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Romualdo Cesar Caballero

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A Re-examination of Mexican “Quickie” Divorces

Until recently, bilateral divorces obtained in Juarez, Chihuahua, Mexico, where neither party was domiciled, were recognized only in New York,¹ the Virgin Islands,² and possibly in Arizona³ and Alabama.⁴ Clearly, the major decision regarding recognition of such divorces was *Rosenstiel v. Rosenstiel*, a 1965 ruling by the New York Court of Appeals.⁵

Since in no state, not even in New York, are mail-order or ex parte divorces recognized, this article will be an attempt to discuss only bilateral divorces, that is, proceedings in which one party appeared in person, and the other party appeared either in person or through an attorney in fact.

Rosenstiel was combined with the case of *Wood v. Wood*, and one opinion was rendered for both cases. Crucial differences between the two cases make separate treatment necessary herein. They should also have been treated separately in the Court of Appeals.

At any rate, the facts in *Rosenstiel* are much the same as those in any other Juarez divorce case. In 1954, Felix Kaufman went to El Paso, Texas, registered in a motel, and the next day crossed over the border into Juarez, where he promptly signed the municipal register for residents and filed with the district court a certificate of residency, which he attached to his petition for divorce. The petition alleged grounds of incompatibility. After about an hour of such proceedings, Kaufman returned to El Paso having been in Juarez altogether several hours at most. The next day, Kaufman's wife made her “appearance” in the Mexican Court through an attorney in fact, who proceeded to file an answer in which she “submitted” to the jurisdic-

*Tax Division, U.S. Department of Justice; LL.B., University of Texas; member, International and Comparative Law Section of American Bar Association, Inter-American Bar Association and Texas State Bar.

¹*Hiatt v. United States*, 415 F.2d 665 (5th Cir. 1969), *application for cert. pend'g*. See also 13 A.L.R.3d 1419, 1425, 1441.

²*Perrin v. Perrin*, 408 F.2d 107 (3rd Cir. 1969). Cf. *Alton v. Alton*, 207 F.2d 667 (3rd Cir. 1953), *ordered vacated because moot* in 347 U.S. 665.

³*Re Nolan's Estate*, 56 Ariz. 361, 108 P.2d 388 (Ariz. 1940).

⁴*Wells v. Wells*, 230 Ala. 430, 161 So. 794 (Ala. 1935).

⁵16 N.Y.2d 64, 262 N.Y.Supp.2d 86, 209 N.E.2d 709, 13 A.L.R.3d 1401 (Ct.App. 1965), *cert. den.*, 384 U.S. 371.

tion of the court, and in which she admitted the allegations in the petition of her husband. A decree was handed down that same day. The wife married Rosenstiel in 1956, and Rosenstiel thereafter brought suit to annul his marriage to the former Mrs. Kaufman, alleging that the Mexican divorce was invalid, and that his marriage was therefore null and void.

It is significant here to note that in the *Rosenstiel* part of the case, the Mexican court based its jurisdiction on Article 22 of the Divorce Code of the State of Chihuahua, which provided that jurisdiction could be had in the place where the plaintiff had his residence.⁶ The Divorce Code further provided that residence was to be determined by the municipal registry.⁷ In the companion *Wood* case, jurisdiction was not based on residence or domicile or any such concept but rather on express or tacit "submission" to the jurisdiction of the court, a submission obtained when the plaintiff filed her petition and defendant his answer.⁸

In its decision, the Courts of Appeals departed from the traditional rule that domicile was the basis for jurisdiction in divorce cases, and held that since recognition of the Mexican bilateral divorce did not offend any New York public policy, a "balanced public policy . . . require[d] that recognition of the bilateral Mexican divorce be given rather than withheld."⁹ Even though domicile was not found to be the basis of jurisdiction, the court did emphasize that the parties did what Mexican law required them to do to acquire residency.¹⁰ The court also stated that the decree was valid in

⁶"The judge who has jurisdiction over a contested divorce is the judge who sits in the place where the plaintiff has his residence; and a divorce by mutual consent may be heard at the place of residence of either spouse."

⁷Article 24, Divorce Code of the State of Chihuahua: "Residence for the purposes of Article 22 of this law shall be determined by the respective municipal registry of the place."

⁸Article 23, Divorce Code of the State of Chihuahua: "Jurisdiction may also be obtained by express or tacit submission. There is express submission when the parties clearly and conclusively waive the privileges which the law grants them and designate with all precision the judge to whom they will submit. There is tacit submission from the fact that the plaintiff presents his petition or by the defendant, who, once having been legally served, does not timely challenge the jurisdiction, or because having challenged that, abandons it."

⁹209 N.E.2d 713.

¹⁰"Although the grounds for divorce found acceptable according to Mexican law are inadmissible in New York, and the physical contact with the Mexican jurisdiction was ephemeral, there are some incidents in the Mexican proceedings which are the common characteristics of the exercise of judicial power. The former husband was physically in the jurisdiction, personally before the court, with the usual incidents and the implicit consequences of voluntary submission to foreign sovereignty. Although he had no intention of making his domicile there, he did what the domicile law of the place required he do to establish a 'residence' of a kind which was set up as a statutory prerequisite to institute an action for divorce. This is not our own view in New York of what bona fide residence is or should be, but it is that which the local law of Mexico prescribes." 209 N.E.2d at 711. See also *Kakarpis v. Kakarpis*, 58 Misc.2d 515, 296 N.Y.Supp.2d 208 (Family Ct., Montgomery Co., 1968); *Perrin v. Perrin*, *supra*, note 2; and *PADILLA, MARRIAGE AND DIVORCE IN MEXICO* (Toros Pub., Chula Vista, Calif., 1966) pp. 24, 25.

¹¹"The judgment is recognized as valid by the Republic of Mexico." 209 N.E.2d at 710.

Mexico.¹¹ The court, having assumed the foregoing, then decided to give recognition to the *Wood* divorce for no other reason than "that for the purposes of New York public policy decision in this case should be consistent with that in *Rosenstiel*."¹²

This article will be an attempt to determine: (1) whether the Mexican law of residency or domicile in fact was met and whether the *Rosenstiel* and *Wood* divorces are valid in Mexico; and (2) whether the *Rosenstiel* or *Wood* divorces should be recognized.

Bona Fide Residence and Domicile in Mexico

In this examination of migratory divorces, it can be said that if the Mexican court was actually without jurisdiction to render a decree, or if the decree rendered was not recognized in Mexico, there appears to be no reason to give such an invalid divorce any recognition in the United States.¹³

The initial difficulty with the Chihuahua statutes is that ever-present term "domicile." The Chihuahua Divorce Code seems to use the terms "domicile" and "residence" almost interchangeably.¹⁴ For instance, Articles 22 and 24 mentioned above employ "residence," whereas the term "domicile" is found in Articles 27,¹⁵ 34,¹⁶ and 35.¹⁷

Assuming for the moment that anyone who simply signed a book in the office of the mayor in Juarez thereby became a bona fide Mexican resident, would a divorce decree, the jurisdiction of which was based on that resi-

¹²209 N.E.2d at 713: "Although the Mexican decree of divorce in *Wood v. Wood* was entered under a provision of the Chihuahua Divorce Law (Art. 23) which does not require proof of registration as a resident and which allowed jurisdiction to be taken by submission, the personal appearance in Chihuahua before the court of one party and the appearance through a duly authorized attorney by the other require that for purposes of New York public policy decision in this case be consistent with that in *Rosenstiel*."

¹³*Estin v. Estin*, 334 U.S. 541 (1948); *Kreiger v. Kreiger*, 334 U.S. 555, (1948); and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

¹⁴Ohio presented a similar problem, *Ohio Rev. Code Ann. Section 3105.03. Saalfried v. Saalfried*, 86 N.E.2d 165 (Ohio App. 1949) interpreted "residence" in the statute to mean domicile, that is, residence plus intent to remain, *Divorce Recognition—A Two Headed Monster: Full Faith and Credit and Due Process*, 30 OHIO STATE L. J. 311, (Spring, 1969).

¹⁵"In the proceedings in a contested divorce, once the petition is presented, the judge shall furnish a copy of it to the opposite party by service in order that that party may answer within a period of three days, with notice that it will be considered answered in the negative if it is not verified. To this time shall be added that time which the judge may deem prudent when the defendant is not domiciled where the suit is pending."

¹⁶"The first notice shall always be personal. If the defendant has his *domicile* in the Republic, but outside the place where court is held, notice shall be made through a legal letter of request. . . ."

¹⁷"When the *domicile* of the defendant is unknown, he can be notified by memorandum of publishing two edicts in the official periodical of the state, all previous proceedings can be nullified if during the proceedings it can be proved that when initiating the suit the plaintiff knew the *domicile* of the defendant."

dence, be given force and effect in Mexico? The answer appears to be in the negative if there was no domicile, for the equivalent of our Full Faith and Credit Clause¹⁸ in the Mexican Constitution¹⁹ is phrased in terms of "domicile"²⁰ and not "residence."

Mexico, which does have a concept similar to *stare decisis*²¹ called *jurisprudencia*, which is even more forceful and binding when fulfilled, has a Supreme Court which has held, on various occasions, that in divorce cases the only court which has jurisdiction is that where the marriage was domiciled²² with some exceptions provided, such as in cases of abandonment.²³ There is no statutory provision anywhere that an action for divorce may be brought where only the plaintiff was domiciled except in cases of abandonment, and no cases or provisions could be found in which something less than full domicile was necessary. Unfortunately, Chihuahua divorce proceedings in which jurisdiction was based on "residence" only, have not been tested. The apparent reason is that such divorces are uncontested to begin with and also, they are usually granted to Americans who test the decrees in American courts and not in Mexican courts, and because Mexicans usually have domicile.

In one Supreme Court case²⁴ not binding as *jurisprudencia*, it was held that only under federal, not state, law could the rights of aliens be determined. Federal law provides for nothing less than domicile for a court to obtain jurisdiction. That aliens can litigate only under the law of the federal District, appears to be the case according to Article 50 of the Immigration and Naturalization Law.²⁵

¹⁸Art. IV, Sec. 1, United States Constitution.

¹⁹Art. 121, Mexican Political Constitution.

²⁰"In every state of the Federation, Full Faith and Credit shall be given to the public laws, registers, and judicial proceedings of all the other states. The Congress of the Union, by means of general laws, shall prescribe the manner of approving said laws, registers and proceedings, and have effect subject to the following: . . . III. The judgments over personal rights shall only be executed in another state, when the condemned person has expressly submitted himself, or by reason of *domicile*, to the court that rendered the judgment only if he has been served personal notice to attend the proceedings."

²¹Art. 192. Law of Amparo. "The decisions of the Supreme Court when sitting en banc or in panels of the Supreme Court, constitute *jurisprudencia*, whenever that decided in them is found in five consecutive decisions with no decision to the contrary, and in which decisions at least four justices concurred." Some authors have written erroneously that Mexico has no binding case law and that jury trials are unknown. Berke, *Mexican Divorce*, 7 PRACTICAL LAWYER 84 (March 1961). For example, jury trials are available in postal offenses.

²²(Domicilio conjugal). "The marriage is domiciled where the husband establishes a home for his wife and minor children," Suprema Corte de Justicia, *Jurisprudencia y Tesis Sobresalientes de 1955-1963*, Civil III-a Sala, Tesis 898, pag. 410.

²³Apéndice 1917-1965, Tomo I Pleno, Suprema Corte de Justicia, pag. 126, Tesis 19.

²⁴Frieda Tauchnitz Erdmuth Johana, 50 *Semanario Judicial de la Federación*, 5 Ep. pag. 556 (1936).

²⁵See also *Mexican Divorce—A survey*, 33 *FORDHAM L.R.* 449 (1965); and *Mexican Divorces; Are They Recognized in California?* 4 *CAL. WESTERN L.R.* 341 (1968).

It is very doubtful then, whether Juarez divorces, the jurisdiction of which is based on "residence," will be entitled to recognition even in Mexico. The "residence" defined in Articles 22 and 24 of the Divorce Code does not, moreover, rise to domicile even under Chihuahua law.²⁶ The validity of the residence provision in Article 23 is then in grave doubt.²⁷ The statement by the court in *Rosenstiel* that the decree was valid in Mexico was not supported by any authority simply because it probably is not the law.

The court also stated in *Rosenstiel* that signing by the plaintiff of the municipal register made him a bona fide resident, citing Article 24. Now, even without much thought, anyone would ask: How can a person who maintains a residence and domicile in New York, who probably did not interrupt his work schedule in New York, and who spent more time in a plane to Juarez than in Juarez itself, be a bona fide resident of Juarez, Chihuahua, Mexico? The answer can only be: of course, he cannot. The fact that a statute seems to say so, and the fact that such a municipal registry really exists, and the fact that the New York Court of Appeals says so, does not make it so.

In the first place, as noted above,²⁸ it is the federal law, not the state law, which prescribes the manner of approving registers. The use of the word "residence" in Chihuahua divorce statutes must be taken to mean the residence referred to in the definition of domicile,²⁹ since that is the only basis of jurisdiction by which Chihuahua decrees can be recognized in its sister states.

The use of the municipal register in Article 24 is an obvious reference to Article 30³⁰ of the Law of Domicile which provides ways to keep an old

²⁶Article 29 of the Law of Domicile of the State of Chihuahua provides: "The domicile of a physical person is the place where he resides with the purpose of establishing himself; lacking such residence, the place where he has the principal seat of his business; and lacking one or the other, the place where he is found." Some authors have stated that the residence provision in Chihuahua law was inserted to attract foreign divorce seekers, *Mexican Divorce—A Survey*, supra note 25. If that was the reason for its passage, it was an admirable success. "Domicile" has also been defined by the Mexican Supreme Court: "Domicile—the principal elements to determine domicile are: habitual (constant) residence and the principal seat of business, united with the intent to remain in the place where one resides." *Jurisprudencia de la Suprema Corte 1917–1954*, Tomo II, pag. 727, Tesis No. 392; and *Apéndice 1917–1965*, Tomo VI, pag. 169, Tesis No. 95.

²⁷One Juarez attorney told this writer that he *never* used Article 22 but used Article 23 instead because he felt that Article 22 was invalid and even stated the use of Article 22 (with its signing of the municipal registry) was meaningless.

²⁸*Supra*, notes 19,20.

²⁹Art. 29; see note 27, also Art. 31 of the Law of Domicile of the State of Chihuahua which provides: "The legal domicile of a person is a place where the law fixes his residence for the exercise of his rights and the fulfillment of his obligations although he not need be present there."

³⁰"It is presumed that a person aims to establish himself at a place where he resides for more than six months. After said time has passed, he who does not wish the presumption just

domicile even though a person may have resided in a new place for more than six months. The municipal register of the old domicile is signed to evidence an intent to retain that domicile, and the municipal register at the place of the new residence is signed to prevent the establishment of a new domicile there. The signing of the municipal register at the place of the old residence to show an intent to remain so domiciled, cannot be used to establish residence or domicile if it did not in fact exist before. To have any validity whatsoever, the registry must be supported by proceedings and records which existed before to establish previous domicile. That is the holding of several decisions of the Mexican Supreme Court.³¹ Any other interpretation and use of Article 24, except when used in conjunction with Article 30 of the law of Domicile, simply does not make sense. Merely finding a statutory provision in Chihuahua law does not make its use right or accepted in Mexico.³²

An American might also be unable to obtain Mexican residency in view of immigration law which requires one to obtain the proper documentation to avoid being in the category of tourist and to be a resident.

The court seemed to base its decision in *Rosenstiel* on the fact that residence for a day, or domicile for six weeks, really did not differ, and that domicile or residence were not actually necessary. That is exactly what it held in the *Wood* portion of the case, in which there was not even a pretense of domicile or residence.

II. Should Divorces be Recognized Where Jurisdiction was not Based on Domicile, Residence or Nationality?

Another way to phrase the same question: Can the *Wood* case stand on its own? That is, if the *Rosenstiel* part of the case was decided erroneously

mentioned to arise shall declare within the period of fifteen days, by notice to the municipal authorities of his old domicile as well as to the municipal authorities of his new residence, that he does not wish to lose his old domicile and acquire a new one. That declaration will not be effective if it will prejudice the rights of a third party."

³¹"The certifications issued by municipal authorities concerning the existence of domicile of a definite person, within the territorial jurisdiction, can only be accredited as an authentic fact when supported by proceedings or registers which have previously existed in the respective municipal records in order for them to be considered public documents with full, legal probative value." Pleno Inform, 1957, pag. 121; Civil III, Tesis No. 974, pag. 444; and Pleno Tesis No. 184, pag. 145 of Jurisprudencia y Tesis Sobresalientes de 1955-1963. The certifications mentioned refer to the same type of certification which Mr. Kaufman attached to his petition.

³²For instance, Article 34 quoted in part in note 16, *supra*, and Article 35, note 17, of the Divorce Code of the State of Chihuahua provide for constructive service on a foreigner. In decisions written up as *jurisprudencia*, that is with absolute binding effect just as in the case of statutes, the Supreme Court has stated that lack of proper service nullifies the proceedings. Indice 1917-1965, Tomo IV, Sala III a pag. 551, Jurisprudencia de la Suprema Corte, Tesis Nos. 157, 177.

because the decree was invalid, and because there could in fact have been no jurisdiction based on such "residence," should a divorce be recognized when the only possible connection between the forum and the parties was the filing of a petition and answer? Under even the most liberal theories of recognition in conflict of laws when applied to matrimonial cases,³³ the answer is no.³⁴

The American jurisdictional test has been that of domicile as in *Williams v. North Carolina II*,³⁵ and the same is true in England³⁶ except that in England the wife generally could not establish a separate domicile. Other concepts, such as nationality and "habitual residence," have been used as jurisdictional tests in other nations. At the recent Hague Conference of Private International Law, the various jurisdictional tests were outlined and general agreement was reached as to which decrees would be recognized.³⁷ In no case was any test even remotely similar to that of filing a petition with a court, or the test of express or tacit submission, given recognition by the Convention.

To recognize divorces granted without *bona fide* residence or domicile would be to undermine the marriage and divorce policy of a particular state. In this context, "state" is used as meaning "nation" and not a state of the American Union. Although it may be an enlightened state which

³³In *Scott v. Scott*, 51 Cal.2d 249, 331 P.2d 641 (1958) Chief Judge Roger Traynor, in a concurring opinion, mentions the rational connection theory.

³⁴Some argue for a complete departure from the domiciliary theory. Stinson, *Jurisdiction in Divorce Cases: The Unsoundness of the Domiciliary Theory*, 42 A.B.A. JOURNAL 222 (March 1956).

³⁵325 U.S. 226. "In seeking a decree of divorce outside the State in which he has theretofore maintained his marriage, a person is necessarily involved in the legal situation created by our federal system whereby one state can grant a divorce of validity in other states only if the applicant has *bona fide* domicile in the state of the court purporting to dissolve a prior legal marriage." 325 U.S. at 238. See also *Mexican Bilateral Divorce—A catalyst in Divorce Jurisdiction Theory?* 61 NORTHWESTERN U.L.R. 584 (Sept.-Oct. 1966).

³⁶*Le Messurier v. Le Messurier*, [1895] A.C. 517; and *Dolphin v. Robbins*, (1859) 7 H.L. Cas. 390.

³⁷Art. 2 of the Draft Convention provides that a forum could obtain jurisdiction in the following cases: (1) if both parties had habitual residence; (2) if both parties were domiciled there; (3) if the respondent had habitual residence there; (4) if respondent was domiciled there; (5) if both parties were nationals of that state; (6) if respondent was a national and if that was where the spouses last had their common habitual residence; (7) if the plaintiff had his habitual residence there and one or more of the following factors were present: (a) habitual residence of at least one year, (b) both parties had then lost habitual residence in that state or (c) plaintiff was a national of that state; (8) if the plaintiff was domiciled there and also had his habitual residence there; and (9) if the plaintiff was a national of that state and also had his habitual residence there. Foster and Freed, *The Hague Draft Convention on Recognition of Foreign Divorces and Separations*, 1 FAMILY L. Q. 83 (Sept. 1967); von Mehren, *The Draft Convention on Recognition of Divorces and Legal Separations*, 16 AM. J. COMP. L. 580 (1968); Anton, *Hague Conference of Private International Law—Commission I, The Recognition of Divorces and Legal Separations*, 18 INT. AND COMP. L.Q. 620 (July 1969); and 63 AM. J. INT. L. 522.

grants divorces on grounds of mutual consent or incompatibility, other states have the right to prescribe different grounds for divorce. What is clear is that while grounds for divorce may vary, a state should not be forced to recognize a decree the jurisdiction of which was based on facts which could not provide jurisdiction in the state where recognition is sought. This applies only to the theory of comity and not to Full Faith and Credit; that is, only to the recognition of decrees of other nations.

A state does have the right to see that its *bona fide* domiciliaries do not evade its legislative marital policies,³⁸ even if both parties attempt such an evasion.³⁹ Perhaps the state would best preserve its particular marital-divorce policies by recognizing only those divorces in which, under the facts of each case, jurisdiction or perhaps the divorce itself could have been obtained in the place where recognition is sought. That is the test which was suggested by Dean Griswold.⁴⁰

Another somewhat similar test which a state could adopt would be that decrees would be recognized whenever a court found "a real and substantial connection . . . between the petitioner and the country, or territory, exercising jurisdiction."⁴¹

A third alternative to which courts could turn is that provided by the Uniform Divorce Recognition Act. Sections 1 and 2 of that Act provide:

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for divorce was commenced.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within twelve months prior to the commencement of the proceedings therefrom, and resumed residence

³⁸See the dissent by Justice Frankfurter in *Sherrer v. Sherrer*, 334 U.S. 343, 360 (1948): "The parties to a marriage do not comprehend between them all the interests that the relation contains. Society sanctions the institution and creates and enforces its benefits and duties. As a matter of law, society is represented by the permanent home state of the parties, in other words, that of their domicile." See also *United States Recognition of Foreign, Nonjudicial Divorces*, 53 MINNESOTA L. R. 612, 614 (Jan. 1969).

³⁹*Id.*, at p. 361: "The gist of the *Williams* decision was that the state of domicile has an independent interest in the marital status of its citizens that neither they nor any other State with which they may have transitory connection may abrogate against its will. Its interest is not less because both parties to the marital relationship instead of one sought to evade its laws."

⁴⁰Griswold, *Divorce Jurisdiction and Recognition of Divorce Decrees—A Comparative Study*, 65 HARVARD L.R. 193 (Dec. 1951). The exact test proposed was: ". . . a divorce should be recognized in the forum when it was granted under circumstances which are those under which the forum will itself grant a divorce; in other words, that the recognition rule applied by a court should follow and indeed be a reflection of its jurisdictional rule." This rule was adopted in England with the case of *Travers v. Holley* [1953] 3 WEEKLY L. REP. 507; [1953] 2 All E. R. 794; Griswold, *The Reciprocal Recognition of Divorce Decrees*, 67 HARVARD L.R. 823 (1954).

⁴¹*Indyka v. Indyka* [1967] 3 W.L.R. 510 (case which somewhat modifies *Travers v. Holley*, *supra*); *Lately Recognition of Foreign Decrees of Divorce*, 16 INT. AND COMP. L.Q. 982 (Oct. 1967); and *Webb, The Old Order Changeth—Travers v. Holley Reinterpreted*, 16 INT. & COMP. L.Q. 997 (Oct. 1967).

in this state within eighteen months after the date of his departure therefrom, or (b) at all times after his departure from this state, and until his return, maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.⁴²

Regardless of the test or theory, it is evident that in *Rosenstiel* the court did not adopt any real test. It merely held, on unstated or mistaken grounds, that if the domicile theory were followed, the local law in Mexico was satisfied, and that if some other theory were followed, the *Rosenstiel* divorce did not violate the public policy of New York. What exactly the public policy of New York was is another matter entirely, but if it was not stated clearly before *Rosenstiel*, it has been stated since in the form of Article 250 of the Domestic Relations Law, effective in 1967. That Article was a clumsy effort to adopt the provisions of the Uniform Divorce Recognition Act. Only Section 2 of the statute was enacted. Section 2 is a definition whereas Section 1 contains the actual recognition provisions.⁴³

The only ground left upon which the court based its decision in *Rosenstiel* was that it would recognize divorces whenever both parties by mutual agreement submitted to the foreign court. No valid reason or authority was given for that monumental holding.

The practical considerations were, of course, great as Judge Desmond recognized in a concurring opinion. Thousands of New Yorkers had obtained "quickie" divorces, and many had remarried. At the very least, recognition should have been denied for all future divorces obtained after the date of decision, but should have been granted to previous divorces. What really happened was that the Court of Appeals took it upon itself to disagree with the very strict New York divorce law, and to provide an escape therefrom. Once a court does that, it is begging for trouble.⁴⁴

New York courts in the future so construe Article 250 as to give it its

⁴²Some writers would object to a continuation of the domicile theory: *See, for instance, Mexican Bilateral Divorce—A Catalyst In Divorce Jurisdiction Theory?*, *supra*, n. 36. However, one benefit of the domicile theory is that it necessarily meets the "substantial-connection" test and provides a starting point for Griswold's theory of reciprocity.

⁴³*Mexican Bilateral Divorce—A Catalyst In Divorce Jurisdiction Theory?*, *supra*, n. 36; and Foster, *Recognition of Migratory Divorces: Rosenstiel v. Section 250*, 43 N.Y.U. L.R. 429 (May 1968).

⁴⁴"As long as the collective decision is that family stability must be preserved at the expense of individual choice, the power to maintain that stability must be within the control of the domiciliary state. States would be relinquishing too much control over the people living within their borders if they did not control the marital status. The decision of the New York Court of Appeals not only erodes this basic commitment to stability, but also represents a usurpation of power unwarranted by history. The judicial determination that a person has the right to evade his own state's law, regardless of the harshness of that law, must not be condoned." *Mexican Bilateral Divorce—A Catalyst in Divorce Jurisdiction Theory?*, *supra*, n. 36.

obvious meaning, and they should not recognize divorces which do not meet its standards. The law is an expression by the legislature which is the principal source of public policy — not the courts.

The action by the court in *Rosenstiel* was not only condonation, but was also the endorsement by the highest court in New York, of a most questionable practice, one that must have been started by a perceptive Juarez attorney bent on exploiting the eagerness of Americans to patronize divorce mills (e.g., Nevada, the Virgin Islands, Alabama and Idaho). That practice is now given a blessing in *Rosenstiel*. The fraud played on the courts with the municipal registry is not one of which the Mexicans complain, since such a registry makes sense in the case of a Mexican resident. It is really a fraud on society and the courts in New York. The Court of Appeals therefore endorses a fraud perpetrated on itself, since New York courts are still burdened with the more ponderous incidents of marriage such as child custody, support, alimony and partition, and determination of marital property while at the same time being deprived of any control over the status of the marriage itself.

The holding in *Rosenstiel* violated the rights which the Supreme Court of the United States declared were retained by the state of true domicile, even in a Full-Faith-and-Credit situation:

The State of domiciliary origin should not be bound by an unfounded, even if not collusive, recital in the record of a court of another State. As to the truth or existence of a fact, like that of domicile, upon which depends the power to exert judicial authority, a State not a party to the exertion of such judicial authority in another State but seriously affected by it has a right, when asserting its own unquestioned authority, to ascertain the truth on existence of that crucial fact.⁴⁵

It may perhaps even be unethical for an attorney to send a client to Juarez, when the attorney knows jurisdiction will be based on the fact that his client is to sign the municipal registry certifying that he is a resident of that place when in fact he is not.⁴⁶ The widespread use of the practice does not make it right.⁴⁷

⁴⁵*Williams v. North Carolina*, *supra*, n. 35, 325 U.S. at p. 230.

⁴⁶*In Re Sullivan*, 219 So.2d 346 (Ala. 1969); and *In Re Griffith*, 219 So.2d 357 (Ala. 1969), in which the Alabama Supreme Court upheld the disbarment of Alabama attorneys who obtained clients on referral, and submitted divorce petitions to which were attached affidavits stating that the client had *bona fide* residence, or that the client had the intention to obtain *bona fide* residence, when the attorney actually had reason to believe, or knew, that that was not the case. Alabama was a "quickie" divorce state where jurisdiction could attach if a party submitted an application stating that he or she had the intention of establishing Alabama residence. In *Sullivan* the court stated (at p. 355):

"The rule attempts no classification. It merely condemns a practice already contrary to law. It makes crystal clear that no attorney will, in uncontested divorce cases, be permitted to practice fraud upon a court, his client, and society as a whole by asserting facts of jurisdiction when the attorney knows, or reasonably should know, that no such jurisdictional facts exist."

⁴⁷*See Re Anonymous*, 80 N.Y.Supp.2d 75 (App. Div.) in which it was held to be

New York, and the Virgin Islands as represented by the United States Court of Appeals for the Third Circuit, should re-examine their acceptance of decrees coming out of Juarez. The decrees should be examined not only with the goal of arriving at a reasonable test for divorce recognition, or of interpreting existing recognition statutes, but those courts should also examine the Juarez decrees as they are seen within the framework of Mexican law.

unethical for New York attorneys to help secure Mexican mail-order or ex-parte divorces for New York domiciliaries.