REFERENCE DIGEST

CONSTITUTIONAL LAW: FREEDOM AND PLANNING. All government administrations, past and present, Liberal and Nacionalista, have been gradually increasing the emphasis on economic planning. Indicative of the present administration's concern on the matter is the recent creation of the National Economic Council, otherwise known as the NEC, to take charge of formulating and mapping out the country's economic development.

With this increasing emphasis on economic planning, the time will soon come when its encroachment on the freedom of the individual will be questioned on constitutional grounds. Why? Because planning in society and freedom of the individual necessarily conflict with each other. A centralized control, at which our government seems to be aiming at as evidenced by the creation of the NEC, constitutes an implicit danger to liberty and there always lurks the fear that the remaining liberties will be totally absorbed by the planning state. It is hard to combine freedom with order as the tendency is to solve problems by large scale planning. Freedom can coexist with planned economy only if we make freedom our primary concern. If the administration will study not only the economic but the legal and philosophical considerations as well, then it should be able to reconcile freedom with central economic control.

Control is an indispensable element of planning and economic planning is in vogue nowadays. Planning has proved its best during wartime. Planners cling to the idea that it will thrive better in peacetime economy. Economic planning has two concepts. It may be a *logical conception* or planning within the economy, which means the drafting of economic programs or schemes on a large scale, blueprints for economic development with a foresight relative to agriculture, housing, foreign trade, public finance, money and banking. It may be an *economic-historical concept* or the planning of the national economy as a whole. This is planned economy as differentiated from planning within the economy.

The present Five Year Plan of the Philippine Economic Development, revised lately by the technical staff of the National Economic Council, properly falls under the category of planning within the economy rather than of a planned economy. Though the Philippines has adopted economic planning yet it is a case of planning within a free society and the system of free enterprise prevails.

What is planning anyway and what are its goals and objectives? Planning has been defined as the conscious and deliberate choice of economic priorities by some public authority. The functions of public authorities are extended to the organization and utilization of economic resources. The

country's productive resources must be used as a whole and for the welfare of the whole, so that a central control of the national economy is therefore necessary. Planning eventually results into centralization of the national economy which in turn means concentration in the State of ownership, or of production or of control. The goals of the planned economy have been partly political and partly social in nature. Principal aim is for national defense, either in an aggressive or defensive war, and for power politics. Other goals may be full employment, social and economic security, social equality and justice, and lastly postwar reconstruction and planning for peace. (Bienvenido C. Ambion, *Freedom and Planning: A Brief Examination,* 30 PHIL. L.J. No. 1, at 127-33. ₱2.50 at U.P., Diliman, Q.C. This issue also contains: *Annual Survey of 1954 S. Ct. Decisions;* Sinco, *Free Use of Knowledge in the Context of our Law;* Notes, *The Juristic Thinking of Mr. Justices Fernando Jugo and Cesar Bengzon.*)

LEGAL WRITING. Among lawyers, be they practising or teaching, and even among judges, one particular incident of the profession has been overlooked or taken too much for granted, and that is legal writing. Enumerable questions or distinctions could have been avoided if our judges were more precise in their choice of words. Fewer students would have failed their courses if the textbooks used were clearer and simplified. Articles in legal periodicals would be more appreciated if they were more readable and easier to comprehend.

The literary style, or lack of literary style, of many judges, professors of law, and editors of, and contributors to, law reviews is deplorable. What is the trouble? Three sources of trouble may be mentioned: (1) Sloppy thinking; (2) a love for half-tones; (3) a love for resounding words and expressions.

In the United States, a band of legal writers have recently been organized. This band which call themselves "Scribes" have two principal goals:

First: To develop an interesting way of writing.

Second: To develop a clear, succinct and forcible style.

As regards the first—what makes reading interesting? According to one Rudolph Flesh in his recent book, *The Art of Reading,* "readability" means ease of reading plus interest. Structure of words and sentences has to do with one side of readability, personal words and personal sentences with the other.

It has been noted that lawyers' language has long been regarded as the prime example of complex, unreadable, often unintelligible English. Lawyers stand accused of being the one profession that thinks it cannot live without long sentences. The trouble with long sentences is that they become so complex that they are not readily understandable. If they are not readable, how can they be interesting?

As regards the second: less abstraction is the key to clarity. Daniel Webster observed that "the power of clear statement is the great power at the bar." The best argument on a question of law is to state the question clearly. Legal writers much too often deal in abstractions. It results from exactness in the use of specific words.

The Scribes have made succinctness another of their ideals of style. They point out that many lawyers suffer from a literary disease called sentence inflation. Verbosity is their habit of mind and expression. The cure for sentence inflation is to stop being stuffy, legalistic, technical and overly precise in one's writing for the general reader.

The third ideal is a forcible style. It seems that the inactive and intransitive, the impersonal style is preferred by lawyers. Inactive style is not forceful. It is weak. Use active verbs. Watch the adjectives used.

This article by Eugene C. Herbert of the New York bar should be read by all lawyers. Among others, it contains a 7-point advice on effective juristic style by Prof. Edwar Warren of Harvard. (Eugene C. Herbert, *Improving Our Legal Writing: Maxims from the Masters*, 20 L.J. No. 4, at 159-60 and 205 (1955). ₱2.00 at 1192 Taft Ave., Manila. This issue also contains: R.A. No. 1180, An Act to Regulate the Retail Business; Sec. Justice Op. No. 335 (1954) as to whether a non-agricultural employee who is paid ₱3.50 for a 7-hour day should receive the minimum wage pursuant to the Minimum Wage Law.)

JUDICIAL ADMINISTRATION. Today almost everyone is agreed on the need of reform in the judiciary. All quarters are decrying the tremendous backlog of cases in the courts. Recently the Secretary of Justice and also Congress took positive steps to remedy the situation. The Secretary of Justice has enforced all administrative remedies to influence the judges to speed up trials. The Solicitor General has even filed administrative charges against a number of judges for drawing their salaries without complying with the provisions of § 5 of the Judiciary Act of 1948 as to certification of work completed. Congress on the other hand has passed R.A. No. 1186 which increased the number of district judges. All these steps have done a lot to remedy the situation but we submit that a lot can still be done.

In this connection, it may be wise to refer to judicial administration in other countries for possible adoption of any means which have been found effective therin. A comparative lawyer is impressed by the fact that only a few isolated features of foreign procedure have been introduced as though they were ingenious inventions, while tremendous achievements made abroad in other respects have been ignored.

Decision Law Journal contains an article on judicial administration in European countries wherein it is strongly urged that reforms in judicial administration should be supplemented by foreign procedural principles. The following are some suggested reforms:

(1) Parties to a case be required to inform the court from the beginning (pre-trial) not only of all relevant facts but of all means of proof at their disposal, and also to furnish the court along with the complaint and the answer, and to the other party, coopies of all documents.

(2) Instead of the trial being conducted by the lawyers from their point of view, with the judge acting as moderator, let the judge conduct the trial.

(3) A witness is a person at the disposal of the court. He is not a witness of either party and he serves the court so that it may find out the truth. As it is at present, the witnesses are the plaintiff's or the defendant's witnesses. Thereby they cease to be neutrals, and they feel obligated to help their side as much as possible. It is suggested that after the parties have presented their respective stories, the witnesses be heard. They are the court's witnesses. Everybody has a chance to speak freely in his own language without necessary interruption through the objection of lawyers. The judge assists by asking questions. Thereafter, lawyers may ask questions in order to bring out the facts more clearly.

(4) The same is true of experts. The presentation of one unbiased court's expert obviates the necssity of both parties presenting their respective panel of experts giving directly contradictory opinions.

(5) At present, most laymen do not understand the legal language of the courts. The suggestion is to use form only in the few instances in which they are indispensable. Substance and not form or technicalities prevails. A legal language, unintelligible to all but jurists, and lengthy prepared questions are prohibited.

(6) The losing party should compensate the winning party for all actual fees and costs.

Most of the suggested reforms may be hard to adopt in this jurisdiction but it will be good to adopt a modified version of some of them. (Leo J. Reiss, *Lessons in Judicial Administration from European Countries,* 11 DECISION L.J. No. 4, at 243-53 (1955). ₱2.00 at University Publishing Co., 917-C Morayta, Manila.)

NEGOTIABLE INSTRUMENTS — ESTOPPEL — FORGERY. The problems in the adjustment of losses arising out of forgeries of negotiable instruments have long beset the courts. If the number of cases shown in the casebooks is any index to the frequency of forgeries, it may be said that all persons handling these instruments as a means of business are exposed to a certain degree of risk of loss.

Strictly speaking, forgery is not a defense in an action on the instrument. Actually, defenses which may be interposed in an action on a negotiable

instrument have been generally classified into two main categories: (1) real or absolute defenses, and (2) personal defenses or equities. Real defenses are those which are said to attach to the instrument itself. They are good against any person including a holder in due course. As a rule, a defense is real or available against a holder in due course where there is absent one or more of the requisites to the existence of the instrument as a contract or, if these requisites are present, where some rule of law operates to vitiate the contract for reasons of public policy. Personal defenses on the other hand are those which arise out of agreement or conduct of a party in regard to the instrument, to enforce it against the defendant. This defense it not available against a bona fide purchaser for value; in other words, it is cut off by transfer of the instrument to a holder in due course.

The Negotiable Instruments Law makes no express mention of this distinction between real or personal defenses. There is a divergence of opinion as to the proper interpretation of §§ 55 to 57 which mention "defects" of title and "defenses". By the great weight of authority, however, a party to a negotiable instrument may, by his conduct or representation, preclude himself from setting up real defenses. If real defenses are subject to modification by the doctrine of estoppel, *a fortiori* personal defenses would be within the ambit of its influence.

Forgery usually appears in the cases as a defense, in the sense that when a purported party to the instrument is sued by the holder, he raises the defense that he did not sign nor authorize anybody to sign the instrument; that the signature is forged and, therefore, the signature is "wholly inoperative" under § 23 of the Negotiable Instruments Law. The forgery of an endorsement is also raised as a defense against the holder by a party prior to the forged signature whose genuine signature appears on the instrument. Such a defense is based on the theory that the holder has no title to the instrument and, therefore, cannot sue thereon.

When the signature of the maker of a note is forged or unauthorized, the instrument is ordinarily considered absolutely void, even in the hands of a bona fide purchaser, inasmuch as the alleged maker did not enter into any contract at all. Forgery cannot create a contract to which one may be legally bound. He may however be precluded from raising forgery or lack of authority in which case he may be required to pay the instrument to the holder.

And so also forgery of an indorsement is ineffective in transferring any right, title, or interest in the instrument from the person whose name is signed. If however the maker pays the transferee, who is without knowledge of the forged necessary indorsement, he may not recover the money paid if he is precluded from raising the forgery.

The principles therefore set out the fact that contract liability may in effect be imposed, or any party may lose his rights to the instrument or to its proceeds which otherwise belong to him, if he is precluded from setting up forgery or lack of authority. When he is precluded, there are no set rules applicable to all situations. Each individual case must be studied. (Manuel Montecillo, *Estoppel To Assert Forgery of Negotiable Instruments,* 3 FEU L.Q. No. 2, at 117-32 (1955). Copy on request from Barristers Coop. Ass'n of the Inst. of Civ. Law, FEU. This issue also contains: Ruben Santos, *The Philippine Minimum Wage Fixing Machinery;* Note, *The Legal Philosophy of Justice Gregorio F. Perfecto.*)