the handwriting, does the court have the power to annul the ballots or must the court await the filing of an election contest before such matter could be touched upon?

The recount of votes under the foregoing condition has for its purpose, in the first instance, the determination of the true statement or the true result of the count in case statements submitted to the provincial board of canvassers are contradictory. Its practical effect, in other words, is the alteration of the statement made by the board of election inspectors in accordance with Section 154 of the Revised Election Code. There is no question, of course, that the CFI has the power to order the correction of election returns prepared by the board of election inspectors,[30] i.e., the correction of any contradiction or discrepancy appearing therein, whether due to clerical error or otherwise. But can the CFI take over the position and function of the board of election inspectors in case it entertains a motion for recount of votes? Assuming that the CFI does take over the position and function of the board in so-recounting the votes, it logically follows that the court can also alter the statement made by the board as mentioned earlier. But does the power to alter or amend the statement of election include the power to annul ballots which it may find to be tainted with fraud in the process of recounting? Assuming again that the court does take over the position and function of the board, it seems that the court, upon finding that the ballots were filled by the same hand, may apply the rules for appreciation of ballots[31] and, consequently, annul the same. Thus in the case of *Clarin v. Alo*[32] the Supreme Court ruled that "the correction of report can be made when the board of inspectors so requests and the Court, in the exercise of its sound discretion so permits. The procedure, in effect, is summary and the decision of the court is final and executory solely as to the results of the election. However, it is never binding upon

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30 Tizon v. Doroja, G.R. No. L-7312, February 26, 1954:
31 Sec. 149, **Revised Election Code.**
32 50 O.G. 1577.

an election protest which could be had after the results of the election has been proclaimed." In short, it seems that the court, in acting in the place and stead of the board of inspectors performing their duty of counting the votes in a given precinct or correcting its statement pursuant to Section 148 and 154 of the Election Law respectively, may annul ballots tainted with fraud without waiting for the filing of an election protest. The Supreme Court continued that "the lower court had jurisdiction to decide the question of correction of election returns" involving candidates running for a seat in the House of Representatives because "the right to be proclaimed is valuable, in view of the experience that election protests usually consume almost half of the term of office, during which period the should-be declared elected is deprived of the benefits and emoluments corresponding thereto. Because of this, care must be taken to prevent the proclamation of election which may end to fraudulent results with consequent irreparable damages."

The ruling in the Clarin case however, is not applicable in the Lagumbay case. Although Lagumbay also sought the recount of votes which has the effect of altering the statements made by several boards of election inspectors, the Supreme Court never did order or conduct a recount of the votes by itself. It simply annulled, not merely altered or amended, the election returns from the questioned precincts because they were "contrary to all statistical probabilities." Under these circumstances how could the Supreme Court determine the true result of the count of votes without actually opening the ballot boxes and counting the ballots therein? And even if it wanted to make recount, obviously, such recount could not be warranted by Section 163 of the Election Law because it is the CFI of the province which is authorized to conduct the recount. Perhaps, had Lagumbay filed his petition for recount in the Courts of First Instance of Cotabato, Lanao del Sur and Lanao del Norte before the returns were submitted to the Commission on Elections for the final canvassing, he could have obtained a valid ruling similar to the Clarin case. The CFIs of the three provinces abovementioned could have ordered a valid recount of the returns from the precincts within their respective jurisdiction. His petition for recount of votes to the Commission on Elections simply could not be properly granted because the Commission is relieved by the CFI in determining the regularity of a canvass of election.[33] The only possible alternative recourse is to leave the question of whether an election is free, orderly, or honest to the Electoral Tribunal. Such question will in all probability be raised before such forum at the

[33] Ramos v. Commission on Elections, 80 Phil. 722.

proper time, so the Supreme Court must not prejudge the issue over which it has no jurisdiction.[34] Besides, to multiply the grounds for judicial recount and downgrade the election protest as a remedy will unduly promote suspicion, conjecture, and unrest. Said the Supreme Court:

> "The special nature and limited scope of the summary judicial recount provided by Section 163 of the Election Code is admittedly aimed at delaying as little as practicable the proclamation of the winning candidates, without prejudice to a thorough revision of the election results in proper cases by means of corresponding **election protest, which is the normal process provided for the purpose.** To multiply the grounds for a recount of votes before a proclamation by the board of canvassers is made has the effect of downgrading the election protest as a remedy, and prolong the periods during which the contested position will remain without an occupant, thereby provoking suspicion, conjecture, and unrest." [35]

The theory of statistical improbability as a ground for asking a judicial recount will downgrade election protest and will undoubtedly generate suspicion, conjecture and unrest. For there are only two main classes of election contests: (1) those which pertain to the eligibility of the candidates, and (2) those which pertain to the casting and counting of ballots. To the last class fall questions involving commission of frauds and mistakes in the appreciation of ballots, counting of the same, and canvassing of returns. In disposing of such questions, it is indispensable to produce and examine the ballots and/or the returns in order to determine the true result of the election. A mere conjecture that frauds and mistakes were committed in the appreciation of the ballots, counting of the same, or canvassing of returns without actually looking behind the returns and examining and counting the corresponding ballots, as was done by the Supreme Court in the Lagumbay case, will not afford a determination of the count that is beyond suspicion and doubt.

C. *The Commission on Elections as a National Board of Canvassers.* Prior to 1940, the administration of election laws was entrusted to the executive Bureau and later to the Secretary of Interior. Because the Secretary of Interior held a political office, he was never entirely free from suspicion of acting with partisan bias. The need for an independent agency that could properly protect the purity of the ballot and the free exercise of the right of suffrage gave birth to Commonwealth Act No. 607 which was ap-

[34] Nacionalista Party v. Commission on Elections, op. cit.
[35] Lawsin v. Escalona, G.R. No. L-22540, July 31, 1964:

proved on August 22, 1940. This Act created the Commission on Elections. Afterwards, with the ratification of the amendments earlier proposed in the resolution of the National Assembly on April 11, 1940, the Commission was transfered from a mere statutory creation into a Constitutional body.[36]

For a limited and special purpose, the Commission, by virtue of Section 2, Article X of the Constitution[37] becomes the administrative head of a body of public officers who normally belong to, and are under the control and supervision of, other offices and organs having to do with law enforcement. These are local officials, like the treasurers, provincial fiscals, and municipal councilors, who by law are required to perform duties connected with elections. This power of the Commission is provided by Section 3 of the Revised Election Code:

> "Sec. 3. Supervision of elections. — The Commission on Elections shall, in addition to the powers and functions conferred upon it by the Constitution, have direct and immediate supervision over the provincial, municipal and city officials designated by law to perform duties relative to the conduct of elections....."

By Constitutional provision[38] the Commission is also vested with the exclusive charge of the enforcement and administration of all laws relative to the conduct of elections. But the power to annul elections that were not free, orderly or honest is not included in the power granted to the Commission. Section 5 of the Revised Election Code, supplementing the Constitutional powers of the Commission, also vets with the power to decide controversies. The Code provides:

> "Sec. 5. Powers of the Commission. — The Commission on Elections or any of the members thereof shall have the power to summon the parties to a controversy pending before it, issue **subpoenas and subpoenas duces tecum** and otherwise take testimony in any investigation or hearing pending before it, and delegate such power to any officer. Any controversy submitted to the Commission on Elections shall be tried, heard and decided by it within fifteen days counted from the time the corresponding petition giving rise to said controversy is filed....."
>
> "Any decision, order or ruling of the Commission on Elections may be reviewed by the Supreme Court by writ of **certiorari** in accordance with the Rules of Court or with such rules as may be promulgated by the Supreme Court."

In reference to the foregoing provision of the Election Law, the

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36 Sumulong v. Commission on Elections, 70 Phil. 703; 73 Phil. 288.
37 See Note No. 18.
38 **Ibid.**

Supreme Court made the observation that "it would therefore appear that the Commission on Elections not only has the duty to enforce and administer all laws relative to the conduct of elections but (also) the power to try, hear and decide *any controversy* that may be submitted to it in connection with the elections... In this sense, the Commission, although it cannot be classified as a court of justice within the meaning of the Constitution (Sec. 13, Art. VIII), for it is merely an independent administrative body (Nacionalista Party v. De Vera, 85 Phil. 126) may however exercise quasi-judicial functions in so far as controversies that by express provision of law come under its jurisdiction. As to what question may come within this category, neither the Constitution nor the Revised Election Code. specifies. The former merely provides that it shall come under its jurisdiction, saving those involving the right to vote, *all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials,* while the latter is silent as to what questions may be brought before it for determination. (I)t is clear that, to come under its jurisdiction, the questions should be controversial in nature and must refer to the enforcement and administration of all laws relative to the conduct of elections. The difficulty lies in drawing the demarcation line between a duty which inherently is administrative in character and a function which is justiciable and which would therefore call for judicial action by the Commission.. But this much depends upon the factors that may intervene when a controversy should arise."[39] Perhaps future decisions will spell out more clearly the nature of election controversies that validly fall within the jurisdiction of the Commissioner under Election Law. So far as the resolution of the Supreme Court in the Lagumbay case is concerned, it is submitted that the same is an invalid and unlawful grant of power, i.e., the grant of power to look behind the returns in making its canvass. The Commission cannot annul an election because of alleged frauds and irregularities that are committed in the process. This case is different from the cases enumerated by the Supreme Court[40] where the Commission on Elections was deemed to have the authority to annul proclamations on such grounds as illegal canvass,[41] proclamation based on incomplete returns;[42] proclamation made in spite of a timely petition

39 Guevara v. Commission on Elections, 55 O.G. 1013.

40 Salcedo, Jr. v. Commission on Elections, G.R. No: 1-16835, July 26, 1960:

41 Mintu v. Enage, et al., GR No. L-1834, November 5, 1953; Ramos v. Commission on Elections, op. cit.

42 Abendante v. Relato, G.R. No. 1-6813, November 5, 1953:

filed with the board of canvassers by the members of the Board of Election Inspectors calling attention to an inadvertent and unintentional mistake in the election return and correcting the same, as well as a petition by a candidate affected, for suspension to give him opportunity to go to court, both of which petitions were denied by the board;[43] and a proclamation made in an unauthorized meeting of the board of canvassers because it was held over the objections of the Commission's representative and against the express instruction of the Commission itself in the exercise of its supervisory powers.[44]

Reference to Section 166 of the Revised Election Code must be made to determine the nature and function of the Commission. Section 166 provides: *"Canvass of votes for President and Senators.* — Thirty days after the election have been held, the Commission on Elections shall meet in session and shall publicly count the votes cast for Senators. The registered candidates in the number of Senators required to be elected who obtained the highest number of votes shall be declared elected . . ." It is clear from the quoted provision that in canvassing the votes cast for senators, the Commission is designated by law merely to act as a national Board of Canvassers. As such body, the Supreme Court has definitely delineated its powers and duties. Thus, in the Nacionalista Party case, the Supreme Court stated:

> "Section 166 of the Revised Election Code hereinabove quoted constitutes the Commission on Elections as a national board of canvassers with respect to the election of senators, who under section 2 electors of the Philippines. In the absence of any provision in the of Article IV of the Constitution are chosen at large by the qualified law making the members of a canvassing board judges of election and giving them full power and authority to approve thereof and to set it aside and order a new election, such a board is considered merely a ministerial body, which is empowered only to accept as correct returns transmitted to it, which are in due form, and to ascertain and declare the result as it appears therefrom. **Questions of illegal voting and fraudulent practices are passed on by another tribunal.** The canvassers are to be satisfied of the genuineness of the returns — namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so-satisfied, however, they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the election. xxx Where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast, the board will not be compelled to canvass them."

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43 Lacson v. Commission on Elections, G.R. No. L-16261, December 28, 1959:
44 Santos v. Commission on Elections, G.R. No. L-16413, January 26, 1960:

The Commission on Elections, therefore, when convened as a national board of canvassers is clothed merely with ministerial powers, that is, to count the votes appearing in the election returns and to proclaim the winning candidates. It cannot go behind the election returns and inquire into alleged illegal voting or fraudulent practices.[45] In other words, the genuineness of the returns, as far as canvassing is concerned, is to be determined solely from the face of said returns.[46] The rulings regarding this matter is beyond dispute:

> "It is settled beyond controversy that candidates cannot go behind the returns. The returns provided for by law are the sole and exclusive evidence from which a canvassing board or official can ascertain or declare the result. The canvassers are not authorized to examine and consider papers or documents which are transmitted to them with the returns, or as returns, but which under the statutes do not constitute part of the returns." [47]

These returns which election officials make under oath showing the results of an election are presumed to be correct and are entitled to respect, and such election returns cannot be inquired into by the courts on vague and indefinite allegations that the election officials incorrectly tabulated the votes.[48] In this connection it is best to emphasize that the whole story of the election law rests on the *prima facie* presumption of honesty and integrity of the board of inspectors. On that presumption, it directs the canvassers to make the proclamation on the basis of such reports "statements" the law calls them) as the inspector shall make.[49]

Legal authority in support of the conclusion above-stated, as reflected in treatises and judicial decisions, is so unanimous and decisive that it would be idle to attempt to exhibit the jurisprudence on the subject. At any rate a few general observations will suffice. In dealing with the duties and powers of boards of canvassers, the author of the monographic articles in Elections in Ruling Case Law begins as follows:

> "The board of official canvassers to whom the boards of election of the several divisions return their certificate showing the number of votes cast for each candidate, is liable to err in overestimating its powers. Whenever it is suggested that illegal votes have been received or that there were other fraudulent practices at the election,

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45 Dizon v. Provincial Board of Canvassers, 52 Phil. 47; 29 C.J.S. (1965) 659: McCrary on Elections, pp. 198-199:

46 29 C.J.S. (1965) 659, citing People v. Hilliard, 29 Ill. 413

47 See Note 39.

48 Hinyut v. Sloat, 29 So 2d 507.

49 Parlade v. Judges Quicho and Alcasid, G.R. No. L-16259, December 29, 1959:

> it is apt to imagine that it is its duty to inquire into these alleged frauds and decide on the legality of the votes. Its duty, however, is almost wholly ministerial to take the returns as made from the different voting precincts, add them up, and declare the result. Questions of illegal voting and fraudulent practices are passed on by another tribunal. The canvassers are to be satisfied of the genuineness of the returns, that is, that the returns presented to them are not forged or spurious, that they are returns, and are signed by proper officers; but when so satisfied they may not reject any returns because of informalities in them or because of illegal or fraudulent practices in the election. The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting. All other questions are to be tried before the court or other tribunal for contesting elections or in quo warranto proceedings." [50]

To the same effect is the following observation from the author of the article on Elections in another standard encyclopedic treatise:

> "xxx Where there is no question as to the genuineness of the returns or that all the returns are before them, the powers and duties of canvassers are limited to the mechanical and mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so-ascertained." [51]

Various aspects of the proposition above quoted have been judicially considered in decisions too numerous to cite, and the views of the courts are further set forth in the separate elaborate treatises Elections written by Paine and McCrary. Among other things the last named author says:

> "It is settled that the duties of canvassing officers are purely ministerial, and extend only to the casting up of votes and awarding the certificate to the person having the highest number; and they have no judicial power (Dalton v. State (Ohio), 1 West. Rep. 773; Justices Opinions, N.H, 621; People v. Wayne Co: Canvassers, 12 Abb., N.Y., New Cases 7; S.C., 64 How. N.Y: Pr: 334; Kortz v. Greene Co: Canvassers, 12 Abb., N.Y., New Cases 84; Leigh v. State, 69 Ala. 261; Page v. Letcher, 11 Utah 119; 39 Pac. Rep. 499; State v. Van Camp, 36 Neb. 91; People v. Bd. of State Canvassers, 129 N.Y. 360; Mead v. Carroll, 6 D.C. 338). In State v. Steers (44 Mo: 223), which was a case in which the canvassing board had undertaken to throw out the returns from one voting precinct for an alleged informality, the Court said: 'When a ministerial officer leaves his proper sphere, and attempts to exercise judicial functions, he is exceeding the limits of the law, and guilty of usurpation.' And again: 'To permit a mere

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50 9 R.C.L. 1110.
51 20 C.J. 200-201.

> ministerial officer abitrarily to reject returns, as his mere caprice or pleasure, is to infringe or destroy the rights of the parties without notice or opportunity to be heard, a thing which the law abhors and prohibits.' (McKinney v. Peers, 91 Va. 684; Inre Woods, 5 Misc. Rep. 1575; State v. Wilson, 24 Neb. 139.) A common council sitting as a board for the canvassing of election returns of members elected to that body is bound by the returns, and cannot go behind the returns and inspect the ballots in order to determine the result. (State v. Trimbell, 12 Wash. 440.)[52]

But of course it does not follow from this doctrine that canvassing and return judges must receive and count whatever purports to be a return, whether it bears upon its face sufficient proof that it is such or not. The true rule is this: They must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose, and this necessarily implies that if a paper is presented as a return, and there is a question as to wheher it is a return or not, they must decide that question from what appears upon the face of the paper itself.[53] McCrary reasons thus:

> "The duties of the Secretary of State of Louisiana in promulgating the returns of election held to be purely and exclusively ministerial. (State v. Maso, 44 La. Ann. 1065.) Thus, in New York, it has been held that the duties of the canvassers were 'to attend at the proper office and calculate and ascertain the whole number of votes given at any election and certify the same to be a true canvass; this is not a judicial act, but merely ministerial; they have no power to controvert the votes of electors.' (People v. Van Slyck, 4 Conn. 297. To the same effect is the ruling in Ex parte Heath, 3 Hill. 47. See also Commonwealth v. Emminger, 74 Pa. 479; Moore v. Jones, 76 N.C. 182.)" [54]

From what has been discussed it inevitably follows that it is the ministerial duty of the Commission on Elections to count the votes appearing in the election returns after satisfying itself of the genuineness of said returns. What in effect the resolution of the Supreme Court in the case of *Lagumbay v. Commission on Elections* did was to order the Commission to desist from performing a ministerial duty. The remedy sought by petitioner Lagumbay for recount or a new count and to nullify the votes cast as appearing in genuine election returns is not within the power of the Commission on Elections as said Commission cannot annul, however partial, an election or the votes cast therein. Justice Tuason, in his concurring opinion in the case of *Ramos v. Commis-*

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52 McCrary on Elections, 4th Ed., p. 198.
53 State v. Hill, 20 Neb. 119; State v. McFadden, 46 Neb. 688:
54 McCrary, op. cit.

sion on Elections,[55] reiterated the foregoing rule:

> "I cannot share the opinion that the Commission on Elections has discretionary **power to annul a canvass** by the board of canvassers. If they had such power I would be inclined to agree that a grave abuse of discretion was committed when the Commission denied or declined to act on the petition of the local representatives of the Nacionalista Party, in the face of its (Commission's) finding that the returns used in the canvass were forged. In my opinion the Commission had **no other alternative** but to refrain, as it did, from taking cognizance of the complaint. A machinery of justice with special summary jurisdiction and clearly outlined procedure has been set up to hear and decide precisely such irregularities as are charged in the case at bar. The Commission on Elections is an **administrative body** endowed with **administrative function only**. Determination of which of two or more conflicting returns is authentic is a judicial prerogative. It requires the taking of evidence, the holding of a regular trial, if justice is to be done to both parties. It amounts to a power to declare, in some cases as in this, that one candidate has been elected over another candidate or candidates."

Besides, as it has been repeatedly asserted, the Commission can be compelled or called upon to act in all election frauds. For to contend that the Commission has the ministerial function and therefore may be compelled by mandamus, to look into and act on all election frauds, is indirectly to incapacitate it; for with its limited personnel and facilities, the Commission cannot be expected to take cognizance and promptly dispose of every complaint, similar to that made by Lagumbay, possibly to originate from countless municipalities in the Philippines.[56] Moreover, the Supreme Court cannot substitute its supervisory judgment as to the proper exercise of the functions of the Commission which are exclusively vested to it by the Constitution and the laws. In this regard, it may be pertinent to quote the following:

> "During the oral argument, counsel for the petitioners sought to impress upon us the grave political crisis with which the nation is now confronted as a result of the last elections, during which, it is denounced, the sovereign right of the people to freely and honestly elect their officers was not respected but brazenly violated in several provinces by the party in power; and that this Tribunal, as the bulwark of the people's right, is in duty bound to vindicate it and preserve democracy in this country. We are not unmindful of the grave political situation, nor are we insensitive to petitioner's vehement plea for redress. At the same time, it must be borne in mind that we are not omnipotent; our powers and jurisdiction are **circumscribed by law**, which we cannot transcend. We cannot correct an

55 80 Phil. 722.
56 **Ibid.**

> alleged abuse of power on the part of others by means of a similar abuse of powers; we must not assume the role of a dictator to forestall dictatorship; we cannot transcend the law to foster the reign of law. We can only perform faithfully our assigned duty and expect others to perform theirs. Constitutional government can be preserved and maintained if every officer, who has sworn to preserve and defend the Constitution, keeps this solemn oath faithfully." [57]

D. *The Case of Mitchell v. Stevens.* The resolution of the Commission on Elections denying the petition of the Nacionalista Party for non-inclusion in the canvass of votes for senators specified election returns or for a recount of votes, contain the following sentence in the nature of a proviso: "Where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast, the board will not be compelled to canvas them." The said quotation was borrowed from 18 *American Jurisprudence* citing the American case *State ex rel. Mitchell v. Stevens.*[58] (The same quotation, by the way, is also found in the Supreme Court's decision in the Nacionalista Party case.) This case was an action for mandamus to compel the defendants, as canvassing of the County of Horper, to canvass and declare the result of the election held for county officers. The defendants answered in defense that the election was vitiated with frauds because, as there were only about 800 legal voters in said county at the time of the election, the returns showed a vote of 2,947 as purporting to have been cast. Therefore, it was alleged, that at least 2,147 of such reported votes were fraudulent and illegal, and for that reason it was improbable to determine and declare the will of the people or the true result of the election. The Court, in refusing to issue the writ of mandamus to compell a canvass, held that "no court is under obligation to attempt to sift the grain of truth from the mass of falsehood". Consequently, the returns for that one questioned precinct was declared "manifestly untrue" and was not canvassed. It was "obviously manufactured" for on its very face it showed "a great excess of votes over what could legally have been cast." It was very clear that by just looking at the returns, one could see that out of the 2,947 purported votes cast, 2,147 were fraudulent and illegal, because there were only 800 voters. Reference was also to "returns obviously manufactured" and "great excess of votes over what could legally have been cast" in the case of *Nacionalista Party v. Commission on Elections.* But that was not the ratio decidendi of the decision. That case was decided on the basis of the principle that

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57 Nacionalista Party v. Commission on Elections, op. cit.
58 33 Am. Rep. 175.

the Commission, as a canvassing board, has no power to annul an election which is alleged to have been tainted with fraud or other irregularities for to do so is to go behind the returns.

The present resolution, on the other hand, based its rejection of fifty election returns covering fifty different precincts scattered over three provinces on the novel and hitherto unheard of theory of statistical improbabilities. This is neither mentioned nor even faintly intimated in the Nacionalista Party decision nor in the Mitchell ruling. There is no doubt that in a case "where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast", such returns betray their falsity by their very contents. They set forth as the result of the voting in a precinct something which can be seen to be false without examining anything but the returns themselves because it is impossible for the votes to have in fact been as the returns assert them.[59] But the case of one hundred per cent voting is different. A conclusion that the returns showing one hundred per cent voting are "obviously manufactured" does not necessarily follow. For this kind of voting had in fact taken place in many precincts other than those questioned in the present case. Consequently, it is possible for the returns to be in fact genuine and no theory of statistical improbabilities can establish that the votes inside the ballot boves are not or cannot be as the returns purport them to be. The ballot boxes themselves must be opened and the ballots cast therein counted, to prove that the returns corresponding to them are false, i.e., that in fact the votes are not as the returns state them to be.[60] Unless and until this is done, the election returns are presumptive proof of the result of the election.[61] Surely if the ballot boxes are tampered with, a recount becomes futile because the ballots cannot reflect the true will of the voters.[62] But there is no showing in the present case that the ballot boxes were tampered with; and even if tampering were actualy done, it was not for the Commission on Elections as a canvassing board nor the Supreme Court to count such irregularity against the returns.[63] That is the function of the Senate Electoral Tribunal. More so if, as in the present case, there is no question that the returns of the precinct sought to be tabulated or recounted "are in due form", are "not forged or spurious" and that

59 Lopez v. Holleman, 69 So. 2d 903.
60 See dissenting opinion of J.P. Bengzon, Lagumbay case, **op. cit:**
61 18 **Am. Jur.** 374, citing People ex rel Williams v. Cicott, 16 Mich. 283, 97 Am. Dec. 141.
62 Chiongbian v. Court, G.R. No. L-19312.
63 Nacionalista Party v. Commission on Elections, **op. cit.**

they "are signed by the proper officials". The Amended Petition merely makes a vague intimation of fraudulent practices in some precincts in the provinces named — matters which undeniably must be submitted to the proper body — the Senate Electoral Tribunal.

E. *The Solid or "Controlled" Votes.* It is also sad to note that the Supreme Court failed to give a satisfactory standard as to what should be considered "contrary to all statistical probabilties". That a candidate obtained zero cannot obviously be the standard because there are also many precincts where Climaco received no votes and Lagumbay got many votes.[64] Besides, receipt of zero vote is not unsual in the Muslim municipalities of Cotabato, Lanao del Sur and Lanao del Norte. In the said municipalities the natives practice a unique form of leadership which they call "maratabat" under which, in order to save the face of the leader, the voters will give him full unqualified support. This explains the occurence of one hundred per cent voting in said places. Candidates who are openly supported by the Muslim "hadji", datu or

[64] Precincts where Climaco received zeros:

MUNICIPALITY	PROVINCE	PRECINCT NUMBER	VOTES FOR CLIMACO	VOTES FOR LAGUMBAY
Badoc	Ilocos Norte	18	0	221
"	"	19	0	210
"	"	22	0	96
"	"	24	0	171
"	"	26	0	181
Batac	"	37	0	116
Pinili	"	14	0	89
Solsona	"	9	0	98
Sta. Catalina	Ilocos Sur	12	0	64
Santo Domingo	"	3	0	194
Santiago	"	8	0	104
Danao City	Cebu	36	0	97
"	"	48	0	286
"	"	50	0	256
"	"	52	0	217
"	"	53	0	238
"	"	54	0	256
"	"	56	0	176
"	"	60	0	274
Siasi	Sulu	17	0	225
"	"	56	0	40
"	"	61	0	59
Loon	Bohol	40	0	175
Tubigon	"	40	0	117
Batangas	Batangas	113	0	182
Tanauan	"	25	0	140

sultan will get all the votes. Naturally, candidates who are not so-supported will get zeros. This common practice was explained by the re-elected Congressman Vincenzo A. Sagun of Zamboanga del Sur:

> "It is not unnatural, which has happened in previous elections, that a candidate has receivel zero in several precincts in Zamboanga del Sur. Some justices are ignorant of the fact that in Mindanao, especially in precincts controlled by 'hadjis', under the principle of 'maratabat' (to save the face of the leader at all cost), the opponent is given zero." [65]

Precincts where Climaco received only ONE vote:

MUNICIPALITY	PROVINCE	PRECINCT NUMBER	VOTES FOR CLIMACO	VOTES FOR LAGUMBAY
Badoc	Ilocos Norte	8	1	151
"	"	10	1	106
"	"	15	1	146
"	"	21	1	141
"	"	25	1	161
"	"	31	1	89
"	"	32	1	131
"	"	31	1	102
Curinao	"	3	1	139
"	"	8	1	154
Laoag	"	53	1	131
"	"	68	1	143
Marcos	"	3	1	137
Pagudpud	"	14	1	59
Paoay	"	1	1	116
"	"	14	1	200
Pinili	"	8	1	211
"	"	9	1	126
Piddig	"	14	1	155
Solsona	"	19	1	142
Vintar	"	18	1	141
"	"	24	1	127
"	"	25	1	105
"	"	26	1	192
Sta. Catalina	"	10	1	150
"	"	13	1	90
Danao City	Cebu	37	1	173
"	"	41	1	129
"	"	57	1	127
"	"	58	1	125
Siasi	Sulu	17	1	55
"	"	40	1	73
"	"	63	1	82
Calamba	Laguna	68	1	171
Nagcarlan	"	23	1	164
Pilar	Boho.	14	1	131
Batangas	Batangas	114	1	138

[65] The Manila Times, December 26, 1965, p. 63.

Salipada Pendatun of Cotabato, Speaker Pro-Tempore of the House of Representatives, and a Muslim leader himself, made a similar comment:

> "The fact that has occured in many elections is that in many municipalities under the influence and control of a Muslim leader, the candidates of his political opponent get zeros.
>
> "Thus in Dinaig, Cotabato, under the control of Odin Sinsuat, the opponents in various past elections received zero. Likewise. in municipalities like Pagalungan, Pikit and Buluan in Cotabato, under the leadership of Governor Matalum, the candidates of his opponents also received zero. Thus in the 1961 elections, Macapagal received zero in many precincts and in the 1965 elections, Marcos likewise received zeros." [66]

It is interesting to note tha this occurrence is not confined in the Muslim provinces alone. In Danao City, Cebu, for example, Sergio Osmeña, Jr., the acknowledged political leader of Cebu, received zero votes in twelve precincts. Osmeña admitted: "Regarding the receipt of 'zero' votes by candidates, in Danao City, I, a Cebuano political leader, received zero in twelve precincts." And in Cavite, it occurred in at least for precincts of three municipalities.[67] The actual statistics as to zero votes of candidates of one party and the identical and uniform voes for candidates of the other party existed in the past Presidential and Senatorial elections of 1957 and 1961 and Senatorial elections of 1963 in the three provinces which include the various municipalities listed in the resolution of the Supreme Court of December 24, 1965. The following statistics will clearly show that identical or uniform voting is not "contrary to all statistical probabilities" but rather within and in accord with "actual statistics":

1957 Presidential Elections

MUNICIPALITIES	PROVINCE	PRECINCT NUMBER (Where there is identical or uniform voting
Pagalungan	Cotabato	1, 3, 4, 5, 6, 10, 12, 13; 14; 15
Pikit	"	22, 24
Upi	"	11
Parang	"	8, 10, 24

[66] **Manila Times, Ibid.**

[67] 1965 Elections: Cavite: Bailen-Prec. No. 10, all LP got 255 votes. all others zero; Prec. No. 12, All LP got 228 votes, all others zero; Silang-Prec. No. 34, all LP got 287 votes, all others zero; Ternate-Prec. No. 7, all LP got 90 votes, all others zero. Also, in 1961 Elections: Saramain Lanao del Sur-Prec. No. 1, all NP

1957 Senatorial Elections

Pagalungan	Cotabato	12, 13, 14
Parang	"	8, 10, 24
Pikit	"	22, 24
Nunungan	Lanao del Norte	1, 2, 3
Karomatan	"	3
Ditsaan-Ramain	"	2
Biniduyan	"	5
Lumba Bayabao	"	28
Madamba	"	2, 4, 6, 7

1961 Presidential Elections

MUNICIPALITIES	PROVINCE	PRECINCT NUMBER (Where there is identical or uniform voting
Datu Piang	Cotabato	32, 39, 50
Buluan	"	3-B, 3-C, 4-A, 4-B, 7-A, 9, 10-A, 14, 15, 16, 16-A, 17-A
Dinaig	"	3, 4, 7, 9, 10; 11; 12; 13; 14; 15; 16; 17, 18, 21, 23, 25, 26,; 27; 30; 31; 33
Kidapawan	"	33, 33-A, 35
Palimbang	"	26
Ampatuan	"	3, 3-A
Carmen	"	6, 9-A
M'Lang	"	14-A
Cotabato City	"	8, 24, 28, 29
Ditsaan-Ramain	Lanao del Sur	1, 1-A, 2, 3; 3-A
Bubong	"	1-A, 2
Tubod	Lanao del Norte	15

1961 Senatorial Elections

Datu Piang	Cotabato	32, 39
Buluan	"	4-A, 9, 10-A
Dinaig	"	3, 7, 10, 11, 12, 13, 17; 21; 23; 26; 27; 30; 31, 33
Kidapawan	"	33, 33-A, 35
Palimbang	"	26
Ampatuan	"	3, 3-A
Carmen	"	9-A
M'Lang	"	14-A
Ditsaan-Ramain	Lanao del Sur	1, 2-A, 2, 3, 3-A, 12
Kapai	"	1, 2
Lumba Bayabao	"	18, 28-A
Molundo	"	9, 10
Bubong	"	2
Binidayan	"	5, 5-A
Nunungan	Lanao del Norte	1, 2, 3
Tubod	"	15

1963 Senatorial Elections

Pagalungan	Cotabato	3, 9, 10, 11, 14, 17
Maganoy	"	3, 5, 12, 14,
Ampatuan	"	1, 2, 3, 4, 5-B, 6; 7; 8; 13; 14; 22; 26
Dinaig	"	7, 9, 11, 14, 15, 16; 17; 28; 30; 31; 39; 40; 41
Buldon	"	14
Pikit	"	45
M'Lang	"	17
Lumbatan	Lanao del Sur	10
Karomatan	Lanao del Norte	5
Nunungan	"	3, 4

As early as November 12, 1957 elections, per records of the Commission on Elections Statistics and Records Division, the trend of identical and/or almost identical voting was evident. In 1961, for example, all Nacionalista Party candidates got 383 votes in Precinct No. 1 in Ditsaan-Ramain, Lanao del Sur; and in Precinct No. 12, only Alonto obtained votes (496), while all others, Nacionalista and Liberal alike got zero. Again, in Precinct No. 9-A in Carmen, Cotabato, only three candidates, two NP and one LP obtained votes (208 each), while all others got zero. And in 1963, in Precinct No. 12 in Maganoy, Cotabato, all Liberals got 200 votes each, all Nacionalistas got one vote each except Tolentino who received two votes. The fact that in some precincts the candidates of one political party, Liberal or Naciconalista, received identical or uniform number of votes is not, therefore, surprising at all. This is especially true in Muslim municipalities wherep political leaders are also spiritual leaders and their desires and preferences are the law. Therefore, votes are controlled not only politically but also spiritually. And spiritual control is more effective than political control. More correctly, uniform or identical voting is often times in accordance with electoral results and practices in the past, because "sample ballots" used by the voters list only the names of the candidates of either party. And in the particular municipalities questioned in the present case, which are generally inaccessible to newspapers, radios and more to televisions, most voters can write only in Arabic. They are taught to write only the names of the candidates of their spiritual leaders. So Nacionalista "Sample ballots" have no use for them. They memorize in Arabic the names given to them by their leaders. They do not understand or read or write English or the National Language. So it is not factually impossible to have 100 per cent uniform or identical voting.

It is relevant to mention at this point that voting "against statistical probabilities" may be caused not only by manufacturing

votes which is fraudulent, but also by controlled votes which is validly exercise through political, religious, or economical leadership situations. We have mentioned as an example above the Muslim's idea of "maratabat". Perhaps, we could also place in the same category the votes of the *Iglesia ni Kristo* (INK). This religious sect is well known for its solid votes. That is the reason why its support is always sought by cunning politicians. For oftentimes, their votes can decide an election, especially a close one, because their votes are always cast solidly in favor of their candidates. Or consider the votes of the so-called Solid North. The proportion of votes between Climaco and Lagumbay in the three Mindanao provinces is only about 3 to 1 in favor of Climaco who is a native of Mindanao; but in some Ilocano provinces, the proportion of votes between the two is 10 to 1 in favor of Lagumbay who is not even an Ilocano.[68] In Ilocos Norte, the votes cast in favor of Marcos and Nacionalista candidates reached the staggering percentage of 98 or over.[69] Following the theory of statistical probabilities as adopted by the Supreme Court, these proportions may as well be classified as contrary to all statistical probabiliies. Yet, they were not even questioned and the election returns wherein these results were reported were accepted as apparently regular and genuine. In effect, it seemed that the resolution would leave the judgment as to who should lay down the standard as to what returns are to be considered statistically "improbable" to the boards of canvassers. As we will explain later, this is dangerous. Indeed, Mr. Justice J. P. Bengzon's sagacious observaion was well taken. He said "For me, the majority view in the case at bar, by adopting the criterion of 'statistical probabilities' in drawing the line between returns 'obviously manufactured' and returns not of that kind, has drawn a

68 "Certifications" from Comelec Executive Officer Emilio Aguila showing the votes received by candidates Climaco and Lagumbay:

		CLIMACO	LAGUMBAY
Cotabato	Comelec Canvass	131,455	48.014
	Provincial Bd. Canvass	131,345	48,172
Lanao del Norte	Comelec Canvass	31,018	10,559
	Provincial Bd. Canvass	31,532	10.559
Lanao del Sur	Comelec Canvass	60,288	12,654
	Provincial Bd. Canvass	62,937	16,505
Ilocos Norte		7,604	69,487
Danao City, Cebu		963	9,015

69 Marcos — 88,837; Macapagal — 2,988.

shifting, movable and uncertain line, liable to run without direction of policy, without regard to logic and contrary to experience."[70]

V. CONCLUSION

A. *Importance of Free and Honest Election.* The purity of elections is a *sine qua non* to popular government. The existence of suffrage or the right to vote for public officials is not enough. Elections, which constitute the occasion for the exercise of suffrage, must be honest and orderly. The electorate must be afforded a free and voluntary use of their right to express their choice of candidates without threats, violence, intimidation, or corrupt motives. Election officials must likewise be free and honest in the porformance of their inviolable duties. Otherwise, such elections can hardly be considered the expression of the sovereign will of the people as they are meant to be[71] but a brazen distortion of the popular judgment, a veritable mockery of democracy. To avoid those ugly blots that corrupt and sap our society, to safeguard the democratic processes of government to the end that the sanctity of the ballot and the exercise of suffrage could best be protected, election laws as passed and promulgated must be fearlessly and vigorously enforced. In the graphic language of the Supreme Court, the aim of the law is "to banish the spectre from the minds of the timid and defenseless, to render precarious and uncertain the bartering of votes, and lastly, to secure a fair and honest count of the ballots cast".[72]

B. *The Resolution is a Precedent-shattering Ruling, a Decision "Fraught with Dangers".* There is no disputing the fact that public confidence in elections as a process essential to the preservation of a democratic government is absolutely indispensable. But in securing this confidence, public officials who are called upon to see to it that the sovereign will is maintained must act within the limits of their power and authority as circumscribed by the Constitution, the statutes, the precedents, and the accepted jurisprudence. Indeed, in the own words of the Supreme Court, this basic principle is proclaimed: "We are not omnipotent; our powers and jurisdiction are circumscribed by law, which we cannot transcend."

Yet the Supreme Court, by adopting the novel theory of statistical improbabilities overstepped the bounds of its powers and jurisdiction. Contrary to the Constitution, it diminished, in effect,

70 See dissenting opinion of Justice J. P. Bengzon, Lagumbay case, op. cit.
71 Hontiveros v. Altavas, 24 Phil. 632.
72 U.S. v. Cueto, 38 Phil. 935

the power of the Senate Electoral Tribunal by sharing with the latter the authority to decide all contests relating to the elections, returns, and qualifications of senators. Contrary to the Election Law and precedents on the matter, it empowered, in effect, the Commission on Elections as a canvassing board to annul election returns by going behind said returns and inquiring into alleged illegal voting or fraudulent practices. It was but natural, therefore, for sibilant objections to be raised, and for the Supreme Court to become target of broadsides of so many critics. For the critics of the resolution reasoned out, not without any logic: If the theory of statistical improbability is now the new rule on canvassing, the different boards of canvassers, namely: (1) Municipal Board of Canvassers for municipal officials, (2) Provincial Board of Canvassers for congressmen and provincial and city officials, (3) Commission on Elections for the eight senators, and (4) the Joint Session of Congress for the President and Vice President, can exercise their discretion to consider what returns or certificates of canvass are "statistically probable or improbable", without any judicial recount or any verification from the ballots cast in the election protest. If such is the case, then said boards of canvassers can also follow the unprecedented decision of the Supreme Court and thereby reject election returns *enough* to cover the majority of the winning candidate and proceed to proclaim the loser. In the same vein, what can prevent the majority of the members of Congress belonging to the same political party, by majority vote (like the resolution) to consider that some certificates of canvass are against or "contrary to all statistical probabilities", reject enough of such certificates of canvass and after sufficiently covering the majority votes of the winning candidate belonging to the minority political party, actually decide that the loser is the winner and proclaim said candidate of the majority party in control of Congress as the President- or Vice President-elect? This anomalous situation is not imporbable under the resolution of the Supreme Court. And should such an eventuality occur, the next or future presidential eletions may precipitate violence, disorder, and worse still, a civil war.

C. *Philosophic Bearing of Probability.* Our age is an age of materialism. Mor or less it is "inevitable that an extravagant significance should be attached to mere numbers so that many arguments are victoriously concluded with arithmetical calculations, and too many decisions are based on anaesthetic whiffs of statistics."[73] For in an age of materialism, things are paramount, and the tempt-

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[73] Lord Elton, "The Scourge of Statistics" The Listener, 649 (1961).

ing convenience about things is that they can so readily be counted, weighed, or measured. Excluding the imponderables, therefore, recourse to numbers seems to simplify our everyday problems. There are even times when our credulity is carried in such a way as to regard numbers as the pofound truth and believe that statistics can prove anyhing. Thus statistics are employed "in making estimates, forming conclusions, or drawing of inferences of the characteristics of the sample."[74]

In making our estimates, conclusions, and inferences, we would inevitably encounter the problem of probability. For some of our beliefs and judgements are entertained with certainty; while others are of which we are not so sure. The degrees of confidence with which the logic of probability is concerned are those associated with different kinds of objective evidence and different degrees of objective cogency; and not with the confidence which depends on feeling, or arises we know not how. In other words, we are concerned with different degrees of rational belief or confidence. Note that the degrees of confidence attach to the bilief or judgments, or to proposition expressing the beliefs or judgments. The probability, then refers to the judgment or proposition, nt to things or events to which such judgment or proposition is drawn. For things just are, and events just happen — but there is no certainty or probability in them. Only our judgments about them can be more or less probable.[75]

There are two types of calculable probability: those that can be calculated *a priori,* or deductively, and those that can only be calculated *a poseriori,* or inductively.[76] The fundamental rules of the empirical theory of probability (frequency theory) may then be stated as follows:[77] (1) There is only one probability concept, regardless of whether it is to be applied to games of chance, to social statistics, or biological or physical phenomena; he object of probality theory is the mass occurence, the statistical phenomenon. (2) Probability is a number measuring relaive frequency and is arrived at in the following way: in a mass phenomenon, that is to say, a definite and precisely formulated grouping in which individual

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74 Solis, **Statistics in Research,** 8 Science Bulletin, 49 (1964).

75 **18 Encyclopedia Britanica,** p. 529 (1963).

76 The **a priori** type is that in which the calculation can be made by reasoning deductively from the nature of the case, and without reference to actual observations of the kind of events under consideration. The **a posteriori** type consists of those cases in which the calculation can be made only with the aid of previous observations of similar events.

77 **Encyclopaedia of Social Sciences,** p. 427 (1942).

events repeat themselves, we watch out for certain distinguishing characteristics and note each time that it appears.

The Supreme Court, in disposing of the case of *Lagumbay v. Commission on Elections*, made use of the *a priori* type of probability theory. By merely looking at the questioned election returns, it concluded that the same were "manufactured" or "fabricated" because the result that they proclaimed was "contrary to all statistical probabilities". This conclusion was deduced from the observation of the fact that the returns showed — in the first set — the number of registered voters equalling the number of ballots and the number of votes cast and tallied for *each and every* Liberal candidates each got a zero; and in the second set — all reported votes were for Liberal candidates, all of whom were credited *exactly the same* number of votes, while the Nacionalista candidates, again, each got a *zero*. In the first set, the observable distinguishing characteristic appeared thirty one times in thirty one questioned election returns; and in the second set, nineteen times in nineteen returns. Such frquency of occurrence, according to the Court, is improbable in the natural course of events. It is "contrary to all statistical probabilities". It is not merely a case of an isolated occurrence of the observable distinguishing characteristic. On the contrary, it is a case of many and frequent occurrences which is against the experience of man.

It has been said that a slight preponderance of evidence is sufficient to warrant a conclusion that on improbable event did not occur.[78] Assuming, but without admitting, that the questioned election returns show an improbable event, such improbability is not a sufficient ground for holding the event not proved where it is supported by apparently credible evidence.[79] The resolution tabulated the fifty precincts where Lagumbay received zero votes and Climaco received votes *not in excess* of the registered voters. But there are also many precincts where Climaco received zero votes and Lagumbay received many votes. As a matter of fact, straight and one hundred per cent voting had occurred before in other places as previously shown. It may indeed be irregular, but it is not impossible. Besides, as explained above, the occurrence of straight voting is not unusual — and, therefore, not improbable — in Muslim municipalities.

While it is desirable to discourage straight voting, as it was

78 30 A C.J.S., p 637, citing McBride v. New Orleans Public Service, 3 La. App. 474.

79 Ibid., p. 636.

deemed wise to abolish block voting, it should be borne in mind that there is a whale of a difference between reasonable probabilities and the cold fact of actual voting. No one can substitute his judgment for what should be the votes actually cast without actually opening the valid ballot boxes and counting the votes therein. In other words, the Court cannot, by simply looking at the result of the election as reported by the returns, conclude that said returns are "manufacured" or "fabricated" because in its opinion, the result is "contrary to all statistical probabilities". If this is the the Court would be merely engaging itself in a guessing game and dispensing its judgment based on a conjecture. To find out, therefore, if the returns involved were manufactured or fabricated, it is necessary to open the ballot boxes and to count the ballots cast therein — a function which is, incidentally, exclusively vested in the Electoral Tribunal. It is not the Commission on Elections nor the Supreme Court which is the forum empowered to look behind the returns and to find out if there are frauds or other irregularities committed during the election. At the risk of being philosophical, it is submitted that if there is something probable in the present case, the "probability" refers only to the conclusion" of the Supreme Court that the returns questioned were manufactured or fabricated, and not to the things or events (the facts of actual voting, counting of ballots, or reporting the result thereof) to which said conclusion refers. "For things just are, and events just are, and events just happen — but there is no certainty or probability in them." The different boards of inspectors in the different precincts involved reported the results of the elections in their respective precincts. The statements of the count were delivered to the Commision on Elections in proper form and through proper channels. On their face, the returns appeared to be regular and genuine. These were the facts according to the findings of the Supreme Court would like to substitute, as it had actually substituted, its conclusion based on a debatable hypothesis to the facts as per findings of the Commission. This is not proper.

Perhaps it is now permissible to conclude with a few remarks general nature. In approaching the study of statistics, it is important to realize that no statistical procedure can, in itself, insure against mistakes, inaccuracies, faulty reasonings, or incorrect conclusions.[81] Statistical explanations of phenomena cannot, for the present time, satisfactorily take the place of the causal explana-

[80] Resolution of the Commission on Elections, December 15, 1965.
[81] Adler and Roesler, **Introduction to Probability and Statistics**, 3 (1960).

tions. Perhaps in the future, with the deeper penetrations into the natural and social sciences of the statistical interpretations, the house of causality principle will sway to the blows of the winds of changed ideas, so that in the end, it is hoped, the statistical explanations may be acommodated and regarded as also a causal one.[82] But in the meantime, a search for firmer and more solid foundation is in order to justify its adoption. Otherwise, a conclusion that relies primarily on such a debatable basis will only breed suspicion and doubt. Remember what the adoption of the theory of statistical probabilities brought to the Supreme Court: It undermined he Court's reputation for mature and well-considered reasoning. For even the justices themselves were divided — six to four another obxious indicium that the Court's resolution is really standing on shaky grounds.

[82] Encyclopaedia of Social Sciences; op. cit., 434.