Republic of the Philippines
Supreme Court
Baguio City

EN BANC

ABS-CBN CORPORATION AND JORGE CARIÑO, Petitioners, -versus- **DATU ANDAL AMPATUAN, JR.** Respondent.	**G.R. No. 227004** Present: GESMUNDO, *Chief Justice,* LEONEN, CAGUIOA, HERNANDO*, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO**, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.* **Promulgated:** April 25, 2023

x----------x

DECISION

LEONEN, *J.*:

"Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm

---

* On leave.
** On leave.

> of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts."
>
> - Associate Justice George A. Malcolm, *United States v. Bustos*[1]

> Then and now, we rule that the right of an accused to a fair trial is not incompatible to a free press. To be sure, responsible reporting enhances an accused's right to a fair trial for, as well pointed out, "a responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field[.]"
>
> - Chief Justice Reynato S. Puno, *People v. Teehankee, Jr.*[2]

Courts are not immune from public scrutiny. This is part of a democracy. However, owing to the nature of the court and its ability to respond to criticism in real time when an utterance tends to scandalize or disrespect the court, or where its administration of justice would be impeded, the court may subsequently punish the speaker. As a measure of self-preservation, the courts may exercise its inherent power to punish for contempt.[3]

In the past, this Court has attempted to define *sub judice*. Today, this definition requires further clarification given the context of public speech. A violation of the *sub judice* rule is considered "improper conduct" and is punishable by indirect contempt.[4] This Court's indirect contempt powers are broad and traverse all kinds of speech. Contemptuous speech is restricted for different reasons that affect the administration of our justice. Jurisprudence prescribes different standards for punishing contemptuous conduct of different participants in a judicial proceeding on a case-by-case basis. The lack of clear cut rules on the limits of the exercise of speech with clear and present danger to our administration of justice and well-defined boundaries as to when a speech can be punishable and when it is privileged leads to confusion among the litigants, their counsels, members of the bench and bar, the media, and the public. Thus, when these participants commit contemptuous conduct and are held accountable, they invoke other favorable standards, even when they do not apply.

Adding to the confusion in the rules, we must recognize that contempt can be committed on the internet, especially on social media. Speech on the internet can be weaponized to diminish public confidence in the courts and even threaten the lives of judges. With the rise of disinformation, it is time to rethink why we punish certain kinds of speech and recalibrate our rules to

---

1 37 Phil. 731, 741 (1918) [Per J. Malcolm, *En Banc*].
2 319 Phil. 128, 191 (1995) [Per J. Puno, Second Division].
3 *People v. Godoy*, 312 Phil. 977, 1003 (1995) [Per J. Regalado, *En Banc*].
4 RULES OF COURT, rule 71, sec. 3(d).

further protect our independence in our decisions and integrity as an institution.

This case is an opportunity to prescribe the proper conduct and define the limits of speech of participants in judicial proceedings and harmonize the rules when to impose the subsequent punishment of indirect contempt. This will also help us to recognize and be more vigilant against any attempt to weaponize our contempt powers to stifle dissent or suppress access to information on matters of public interest.

As in this case, the media has the right to give legitimate publicity on matters of public interest without prior restraint and subsequent punishment. Its broadcast and interview of a key witness in the Maguindanao Massacre during the pendency of the criminal cases is a matter of grave public concern. However, its duty to inform the public must be balanced with the court's interest in its administration of justice as embodied in the *sub judice* rule. The qualified privilege of a fair and true report of a judicial proceeding does not extend to a media interview of a potential witness regarding their personal knowledge. This is true when the statement of the witness is relevant in determining the guilt of an accused in a pending case, and the interview was done prior to their presentation in court.

This Court resolves the Petition for Review on *Certiorari*[5] filed by ABS-CBN Corporation (ABS-CBN) and Jorge Cariño (Cariño) assailing the Court of Appeals' Decision[6] and Resolution,[7] which affirmed the Regional Trial Court's refusal to dismiss[8] the indirect contempt petition filed against ABS-CBN and Cariño by Datu Andal Ampatuan, Jr. (Andal).

On November 23, 2009, dozens of armed persons stopped the convoy of Maguindanao gubernatorial candidate Esmael Mangudadatu on its way to file his Certificate of Candidacy. At least 57 died in what is now known as the Maguindanao Massacre.[9]

Criminal cases for murder were filed against 197 persons, including Andal and some members of his family.[10]

---

5 *Rollo*, pp. 30–68.

6 *Id.* at 8–19. The March 24, 2015 Decision in CA-G.R. SP No. 126985 was penned by Associate Justice Ramon A. Cruz with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison of the Second Division, Court of Appeals, Manila.

7 *Id.* at 21–22. The September 7, 2016 Resolution in CA-G.R. SP No. 126985 was penned by Associate Justice Ramon A. Cruz with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison of the Former Second Division, Court of Appeals, Manila.

8 *Id.* at 85–87. The June 8, 2012 and August 14, 2012 Orders in SP. PROC. Case No. Q-10-67543 were issued by Presiding Judge Afable E. Cajigal of Branch 96, Regional Trial Court, Quezon City.

9 *Id.* at 9–10.

10 *Id.*

On June 23, 2010, Cariño, a reporter for ABS-CBN, interviewed Lakmodin "Laks" Saliao (Saliao), which aired on TV Patrol World. In the interview, Saliao narrated that he was present when the Ampatuan family planned what became the Maguindanao Massacre. Saliao named the Ampatuan family members who were present at the meetings. He also discovered that he was about to be killed for knowing too much about the massacre.[11]

On July 16, 2010, Andal filed a Petition for Indirect Contempt[12] against Saliao, ABS-CBN, and Cariño. Andal claimed that Saliao's interview was "calculated to interfere with court proceedings to serve Saliao's own interest without passing through the scrutiny of the police of the National Prosecution Service if it indeed is to form part of or used as evidence in the murder cases aforesaid."[13] He averred that Saliao's interview fell under contemptuous conduct punishable under Rule 71, Section 1 of the Rules of Court.[14]

Andal prayed that Saliao, ABS-CBN, and Cariño be cited for indirect contempt for their respective participations in the interview and that they be prohibited from making further statements in any forum or media during the pendency of the Maguindanao Massacre cases.[15]

ABS-CBN and Cariño jointly filed their Answer with Counterclaims,[16] claiming that the Petition for Indirect Contempt failed to state a cause of action.[17] They cited *People v. Teehankee, Jr.*[18] in claiming that pretrial news about an ongoing criminal case is potentially prejudicial to an accused only in a trial by jury, not in a trial by judge.[19] They asserted that the broadcast of Saliao's interview was made in good faith and within the exercise of freedom of speech and of the press.[20] They prayed for the dismissal of the Petition and the grant of compulsory counterclaims of attorney's fees, litigation expenses, costs of suit, and moral damages.[21]

On February 14, 2011, ABS-CBN and Cariño filed a Motion for Preliminary Hearing on Affirmative Defense.[22]

In its July 15, 2011 Resolution,[23] the Regional Trial Court denied ABS-CBN and Cariño's motion. It directed the parties to file their respective

---

11 *Id.*
12 *Id.* at 127–133.
13 *Id.* at 128.
14 *Id.*
15 *Id.* at 131.
16 *Id.* at 134–143.
17 *Id.* at 139.
18 319 Phil. 128 (1995) [Per J. Puno, Second Division].
19 *Rollo*, p. 139.
20 *Id.* at 140.
21 *Id.* at 142.
22 *Id.* at 144–148.
23 *Id.* at 149–155. The July 15, 2011 Resolution in Civil Case No. Q-10-67534 was penned by Presiding

position papers instead of conducting a preliminary hearing. The trial court opined that this would result in the speedy disposition of cases and better serve the administration of justice.[24]

On August 31, 2011, ABS-CBN and Cariño filed a Motion for Reconsideration with Alternative Motion to Conduct Trial.[25] They asserted that this Court has repeatedly held that while the trial court has the discretion in conducting a hearing on affirmative defenses, for practicality's sake, it should not hastily deny a motion, especially if the ground raised as an affirmative defense is failure to state a cause of action.[26] ABS-CBN and Cariño maintained that assuming a preliminary hearing is improper, the indirect contempt charge against them should be tried on the merits and not merely based on position papers.[27]

On October 20, 2011, the Regional Trial Court granted[28] the Motion and reversed its July 15, 2011 Resolution. It thereafter set the preliminary hearing on ABS-CBN and Cariño's affirmative defenses.[29]

During the preliminary hearing, ABS-CBN and Cariño manifested that they will no longer present evidence relative to their affirmative defenses and submitted the same for resolution.[30]

In its June 8, 2012 Order,[31] the Regional Trial Court denied[32] the affirmative defenses proffered by ABS-CBN and Cariño, thus:

> The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice. *(Ginete v. CA, G.R. No. 127596, September 24, 1998).*
>
> Considering the afore[]quoted pronouncement of the Supreme Court, finding the Affirmative Defense bereft of merit, the same is hereby DENIED. Accordingly, let the initial trial proceed as previously scheduled on 14 June 2012.
>
> SO ORDERED.[33]

Judge Afable E. Cajigal of Branch 96, Regional Trial Court, Quezon City.

24 *Id.* at 154–155.

25 *Id.* at 156–166.

26 *Id.* at 160–163.

27 *Id.* at 163–165.

28 *Id.* at 167–168. The October 20, 2011 Resolution in Civil Case No. Q-10-67543 was penned by Presiding Judge Afable E. Cajigal of Branch 96, Regional Trial Court, Quezon City.

29 *Id.* at 168.

30 *Id.* at 85.

31 *Id.* at 85–86

32 *Id.*

33 *Id.* at 16.

On June 27, 2012, ABS-CBN and Cariño filed a Motion for Reconsideration[34] of the June 8, 2012 Order.

On August 14, 2012, the Regional Trial Court denied[35] ABS-CBN and Cariño's Motion for Reconsideration. It also denied the motion to declare Saliao in default since a summons has not yet been served on Saliao, and thus, the court had not yet acquired jurisdiction over him.

On October 16, 2012, ABS-CBN and Cariño filed a Petition for *Certiorari* and Prohibition (With Applications for Temporary Restraining Order and Writ of Preliminary Injunction)[36] before the Court of Appeals. They asserted that the June 8, 2012, and August 14, 2012 Orders of the Regional Trial Court were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.[37]

On March 24, 2015, the Court of Appeals dismissed[38] the Petition for *Certiorari*. It emphasized that the merits of the Petition for Indirect Contempt against ABS-CBN and Cariño were not at issue. Instead, the issue for resolution was whether the trial court committed grave abuse of discretion in refusing to dismiss the Petition for Indirect Contempt.[39]

The Court of Appeals also held that the trial court did not commit grave abuse of discretion in denying the affirmative defenses of ABS-CBN and Cariño:

> Public Respondent afforded [ABS-CBN and Cariño] all the avenues to prove their assertions. Public respondent even granted [ABS-CBN and Cariño] a preliminary hearing for their affirmative defense, even if it meant reversing his previous ruling when [ABS-CBN and Cariño] moved for reconsideration therefor. It was only when [ABS-CBN and Cariño] manifested, at this same preliminary hearing they earnestly implored for in the first place, that they will no longer present evidence on their affirmative defenses and that they submit the same for resolution that public respondent finally decided on it.[40]

The Court of Appeals also pointed out the inconsistencies in ABS-CBN and Cariño's arguments: ABS-CBN and Cariño stated that their ground for dismissal is purely legal, that is, failure to state a cause of action, thus, "only the four corners of the Petition need to be examined to determine whether the Petition is dismissible. [ABS-CBN and Cariño] do not need to present

---

34 *Id.* at 169–180.
35 *Id.* at 87.
36 *Id.* at 91–118.
37 *Id.* at 92–93.
38 *Id.* at 8–19.
39 *Id.* at 13.
40 *Id.* at 16.

extraneous evidence to show the Petition's insufficiency."[41] However, the Court of Appeals noted that in their Motion for Reconsideration with Alternative Motion to Conduct Trial, ABS-CBN and Cariño asked for a preliminary hearing on their affirmative defenses to present evidence and confront the witnesses against them.[42]

The Court of Appeals ruled that there was a need to proceed to trial where the parties could thoroughly ventilate their issues and arguments. It also stated that a petition for *certiorari* was not the proper remedy to assail the denial of a motion to dismiss.[43]

As for the application for injunctive relief, the Court of Appeals held that ABS-CBN and Cariño were unable to prove a clear and unmistakable right to the relief prayed for, nor did they present sufficient evidence to support their claim of extreme urgency and paramount necessity of the relief prayed for.[44]

Hence, ABS-CBN and Cariño filed the present Petition for Review on *Certiorari* before this Court.

In its January 9, 2017 Resolution,[45] this Court required respondent to file his comment. However, this Resolution was not served on respondent's representative, Bai Shahara Ampatuan. Thus, in a June 7, 2017 Resolution,[46] this Court required petitioners to provide the current address of respondent's representative.

Petitioners submitted their Compliance manifesting that they could not find the current address of respondent's representative. Instead, they informed this Court that Fortun and Santos Law Offices is respondent's counsel on record in the criminal proceedings before the Regional Trial Court of Quezon City, Branch 221.[47] On October 4, 2017, this Court ordered that the Resolution requiring respondents to comment on the Petition be sent to Fortun and Santos Law Offices.[48]

On January 3, 2018, Fortun and Santos Law Offices requested a copy of the case *rollo*.[49]

---

41 *Id.*
42 *Id.* at 16–17.
43 *Id.* at 17.
44 *Id.* at 17–18.
45 *Id.* at 697.
46 *Id.* at 699.
47 *Id.* at 700.
48 *Id.* at 705.
49 *Id.* at 707.

On January 12, 2018, Fortun and Santos Law Offices filed its Entry of Appearance and requested an extension of 15 days to file its comment to the Petition.[50]

On February 28, 2018, this Court noted the Entry of Appearance and granted the extension prayed for, with a warning that no further extension would be given.[51]

On June 25, 2018, respondent filed a Motion to Admit[52] the attached Comment[53] alleging that since the Resolution granting the extension was only received on May 3, 2018, which was beyond the period of extension prayed for, its lapse should not be attributed to respondent. In the interest of fairness and justice, respondent prayed that his Comment be admitted on record.[54]

On July 23, 2018, this Court granted respondent's Motion to Admit and noted his Comment.[55]

On August 2, 2018, petitioners filed a Motion for Leave to File Opposition to Motion to Admit Comment and Reply to Comment.[56] They allege that the Comment was filed 146 days from the lapse of the extended period without any explanation for the delay.[57] Thus, they pray that the Comment be expunged from the records.[58]

On October 15, 2018, this Court noted petitioners' Motion for Leave and the Reply to the Petition.[59]

Petitioners allege that the interview with Saliao is a fair and accurate report considered as privileged communication, and thus outside the scope of the *sub judice* rule.[60] They invoke *Fortun v. Quinsayas*,[61] where it was held that the Maguindanao Massacre was a matter of public interest and that the media has the right to publish these matters.[62] They argue that freedom of speech and of expression should prevail over the *sub judice* rule.[63] In sustaining the lower courts, they claim that there will be a chilling effect on petitioners' future reports on matters of public interest.[64]

---

50 *Id.* at 710–716.
51 *Id.* at 717.
52 *Id.* at 719–722.
53 *Id.* at 723–734.
54 *Id* at 720.
55 *Id.* at 735.
56 *Id.* at 737–751.
57 *Id.* at 740.
58 *Id.* at 741.
59 *Id.* at 788.
60 *Id.* at 42.
61 703 Phil. 578 (2013) [Per J. Carpio, Second Division].
62 *Rollo*, pp. 45–46.
63 *Id.* at 47.
64 *Id.* at 58–59.

Petitioners also argue that the Petition for Indirect Contempt should have been dismissed for its failure to state a cause of action. They argue that the ultimate facts of a cause of action for indirect contempt in relation to the *sub judice* rule are not alleged in the Petition.[65] Since contempt proceedings are akin to criminal proceedings, baseless petitions should be dismissed immediately to avoid unnecessary proceedings.[66]

Finally, petitioners insist that the Petition for Indirect Contempt should have been dismissed as it had been rendered moot when Saliao testified in open court. The matters discussed in the interview ceased to be *sub judice* after these were incorporated as evidence in the Maguindanao Massacre cases.[67] Since respondent has been able to cross-examine Saliao in open court, petitioners claim that the contempt charge lost its significance.[68]

Meanwhile, respondent contends that the trial court judge did not gravely abuse his discretion in issuing its decisions and orders. The judge gave petitioners ample opportunity to present evidence to prove their affirmative defenses, but they manifested that they would no longer present witnesses.[69] He asserts that the proper procedure is to go to trial to ventilate the indirect contempt case thoroughly.[70] Respondent assails petitioners' invocation of *Fortun* since they did not raise it before the trial court. Moreover, respondent asserts that the resolution of whether the trial judge acted with grave abuse of discretion requires factual determination, such as an inquiry into the procedure before the lower courts.[71]

Petitioners filed their Opposition to Motion to Admit Comment, praying for its non-admission because respondent filed the same 161 days from the extended period.[72]

In their Reply, petitioners clarified that they were assailing the trial court's refusal to dismiss the Petition despite its failure to state a cause of action.[73] Petitioners assert that the issue is a question of law that this Court may resolve in a Rule 45 petition.[74] Petitioners insist that they correctly relied on *Fortun* before the Court of Appeals as it was only promulgated during the pendency of their Petition for *Certiorari*, adding that the Court of Appeals should have taken judicial notice of the *Fortun* decision and granted their Petition.[75] Finally, petitioners assert that going to trial on a manifestly

---

65 *Id.* at 48.
66 *Id.* at 56.
67 *Id.* at 57.
68 *Id.* at 58.
69 *Id.* at 726–727.
70 *Id.* at 728–729.
71 *Id.* at 728.
72 *Id.* at 738.
73 *Id.* at 742.
74 *Id.* at 743–744.
75 *Id.* at 744–746.

deficient indirect contempt charge is inconsistent with justice and will have a chilling effect on media practitioners.[76]

The main issue for this Court's resolution is whether the lower courts committed grave abuse of discretion in failing to dismiss the Petition for Indirect Contempt against petitioners ABS-CBN Corporation and Jorge Cariño for failure to state a cause of action. Subsumed in this issue is the determination of the required allegations sufficient to allege a cause of action for this Court to punish for contempt. On the merits, we have to determine whether petitioner Jorge Cariño's interview of Lakmodin "Laks" Saliao, an alleged witness to the planning of the Maguindanao Massacre, and petitioner ABS-CBN Corporation's broadcast of the interview during the pendency of the criminal case violate the *sub judice* rule.

To resolve the Petition, we must examine the basis of this Court's inherent power to punish, who and what type of speech we can limit, and why we can punish certain kinds of speech as improper conduct. This Court's contempt power is a form of subsequent punishment that restricts the freedom of speech, of expression, and of the press. Hence, we should clearly delineate the limits of permissible restriction and harmonize the rules governing different types of speech of those involved in judicial proceedings, namely the litigants and their counsels, members of the bench and bar, the media, and the public.

In resolving the Petition, we lay down the framework of the decision and discuss this Court's contempt power and how it relates to the competing fundamental rights of the sovereign people for their participation in government and holding powers to account. Then, we reexamine the basis of this Court's contempt powers, define what constitutes contemptuous speech, trace their evolution in jurisprudence, and explain why we punish them. Afterwards, we discuss the limitations of this Court's contempt powers through the different kinds of qualified privilege recognized not to be punishable. Next, we discuss the foundations of our doctrines in free speech and why the current developments in jurisprudence challenge our current framework. Finally, we will harmonize the different standards involved in the classes of speech regulated by the court and balance them with the different interests involved in these types of speech.

We grant the Petition.

I

The power to punish for contempt is inherent in the exercise of judicial

---

[76] *Id.* at 746–747.

power under Article VIII, Section 1 of the 1987 Constitution.[77] It is vested in all courts from the moment of their creation.[78]

The power to punish for contempt is indispensable to the administration of justice.[79] It is an inherent power of courts "essential to the execution of their powers and to the maintenance of their authority[.]"[80] It has a twofold purpose: (1) to protect the dignity, authority, and administration of justice through punishment of those who disrespect or seek to put them in disrepute, and (2) to compel the performance of an act or duty which one refuses to perform.[81] It may also be exercised even without a pending case.[82] Described to be "drastic and extraordinary in its nature,"[83] its exercise must be restrained and judicious and "used only in flagrant cases and with the utmost forbearance."[84]

Contempt of court is defined as:

> "[D]efiance of the authority, justice[,] or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation. It is defined as disobedience to the Court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[85] (Citations omitted)

The Rules of Court distinguish direct from indirect contempt.[86] Rule 71, Section 1 provides when a party is guilty of direct contempt:

> SECTION 1. *Direct contempt punished summarily.* – A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment

---

77 CONST., art. VIII, sec. 1 provides:
SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

78 *In re Amzi B. Kelly*, 35 Phil. 944, 950 (1916) [Per J. Johnson, *En Banc*].

79 *Id.*

80 *Id.*

81 *Perkins v. Director of Prisons*, 58 Phil. 271, 276 (1933) [Per J. Abad Santos, *En Banc*].

82 *In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 180 (1995) [Per C.J. Narvasa, *En Banc*].

83 *People v. Estenzo*, 159-A Phil. 483, 489 (1975) [Per J. Fernando, Second Division].

84 J. Fernando, Concurring and Dissenting Opinion, in *Aquino, Jr. v. Enrile*, 158-A Phil. 1, 111 (1974) [Per C.J. Makalintal, *En Banc*].

85 *Regalado v. Go*, 543 Phil. 578, 590 (2007) [Per J. Chico-Nazario, Third Division].

86 RULES OF COURT, rule 71, secs. 1, 3.

> not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court.

Direct contempt is committed in *facie curiae* or "in the face of the court"[87] which may occur within or outside judicial proceedings. Any conduct "directed against or assailing the authority and dignity of the court or a judge, or in the doing of a forbidden act"[88] is direct contempt and may be punishable summarily without hearing. Declaring a person in direct contempt is summary and requires no other proof to establish the contumacious act that the judge personally witnessed.[89]

On the other hand, indirect contempt is limited in scope and application as provided in Rule 71, Section 3 of the Rules of Court:

> SECTION 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;
>
> (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
>
> (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
>
> (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
>
> (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
>
> (f) Failure to obey a subpoena duly served;
>
> (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

Compared to direct contempt, indirect contempt is committed "out of

---

87 *Medina v. Rivera*, 66 Phil. 151, 155–156 (1938) [Per J. Conception, *En Banc*].

88 *Encinas v. National Bookstore, Inc.*, 502 Phil. 800, 801 (2005) [Per J. Tinga, Second Division], *citing Silva v. Lee Jr.*, 251 Phil. 464 (1989) [Per J. Paras, *En Banc*].

89 *Galangi v. Judge Abad*, 185 Phil. 227, 231 (1980) [Per J. Teehankee, First Division].

the presence of the court."[90] These acts are also beyond the personal knowledge or perception of a judge.[91] A separate proceeding is necessary to punish indirect contempt, which may either be instituted *motu proprio* by a judge or by a verified petition, with the respondent having the opportunity to be heard.[92]

Contempt proceedings may either be criminal or civil in nature depending on the purpose for which the court is exercising its inherent power:

> *A. As to the Nature of the Offense.*
>
> A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the other hand, civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.
>
> A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court.
>
> *It has further been stated that intent is a necessary element in criminal contempt, and that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it.* On the contrary, there is authority indicating that since the purpose of civil contempt proceedings is remedial, the defendant's intent in committing the contempt is immaterial. Hence, good faith or the absence of intent to violate the court's order is not a defense in civil contempt.
>
> *B. As to the Purpose for which the Power is Exercised*
>
> A major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide

---

90 *Ligon v. RTC Branch 56 at Makati City, et al.*, 728 Phil. 131, 145 (2014) [Per J. Perlas-Bernabe, Second Division].

91 *Galangi v. Abad*, 185 Phil. 227, 232 (1980) [Per J. Teehankee, First Division].

92 RULES OF COURT, rule 71, sec. 4 provides:
SECTION 4. *How proceedings commenced.* — Proceedings for indirect contempt may be initiated *motu propio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court; private parties have little, if any, interest in the proceedings for punishment. Conversely, if the contempt consists in the refusal of a person to do an act that the court has ordered him to do for the benefit or advantage of a party to an action pending before the court, and the contemnor is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court; the party in whose favor that judgment was rendered is the real party in interest in the proceedings. Civil contempt proceedings look only to the future. And it is said that in civil contempt proceedings, the contemnor must be in a position to purge himself.

C. As to the Character of the Contempt Proceeding

It has been said that the *real character of the proceedings is to be determined by the relief sought, or the dominant purpose, and the proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial.*

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. *In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings.* So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the *accused is to be afforded many of the protections provided in regular criminal cases*, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience. The rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings. It has been held that a proceeding for contempt to enforce a remedy in a civil action is a proceeding in that action. Accordingly, where there has been a violation of a court order in a civil action, it is not necessary to docket an independent action in contempt or proceed in an independent prosecution to enforce the order. It has been

> held, however, that while the proceeding is auxiliary to the main case in that it proceeds out of the original case, it is essentially a new and independent proceeding in that it involves new issues and must be initiated by the issuance and service of new process.
>
> In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.
>
> Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. In proceedings for civil contempt, there is no presumption, although the burden of proof is on the complainant, and while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence. It has been said that the burden of proof in a civil contempt proceeding lies somewhere between the criminal "reasonable doubt" burden and the civil "fair preponderance" burden.[93] (Emphasis supplied, citations omitted)

The power to punish for contempt "should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise."[94]

However, attacks against a judge's personal security and safety relating to the exercise of their judicial functions are also directed against the "court as an organ of the administration of justice."[95] Contempt in these cases extends to this Court, as the protector of the Judiciary, who may punish the personal attack in lieu of the judge. This Court's power to protect judges and officers of the Court is rooted in our constitutional supervision of members of the judicial system.[96] This includes the duty to uphold not only the dignity and authority of this Court as an institution but also the duty to protect the personal safety and security of our judges, lawyers, and other personnel of this Court.

II

The premise of our republican democracy is that all power emanates from the people.[97] Public officers "must, at all times be accountable to the people" because "public office is a public trust."[98] To give effect to this mandate, a full discussion of public affairs is indispensable.[99] The Judiciary is not exempt from public scrutiny because our administration of justice is a

---

93 *People v. Godoy*, 312 Phil. 977, 999–1002 (1995) [Per J. Regalado, *En Banc*].

94 *People v. Judge Estenzo*, 159-A Phil. 483, 489 (1975) [Per J. Fernando, Second Division].

95 J. Moran, Dissenting Opinion in *People v. Alarcon*, 69 Phil. 265, 278 (1939) [Per J. Laurel, *En Banc*].

96 CONST. art. VIII, sec. 6 provides:
SECTION 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

97 CONST. art. II, sec. 1.

98 CONST. art. XI, sec. 1.

99 CONST. art. XI, sec. 1.

matter of public interest. This Court's inherent contempt powers should not hinder fundamental freedoms that give meaning to our democracy.

Article III, Section 4 of the 1987 Constitution provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."

The freedoms of speech, of expression, and of the press are distinct but complementary freedoms occupying preferred status in the hierarchy of rights.[100] They are exercised to mobilize people based on truth or an understanding of what the circumstances are. Following these fundamental freedoms are the right to petition the government for redress of grievances and its cognate rights to freedom of assembly and association.

Freedom of expression is the "means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social and political decision-making, and of maintaining the balance between stability and change."[101] The exercise of one's self by an individual alone or in association with those of similar interests is the least limitable right.[102] It guarantees the inherent sovereignty of a person to be human and the "dignity of individual thought."[103]

The external expression of a thought or idea by way of words, or some other action, is bound to clash with competing ideas and interests.

Freedoms of speech and of the press are the most contentious liberties. These freedoms are guaranteed to keep the power surrendered to government in check, and these freedoms are powerful weapons of accountability.[104] Thus, freedoms of speech and press are "[liberties] to discuss publicly and truthfully any matter of public interest without censorship or punishment" to keep public debates "uninhibited, robust, and wide-open."[105]

A free press is indispensable for a democracy to work. The media has the right to publish freely, with access to information and circulation of its work to the public.[106] The media plays a crucial role in keeping the citizens

---

100 CONST. art. XI, sec. 1.

101 *ABS-CBN Broadcasting Corp. v. Commission on Elections*, 380 Phil. 780, 792 (2000) [Per J. Panganiban, *En Banc*].

102 *Gonzales v. Commission on Elections*, 137 Phil. 471, 492–493 (1969) [Per J. Fernando, *En Banc*].

103 J. Leonen, Separate Concurring Opinion in *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560, 614 (2019) [Per J. J. Reyes, Jr. *En Banc*], *citing* JOSEPH J. HEMMER, JR., COMMUNICATION LAW: THE SUPREME COURT AND THE FIRST AMENDMENT 3 (2000).

104 *United States v. Bustos*, 37 Phil. 731, 740–741 (1918) [Per J. Malcolm, *En Banc*].

105 *Gonzales v. Commission on Elections*, 137 Phil. 471, 492 (1969) [Per J. Fernando, *En Banc*].

106 *Chavez v. Gonzales*, 569 Phil. 155, 202 (2008) [Per C.J. Puno, *En Banc*].

informed and the government accountable by publicizing matters of public concern.[107]

We have given the "broadest scope"[108] and "widest latitude"[109] to these freedoms:

> The primacy, the high estate accorded freedom of expression is of course a fundamental postulate of our constitutional system. No law shall be passed abridging the freedom of speech or of the press . . . What does it embrace? At the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship or punishment. *There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.*
>
> The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guaranty. It represents a profound commitment to the principle that debate of public issue should be uninhibited, robust, and wide-open. It is not going too far, according to another American decision, to view the function of free speech as inviting dispute. "It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."
>
> Freedom of speech and of the press thus means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, to take refuge in the existing climate of opinion on any matter of public consequence. So atrophied, the right becomes meaningless. The right belongs as well, if not more, for those who question, who do not conform, who differ. To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.[110] (Emphasis supplied, citations omitted)

These freedoms are the heart of our democracy, working in conjunction with each other. One cannot be exercised without the other. It is not enough that the exercise of these fundamental liberties is free and unencumbered. It should also be meaningful. The right to public information gives significance to the exercise of these fundamental freedoms.

---

107 *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 433 (2008) [Per J. Reyes, *En Banc*].

108 *Chavez v. Gonzales*, 569 Phil. 155, 197 (2008) [Per C.J. Puno, *En Banc*].

109 *Id.*

110 *In re Gonzales v. Commission on Elections*, 137 Phil. 471, 492–493 (1969) [Per J. Fernando, *En Banc*].

The Constitution recognizes the right of people to information on matters of public concern.[111] This right is a new addition to the 1973 Constitution that was not present in the 1935 Constitution. *Baldoza v. Dimaano*[112] explains that this addition shows the crucial role of free exchange of information in a democracy:

> The New Constitution now expressly recognizes that the people are entitled to information on matters of public concern and thus are expressly granted access to official records, as well as documents of official acts, or transactions, or decisions, subject to such limitations imposed by law. *The incorporation of this right in the Constitution is a recognition of the fundamental role of free exchange of information in a democracy.* There can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times. As has been aptly observed: "*Maintaining the flow of such information depends on protection for both its acquisition and its dissemination since, if either process is interrupted, the flow inevitably ceases.*" However, restrictions on access to certain records may be imposed by law. Thus, access restrictions imposed to control civil insurrection have been permitted upon a showing of immediate and impending danger that renders ordinary means of control inadequate to maintain order.[113] (Emphasis supplied, citations omitted)

This right gives meaning to the people's exercise of their freedom of speech. It allows them to intelligently participate in decision making, choosing their leaders and making them accountable.[114] Access to information gives people a better perspective on the issues affecting the country.[115]

There are recognized exceptions to the right to information and access to official records. These are "(1) national security matters and intelligence information, (2) trade secrets and banking transactions, (3) criminal matters, and (4) other confidential information."[116] Nevertheless, the right to public information empowers citizens:

> The right to information is an essential premise of a meaningful right to speech and expression. But this is not to say that the right to information is merely an adjunct of and therefore restricted in application by the exercise of the freedoms of speech and of the press. Far from it. *The right to information goes hand-in-hand with the constitutional policies of full public*

---

[111] CONST., art. III, sec. 7 provides:
SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[112] 163 Phil. 15 (1976) [Per J. Antonio, Second Division].

[113] *Id.* at 20–21.

[114] *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 939 (2017) [Per J. Leonen, Second Division].

[115] *Legaspi v. Civil Service Commission*, 234 Phil. 521, 534 (1987) [Per J. Cortes, *En Banc*].

[116] *Chavez v. Presidential Commission on Good Governance*, 360 Phil. 133, 160 (1998) [Per J. Panganiban, First Division].

> *disclosure and honesty in the public service. It is meant to enhance the widening role of the citizenry in governmental decision-making as well in checking abuse in government.* [117] (Emphasis supplied, citations omitted)

The press gives life to the public's right to public information. Mass media is the "chief source of information on current affairs"[118] and the "most powerful vehicle of opinion on public questions."[119] The press helps the public to be critical in their participation in matters that affect them.

At the same time, the internet and social media have become the dominant venue in discussions of public affairs. In a concurring opinion in *Rappler, Inc. v. Bautista*,[120] the right to information extends to all possible channels of expression, including the internet and social media:

> Article II, Section 24 of the Constitution states that "[t]he State recognizes the vital role of communication and information in nation building." Article III, Section 7 provides that "[t]he right of the people to information on matters of public concern shall be recognized." These provisions create a constitutional framework of opening all possible and available channels for expression to ensure that information on public matters have the widest reach. In this age of information technology, media has expanded from traditional print, radio, and television. Internet has sped data gathering and multiplied the types of output produced. The evolution of multimedia introduced packaging data into compact packets such as "infographics" and "memes." Many from this generation no longer listen to the radio or watch television, and instead are more used to live streaming videos online on their cellular phones or laptops. Social media newsfeeds allow for real-time posting of video excerpts or "screen caps," and engaging comments and reactions that stimulate public discussions on important public matters such as elections. Article IX-C, Section 4 on the Commission on Elections' power of supervision or regulation of media, communication, or information during election period is situated within this context. The Commission on Elections' power of supervision and regulation over media during election period should not be exercised in a way that constricts avenues for public discourse.[121]

III

The freedoms of speech, of expression, and of the press, while preferred civil liberties, are not absolute.[122] Judicial independence is a compelling interest in a democracy, as important as the constitutional guarantees of freedom of speech, of expression, and of the press.[123] The administration of

---

117 *Valmonte v. Belmonte*, 252 Phil. 264, 271–272 (1989) [Per J. Cortes, *En Banc*].
118 *Chavez v. Gonzales*, 569 Phil. 155, 201 (2008) [Per C.J. Puno, *En Banc*].
119 *Id.*
120 783 Phil 902 (2016) [Per J. Carpio, *En Banc*].
121 J. Leonen, Concurring Opinion in *Rappler, Inc. v. Bautista*, 783 Phil 902, 926 (2016) [Per J. Carpio, *En Banc*].
122 J. Corona, Separate Opinion in *Soriano v. Laguardia*, 605 Phil. 43, 124 (2009) [Per J. Velasco, Jr., *En Banc*].
123 *In re Lozano and Quevedo*, 54 Phil. 801, 807 (1930) [Per J. Malcolm, *En Banc*].

justice is a vital public interest that allows certain permissible restrictions in the exercise of these fundamental freedoms.

This Court has been entrusted the power to settle actual controversies and correct grave abuse of discretion, and put them to rest.[124] As guardians, protectors, and final arbiters of the rule of law, people rely on us "with substantial certainty [and] encourages the resolution of disputes in courtrooms rather than on the streets."[125] This democratic order is dependent on the maintenance of the public's confidence in judicial independence both in its decisions and in the institution as a whole:

> Under the Judiciary's unique circumstances, independence encompasses the idea that individual judges can freely exercise their mandate to resolve justiciable disputes, while the judicial branch, as a whole, should work in the discharge of its constitutional functions free of restraints and influence from the other branches, save only for those imposed by the Constitution itself. Thus, judicial independence can be "broken down into two distinct concepts: *decisional independence and institutional independence*." *Decisional independence "refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law*." On the other hand, institutional independence "describes the separation of the judicial branch from the executive and legislative branches of government." Simply put, *institutional independence refers to the "collective independence of the judiciary as a body*."
>
> In the case *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*, the Court delineated the distinctions between the two concepts of judicial independence in the following manner:
>
> > One concept is individual judicial independence, which focuses on each particular judge and seeks to insure his or her ability to decide cases with autonomy within the constraints of the law. A judge has this kind of independence when he can do his job without having to hear — or at least without having to take it seriously if he does hear — criticisms of his personal morality and fitness for judicial office. The second concept is institutional judicial independence. It focuses on the independence of the judiciary as a branch of government and protects judges as a class.
> >
> > A truly independent judiciary is possible only when both concepts of independence are preserved — *wherein public confidence in the competence and integrity of the judiciary is maintained, and the public accepts the legitimacy of judicial authority. An erosion of this confidence threatens the maintenance of an independent Third Estate*.

---

[124] CONST. art. VIII, sec. 1.

[125] *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 435 (2008) [Per J. Reyes, *En Banc*].

> Recognizing the vital role that the Judiciary plays in our system of government as the sole repository of judicial power, with the power to determine whether any act of any branch or instrumentality of the government is attended with grave abuse of discretion, no less than the Constitution provides a number of safeguards to ensure that judicial independence is protected and maintained.[126] (Emphasis supplied, citations omitted)

The maintenance of public confidence in judicial independence is necessary for the legitimacy of judicial authority.[127] It is the "indispensable means for enforcing the supremacy of the Constitution and the rule of law."[128]

Courts exercise inherent contempt powers by restricting speech that tends to bring the court into disrespect or scandalize the court, or where there is clear and present danger that would impede the administration of justice. The utterance of this contemptuous speech affects judicial independence by destroying both its decisional and institutional aspects, thus eroding public confidence in the competence and integrity of the courts.

The court's inherent power to punish contemptuous speech for indirect contempt is a form of subsequent punishment. Its exercise is a content-based restriction because the "communicative impact of the speech"[129] is the subject of the regulation. Essentially, courts punish for contempt because the content of the speech decreases the public's confidence in judicial independence. Strict scrutiny is employed in the permissibility of restriction of speech that is based on content. Under this test, restrictions on the legitimate exercise of citizens' rights are minimal and only to the extent necessary to achieve the State's compelling interest.[130]

Restricting speech that cannot be said against the courts should be strictly scrutinized. The courts' contempt powers should be narrowly tailored to the communicative impact of the restricted speech that should be prevented. As will be discussed below, courts exercise contempt powers to ensure the decisional and institutional aspects of judicial independence. Maintaining these aspects of independence is crucial in the administration of justice.

It must not be forgotten that our duty to protect and enforce constitutional rights through the promulgation of rules is paramount.[131] The courts cannot be the first violator of fundamental and cherished liberties of

---

[126] *Re: COA Opinion on Computation of Appraised Value of Properties Purchased by the Retired Chief/ Assoc. Justices of the SC*, 692 Phil. 147, 156–157 (2012) [*Per Curiam, En Banc*].

[127] *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 436 (2008) [Per J. Reyes, *En Banc*].

[128] *In re Proceedings for Disciplinary Action Against Atty. Wenceslao Laureta, and of Contempt Proceedings Against Eva Maravilla-Ilustre*, 232 Phil. 353, 386 (1987) [*Per Curiam, En Banc*].

[129] C.J. Puno, Dissenting Opinion in *Soriano v. Laguardia*, 605 Phil. 43, 162 (2009) [Per J. Velasco, Jr., *En Banc*].

[130] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1116 (2017) [Per J. Perlas-Bernabe, *En Banc*].

[131] CONST., art. VIII, sec. 5, par. 5.

speech and the press. In protecting our administration of justice and defending our integrity and independence, we must carefully lay down the basis of why we can punish certain types of speech and narrowly define the restrictions on speech based on perceived instances of how it constitutes "clear and present danger in our administration of justice."[132]

This is not to say that there is only one test in determining the permissibility of our subsequent punishment of contemptuous speech against the courts. Different types of speech enjoy varying levels of protection, such that we have applied different tests to evaluate the permissibility of speech restrictions.[133] *Chavez v. Gonzales*[134] instructs that the assessment of the validity of restrictions on speech should be evaluated on a case-by-case basis.[135] It is not necessary that only a singular test or standard be used in our assessment.[136]

The courts restrain contemptuous speech by way of punishment for indirect contempt under Rule 71, Section 3(d) of the Rules of Court. These types of speech, which are considered improper conduct, include (1) violation of the *sub judice* rule;[137] (2) degrading comments or criticisms that put the courts in disrepute;[138] and (3) publications violating the confidentiality of administrative proceedings.[139]

Before dissecting the jurisprudential elements of our contempt powers, we have to understand the competing public interests involved in our administration of justice and in criticisms of the courts. This is necessary to understand the basis for the courts to restrict certain conduct and subsequently punish them.

---

132 *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 649 (2014) [Per J. Mendoza, Third Division].

133 *Chavez v. Gonzales*, 569 Phil. 155, 200–201 (2008) [Per C.J. Puno, *En Banc*].

134 *Id.*

135 *Id.* at 203.

136 *Cabansag v. Fernandez*, 102 Phil. 152, 164–165 (1957) [Per J. Bautista Angelo, First Division].

137 *Romero II v. Estrada*, 602 Phil. 312 (2009) [Per J. Velasco, *En Banc*]; *Marantan v. Diokno*, 726 Phil. 642 (2014) [Per J. Mendoza, Third Division]; *Re: Republic v. Sereno*, 836 Phil. 166 (2018) [Per J. Tijam, *En Banc*]; *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391 (2008) [Per J. Reyes, R.T., *En Banc*]; J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512 (2010) [Per J. Abad, *En Banc*].

138 *In re Kelly*, 35 Phil. 944 (1916) [Per J. Johnson, *En Banc*]; *In re Vicente Sotto,* 82 Phil. 595, 600 (1949) [Per J. Feria, *En Banc*]; *In re Published Alleged Threats Against Members of the Court in the Plunder Law Case Hurled by Atty. Leonard De Vera*, 434 Phil. 503 (2002) [Per J. Kapunan, *En Banc*]; *In re Jurado*, 313 Phil. 119 (1995) [Per J. Narvasa, *En Banc*]; *Cabansag v. Fernandez*, 102 Phil. 152 (1957) [Per J. Bautista Angelo, First Division]; *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*]; *In re Almacen v. Yaptinchay,* 142 Phil. 353 (1970) [Per J. Ruiz Castro, First Division]; *People v. Godoy*, 312 Phil. 977 (1995) [Per J. Regalado, *En Banc*]; *Zaldivar v. Sandiganbayan*, 248 Phil. 542, 554–555 (1988) [*Per Curiam, En Banc*]; *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391 (2008) [Per J. Reyes, R.T., *En Banc*]; *Complaint of Mr. Aurelio Indencia Arrienda*, 499 Phil. 1 (2005) [Per J. Corona; *En Banc*]; *Re: News Report of Mr. Jomar Canlas in the Manila Times*, A.M. No. 16-03-10-SC, October 15, 2019 [Per J. Carpio, *En Banc*].

139 *In re Lozano and Quevedo*, 54 Phil. 801 (1930) [J. Malcolm, *En Banc*]; *In re Abistado*, 57 Phil. 669 (1932) [Per J. Vickers, *En Banc*]; *Roque Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 933 (2017) [Per J. Leonen, Second Division]; *Fortun v. Quinsayas*, 703 Phil. 578 (2013) [Per J. Carpio, Second Division]; *Palad v. Solis*, 796 Phil. 216 (2016) [Per J. Peralta, Third Division].

III (A)

Our judicial system is founded on the principle of open justice, where "justice should not only be done but should manifestly and undoubtedly be seen to be done."[140] A trial that is open to the public's view has a prophylactic effect and an outlet to express public outrage against an injustice of shocking nature and consequence:

> When a shocking crime occurs, a community reaction of outrage and public protest often follows . . . . *Thereafter, the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility and emotion.* Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated and may manifest themselves in some form of vengeful "self help," as indeed they did regularly in the activities of vigilante "committees" on our frontiers. . . It is not enough to say that results will alone will satiate the natural community desire for "satisfaction." A result considered untoward may undermine public confidence, and where trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted. To work effectively, it is important that society's criminal process "satisfy the appearance of justice" . . . and the appearance of justice can best be provided by allowing people to observe it.[141] (Emphasis supplied)

Courts are generally open to the public's view since these encourage the conscientious performance of duties of all the participants in a judicial proceeding, from the judge, the counsels, and their witnesses.[142] A public trial is not a publicized trial:

> A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings.[143]

The administration of justice is a matter of public concern to which the public has access and the right to information. It is also an appropriate subject of public and proper comment:[144]

---

[140] Jason Bosland and Jonathan Gill, *The Principle of Open Justice and the Judicial Duty to Give Public Reasons*, 38 Melbourne U. L.R. 482, 1 (2014).

[141] J. Puno, Dissenting Opinion in *Perez v. Estrada*, 412 Phil. 686, 738 (2001) [Per J. Vitug, *En Banc*].

[142] J. Kapunan, Concurring Opinion in *Perez v. Estrada,* 412 Phil. 686, 716 (2001) [Per J. Vitug, *En Banc*].

[143] *Perez v. Estrada*, 412 Phil. 686, 706–707 (2001) [Per J. Vitug, *En Banc*].

[144] *United States v. Bustos*, 37 Phil. 731, 741 (1918) [Per J. Malcolm, *En Banc*].

> *Decisions and opinions of a court are of course matters of public concern or interest for these are the authorized expositions and interpretations of the laws, binding upon all citizens, of which every citizen is charged with knowledge.* Justice thus requires that all should have free access to the opinions of judges and justices, and it would be against sound public policy to prevent, suppress or keep the earliest knowledge of these from the public. Thus, in *Lantaco Sr. et al. v. Judge Llamas*, this Court found a judge to have committed grave abuse of discretion in refusing to furnish Lantaco et al. a copy of his decision in a criminal case of which they were even the therein private complainants, the decision being "already part of the public record which the citizen has a right to scrutinize."
>
> *Unlike court orders and decisions, however, pleadings and other documents filed by parties to a case need not be matters of public concern or interest. For they are filed for the purpose of establishing the basis upon which the court may issue an order or a judgment affecting their rights and interests.*
>
> In thus determining which part or all of the records of a case may be accessed to, the purpose for which the parties filed them is to be considered.[145] (Emphasis supplied, citations omitted)

Generally, the public's interest in judicial proceedings is limited to whether judges perform their public duties and not the actual contents of the pleadings filed therein, nor the procedural incidents of a pending case.[146]

III (B)

Judicial independence does not exempt the courts from public scrutiny. In *United States v. Bustos:*[147]

> The interest of society and the maintenance of good government demand a full discussion of public affairs. *Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience.* A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorized defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official, or set of officials, to the Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy.
>
> *The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment.* If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will

---

[145] *Hilado v. Judge Reyes*, 528 Phil. 703, 718–719 (2006) [Per J. Carpio-Morales, Third Division].
[146] *Barretto v. Philippine Publishing Company*, 30 Phil. 88, 94–95 (1915) [Per J. Moreland, *En Banc*].
[147] 37 Phil. 731 (1918) [Per J. Malcolm, *En Banc*].

> be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official. On the contrary, it is a duty which every one owes to society or to the State to assist in the investigation of any alleged misconduct. It is further the duty of all know of any official dereliction on the part of a magistrate or the wrongful act of any public officer to bring the facts to the notice of those whose duty it is to inquire into and punish them. In the words of Mr. Justice Gayner, who contributed so largely to the law of libel. "The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism."[148] (Emphasis supplied, citations omitted)

Constructive criticism is necessary in our reflection and resolution of cases. Debates on public issues should be encouraged even if they include "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[149] These help us make our decisions more responsive to addressing inequalities and injustice in society. We cannot censor legitimate criticisms of our decisions' propriety and public conduct. No justice or judge should be "too thin-skinned with reference to comment upon [their] official acts."[150]

Justices and judges are public officers subject to constant public scrutiny,[151] and stringent and exacting standards of a judicial office bind them.[152] We are guided by strict propriety and decorum at all times and activities.[153]

It must be remembered that our inherent power to punish for contempt is not prior restraint but a permissible subsequent punishment for those who abuse their constitutional freedoms of speech, of expression, and of the press. Courts must exercise their contempt power within the context of these constitutional guarantees. Before punishing contemptuous speech, courts must remember the public interests in the administration of justice. Justices and judges must carefully weigh the public interest against the purpose for punishing the act and consider all the relevant circumstances in the case.[154]

Having explored the public interests involved in relation to the functions of the Judiciary, we now examine the purpose of the punishment of contempt when the policies of the court for its administration of justice have been violated.

---

148 *United States v. Bustos*, 37 Phil. 731, 740–741 (1918) [Per J. Malcolm, *En Banc*].

149 *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

150 *United States v. Bustos*, 37 Phil. 731, 740–741 (1918) [Per J. Malcolm, *En Banc*].

151 NEW CODE OF JUD. CONDUCT, Canon 4, sec. 2.

152 *Lorenzana v. Austria*, 731 Phil. 82 (2014), 101–103 [Per J. Brion, Second Division].

153 *Office of the Court Administrator v. Atillo, Jr.*, A.M. No. RTJ-21-018, September 29, 2021 [Per J. Inting, Second Division].

154 *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 953–954 (2017) [Per J. Leonen, Second Division].

IV

The *sub judice* rule generally restricts "comments and disclosures pertaining to judicial proceedings."[155] Discussion on the merits of a pending case is generally prohibited. This includes the contents of the actual pleadings filed, comments on the credibility of witnesses, assessment of the evidence offered, the relevance of the evidence presented, and any other matter that is presented in the trial for a judge's appreciation.[156]

A violation of the rule on *sub judice* is punishable as indirect contempt under Rule 71, Section 3(d) of the Rules of Court.[157] It is treated as "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice."

Canon II, Section 19 of the Code of Professional Responsibility and Accountability defines the *sub judice* rule as regards lawyers:

> SECTION 19. *Sub-judice rule.* — A lawyer shall not use any forum or medium to comment or publicize opinion pertaining to a pending proceeding before any court, tribunal, or other government agency that may:
>
> (a) cause a pre-judgment, or
> (b) sway public perception so as to impede, obstruct, or influence the decision of such court, tribunal, or other government agency, or which tends to tarnish the court's or tribunal's integrity, or
> (c) impute improper motives against any of its members, or
> (d) create a widespread perception of guilt or innocence before a final decision.

During the deliberations on this case, Associate Justice Maria Filomena Singh (Associate Justice Singh) noted that Canon II, Section 19 of the Code of Professional Responsibility and Accountability is formulated to complement the contempt power of this Court.

Court proceedings are matters of public discussion.[158] Free speech includes the right to know and discuss judicial proceedings, but excluded from its guaranty are statements that are aimed to influence judges in deciding a pending case.[159]

---

155 *Romero II v. Estrada,* 602 Phil 312, 319 (2009) [Per J. Velasco, *En Banc*].

156 J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 654–655 (2010) [Per J. Abad, *En Banc*].

157 *Id.* at 652.

158 *Roque Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 933 (2017) [Per J. Leonen, Second Division].

159 *In re Published Alleged Threats Against Members of the Court in the Plunder Law Case Hurled by Atty. Leonard De Vera*, 434 Phil. 503, 508 (2002) [Per J. Kapunan, *En Banc*].

Technological advancements increased mass media's influence on public and government affairs.[160] Justices, judges, lawyers, and witnesses may be exposed to pressures outside judicial proceedings when cases are discussed freely and publicly in mass media due to their pervasive presence in everyday life. This is especially true in the age of the internet and social media.

Publicity of judicial proceedings is restricted because it may endanger the fairness of trial:

> Witnesses and judges may very well be men and women of fortitude, able to thrive in hardy climate, with every reason to presume firmness of mind and resolute endurance, but it must also be conceded that "television can work profound changes in the behavior of the people it focuses on." *Even while it may be difficult to quantify the influence, or pressure that media can bring to bear on them directly and through the shaping of public opinion, it is a fact, nonetheless, that, indeed, it does so in so many ways and in varying degrees.* The conscious or unconscious effect that such a coverage may have on the testimony of witnesses and the decision of judges cannot be evaluated but, it can likewise be said, it is not at all unlikely for a vote of guilt or innocence to yield to it. It might be farcical to build around them an impregnable armor against the influence of the most powerful media of public opinion.
>
> To say that actual prejudice should first be present would leave to near nirvana the subtle threats to justice that a disturbance of the mind so indispensable to the calm and deliberate dispensation of justice can create. The effect of television may escape the ordinary means of proof, but it is not far-fetched for it to gradually erode our basal conception of a trial such as we know it now.[161] (Emphasis supplied)

Courts and any party who wishes to resolve their disputes therein both have an interest in ensuring "that courts, in the decision of issues of fact and law, should be immune from every extraneous influence; that facts should be decided upon the evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies."[162]

The rationale of the *sub judice* rule is to protect against the dangers of the publication to directly influence a judge or indirectly through public opinion in resolving a particular case.[163] As Associate Justice Singh pointed out during the deliberations, the importance of the *sub judice* rule is its protective mechanism for judges against whom the opinion is directed do not have an opportunity to respond to the criticisms. She emphasized that judges

---

160 *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 432–433 (2008) [Per J. Reyes, *En Banc*].

161 *Perez v. Estrada*, 412 Phil. 686, 706 (2001) [Per J. Vitug, *En Banc*].

162 *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 648–649 (2014) [Per J. Mendoza, Third Division]; *citing Romero v. Estrada*, 602 Phil. 312 (2009) [Per J. Velasco, *En Banc*], *citing Nestle Philippines v. Sanchez*, 238 Phil. 543 (1987) [*Per Curiam, En Banc*].

163 J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 652 (2010) [Per J. Abad, *En Banc*].

must be insulated from opinions that are not founded on evidence presented before them since decisions should be based on records.

Aside from public discussions on the merits of a pending case, disclosures relating to pending administrative cases of lawyers and judges are also restricted.[164] The policy of the confidentiality of proceedings is to "protect the personal and professional reputation of attorneys and judges from the baseless charges of disgruntled, vindictive, and irresponsible clients and litigants."[165]

These judicial polices restricting certain kinds of speech apply "not only to participants in the pending case, i.e., to members of the bar and bench, and to litigants and witnesses, but also to the public in general, which necessarily includes the media."[166] The violation of the *sub judice* rule and the confidentiality of administrative proceedings are punishable under Rule 71, Section 3(d) of the Rules of Court as "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice."

The rules on *sub judice* evolved from jurisprudence. An examination of these cases is necessary to distill the requirements of its violation.

The *sub judice* rule can be traced from *In re Kelly*,[167] the first case that recognized courts' inherent power to punish for contempt.[168] In *In re Kelly*, it was held that a publication that criticizes the court during the pendency of the proceedings is misbehavior that tends to obstruct the administration of justice and is punishable with the inherent contempt power of courts:

> The power to punish for contempt is inherent in all courts[.]
>
> The power to fine for contempt, imprison for contumacy, or enforce the observance of order, are powers which cannot be dispensed with in the courts, because they are necessary to the exercise of all others. . .
>
> . . . .
>
> The summary power to commit and punish for contempt, tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority, is a part of the law of the land[.]
>
> Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence and submission to their lawful mandates, and as a corollary to this

---

164 *In re Lozano and Quevedo*, 54 Phil. 801, 804–805 (1930) [J. Malcolm, *En Banc*]; *In re Heraclio Abistado*, 57 Phil. 669 (1932) [Per J. Vickers, *En Banc*].

165 *In re Heraclio Abistado*, 57 Phil. 669, 674 (1932) [Per J. Vickers, *En Banc*].

166 J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 652 (2010) [Per J. Abad, *En Banc*].

167 35 Phil. 944 (1916) [Per J. Johnson, *En Banc*].

168 *Id.* at 950.

provision, to preserve themselves and their officers from the approach of insults and pollution.

The existence of the inherent power of courts to punish for contempt is essential to the observance of order in judicial proceedings and to the enforcement of judgments, orders, and writs of the courts, and consequently to the due administration of justice[.]

Any publication, pending a suit, reflecting upon the court, the jury, the parties, the officers of the court, the counsel, etc., with reference to the suit, or tending to influence the decision of the controversy, is contempt of court and is punishable. . .

The *publication of a criticism of a party or of the court to a pending cause, respecting the same, has always been considered as misbehavior, tending to obstruct the administration of justice and subjects such persons to contempt proceedings*. Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by publications or public clamor. *Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law, free from outside coercion or interference*[.][169] (Emphasis supplied, citations omitted)

In *In re Kelly*, the accused wrote and published a defamatory letter in a newspaper during the pendency of the re-trial of his contempt conviction. In his published letter, he slandered judges who convicted him of contempt and imprisoned him in Bilibid.[170]

This Court found the letter contemptuous due to the following: (1) the content of the publication referred to a pending matter; (2) the letter was willingly and deliberately published; (3) the publication was intended to obstruct and interfere with the administration of justice; and (4) the publication of the letter tends to directly affect and influence the action of this Court in the proceedings, which can destroy public confidence and prevent the due administration of justice:

After a careful consideration of the petition or information furnished to this court by the Honorable Ramon Avanceña, Attorney-General for the Philippine Islands, in relation with the said publication which was made a part thereof, and the answer and argument of the said Kelly, heard in open court on the 25th of March, 1916, in support of his reasons why he should not be punished for contempt, and the matter having been finally submitted for the consideration of this court on said date; and considering that said publication was made of and concerning a cause which was then and there pending before the Supreme Court; and considering that the said Amzi B. Kelly did, by said publication, *thereby willfully, maliciously, and deliberately intend and attempt to bring the Supreme Court of the Philippine Islands and the members thereof into contempt and ridicule and to lower the dignity, standing, and prestige of the Supreme Court of the Philippine*

---

169 *Id.* at 950–951.
170 *Id.* at 946–949.

> *Islands and to hinder and delay the due administration of justice in the Philippine Islands*; and considering that the said Amzi B. Kelly, by his answer and oral argument given in reply to said order to show cause, admitted in open court the authorship of said publication; and considering that said *publication was intended to obstruct and interfere with, and tends directly to obstruct and interfere with and impede the administration of justice in said pending proceedings* in the Supreme Court, and said motion made therein; and considering that the said Amzi B. Kelly, by means of said publication intended and said publication *does tend directly to affect and influence the action of the Supreme Court in the said pending proceedings, and to bring the Supreme Court into contempt and to destroy its usefulness in the Philippine Islands, and the confidence of the people therein, and to hinder and prevent the due administration of justice*; it is hereby ordered and decreed:
>
> That by reason of said *false, malicious, and defamatory charges contained in said publication*, a full copy of which is set out in the information of the Attorney-General, that the said Amzi B. Kelly is hereby found guilty of contempt of this court, by virtue of said publication, and he is hereby sentenced to be imprisoned in the insular prison commonly known as Bilibid, located in the city of Manila, for a period. . . committed until said fine is paid, not exceeding two months. Said imprisonment in lieu of fine shall be in addition to the imprisonment of six months heretofore imposed.[171] (Emphasis supplied)

The doctrine in *In re Kelly* became the basis for the Rules of Court provisions penalizing improper conduct as contempt of court.[172] In exercising the power of contempt, the following elements must be considered: the content of the speech, intent on bringing ridicule to the courts and delay the due administration of justice, and the effect of the speech to destroy the courts' usefulness and public confidence in its administration of justice.

In the case of *In re Lozano and Quevedo*,[173] this Court held that publications violating the confidentiality of administrative proceedings are punishable by criminal contempt. In *In re Lozano*, an article was published in a newspaper that contains inaccurate details about an administrative complaint filed against a judge. The editor and reporter of the newspaper were declared to be in contempt of court:

> We come now to a determination of the right of the court to take action in a case of this character. *It has previously been expressly held that the power to punish for contempt is inherent in the Supreme Court. . . That this power extends to administrative proceedings as well as to suits at law cannot be doubted.* It is necessary to maintain respect for the courts, indeed to safeguard their very existence, in administrative cases concerning the removal and suspension of judges as it is in any other class of judicial proceedings.

---

171 *Id.* at 951–952.

172 *In re Vicente Sotto*, 82 Phil. 595, 599 (1949) [Per J. Feria, *En Banc*]; *see also* RULES OF COURT (1940) rule 64, secs. 231, 232.

173 54 Phil. 801 (1930) [J. Malcolm, *En Banc*].

The rule is well established that *newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitute criminal contempt which is summarily punishable by the courts.* The rule is otherwise after the cause is ended. *It is also regarded as an interference with the work of the courts to publish any matters which their policy requires should be kept private*, as for example the secrets of the jury room, or proceedings in camera. . .

. . . .

With reference to the applicability of the above authorities, it should be remarked first of all that this court is not bound to accept any of them absolutely and unqualifiedly. What is best for the maintenance of the Judiciary in the Philippines should be the criterion. Here, in contrast to other jurisdictions, we need not be overly sensitive because of the sting of newspaper articles, for there are no juries to be kept free from outside influence. Here also we are not restrained by regulatory law. The only law, and that judge made, which is at all applicable to the situation, is the resolution adopted by this court. That the respondents were ignorant of this resolution is no excuse, for the very article published by them indicates that the hearing was held behind closed doors and that the information of the reporter was obtained from outside the screen and from comments in social circles. Then in writing up the investigation, it came about that the testimony was mutilated and that the report reflected upon the action of the complainant to his possible disadvantage.

The Organic Act wisely guarantees freedom of speech and press. This constitutional right must be protected in its fullest extent. The court has heretofore given evidence of its tolerant regard for charges under given evidence of its tolerant regard for charges under the Liberal Law which come dangerously close to its violation. We shall continue in this chosen path. The liberty of the citizen must be preserved in all of its completeness. But license or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense. As important as the maintenance of an unmuzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the Judiciary. Respect for the Judiciary cannot be had if persons are privileged to scorn a resolution of the court adopted for good purposes, and if such persons are to be permitted by subterranean means to diffuse inaccurate accounts of confidential proceedings to the embarrassment of the parties and the courts.

In a recent Federal case (*U. S. vs. Sullens* [1929], 36 Fed. [2d], 230, 238, 239), Judge Holmes very appropriately said:

> "The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. *The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the*

> *administration of justice, this court will not hesitate to exercise its undoubted power to punish for contempt. . . .*
>
> xxx xxx xxx
>
> "This court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. *This right will be insisted upon as vital to an impartial court, and, as a last resort*, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal. . . ."
>
> As has been remarked, the parties plead ignorance in extenuation of their offense. We accept as certain this defense. It is made known also that other newspapers, particularly in the metropolis, have been guilty of similar acts. That likewise is undoubtedly true, but does not purge the respondents of their contempt. All facts considered, we desire on the one hand to proceed on the corrective and not on the retaliatory idea of punishment, while on the other giving due notice that practices of which the respondents are guilty must stop.
>
> It is the holding of the court that the respondents Severino Lozano and Anastacio Quevedo are guilty of contempt of court, and it is the order of the court that they be punished for such contempt by the payment of a nominal sum by each of them in the amount of twenty pesos (P20), to be turned into the office of the clerk of court within a period of fifteen days from receipt of notice, with the admonition that if they fail to comply, further and more drastic action by the court will be necessary.[174] (Emphasis supplied, citations omitted)

The confidentiality of administrative cases also extend to complaints filed against lawyers. In *In re Abistado*,[175] the contempt powers of the court may also be used to protect the personal and professional reputations of judges and lawyers against baseless complaints:

> We find no merit in the respondent's answer to the petitions of the Attorney-General and the orders to show cause why he should not be punished for contempt. The evidence shows that the resolution of this court of January 26, 1922, providing that all proceedings looking to the suspension or disbarment of lawyers, and all proceedings looking to the suspension or removal of judges of first instance, shall be considered confidential in nature until the final disposition of the matter was published in "La Vanguardia", "El Ideal", and the "Manila Times" on January 27, 1922, and in the "Manila Daily Bulletin" on January 28, 1922. There can be no question as to the right of this court to adopt such a resolution and to punish violations of it by contempt proceedings. The matter was carefully considered in the case of *In re Lozano and Quevedo* (54 Phil., 801), promulgated July 24, 1930. In the decision of that case it was held that newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitute

---

[174] *In re Lozano and Quevedo*, 54 Phil. 801, 805–809 (1930) [J. Malcolm, *En Banc*].
[175] 57 Phil. 669 (1932) [Per J. Vickers, *En Banc*].

> criminal contempt which is summarily punishable by the courts; that the rule is otherwise after the cause is ended;
>
> That the constitutional guaranty of freedom of speech and press must be protected in its fullest extent, but license or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense; that as important as is the maintenance of an unmuzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the judiciary;
>
> That the courts must be permitted to proceed with the disposition of their business in an orderly manner free from outside interference obstructive of their constitutional functions. (*U.S. vs. Sullens* [1929], 36 Fed. [2d], 230.)
>
> The purpose of the rule is *not only to enable this court to make its investigations free from any extraneous influence or interference*, but also to *protect the personal and professional reputation of attorneys and judges from the baseless charges of disgruntled, vindictive, and irresponsible clients and litigants*. The present charges are a case in point. It was falsely stated in the issue of the "Union" for October 24th that the charges against Attorney Sotelo had been referred to the Attorney-General for investigation. The truth is that after considering the charges and the respondent's answer thereto, and the various exhibits, and finding that there was apparently no merit therein, and that the complainant had no interest in said charges and was actuated by the vindictiveness of a defeated litigant, the court dismissed the charges.[176] (Emphasis supplied)

This Court clarified in *In re Sotto*[177] that "[m]ere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated."[178] However, comments which tend to intimidate this Court's members into influencing their decision in a pending case, and those attacking the honesty and integrity of this Court for the apparent purpose of bringing justices into disrepute and degrading the administration of justice, are punishable by contempt.[179] Subsequent punishment of contemptuous conduct is necessary for this Court's orderly disposition of justice.

In *In re Sotto*,[180] this Court cited Atty. Vicente Sotto (Sotto) in contempt for publishing an article criticizing this Court's members after promulgating its decision in the case of *In re Parazo*.[181] In his article, Sotto used his seat in the Senate to intimidate the Court and influence its final disposition of *In re Parazo*:

> *Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case*

---

176 *In re Heraclio Abistado*, 57 Phil. 669, 673–674 (1932) [Per J. Vickers, *En Banc*].

177 82 Phil. 595 (1949) [Per J. Feria, *En Banc*].

178 *In re Vicente Sotto,* 82 Phil. 595, 600 (1949) [Per J. Feria, *En Banc*].

179 *Id.*

180 *Id.*

181 *In re Investigation of Angel J. Parazo for Alleged Leakage of Questions in some Subjects in the 1948 Bar Examinations*, 82 Phil. 230 (1948) [Per J. Montemayor, *En Banc*].

made in good faith may be tolerated; because if well founded it may enlighten the court and contribute to the correction of an error if committed; but if it is not well taken and obviously erroneous, it should, in no way, influence the court in reversing or modifying its decision. Had the respondent in the present case limited himself to a statement that our decision is wrong or that our construction of the intention of the law is not correct, because it is different from what he, as proponent of the original bill which became a law had intended, his criticism might in that case be tolerated, for it could not in any way influence the final disposition of the Parazo case by the court; inasmuch as it is of judicial notice that the bill presented by the respondent was amended by both houses of Congress, and the clause "unless the court finds that such revelation is demanded by the interest of the State" was added or inserted; and that, as the Act was passed by Congress and not by any particular member thereof, the intention of Congress and not that of the respondent must be the one to be determined by this Court in applying said Act.

But in the above-quoted written statement which he caused to be published in the press, *the respondent does not merely criticize or comment on the decision of the Parazo case, which was then and still is pending reconsideration by this Court upon petition of Angel Parazo.* He not only *intends to intimidate the members of this Court with the presentation of a bill in the next Congress*, of which he is one of the members, reorganizing the Supreme Court and reducing the members of Justices from eleven to seven, so as to change the members of this Court which decided the Parazo case, who according to his statement, are incompetent and narrow minded, in order *to influence the final decision of said case by this Court, and thus embarrass or obstruct the administration of justice. But the respondent also attacks the honesty and integrity of this Court for the apparent purpose of bringing the Justices of this Court into disrepute and degrading the administration of justice, for in his above-quoted statement he says*:

> "In the wake of so many blunders and injustices deliberately committed during these last years, I believe that the only remedy to put an end to so much evil, is to change the members of the Supreme Court. To this effect, I announce that one of the first measures, which I will introduce in the coming congressional sessions, will have as its object the complete reorganization of the Supreme Court. As it is now the Supreme Court of today constitutes a constant peril to liberty and democracy."

To hurl the false charge that this Court has been for the last years committing deliberately "so many blunders and injustices," that is to say, that it has been deciding in favor of one party knowing that the law and justice is on the part of the adverse party and not on the one in whose favor the decision was rendered, in many cases decided during the last years, would *tend necessarily to undermine the confidence of the people in the honesty and integrity of the members of this Court, and consequently to lower or degrade the administration of justice by this Court.* The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result. As a member of the bar and an officer of the courts

> Atty. Vicente Sotto, like any other, is in duty bound to uphold the dignity and authority of this Court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice. Respect to the courts guarantees the stability of other institutions, which without such guaranty would be resting on a very shaky foundation.
>
> . . . .
>
> It is true that the constitutional guaranty of freedom of speech and the press must be protected to its fullest extent, but license or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense. As important as the maintenance of an unmuzzled press and the free exercise of the right of the citizen, is the maintenance of the independence of the judiciary. As Judge Holmes very appropriately said in *U. S. vs. Sullens*: "The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal[.]"
>
> It is also well settled that an attorney as an officer of the court is under special obligation to be respectful in his conduct and communication to the courts, he may be removed from office or stricken from the roll of attorneys as being guilty of flagrant misconduct[.][182] (Emphasis supplied, citations omitted)

In *In re Torres*,[183] an editor of a newspaper article was cited in contempt after publishing the name of the *ponente* of a decision, with a commentary on the probable voting of the members of this Court:

> The return made by the Editor of El Debate concludes with this statement: "If it is a fact, therefore, that the decision in favor of the accused in the above-entitled case had already been discussed and voted by this Honorable Tribunal, the information given by the 'El Debate' can in no way obstruct, embarrass, or influence the administration of justice because it deals with a consummated fact. It is nothing more than a simple scoop of the paper." Within the knowledge of the members of the court, the foregoing quotation is not true, for at the time of the publication in El Debate, the case in question had not been discussed and voted, although even if it had been and even if the newspaper story had been correct, would

---

182 *In re Vicente Sotto*, 82 Phil. 595, 600–603 (1949) [Per J. Feria, *En Banc*].

183 *In re Ramon Torres*, 55 Phil. 799 (1931) [Per J. Malcolm, First Division].

> not be important. *The proceedings of this court must remain confidential until decisions or orders have been properly promulgated.* The reason for this is so obvious that it hardly needs explanation. In a civil case, for example, prior knowledge of the result would permit parties to benefit themselves financially or to compromise cases to the detriment of parties not so well informed. In criminal cases, for example, advance advice regarding the outcome would permit the accused to flee the jurisdiction of the court. *The court must, therefore, insist on being permitted to proceed to the disposition of its business in an orderly manner, free from outside interference obstructive of its functions and tending to embarrass the administration of justice.*[184] (Emphasis supplied)

Similarly, in *In re Published Alleged Threats Against Members of the Court in the Plunder Law Case Hurled by Atty. Leonard De Vera*,[185] a lawyer was declared in contempt for his published statement asking this Court to dispel rumors that it will vote against the constitutionality of the plunder law in relation to the pending case of former President Joseph Ejercito Estrada and risk another series of mass actions:

> Clearly, respondent's utterances pressuring the Court to rule in favor of the constitutionality of the Plunder Law or risk another series of mass actions by the public cannot be construed as falling within the ambit of constitutionally protected speech, *because such statements are not fair criticisms of any decision of the Court, but obviously are threats made against it to force the Court to decide the issue in a particular manner*, or risk earning the ire of the public. Such statements show disrespect not only for the Court but also for the judicial system as a whole, tend to promote distrust and undermine public confidence in the judiciary, by creating the impression that the Court cannot be trusted to resolve cases impartially and violate the right of the parties to have their case tried fairly by an independent tribunal, uninfluenced by public clamor and other extraneous influences.
>
> It is respondent's duty as an officer of the court, to uphold the dignity and authority of the courts and to promote confidence in the fair administration of justice and in the Supreme Court as the last bulwark of justice and democracy. Respondent's utterances as quoted above, while the case of *Estrada vs. Sandiganbayan* was pending consideration by this Court, belies his protestation of good faith but were clearly made to mobilize public opinion and bring pressure on the Court.[186] (Emphasis supplied, citations omitted)

Aside from publications, other actions, such as picketing in front of the court's premises to influence its decision in a pending case, may be punished with contempt.

In *Nestle Philippines, Inc. v. Sanchez*,[187] union parties to a pending case before this Court set up pickets in front of the gate of the Supreme Court. This

---

[184] *Id.* at 800.
[185] 434 Phil. 503 (2002) [Per J. Kapunan, *En Banc*].
[186] *Id.* at 509–510.
[187] 238 *Phil.* 543 (1987) [*Per Curiam, En Banc*].

Court issued show cause orders against the union leaders and their counsels on record for direct contempt. Here, this Court need not refer to the test on the limitation of the freedoms of speech and expression of the union parties. Picketing within the vicinity of the Supreme Court is "intended to pressure or influence courts of justice into acting one way or the other on pending cases." While this Court dismissed the contempt charges against them, it issued a stern warning against the litigants and their lawyers:

> We accept the apologies offered by the respondents and at this time, forego the imposition of the sanction warranted by the contemptuous acts described earlier. The liberal stance taken by this Court in these cases as well as in the earlier case of *AHS/PHILIPPINES EMPLOYEES UNION vs. NATIONAL LABOR RELATIONS COMMISSION*, et al., G.R. No. 73721, March 30, 1987, should not, however, be considered in any other light than an acknowledgment of the euphoria apparently resulting from the rediscovery of a long-repressed freedom. *The Court will not hesitate in future similar situations to apply the full force of the law and punish for contempt those who attempt to pressure the Court into acting one way or the other in any case pending before it. Grievances, if any, must be ventilated through the proper channels,* i.e., through appropriate petitions, motions or other pleadings in keeping with the respect due to the Courts as impartial administrators of justice entitled to "proceed to the disposition of its business in an orderly manner, free from outside interference obstructive of its functions and tending to embarrass the administration of justice."
>
> *The right of petition is conceded to be an inherent right of the citizen under all free governments. However, such right, natural and inherent though it may be, has never been invoked to shatter the standards of propriety entertained for the conduct of courts.* For "it is a traditional conviction of civilized society everywhere that courts and juries, in the *decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.*"
>
> Moreover, "*parties have a constitutional right to have their causes tried fairly in court by an impartial tribunal, uninfluenced by publication or public clamor. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law free from outside coercion or interference.*" The aforecited acts of the respondents are therefore not only an affront to the dignity of this Court, but equally a violation of the above-stated right of the adverse parties and the citizenry at large.
>
> We realize that the individuals herein cited who are non-lawyers are not knowledgeable in her intricacies of substantive and adjective laws. They are not aware that even as the rights of free speech and of assembly are protected by the Constitution, any attempt to pressure or influence courts of justice through the exercise of either right amounts to an abuse thereof, is no longer within the ambit of constitutional protection, nor did they realize that any such efforts to influence the course of justice constitutes contempt of court. *The duty and responsibility of advising them, therefore, rest primarily and heavily upon the shoulders of their counsel of record.* Atty. Jose C. Espinas, when his attention was called by this Court, did his best to demonstrate to the pickets the untenability of their acts and posture.

> Let this incident therefore serve as a reminder to all members of the legal profession that it is their duty as officers of the court to properly apprise their clients on matters of decorum and proper attitude toward courts of justice, and to labor leaders of the importance of a continuing educational program for their members.[188] (Emphasis supplied, citations omitted)

In *People v. Alarcon*,[189] this Court clarified that the power to punish for criminal contempt ceases when a decision is no longer pending before a judge, "when and once the court has come upon a decision and has lost control either to reconsider or amend it." In *Alarcon*, respondent Federico Mañgahas was acquitted of criminal contempt because the case discussed in his published letter was already elevated to the Court of Appeals. The majority of this Court held that "[n]ewspaper publication tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitutes criminal contempt which is summarily punishable by the courts."[190]

Chief Justice Manuel V. Moran (Chief Justice Moran) was the lone dissent in *Alarcon*. He distinguished the two types of contemptuous speech and the rationale for which the court punishes them:

> *Contempt, by reason of publications relating to court and to court proceedings, are of two kinds. A publication which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding, constitutes criminal contempt which is summarily punishable by courts. This is the rule announced in the cases relied upon by the majority. A publication which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute constitutes likewise criminal contempt, and is equally punishable by courts.* In the language of the majority, what is sought, in the first kind of contempt, to be shielded against the influence of newspaper comments, is the all-important duty of the courts to administer justice in the decision of a pending case. In the second kind of contempt, the punitive hand of justice is extended to vindicate the courts from any act or conduct calculated to bring them into disfavor or to destroy public confidence in them. In the first, there is no contempt where there is no action pending, as there is no decision which might in any way be influenced by the newspaper publication. In the second, the contempt exists, with or without a pending case, as what is sought to be protected is the court itself and its dignity. . . . Courts would lose their utility if public confidence in them is destroyed.[191] (Emphasis supplied)

Chief Justice Moran contended that the publication did not pertain to pending cases that impede the administration of justice. Instead, the article that describes the criminal trial as a farce and mockery is an attack on the court

---

188 *Id.* at. 547–549.

189 69 Phil. 265 (1939) [Per J. Laurel, *En Banc*].

190 *Id.* at 271.

191 C.J. Moran, Dissenting Opinion in *People v. Alarcon*, 69 Phil. 265, 274–275 (1939) [Per J. Laurel, *En Banc*].

that is "calculated to bring it into disfavor." Thus, this Court can punish such attack for its self-preservation:

> If the contemptuous publication made by the respondent herein were directed to this Court in connection with a case already decided, the effect of the rule laid down by the majority is to deny this Court the power to vindicate its dignity. The mischievous consequences that will follow from the situation thus sought to be permitted, are both too obvious and odious to be stated. The administration of justice, no matter how righteous, may be identified with all sorts of fancied scandal and corruption. Litigants, discontented for having lost their cases, will have every way to give vent to their resentment. Respect and obedience to law will ultimately be shattered, and, as a consequence, the utility of the courts will completely disappear. [192]

The doctrine that contempt powers can only be exercised against the publication, which tends to influence this Court's decision during the pendency of the proceedings, has been abandoned in *People v. Godoy*.[193]

In *Godoy,* this Court formally adopted Chief Justice Moran's dissent in *Alarcon*. Thus, the power to punish for contempt of court not only extends to contemptuous speech relating to pending cases, but also to publications after the finality of the decision. This Court also summarized the types of contemptuous publications which may be punished even if a case has already been terminated:

> The Philippine rule, therefore, is that in case of a post-litigation newspaper publication, fair criticism of the court, its proceedings and its members, are allowed. However, there may be a contempt of court, even though the case has been terminated, if the publication is attended by either of these two circumstances: (1) where it tends to bring the court into disrespect or, in other words, to scandalize the court; or (2) where there is a clear and present danger that the administration of justice would be impeded. And this brings us to the familiar invocation of freedom of expression usually resorted to as a defense in contempt proceedings.
>
> On the first ground, it has been said that the right of free speech is guaranteed by the Constitution and must be sacredly guarded, but that an abuse thereof is expressly prohibited by that instrument and must not be permitted to destroy or impair the efficiency of the courts of the public respect therefor and the confidence therein.
>
> Thus, in *State vs. Morril*, the court said that any citizen has the right to publish the proceedings and decisions of the court, and if he deems it necessary for the public good, to comment upon them freely, discuss their correctness, the fitness or unfitness of the judges for their stations, and the fidelity with which they perform the important public trusts reposed in them; but he has no right to attempt, by defamatory publications, to degrade the tribunal, destroy public confidence in it, and dispose the community to disregard and set at naught its orders, judgments and decrees. Such publications are an abuse of the liberty of the press; and tend to sap the very

---

[192] *Id.* at 276–277.

[193] 312 Phil 977, 1012–1015 (1995) [Per J. Regalado, *En Banc*].

foundation of good order and well-being in society by obstructing the course of justice. Courts possess the power to punish for contempt libelous publications regarding their proceedings, present or past, upon the ground that they tend to degrade the tribunals, destroy public confidence and respect for their judgments and decrees, so essentially necessary to the good order and well-being of society, and most effectually obstruct the free course of justice.

Then, in *In re Hayes*, it was said that publishers of newspapers have the right, but no higher right than others, to bring to public notice the conduct of the courts, provided the publications are true and fair in spirit. The liberty of the press secures the privilege of discussing in a decent and temperate manner the decisions and judgments of a court of justice; but the language should be that of fair and honorable criticism, and should not go to the extent of assigning to any party or the court false or dishonest motives. There is no law to restrain or punish the freest expressions of disapprobation that any person may entertain of what is done in or by the courts. Under the right of freedom of speech and of the press the public has a right to know and discuss all judicial proceedings, but this does not include the right to attempt, by wanton defamation, groundless charges of unfairness and stubborn partisanship, to degrade the tribunal and impair its efficiency.

Finally, in *Weston vs. Commonwealth*, it was ruled that the freedom of speech may not be exercised in such a manner as to destroy respect for the courts, the very institution which is the guardian of that right. The dignity of the courts and the duty of the citizens to respect them are necessary adjuncts to the administration of justice. Denigrating the court by libelous attacks upon judicial conduct in an ended case, as well as one which is pending before it, may seriously interfere with the administration of justice. While such an attack may not affect the particular litigation which has been terminated, it may very well affect the course of justice in future litigation and impair, if not destroy, the judicial efficiency of the court or judge subjected to the attack.

Anent the second ground, the rule in American jurisprudence is that false and libelous utterances present a clear and present danger to the administration of justice. *To constitute contempt, criticism of a past action of the court must pose a clear and present danger to a fair administration of justice, that is, the publication must have an inherent tendency to influence, intimidate, impede, embarrass, or obstruct the court's administration of justice*. It is not merely a private wrong against the rights of litigants and judges, but a public wrong, a crime against the State, to undertake by libel or slander to impair confidence in the judicial functions.

Elucidating on the matter, this Court, in *Cabansag vs. Fernandez*, et al., held as follows:

> . . . The first, as interpreted in a number of cases, means that the *evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished.* The danger to be guarded against is the "substantive evil" sought to be prevented. *And this evil is primarily the "disorderly and unfair administration of justice."* This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. *Under this rule, the advocacy of ideas cannot constitutionally be abridged unless*

there is a clear and present danger that such advocacy will harm the administration of justice.

xxx xxx xxx

Thus, speaking of the extent and scope of the application of this rule, the Supreme Court of the United States said: "Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justices an impairment of the constitutional right of freedom of speech and press only if the evils are extremely serious and the degree of imminence extremely high. . . . The possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press." . . .

No less important is the ruling on the power of the court to punish for contempt in relation to the freedom of speech and press. We quote: "*Freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice.* A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. *The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice.*". . .

And in weighing the danger of possible interference with the courts by newspaper criticism against the free speech to determine whether such criticism may constitutionally be punished as contempt, it was ruled that "freedom of public comment should in borderline instances weigh heavily against a possible tendency to influence pending cases." . . .

The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree. . . .

Although Cabansag involved a contempt committed during the pendency of a case, no compelling reason exists why the doctrines enunciated therein should not be made applicable to vituperative publications made after the termination of the case. *Whether a case is pending or not, there is the constant and ever growing need to protect the courts from a substantive evil, such as invective conduct or utterances which tend to impede or degrade the administration of justice, or which calumniate the courts and their judges.* At any rate, in the case of *In re Bozorth*, it was there expressly and categorically ruled that the clear and present danger rule equally applies to publications made after the

> determination of a case, with the court declaring that a curtailment of criticism of the conduct of finally concluded litigation, to be justified, must be in terms of some serious substantive evil which it is designed to avert.
>
> Adverting again to what was further said in *State vs. Shepherd*, *supra*, let it here be emphasized that the protection and safety of life, liberty, property and character, the peace of society, the proper administration of justice and even the perpetuity of our institutions and form of government, imperatively demand that everyone — lawyer, layman, citizen, stranger, newspaperman, friend or foe — shall treat the courts with proper respect and shall not attempt to degrade them, or impair the respect of the people, or destroy the faith of the people in them. When the temples of justice become polluted or are not kept pure and clean, the foundations of free government are undermined, and the institution itself threatened.[194] (Emphasis supplied, citations omitted)

In *People v. Castelo*,[195] an article was published about an alleged extortion attempt in relation to a pending criminal case. The presiding judge convicted the news editor for indirect contempt. This Court reversed the conviction because the news article was a fair and true report of a police investigation incidental to a pending case. To punish for contempt, it must be apparent from an objective reading of the story that the ultimate purpose of its publication was to impede, obstruct, or degrade the administration of justice:

> It should however be noted that there is nothing in the story which may even in a slight degree indicate that the ultimate purpose of appellant in publishing it was to impede, obstruct or degrade the administration of justice in connection with the Castelo case. The publication can be searched in vain for any word that would in any way degrade it. The alleged extortion try merely concerns a news story which is entirely different, distinct and separate from the Monroy murder case. Though mention was made indirectly of the decision then pending in that case, the same was made in connection with the extortion try as a mere attempt to secure the acquittal of Castelo. But the narration was merely a factual appraisal of the negotiation and no comment whatsoever was made thereon one way or the other coming from the appellant. Indeed, according to the trial judge himself, as he repeatedly announced openly, said publication did not in any way impede or obstruct his decision promulgated on March 31, 1955. As this Court has aptly said, for a publication to be considered as contempt of court there must be a showing not only that the article was written while a case is pending but that it must really appear that such publication does impede, interfere with and embarrass the administration of justice. . . Here, there is no such clear showing. The very decision of the court shows the contrary.[196] (Citations omitted)

In *Cabansag v. Fernandez*,[197] this Court discussed the two tests in determining the maintenance of judicial independence *vis-à-vis* the right of the public for the redress of grievances:

---

194 *People v. Godoy*, 312 Phil 977, 1019–1024 (1995) [Per J. Regalado, *En Banc*].
195 114 Phil. 892 (1962) [Per J. Bautista Angelo, *En Banc*].
196 *Id.* at 899–900.
197 102 Phil. 152 (1957) [Per J. Bautista Angelo, *En Banc*].

Two theoretical formulas had been devised in the determination of conflicting rights of similar import in an attempt to draw the proper constitutional boundary between freedom of expression and independence of the judiciary. *These are the "clear and present danger" rule and the "dangerous tendency" rule.* The first, as interpreted in a number of cases, means that the *evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished.* The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. *Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.*

This rule had its origin in *Schenck vs. U. S.* (249) U. S. 47), promulgated in 1919, and ever since it has afforded a practical guidance in a great variety of cases in which the scope of the constitutional protection of freedom of expression was put in issue. In one of said cases, the United States Supreme Court has made the significant suggestion that this rule "is an appropriate guide in determining the constitutionality of restriction upon expression where the substantial evil sought to be prevented by the restriction is destruction of life or property or invasion of the right of privacy."

Thus, speaking of the extent and scope of the application of this rule, the Supreme Court of the United States said "*Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom of speech and press only if the evils are extremely serious and the degree of imminence extremely high.* . . . A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice. . . . The possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press."

No less important is the ruling on the power of the court to punish for contempt in relation to the freedom of speech and press. We quote; "Freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. . . . A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. . . . The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice."

And in weighing the danger of possible interference with the courts by newspaper criticism against the right of free speech to determine whether such criticism may constitutionally be punished as contempt, it was ruled

that "freedom of public comment should in borderline instances weigh heavily against a possible tendency to influence pending cases."

The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree[.]

The "*dangerous tendency*" *rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins.* There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt[.]

This rule may be epitomized as follows: *If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable.* It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.

> "It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom. . . . Reasonably limited, it was said by story in the passage cited this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the Republic.
>
> XXX XXX XXX
>
> "And, for yet more imperative reasons, a state may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional state. . . .
>
> XXX XXX XXX
>
> ". . . And the immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen. The state cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smoldering for a time, may burst into a sweeping and destructive conflagration. It cannot be

> said that the state is acting arbitrarily or unreasonably when, in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment suppress the threatened danger in its incipiency. In *People vs. Lloyd, supra* p. 35 (136 N. E. 605), it was aptly said: 'Manifestly the legislature has authority to forbid the advocacy of a doctrine until there is a present and imminent danger of the success of the plan advocated. If the state were compelled to wait until the apprehended danger became certain, than its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.'"[198] (Emphasis supplied, citations omitted)

This Court applied both the clear and present danger, and dangerous tendency tests in determining the boundary between freedom of expression and judicial independence. In *Cabansag*, Apolonio Cabansag (Cabansag) wrote a letter of complaint to the Presidential Complaints and Action Commission due to the failure of the stenographers to transcribe the records. The trial judge ordered Cabansag to show cause for contempt for sending the letter to the Office of the President, and he was eventually declared to be in contempt. This Court reversed the trial court's decision, holding that there was nothing in the letter that constitutes a serious and imminent threat to the administration of justice, nor can a dangerous tendency be inferred from the context of the letter:

> The question then to be determined is: Has the letter of Cabansag created a sufficient danger to a fair administration of justice? Did its remittance to the PCAC create a danger sufficiently imminent to come under the two rules mentioned above?
>
> Even if we make a careful analysis of the letter sent by appellant Cabansag to the PCAC which has given rise to the present contempt proceedings, we would at once see that it was far from his mind to put the court in ridicule and much less to belittle or degrade it in the eyes of those to whom the letter was addressed for, undoubtedly, he was compelled to act the way he did simply because he saw no other way of obtaining the early termination of his case. *This is clearly inferable from its context wherein, in respectful and courteous language*, Cabansag gave vent to his feeling when he said that he "has long since been deprived of his land thru the careful maneuvers of a tactical lawyer"; that the case which had long been pending "could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenographic notes"; and that the "new Judges could not proceed to hear the case before the transcription of the said notes." Analyzing said utterances,

---

[198] *Id.* at 161–164.

> one would see that if they ever criticize, the criticism refers, not to the court, but to opposing counsel whose "tactical maneuvers" has allegedly caused the undue delay of the case. The grievance or complaint, if any, is addressed to the stenographers for their apparent indifference in transcribing their notes.
>
> The only disturbing effect of the letter which perhaps has been the motivating factor of the lodging of the contempt charge by the trial judge is the fact that the letter was sent to the Office of the President asking for help because of the precarious predicament of Cabansag. While the course of action he had taken may not be a wise one for it would have been proper had he addressed his letter to the Secretary of Justice or to the Supreme Court, such act alone would not be contemptuous. To be so the danger must cause a *serious imminent* threat to the administration of justice. Nor can we infer that such act has "a dangerous tendency" to belittle the court or undermine the administration of justice for the writer merely exercised his constitutional right to petition the government for redress of a legitimate grievance.
>
> The fact is that even the trial court itself has at the beginning entertained such impression when it found that the criticism was directed not against the court but against the counsel of the opposite party, and that only on second thought did it change its mind when it developed that the act of Cabansag was prompted by the advice of his lawyers. Nor can it be contended that the letter is groundless or one motivated by malice. The circumstances borne by the record which preceded the sending of that letter show that there was an apparent cause for grievance.[199] (Emphasis supplied)

Notwithstanding the clear and present danger test, and the dangerous tendency test discussed in *Cabansag*, the clear and present danger test has been associated with contempt powers of the Court.[200]

In *Marantan v. Diokno*,[201] this Court applied the clear and present danger test in determining whether such utterance harms the administration of justice:

> The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. *The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.*

---

199 *Id.* at 164–166.

200 *See In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 184 (1995) [Per C.J. Narvasa, *En Banc*]; *People v. Godoy*, 312 Phil. 977, 1020 (1995) [Per J. Regalado, *En Banc*]; J. Carpio, Dissenting Opinion in *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 401 (2008) [Per J. Reyes, *En Banc*]; *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 649 (2014) [Per J. Mendoza, Third Division]; *Re: Show Cause Order in the Decision dated May 11, 2018 in G.R. No. 237428*, 836 Phil. 166, 178 (2018) [Per J. Tijam, *En Banc*].

201 726 Phil. 642 (2014) [Per J. Mendoza, Third Division].

> The "clear and present danger" rule means that *the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished.* There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat.
>
> . . . .
>
> "*A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case, it must necessarily tend to obstruct the orderly and fair administration of justice.*" By no stretch of the imagination could the respondents' comments pose a serious and imminent threat to the administration of justice. No criminal intent to impede, obstruct, or degrade the administration of justice can be inferred from the comments of the respondents.
>
> *Freedom of public comment should, in borderline instances, weigh heavily against a possible tendency to influence pending cases.* The power to punish for contempt, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice. In the present case, such necessity is wanting.[202] (Emphasis supplied)

In *Marantan*, ABS-CBN aired the interview of Atty. Jose Manuel Diokno (Diokno) and the families of the victims in a homicide case filed against Police Superintendent Hansel M. Marantan (P/Supt. Marantan). Previously, Diokno filed a petition praying that this Court reverse the resolution of the Office of the Ombudsman downgrading of the criminal charges from murder to homicide. P/Supt. Marantan filed a petition to declare the respondents in indirect contempt. This Court dismissed the petition because respondents did not comment or make disclosures regarding the merits of a case but only expressed their opinion. Their comments did not appear to attack or insult the dignity of this Court. Moreover, the mere restatement of respondents' argument in their petition cannot, or did not even tend to, influence this Court.

Aside from contemptuous speech that violates the *sub judice* rule and the confidentiality of administrative cases, this Court also punishes speech that defames, scandalizes, or dishonors the courts.

---

202 *Id.* at 649–650.

V

The public has the right to criticize the decisions, proceedings, and the conduct of the members of the Judiciary.[203] Criticisms against the courts may include, but are not limited to, the following:

> [W]hile a citizen may comment upon the proceedings and decisions of the court and discuss their correctness, and even express his opinions on the fitness or unfitness of the judges for their stations, and the fidelity with which they perform the important public trusts reposed in them, he has no right to attempt to degrade the court, destroy public confidence in it, and encourage the people to disregard and set naught its orders, judgments and decrees. Such publications are said to be an abuse of the liberty of speech and of the press, for they tend to destroy the very foundation of good order and well-being in society by obstructing the course of justice.[204]

However, there is a boundary between legitimate criticism and speech that attacks the integrity of the courts, damaging both their decisional and institutional independence:

> But there is an important line between *legitimate criticism and illegitimate attack upon the courts or their judges.* Attacks upon the court or a judge not only risk the inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities; they also undermine the people's confidence in the courts.
>
> *Personal attacks, criticisms laden with political threats, those that misrepresent and distort the nature and context of judicial decisions, those that are misleading or without factual or legal basis, and those that blame the judges for the ills of society, damage the integrity of the judiciary and threaten the doctrine of judicial independence.* These attacks do a grave disservice to the principle of an independent judiciary and mislead the public as to the role of judges in a constitutional democracy, shaking the very foundation of our democratic government.
>
> Such attacks on the judiciary can result in two distinct — yet related undesirable consequences. *First, the criticism will prevent judges from remaining insulated from the personal and political consequences of making an unpopular decision, thus placing judicial independence at risk. Second, unjust criticism of the judiciary will erode the public's trust and confidence in the judiciary as an institution.* Both judicial independence and the public's trust and confidence in the judiciary as an institution are vital components in maintaining a healthy democracy.
>
> Accordingly, it has been consistently held that, while freedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy, these freedoms are not absolute. For, if left unbridled, they have the tendency to be abused

---

[203] *United States v. Bustos*, 37 Phil. 731, 741–742 (1918) [Per J. Malcolm, *En Banc*].

[204] *In re De Vera*, 434 Phil. 503, 509 (2002) [Per J. Kapunan, *En Banc*], *citing People v. Godoy*, 312 Phil. 977 (1995) [Per J. Regalado, *En Banc*].

> and can translate to licenses, which could lead to disorder and anarchy.[205] (Emphasis supplied)

Comments and criticisms that are unfair and illegitimate are malicious publications akin to libel and may be subsequently punished for indirect contempt[206] under Rule 71, Section 3(d) of the Rules of Court.[207] These types of utterances are punishable regardless of whether the public speech was uttered during the pendency of a case.[208] The purpose of punishing these utterances is to protect the dignity of courts and to "vindicate the courts from any act or conduct calculated to bring them into disfavor or to destroy public confidence in them."[209]

The right to criticize the courts should be done with respect, such that criticisms and comments must be "*bona fide*, and shall not spill over the walls of decency and propriety."[210] The nature and manner of the criticism are relevant in determining whether this right has been abused.[211] The personality of the speaker and their corresponding duty to the courts are relevant in determining whether a speech may be subsequently punished.

The power to punish for contempt will generally not lie against a trustful, sincere, and respectful statement of an opinion.[212] However, publication of lies against the courts is contemptuous speech. The imposition of subsequent punishment against calculated falsehoods is a permissible restriction on the freedom of speech. This is to prevent "the proliferation of

---

205 *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 436–437 (2008) [Per J. Reyes, *En Banc*].

206 *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].

207 RULES OF COURT, rule 71, sec. 3 provides:
SECTION 3. *Indirect Contempt to be Punished After Charge and Hearing.* — After charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
(f) Failure to obey a subpoena duly served;
(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.
But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

208 *In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 180 (1995) [Per J. Narvasa, *En Banc*].

209 J. Moran, Dissenting Opinion in *People v. Alarcon*, 69 Phil. 265, 275 (1939) [Per J. Laurel, *En Banc*].

210 *In re Almacen v. Yaptinchay*, 142 Phil. 353, 371 (1970) [Per J. Ruiz Castro, First Division].

211 *Zaldivar v. Sandiganbayan*, 248 Phil. 542, 554–555 (1988) [*Per Curiam, En Banc*].

212 *Austria v. Masaquel*, 127 Phil. 677, 689–690 (1967) [Per J. Zaldivar, *En Banc*].

untruths which[,] if unrefuted, would gain an undue influence in the public discourse."[213]

Publications that scandalize or put the courts in disrepute are not covered under the guarantees of the freedom of speech and of the press. Freedom of the press is restricted and may be subject to subsequent punishment:

> This brings to fore the need to make a distinction between adverse criticism of the court's decision after the case is ended and "scandalizing the court itself." The latter is not criticism; it is personal and scurrilous abuse of a judge as such, in which case it shall be dealt with as a case of contempt.
>
> It must be clearly understood and always borne in mind that there is a vast difference between criticism or fair comment on the one side and defamation on the other. Where defamation commences, true criticism ends. True criticism differs from defamation in the following particulars: (1) Criticism deals only with such things as invite public attention or call for public comment. (2) Criticism never attacks the individual but only his work. In every case[,] the attack is on a man's acts, or on some thing, and not upon the man himself. A true critic never indulges in personalities. (3) True criticism never imputes or insinuates dishonorable motives, unless justice absolutely requires it, and then only on the clearest proofs. (4) The critic never takes advantage of the occasion to gratify private malice, or to attain any other object beyond the fair discussion of matters of public interest, and the judicious guidance of the public taste.
>
> Generally, criticism of a court's rulings or decisions is not improper, and may not be restricted after a case has been finally disposed of and has ceased to be pending. *So long as critics confine their criticisms to facts and base them on the decisions of the court, they commit no contempt no matter how severe the criticism may be; but when they pass beyond that line and charge that judicial conduct was influenced by improper, corrupt, or selfish motives, or that such conduct was affected by political prejudice or interest, the tendency is to create distrust and destroy the confidence of the people in their courts.*[214] (Emphasis supplied, citations omitted)

Owing to the nature of judicial functions and the ability of justices and judges to respond to criticism in real time when an utterance tends to undermine both aspects of their judicial independence, defamatory criticisms against the courts may be restricted.

Criticisms against public officers are allowed "adequate margin of error by protecting some inaccuracies."[215] Honest mistakes, by way of "[e]rrors or misstatements[,] are inevitable in any scheme of truly free expression and

---

[213] *Guingguing v. Court of Appeals*, 508 Phil. 193, 222 (2005) [Per J. Tinga, Second Division].
[214] *People v. Godoy*, 312 Phil 977, 1018–1019 (1995) [Per J. Regalado, *En Banc*].
[215] *Borjal v. Court of Appeals*, 361 Phil. 1, 27 (1999) [Per J. Bellosillo, Second Division].

debate."[216] A footnote in *Philippine Journalists Inc. v. Thoenen*[217] explains the difference in the treatment of defamation of a public officer and a private individual:

> Three reasons were advanced by Justice Powell for making a distinction between private individuals on one hand and public officers and public figures in the other. *First, public officials and public figures usually enjoy significantly greater access to the channels of effective communication* and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater. *Second, an individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs.* He runs the risk of closer public scrutiny than might otherwise be the case. Those classed as public figures stand in a similar position. For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. *More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.* Third, this would impose an additional difficulty on trial court judges to decide which publications address issues of "general interest" and which do not. Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private individual. He has not accepted public office or assumed an "influential role in ordering society." He has relinquished no part of his interest in the protection of his own good name, and consequently he has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.[218] (Emphasis supplied, citation omitted)

When defamatory allegations are uttered against the courts, justices and judges cannot defend themselves like other public officers. They have no political machinery to speak for and defend them, and the courts can only rely on their officers, who may likewise not be capable of responding in real time. Moreover, the filing of defamation cases is not available to them:

> Under the American doctrine, to repeat, the great weight of authority is that in so far as proceedings to punish for contempt are concerned, critical comment upon the behavior of the court in cases fully determined by it is unrestricted, under the constitutional guaranties of the liberty of the press and freedom of speech. Thus, comments, however stringent, which have relation to judicial proceedings which are past and ended, are not contemptuous of the authority of the court to which reference is made. Such

---

[216] *Id.* at 26.
[217] 513 Phil. 607 (2005) [Per J. Chico-Nazario, Second Division].
[218] *Id.* at 623, *citing Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

comments may constitute a libel against the judge, but it cannot be treated as in contempt of the court's authority.

On this score, it is said that prosecution for libel is usually the most appropriate and effective remedy. The force of American public opinion has greatly restrained the courts in the exercise of the power to punish one as in contempt for making disrespectful or injurious remarks, and it has been said that the remedy of a judge is the same as that given to a private citizen. In such a case, therefore, the remedy of a criminal action for libel is available to a judge who has been derogated in a newspaper publication made after the termination of a case tried by him, since such publication can no longer be made subject of contempt proceedings.

The rule, however, is different in instances under the Philippine doctrine earlier discussed wherein there may still be a contempt of court even after a case has been decided and terminated. In such case, the offender may be cited for contempt for uttering libelous remarks against the court or the judge. The availability, however, of the power to punish for contempt does not and will not prevent a prosecution for libel, either before, during, or after the institution of contempt proceedings. In other words, the fact that certain contemptuous conduct likewise constitutes an indictable libel against the judge of the court contemned does not necessarily require him to bring a libel action, rather than relying on contempt proceedings.

The fact that an act constituting a contempt is also criminal and punishable by indictment or other method of criminal prosecution does not prevent the outraged court from punishing the contempt. This principle stems from the fundamental doctrine that an act may be punished as a contempt even though it has been punished as a criminal offense. The defense of having once been in jeopardy, based on a conviction for the criminal offense, would not lie in bar of the contempt proceedings, on the proposition that a contempt may be an offense, against the dignity of a court and, at the same time, an offense against the peace and dignity of the people of the State. But more importantly, adherence to the American doctrine by insisting that a judge should instead file an action for libel will definitely give rise to an absurd situation and may even cause more harm than good.

Drawing also from American jurisprudence, *to compel the judge to descend from the plane of his judicial office to the level of the contemnor, pass over the matter of contempt, and instead attack him by a civil action to satisfy the judge in damages for a libel, would be a still greater humiliation of a court. That conduct would be personal; the court is impersonal. In our jurisdiction, the judicial status is fixed to such a point that our courts and the judges thereof should be protected from the improper consequences of their discharge of duties so much so that judicial officers have always been shielded, on the highest considerations of the public good, from being called for questioning in civil actions for things done in their judicial capacity.*

Whenever we subject the established courts of the land to the degradation of private prosecution, we subdue their independence, and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden the licentious to trample upon everything sacred in society, and to overturn those institutions which have hitherto been deemed the best guardians of civil liberty.

Hence, *the suggestion that judges who are unjustly attacked have a remedy in an action for libel, has been assailed as being without rational*

> *basis in principle. In the first place, the outrage is not directed to the judge as a private individual but to the judge as such or to the court as an organ of the administration of justice. In the second place, public interests will gravely suffer where the judge, as such, will, from time to time, be pulled down and disrobed of his judicial authority to face his assailant on equal grounds and prosecute cases in his behalf as a private individual.* The same reasons of public policy which exempt a judge from civil liability in the exercise of his judicial functions, most fundamental of which is the policy to confine his time exclusively to the discharge of his public duties, applies here with equal, if not superior, force.[219] (Emphasis supplied, citation omitted)

Justices and judges are restrained from engaging in any other forum except in the content of their decisions. While they cannot be sensitive against legitimate criticisms of their public personalities, courts are weak to correct when false information about them is circulated. Hence, the inherent contempt powers of the court should be available to address the damaging effects of contemptuous speech.

Qualified privilege in libel cases can also be invoked in contempt proceedings, such that even if a speech may be contemptuous, the utterance is not ordinarily subject to subsequent punishment.[220] Fair comments and criticisms are allowed, no matter how severe they may be.[221] In *Manila Bulletin Publishing Corp. v. Domingo*:[222]

> It was evident that the statements as to the "lousy performance" and "mismanagement" of Domingo cannot be regarded to have been written with the knowledge that these were false or in reckless disregard of whether these were false, bearing in mind that Batuigas had documentary evidence to support his statements. Batuigas merely expressed his opinion based on the fact that there were complaints filed against Domingo, among others. *If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.*
>
> Moreover, these statements were but fair commentaries of Batuigas which can be reasonably inferred from the contents of the documents that he had received and which he qualified, in his 20 December 1990 article, to have been brought already to the attention of the DTI, CSC, and the Ombudsman. Jurisprudence defines fair comment as follows:
>
> > To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, *when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily*

---

219 *People v. Godoy*, 312 Phil 977, 1029–1032 (1995) [Per J. Regalado, *En Banc*].
220 *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].
221 *People v. Godoy*, 312 Phil 977, 1019 (1995) [Per J. Regalado, *En Banc*].
222 813 Phil. 37 (2017) [Per J. Martires, Second Division].

> *actionable*. In order that such discreditable imputation to a public official may be actionable, *it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts*.[223] (Emphasis supplied, citations omitted)

Unless proven malicious, criticisms of the conduct of public officers, including the courts, should not be punished. In *Borjal v. Court of Appeals*,[224] adopting *New York Times v. Sullivan*:[225]

> To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. *In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.*
>
> . . . .
>
> This in effect is the strong message in *New York Times v. Sullivan* which the appellate court failed to consider or, for that matter, to heed. It insisted that private respondent was not, properly speaking, a "public official" nor a "public figure," which is why the defamatory imputations against him had nothing to do with his task of organizing the FNCLT.
>
> *New York Times v. Sullivan* was decided by the U. S. Supreme Court in the 1960s at the height of the bloody rioting in the American South over racial segregation. The then City Commissioner L. B. Sullivan of Montgomery, Alabama, sued New York Times for publishing a paid political advertisement espousing racial equality and describing police atrocities committed against students inside a college campus. As commissioner having charge over police actions Sullivan felt that he was sufficiently identified in the ad as the perpetrator of the outrage; consequently, he sued New York Times on the basis of what he believed were libelous utterances against him.
>
> The U.S. Supreme Court speaking through Mr. Justice William J. Brennan Jr. ruled against Sullivan holding that *honest criticisms on the conduct of public officials and public figures are insulated from libel judgments. The guarantees of freedom of speech and press prohibit a public official or public figure from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement*

---

223 *Id.* at 66–67.

224 361 Phil. 1 (1999) [Per J. Bellosillo, Second Division].

225 376 U.S. 254 (1964).

was made with actual malice, i.e., with knowledge that it was false or with reckless disregard of whether it was false or not.

The *raison d'etre* for the New York Times doctrine was that to require critics of official conduct to guarantee the truth of all their factual assertions on pain of libel judgments would lead to self-censorship, since would-be critics would be deterred from voicing out their criticisms even if such were believed to be true, or were in fact true, because of doubt whether it could be proved or because of fear of the expense of having to prove it.[226] (Emphasis supplied, citations omitted)

In relation to publications attacking the Judiciary, *In re Jurado*[227] explains that the freedom of the press to publish must be balanced with the right to the private reputation of the Judiciary. Journalists must exercise *bona fide* efforts to ascertain the truth or falsity of their publications:

In the present proceeding, there is also involved an acknowledged and important interest of individual persons: the right to private reputation. Judges, by becoming such, are commonly and rightly regarded as voluntarily subjecting themselves to norms of conduct which embody more stringent standards of honesty, integrity, and competence than are commonly required from private persons. Nevertheless, persons who seek or accept appointment to the Judiciary cannot reasonably be regarded as having thereby forfeited any right whatsoever to private honor and reputation. For so to rule will be simply, in the generality of cases, to discourage all save those who feel no need to maintain their self-respect as a human being in society, from becoming judges, with obviously grievous consequences for the quality of our judges and the quality of the justice that they will dispense. Thus, the protection of the right of individual persons to private reputations is also a matter of public interest and must be reckoned with as a factor in identifying and laying down the norms concerning the exercise of press freedom and free speech.

Clearly, the public interest involved in freedom of speech and the individual interest of judges (and for that matter, all other public officials) in the maintenance of private honor and reputation need to be accommodated one to the other. *And the point of adjustment or accommodation between these two legitimate interests is precisely found in the norm which requires those who, invoking freedom of speech, publish statements which are clearly defamatory to identifiable judges or other public officials to exercise bona fide care in ascertaining the truth of the statements they publish. The norm does not require that a journalist guarantee the truth of what he says or publishes. But the norm does prohibit the reckless disregard of private reputation by publishing or circulating defamatory statements without any bona fide effort to ascertain the truth thereof.* That this norm represents the generally accepted point of balance or adjustment between the two interests involved is clear from a consideration of both the pertinent civil law norms and the Code of Ethics adopted by the journalism profession in the Philippines. (Emphasis supplied, citations omitted)[228]

---

226 *Borjal v. Court of Appeals*, 361 Phil 1, 20–22 (1999) [Per J. Bellosillo, Second Division].
227 313 Phil. 119 (1995) [Per J. Narvasa, *En Banc*].
228 *Id.* at 167–168.

In *In re Jurado*, a lawyer-columnist was punished for contempt after publishing numerous articles scandalizing the integrity of judges and members of this Court, in gross and reckless disregard for the truth or falsity of his statements. Here, this Court recognized the right of judges to private honor and reputation even as they voluntarily subject themselves to stricter standards of integrity, honesty, and competence than private individuals. The freedom of speech and of the press do not sanction abusing these rights through false publications relating to public officers without *bona fide* effort in ascertaining the truth. Such reckless disregard of truth also violates the Philippine Journalist's Code of Ethics.

Moreover, this Court held that the personalities of Emiliano Jurado as a member of the media and as a lawyer cannot be separated, and the liability that may be imposed upon him for being an officer of the court may be aggravated:

> Jurado would have the Court clarify in what capacity—whether as a journalist, or as a member of the bar—he has been cited in these proceedings. Thereby he resurrects the issue he once raised in a similar earlier proceeding: that he is being called to account as a lawyer for his statements as a journalist. This is not the case at all. Upon the doctrines and principles already inquired into and cited, he is open to sanctions as journalist who has misused and abused press freedom to put the judiciary in clear and present danger of disrepute and of public odium and approbium, [*sic*] to the detriment and prejudice of the administration of justice. That he is at the same time a member of the bar has nothing to do with the setting in of those sanctions, although it may aggravate liability. At any rate, what was said about the matter in that earlier case is equally cogent here:
>
> > "Respondent expresses perplexity at being called to account for the publications in question in his capacity as a member of the bar, not as a journalist. The distinction is meaningless, since as the matter stands, he has failed to justify his actuations in either capacity, and there is no question of the Court's authority to call him to task either as a newsman or as a lawyer. What respondent proposes is that in considering his actions, the Court judge them only as those of a member of the press and disregard the fact that he is also a lawyer. But his actions cannot be put into such neat compartments. In the natural order of things, a person's acts are determined by, and reflect, the sum total of his knowledge, training and experience. In the case of respondent in particular, the Court will take judicial notice of the frequent appearance in his regular columns of comments and observations utilizing legal language and argument, bearing witness to the fact that in pursuing his craft as a journalist he calls upon his knowledge as a lawyer to help inform and influence his readers and enhance his credibility. Even absent this circumstance, respondent cannot honestly assert that in exercising his profession as a journalist he does not somehow, consciously or unconsciously, draw upon his legal knowledge and training. It is thus not realistic, nor perhaps even possible, to come to

> any affair, informed and intelligent judgment of respondent's actuations by divorcing from consideration the fact that he is a lawyer as well as a newspaperman, even supposing, which is not the case — that he may thereby be found without accountability in this matter.
>
> To repeat, respondent cannot claim absolution even were the Court to lend ear to his plea that his actions be judged solely as those of a newspaperman unburdened by the duties and responsibilities peculiar to the law profession of which he is also a member."[229]

In *In re Macasaet*,[230] bribery allegations against an associate justice of this Court who supposedly received PHP 10 million in consideration for ruling in favor of the accused were published several times in a newspaper of general circulation. This Court found Amado Macasaet in contempt in publishing defamatory articles, in reckless and wanton disregard of whether his publication was false or not:

> We have no problems with legitimate criticisms pointing out flaws in our decisions, judicial reasoning, or even how we run our public offices or public affairs. They should even be constructive and should pave the way for a more responsive, effective and efficient judiciary.
>
> Unfortunately, the published articles of respondent Macasaet are not of this genre. On the contrary, he has crossed the line, as his are *baseless scurrilous attacks which demonstrate nothing but an abuse of* press freedom. They *leave no redeeming value* in furtherance of freedom of the press. They do nothing but *damage the integrity of the High Court, undermine the faith and confidence of the people in the judiciary, and threaten the doctrine of judicial independence*.
>
> A veteran journalist of many years and a president of a group of respectable media practitioners, respondent Macasaet has brilliantly sewn an incredible tale, adorned it with some facts to make it lifelike, but impregnated it as well with insinuations and innuendoes, which, when digested entirely by an unsuspecting soul, may make him throw up with seethe. Thus, *he published his highly speculative articles that bribery occurred in the High Court, based on specious information*, without any regard for the injury such would cause to the reputation of the judiciary and the effective administration of justice. Nor did he give any thought to the undue, irreparable damage such false accusations and thinly veiled allusions would have on a member of the Court.
>
> Respondent has absolutely no basis to call the Supreme Court a court of "thieves" and a "basket of rotten apples". These publications directly undermine the integrity of the justices and render suspect the Supreme Court as an institution. Without bases for his publications, purely resorting to speculation and "fishing expeditions" in the hope of striking — or creating — a story, with utter disregard for the institutional integrity of the Supreme

---

229 *Id.* at 184-185.

230 583 Phil. 391, 433 (2008) [Per J. R.T. Reyes, *En Banc*].

> Court, he has committed acts that degrade and impede the orderly administration of justice.
>
> We cannot close our eyes to the comprehensive Report and Recommendation of the Investigating Committee. It enumerated the inconsistencies and assumptions of respondent which *lacked veracity and showed the reckless disregard of whether the alleged bribery was false or not.*
>
> Indeed, the confidential information allegedly received by respondent by which he swears with his "heart and soul" was found by the Investigating Committee *unbelievable*. It was a story that reeked of urban legend, as it generated more questions than answers.[231] (Emphasis supplied, citations omitted)

In *Re: News Report of Mr. Jomar Canlas in the Manila Times*,[232] this Court severely reprimanded Jomar Canlas (Canlas) for publishing a misleading article with grave accusations of bribery of justices of this Court to rule in favor of the disqualification of Senator Grace Poe during the 2016 presidential elections. This Court declared Canlas guilty of indirect contempt for his misleading article showing an intention to sensationalize, with grave allegations without showing that his sources had been verified:

> The substantive evil sought to be prevented to warrant the restriction upon freedom of expression or of the press must be serious and the degree of imminence extremely high. In the application of the clear and present danger test in relation to freedom of the press, good faith or absence of intent to harm the courts is a valid defense. Here, Canlas claimed that his article was written with good motives and for justifiable ends.
>
> We do not agree. Canlas reported about alleged attempts to buy off the Justices in the Poe cases. The offer was allegedly ₱50 million for each vote to disqualify Poe. Canlas claimed that he tried to get the side of the Justices on the alleged attempts but he was unsuccessful. He did not elaborate on his attempts to verify the story. However, he quoted an unnamed Justice who allegedly said that the Court will not bow to any pressure in deciding the case in exchange for money. Canlas claimed that his article painted the Court in a good light as it showed that the Court is incorruptible. We do not find his explanation acceptable.
>
> First, the Court notes that the statement of the unnamed Justice did not confirm the allegation of bribery; the unnamed Justice only stated that the Court will not allow itself to be pressured by anyone. *Second, the legitimacy of the news article is misleading and has not been sufficiently established. Third, a reading of the article shows its intention to sensationalize. The news article reports of grave accusations that were not shown to have been verified.* It imputed bribery charges against a female lawyer, who was a former Malacañang lawyer and who supported the candidacy of Mar Roxas; a member of the Liberal Party; and a businessman, who is close to Roxas and President Benigno Aquino III. It gave a false impression against the Justices who did not vote in favor of Poe. It compared the bribery attempts to the one that allegedly occurred during the

---

231 *Id.* at 448–451.

232 865 Phil. 279 [Per J. Carpio, *En Banc*].

impeachment of Chief Justice Renato C. Corona. The article, in full, emphasizes the bad that overshadows the short disclaimer that the Justices refused the bribe. Again, because of the close voting in the Poe cases, the article created a doubt in the minds of the readers, against some of the Justices and in the process, the Court as a whole.

In *In Re Emil P. Jurado*, where Jurado was cited for contempt for publishing serious accusations against members of the Judiciary without ascertaining their veracity, the Court expressed that —

> [F]alse reports about a public official or other person are not shielded from sanction by the cardinal right to free speech enshrined in the Constitution. Even the most liberal view of free speech has never countenanced the publication of falsehoods, specially the persistent and unmitigated dissemination of patent lies. The U.S. Supreme Court, while asserting that "[u]nder the First Amendment there is no such thing as a false idea," and that "[h]owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas" (citing a passage from the first Inaugural Address of Thomas Jefferson), nonetheless made the firm announcement that there is no constitutional value in false statements of facts," and "the erroneous statement of fact is not worthy of constitutional protection [although] x x x nevertheless inevitable in free debate." "Neither the intentional lie nor careless error," it said, "materially advances society's interest in 'unhibited [*sic*], robust, and wide-open' debate on public issues. They belong to that category of utterances which 'are no[t] essential part of any exposition of ideas, and are of such slight social value as a step to the truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'"

The Court is not immune from criticisms, and it is the duty of the press to expose all government agencies and officials and to hold them responsible for their actions. However, the press cannot just throw accusations without verifying the truthfulness of their reports. The perfunctory apology of Canlas does not detract from the fact that the article, directly or indirectly, tends to impede, obstruct, or degrade the administration of justice.[233] (Emphasis supplied, citations omitted)

Like criminal libel, the burden to prove actual malice or the reckless disregard of falsity in criminal contempt proceedings belongs to the judge or any other person seeking to hold the speaker in contempt:

> Based on these principles, this Court has imposed a higher standard for criminal libel where the complainant is a public figure, particularly a public officer. *Actual malice — knowledge that the defamatory statement was false, or with reckless disregard as to its falsity — must be proved. It is the burden of the prosecution to prove actual malice, not the defense's to disprove.* In *Guingguing v. Court of Appeals*:

---

[233] *Id.* at 285–288.

> We considered the following proposition as settled in this jurisdiction: that in order to justify a conviction for criminal libel against a public figure, it must be established beyond reasonable doubt that the libelous statements were made or published with actual malice, meaning knowledge that the statement was false or with reckless disregard as to whether or not it was true.
>
> *"Reckless disregard" is determined on a case-by-case basis.* There is reckless disregard if the accused was found to have entertained serious doubts of the truth of the published statements, or if the statements were of a matter not determined to be a legitimate topic in the area. *Errors or misstatements by themselves are insufficient to be considered reckless disregard, unless shown that the accused possessed a high degree of awareness of the falsity.* Mere negligence is not enough:
>
> > To be considered to have reckless disregard for the truth, the false statements must have been made with a definite awareness that they are untrue. That the accused was negligent of the facts is not enough. The accused must have doubted the veracity of the statements that he or she was making. Thus, errors and inaccuracies may be excused so long as they were made with the belief that what was being stated is true.
>
> To burden the accused with proving that allegations of official misconduct are true, or that the allegations were made with good motives and justifiable ends, is repugnant to the Constitution.[234] (Emphasis supplied, citations omitted)

VI

Comments or criticisms of lawyers against the courts may be subject to greater limitation and scrutiny, owing to the Lawyer's Oath and the Code of Professional Responsibility and Accountability. Similarly, the speech of judges is stringently restricted by the Code of Judicial Conduct.[235] Judges should be guided by strict propriety and decorum at all times and in all activities, whether in their personal or official capacity.[236]

The freedom of speech of lawyers is not absolute. Prior to its amendment, Canon 13 of the Code of Professional Responsibility prohibits a lawyer from committing "any impropriety which tends to influence, or gives the appearance of influencing the court."[237] Canon 13, Rule 13.02 expressly provides that "[a] lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party."

---

234 *Daquer v. People*, G.R. No. 206015, June 30, 2021 [Per J. Leonen, Third Division].

235 *Lorenzana v. Judge Austria*, 731 Phil. 82, 102 (2014) [Per J. Brion, Second Division].

236 *Office of the Court Administrator v. Atillo, Jr.*, A.M. No. RTJ-21-018, September 29, 2021 [Per J. Inting, Second Division].

237 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 19.

The Code of Professional Responsibility and Accountability expands the responsibilities of lawyers with respect to the *sub judice* rule. Rule 13.02 in the old Code has been incorporated under Canon II on Propriety in the new Code of Professional Responsibility and Accountability. Section 19 of the same Code limits the public speech of a lawyer in relation to a pending proceeding that may have the following effect:

> a. cause a pre-judgment, or
> b. sway public perception so as to impede, obstruct, or influence the decision of such court, tribunal, or other government agency, or which tends to tarnish the court's or tribunal's integrity,
> c. impute improper motives against any of its members, or
> d. create a widespread perception of guilt or innocence before a final decision.

Aside from compliance with the *sub judice* rule, lawyers are responsible for their use of social media and "shall not knowingly or maliciously post, share, upload or otherwise disseminate false or unverified statements, claims, or commit any other act of disinformation."[238]

Lawyers do not shed their obligations to this Court regardless of the role they choose to fulfill.[239] They are duty bound to comply with the ethical standards of the profession inside and outside judicial proceedings. Hence, a lawyer, who is also a member of the press, cannot claim to exercise press freedom at the expense of their obligations under the Code of Professional Responsibility and Accountability.[240] While this Court has recognized the rights of a lawyer as an officer of the court and as an ordinary citizen,[241] this Court also held that the duties attending these rights are not divisible and cannot be invoked only when convenient.[242]

Notwithstanding these professional responsibilities, this Court recognizes that criticism of its decisions is an important aspect of a lawyer's work:

> Criticism of the courts has, indeed, been an important part of the traditional work of the lawyer. In the prosecution of appeals, he points out the errors of lower courts. In articles written for law journals he dissects with detachment the doctrinal pronouncements of courts and fearlessly lays bare for all to see the flaws and inconsistencies of the doctrines[.] As aptly stated by Chief Justice Sharswood in *Ex Parte Steinman*, 40 Am. Rep. 641:
>
> "No class of the community ought to be allowed freer scope in the expression or publication of opinions as to the

---

238 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 38.
239 *Velasco v. Atty. Causing*, A.C. No. 12883, March 2, 2021 [Per J. Inting, *En Banc*].
240 *Id.*
241 *Judge Lacurom v. Atty. Jacoba*, 519 Phil. 195, 209 (2006) [Per J. Carpio, Third Division].
242 *Velasco v. Atty. Causing*, A.C. No. 12883, March 2, 2021 [Per J. Inting, *En Banc*].

> capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities for observing and forming a correct judgment. They are in constant attendance on the courts. . . . To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood, by the judge or judges whom he may consider it his duty to attack and expose, is a position too monstrous to be entertained. . . .

Hence, as a citizen and as officer of the court, a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he "professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen."

> "Above all others, the members of the bar have the best opportunity to become conversant with the character and efficiency of our judges. No class is less likely to abuse the privilege, as no other class has as great an interest in the preservation of an able and upright bench."

To curtail the right of a lawyer to be critical of the foibles of courts and judges is to seal the lips of those in the best position to give advice and who might consider it their duty, to speak disparagingly. "Under such a rule," so far as the bar is concerned, "the merits of a sitting judge may be rehearsed, but as to his demerits there must be profound silence."

But it is the cardinal condition of all such criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.

For, membership in the Bar imposes upon a person obligations and duties which are not mere flux and ferment. His investiture into the legal profession places upon his shoulders no burden more basic, more exacting and more imperative than that of respectful behavior toward the courts. He vows solemnly to conduct himself "with all good fidelity . . . to the courts;" 14 and the Rules of Court constantly remind him "to observe and maintain the respect due to courts of justice and judicial officers." The first canon of legal ethics enjoins him "to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."

As Mr. Justice Field puts it:

> ". . . the obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the Bar, is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but includes abstaining out of court from all insulting language and offensive conduct toward judges personally for their judicial acts."

> The lawyer's duty to render respectful subordination to the courts is essential to the orderly administration of justice. Hence, in the assertion of their clients' rights, lawyers—even those gifted with superior intellect—are enjoined to rein up their tempers.[243] (Emphasis supplied, citations omitted)

However, there are limits to a lawyer's criticism of the courts:

> [U]se of foul language which ridicules the high esteem for the courts, creates or promotes distrust in judicial administration, or tends to undermine the confidence of the people in the integrity of the members of this Court and to degrade the administration of justice by this Court; or offensive, abusive and abrasive language; or disrespectful, offensive, manifestly baseless and malicious statements in pleadings or in a letter addressed to the judge; or disparaging, intemperate, and uncalled for remarks.[244] (Citations omitted)

In *In re Almacen v. Yaptinchay,*[245] Atty. Vicente Raul Almacen (Atty. Almacen) filed a petition to surrender his lawyer's certificate of title to this Court for the alleged injustice done to his client. He disclosed the contents of his petition to the press, which were also published in a newspaper of general circulation. Atty. Almacen's petition originated from dismissing his motion for reconsideration in the lower court for failing to include a notice of time and place of the hearing. His appeal to the Court of Appeals was likewise dismissed for the same reason. Similarly, this Court also dismissed his appeal by *certiorari* and the subsequent motions for reconsiderations filed through minute resolutions. Despite his filing of the petition and its publication in the media, Atty. Almacen did not surrender his certificate of membership to the bar.[246]

Atty. Almacen was declared to be in contempt of court for his "vicious language used, and the scurrilous innuendoes they carried far transcend the permissible bounds of legitimate criticism."[247] Citing the dissenting opinion of Chief Justice Moran in *Alarcon*, this Court held that contemptuous speech may be punished even after the final disposition of a pending case:

> Accordingly, no comfort is afforded Atty. Almacen by the circumstance that his statements and actuations now under consideration were made only after the judgment in his client's appeal had attained finality. He could as much be liable for contempt therefor as if it had been perpetrated during the pendency of the said appeal.
>
> More than this, however, consideration of whether or not he could be held liable for contempt for such post-litigation utterances and actuations, is here immaterial. By the tenor of our Resolution of November

---

243 *In re Almacen v. Yaptinchay,* 142 Phil. 353, 353–393 (1970) [Per J. Castro, First Division].
244 *Complaint of Mr. Aurelio Indencia Arrienda,* 499 Phil. 1, 16 (2005) [Per J. Corona, *En Banc*].
245 142 Phil. 353 (1970) [Per J. Castro, First Division].
246 *Id.* at 356–360.
247 *Id.* at 389

> 17, 1967, we have confronted the situation here presented solely in so far as it concerns Atty. Almacen's professional identity, his sworn duty as a lawyer and his fitness as an officer of this Court, in the exercise of the disciplinary power inherent in our authority and duty to safeguard the morals and ethics of the legal profession and to preserve its ranks from the intrusions of unprincipled and unworthy disciples of the noblest of callings. In this inquiry, the pendency or non-pendency of a case in court is altogether of no consequence. The sole objective of this proceeding is to preserve the purity of the legal profession, by removing or suspending a member whose misconduct has proved himself unfit to continue to be entrusted with the duties and responsibilities belonging to the office of an attorney. [248]

In *Zaldivar v. Sandiganbayan*,[249] a motion for contempt of court was filed against Special Prosecutor Raul M. Gonzalez (Special Prosecutor Gonzalez) in relation to his public statements regarding the dismissal of this Court for the graft and corruption case against Antique Governor Enrique Zaldivar. This Court issued a show cause order why Special Prosecutor Gonzalez should not be punished for contempt and subjected to administrative liability. Special Prosecutor Gonzalez filed a motion for inhibition of several justices of this Court for "lack of sobriety and neutrality" and to transfer the hearing of the administrative complaint to the Integrated Bar of the Philippines, among others. This Court held that when the speaker of a contumacious speech is a lawyer, they may be penalized for contempt and administratively held liable at the same time:

> We begin by referring to the authority of the Supreme Court to discipline officers of the court and members of the court and members of the Bar. The Supreme Court, as regular and guardian of the legal profession, has plenary disciplinary authority over attorneys. The authority to discipline lawyers stems from the Court's constitutional mandate to regulate admission to the practice of law, which includes as well authority to regulate the practice itself of law. Quite apart from this constitutional mandate, the disciplinary authority of the Supreme Court over members of the Bar is an inherent power incidental to the proper administration of justice and essential to an orderly discharge of judicial functions. Moreover, the Supreme Court has inherent power to punish for contempt, to control in the furtherance of justice the conduct of ministerial officers of the Court including lawyers and all other persons connected in any manner with a case before the Court. The power to punish for contempt is "necessary for its own protection against an improper interference with the due administration of justice," "[it] is not dependent upon the complaint of any of the parties litigant."
>
> There are, in other words, two (2) related powers which come into play in cases like that before us here; the Court's inherent power to discipline attorneys and the contempt power. The disciplinary authority of the Court over members of the Bar is broader that the power to punish for contempt. Contempt of court may be committed both by lawyers and non-lawyers, both in and out of court. Frequently, where the contemnor is a lawyer, the contumacious conduct also constitutes professional misconduct which calls into play the disciplinary authority of the Supreme Court.

---

[248] *Id.* at 386–387.

[249] 248 Phil. 542 (1988) [*Per Curiam, En Banc*].

> Where the respondent is a lawyer, however, the Supreme Court's disciplinary authority over lawyers may come into play whether or not the misconduct with which the respondent is charged also constitutes contempt of court. The power to punish for contempt of court does not exhaust the scope of disciplinary authority of the Court over lawyers. The disciplinary authority of the Court over members of the Bar is but corollary to the Court's exclusive power of admission to the Bar. A lawyer is not merely a professional but also an officer of the court and as such, he is called upon to share in the task and responsibility of dispensing justice and resolving disputes in society. Any act on his part which visibly tends to obstruct, pervert, or impede and degrade the administration of justice constitutes both professional misconduct calling for the exercise of disciplinary action against him and contumacious conduct warranting application of the contempt power.
>
> . . . .
>
> Considering the kinds of statements of lawyers discussed above which the Court has in the past penalized as contemptuous or as warranting application of disciplinary sanctions, this Court is compelled to hold that the statements here made by respondent Gonzalez clearly constitute contempt and call for the exercise of the disciplinary authority of the Supreme Court. Respondent's statements, especially the charge that the Court deliberately rendered an erroneous and unjust decisions in the Consolidated Petitions, necessarily implying that the justices of this Court betrayed their oath of office, merely to wreak vengeance upon the respondent here, constitute the grossest kind of disrespect for the Court. Such statements very clearly debase and degrade the Supreme Court and, through the Court, the entire system of administration of justice in the country. That respondent's baseless charges have had some impact outside the internal world of subjective intent, is clearly demonstrated by the filing of a complaint for impeachment of thirteen (13) out of the then fourteen (14) incumbent members of this Court, a complaint the centerpiece of which is a repetition of the appalling claim of respondent that this Court deliberately rendered a wrong decision as an act of reprisal against the respondent.[250] (Citations omitted)

In *Zaldivar*, this Court held that a lawyer's freedom of speech and of expression is limited. While a lawyer can criticize the courts and its decisions, this must not transcend the bounds of decency and propriety. The nature and manner of a lawyer's criticisms can show that they violated their solemn duty to uphold and defend judicial independence and public confidence:

> *The instant proceeding is not addressed to the fact that respondent has criticized the Court; it is addressed rather to the nature of that criticism or comment and the manner in which it was carried out.*
>
> *Respondent Gonzalez disclaims an intent to attack and denigrate the court. The subjectivities of the respondent are irrelevant so far as characterization of his conduct or misconduct is concerned. He will not, however, be allowed to disclaim the natural and plain import of his words and acts.* It is, upon the other hand, not irrelevant to point out that

---

[250] *Id.* at 554–556, 578–579.

respondent offered no apology in his two (2) explanations and exhibited no repentance.

Respondent Gonzalez also defends himself contending that no injury to the judiciary has been shown, and points to the fact that this Court denied his Motion for Reconsideration of its per curiam Decision of 27 April 1988 and reiterated and amplified that Decision in its Resolution of 19 May 1988. In the first place, proof of actual damage sustained by a court or the judiciary in general is not essential for a finding of contempt or for the application of the disciplinary authority of the Court. Insofar as the Consolidated Petitions are concerned this Court after careful review of the bases of its 27 April 1988 Decision, denied respondent's Motion for Reconsideration thereof and rejected the public pressures brought to bear upon this Court by the respondent through his much publicized acts and statements for which he is here being required to account. Obstructing the free and undisturbed resolution of a particular case is not the only species of injury that the Court has a right and a duty to prevent and redress. What is at stake in cases of this kind is the integrity of the judicial institutions of the country in general and of the Supreme Court in particular. Damage to such institutions might not be quantifiable at a given moment in time but damage there will surely be if acts like those of respondent Gonzalez are not effectively stopped and countered. The level of trust and confidence of the general public in the courts, including the court of last resort, is not easily measured; but few will dispute that a high level of such trust and confidence is critical for the stability of democratic government.

Respondent Gonzalez lastly suggest[s] that punishment for contempt is not the proper remedy in this case and suggests that the members of this Court have recourse to libel suits against him. While the remedy of libel suits by individual members of this Court may well be available against respondent Gonzalez, such is by no means an exclusive remedy. Moreover, where as in the instant case, it is not only the individual members of the Court but the Court itself as an institution that has been falsely attacked, libel suits cannot be an adequate remedy.[251] (Emphasis supplied, citations omitted)

VII

This Court has recognized several qualified privileges which exempt a contemptuous speech from subsequent punishment.

In *Castelo,* this Court characterized contempt proceedings as akin to libel cases in relation to the applicable limitations on the freedoms of expression and of the press. Hence, qualified privileged communications that are defenses in libel cases found in Article 354 of the Revised Penal Code also apply in contempt proceedings. The provision reads:

ARTICLE 354. *Requirement for publicity.*– Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

---

[251] *Id.* at 582–584.

1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Manuel v. Paño[252] expounds on these qualified privileged communications, which are ultimately based on the freedom of expression and the right to information on matters of public interest:

The two exceptions provided for under Article 354 are based on the wider guarantee of freedom of expression as an institution of all republican societies. This in turn is predicated on the proposition that the ordinary citizen has a right and a duty to involve himself in matters that affect the public welfare and, for this purpose, to inform himself of such matters.

The vitality of republicanism derives from an alert citizenry that is always ready to participate in the discussion and resolution of public issues. These issues include the conduct of government functionaries who are accountable to the people in the performance of their assigned powers, which after all come from the people themselves. Every citizen has a right to expect from all public servants utmost fidelity to the trust reposed in them and the maximum of efficiency and integrity in the discharge of their functions. Every citizen has a right to complain and criticize if this hope is betrayed.

It is no less important to observe that this vigilance is not only a right but a responsibility of the highest order that should not be shirked for fear of official reprisal or because of mere civic lethargy. Whenever the citizen discovers official anomaly, it is his duty to expose and denounce it, that the culprits may be punished and the public service cleansed even as the rights violated are vindicated or redressed. It can never be overstressed that indifference to ineptness will breed more ineptness and that toleration of corruption will breed more corruption. The sins of the public service are imputable not only to those who actually commit them but also to those who by their silence or inaction permit and encourage their commission.

. . . .

The second exception is justified under the right of every citizen to be informed on matters of public interest, which, significantly, was first recognized in the 1973 Constitution. Even if it were not, the right would still be embraced in the broader safeguard of freedom of expression, for the simple reason that the right to speak intelligently on "matters that touch the existing order" necessarily imports the availability of adequate official information on such matters. Surely, the exercise of such right cannot inspire belief if based only on conjectures and rumors and half-truths because direct access to the facts is not allowed to the ordinary citizen.

This right is now effectively enjoyed with the help of the mass media, which have fortunately resumed their roles as an independent

---

[252] 254 Phil. 223 (1989) [Per J. Cruz, First Division].

> conduit of information between the government and the people. It is the recognized duty of the media to report to the public what is going on in the government, including the proceedings in any of its departments or agencies, save only in exceptional cases involving decency or confidentiality when disclosure may be prohibited. To protect them in the discharge of this mission, the law says that as long as the account is a fair and true report of such proceedings, and made without any remarks or comment, it is considered privileged and malice is not presumed. Its publication is encouraged rather than suppressed or punished.
>
> This is one reason why the Court looks with disapproval on censorship in general as an unconstitutional abridgment of freedom of expression. Censorship presumes malice at the outset. It prevents inquiry into public affairs and curtails their disclosure and discussion, leaving the people in the dark as to what is happening in the public service. By locking the public portals to the citizen, who can only guess at the goings-on in the forbidden precints, censorship separates the people from their government. This certainly should not be permitted. "A free press stands as one of the great interpreters between the government and the people," declared Justice Sutherland of the U.S. Supreme Court. "To allow it to be fettered is to fetter ourselves."[253] (Citations omitted)

The first type of qualified privilege is illustrated in *Bustos*, where a "complaint made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having some interest or duty in the matter,"[254] does not constitute contempt of court:

> Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege.
>
> > "The doctrine of privileged communications rests upon public policy, 'which looks to the free and unfettered administration of justice, though, as an incidental result, it may in some instances afford an immunity to the evil-disposed and malignant slanderer.'"
>
> Privilege is classified as either absolute or qualified. With the first, we are not concerned. As to qualified privilege, it is as the words suggest a *prima facie* privilege which may be lost by proof of malice. The rule is thus stated by Lord Campbell, C. J.
>
> "A communication made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contained criminatory matter which without this privilege would be slanderous and actionable."
>
> A pertinent illustration of the application of qualified privilege is a complaint made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having

---

253 *Id.* at 236–238.

254 *United States v. Bustos*, 37 Phil. 731, 742 (1918) [Per J. Malcolm, *En Banc*].

> some interest or duty in the matter. *Even when the statements are found to be false, if there is probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistake of the individual.* But the statements must be made under an *honest sense of duty*; a self-seeking motive is destructive. Personal injury is not necessary. All persons have an interest in the pure and efficient administration of justice and of public affairs. *The duty under which a party is privileged is sufficient if it is social or moral in its nature and this person in good faith believe he is acting in pursuance thereof although in fact he is mistaken.* The privilege is not defeated by the mere fact that the communication is made in intemperate terms. A further element of the law of privilege concerns the person to whom the complaint should be made. The rule is that if a party applies to the wrong person through some natural and honest mistake as to the respective functions of various officials such unintentional error will not take the case out of the privilege.
>
> In the usual case malice can be presumed from defamatory words. Privilege destroy that presumption. *The onus of proving malice then lies on the plaintiff. The plaintiff must bring home to the defendant the existence of malice as the true motive of his conduct.* Falsehood and the absence of probable cause will amount to proof of malice.
>
> A privileged communication should not be subjected to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications. The ultimate test is that of *bona fides*.[255] (Emphasis supplied, citations omitted)

In *Bustos*, a criminal case for libel was filed against those who filed a complaint to the executive secretary for the removal of a justice of the peace in Pampanga for malfeasance. This Court reversed the conviction of the complainants, recognizing the right to criticize judicial conduct and the duty to assist in the investigation of any misconduct of a public officer.

Complainants who ventilated their grievances against a judge in the proper forum will generally not be held liable for contempt.[256] If the charges in the complaint are proven false, it is still not punishable as long as the charges were "formed with a reasonable degree of care and on reasonable grounds."[257] It is the burden of those who seek to punish for contempt to establish that the filing of the complaint was done maliciously.

The second type of qualified privilege is a fair and true reporting of a proceeding or any of its incidents. This was illustrated in *Castelo*:

> But, even if it may have that effect, we however believe that the publication in question comes well within the framework of the constitutional guaranty of the freedom of the press. *At least it may be said that it is a fair and true report of an official investigation that comes well*

---

255 *Id.* at 742–743.

256 *Daez v. Court of Appeals*, 269 Phil. 63 (1990) [Per J. Medialdea, First Division].

257 *United States v. Sedano*, 14 Phil. 338, 342 (1909) [Per J. Carson, *En Banc*].

> *within the principle of a privileged communication, so that even if the same is defamatory or contemptuous, the publisher need not be prosecuted upon the theory that he has done it to serve public interest or promote public good.* Thus, under our law, it is postulated that "*a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in such proceedings, or of any other act performed by public officers in the exercise of their functions*", *is deemed privileged and not punishable.*
>
> The reason behind this privilege is obvious. As it was aptly said, "Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege." On another occasion it was emphasized that "The doctrine of privilege communications rests upon public policy, 'which looks to the free unfettered administration of justice, though, as an incidental result, it may in some instances afford an immunity to the evil-disposed and malignant slanderer[.]'"
>
> While the present case involves an incident of contempt the same is akin to a case of libel for both constitute limitations upon freedom of the press or freedom of expression guaranteed by our Constitution. So what is considered a privilege in one may likewise be considered in the other. The same safeguard should be extended to one whether anchored in freedom of the press or freedom of expression. Therefore, this principle regarding privileged communications can also be invoked in favor of appellant.
>
> *A circumstance that mitigates the behavior of appellant is his compelling duty as he sees it to serve public opinion by reporting matters of public concern.* He acted imbued with this spirit and compelled by this duty. *His main function is to gather news of public interest for his newspaper from sources available to him which at times come under adverse circumstances and this he has a perfect right to do provided that his source comes within the realm of law.* In legal parlance, we may say that this source should be one not of confidential nature or not banned for publication. Otherwise, its privileged nature is destroyed. He then becomes amenable to prosecution or disciplinary action.[258] (Emphasis supplied, citations omitted)

The third kind of qualified privilege is fair commentaries on matters of public interest.

In *Borjal*, this Court recognized that Article 354 of the Revised Penal Code is not an exclusive enumeration of qualified privilege. Fair commentaries on matters of public interest are implicit in the constitutional freedoms of speech and of the press:

> Indisputably, petitioner Borjal's questioned writings are not within the exceptions of Art. 354 of The Revised Penal Code for, as correctly observed by the appellate court, they are neither private communications nor fair and true report without any comments or remarks. However this

[258] *People v. Castelo*, 114 Phil. 892, 900-901 (1962) [Per J. Bautista Angelo, *En Banc*].

does not necessarily mean that they are not privileged. To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete*, this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels.

The concept of privileged communications is implicit in the freedom of the press. As held in *Elizalde v. Gutierrez* and reiterated in *Santos v. Court of Appeals*—

> To be more specific, no culpability could be imputed to petitioners for the alleged offending publication without doing violence to the concept of privileged communications implicit in the freedom of the press. As was so well put by Justice Malcolm in Bustos: 'Public policy, the welfare of society, and the orderly administration of government have demanded protection of public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege.'

The doctrine formulated in these two (2) cases resonates the rule that privileged communications must, sui generis, be protective of public opinion. This closely adheres to the democratic theory of free speech as essential to collective self-determination and eschews the strictly libertarian view that it is protective solely of self-expression which, in the words of Yale Sterling Professor Owen Fiss, makes its appeal to the individualistic ethos that so dominates our popular and political culture. It is therefore clear that the restrictive interpretation vested by the Court of Appeals on the penal provision exempting from liability only private communications and fair and true report without comments or remarks defeats, rather than promotes, the objective of the rule on privileged communications, sadly contriving as it does, to suppress the healthy efflorescence of public debate and opinion as shining linchpins of truly democratic societies.

To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[259] (Citations omitted)

---

[259] *Borjal v. Court of Appeals*, 361 Phil. 1, 18–20 (1999) [Per J. Bellosillo, Second Division].

In *Borjal*, a libel complaint was filed against a columnist for publishing a story about the alleged anomalous publications of a conference organizer. At that time, the First National Conference on Land Transportation was organized to draft a bill for long-term land transportation policy for presentation to Congress. Although the organizer was unnamed in the column, respondent reacted to the articles and filed several complaints against petitioner. This Court held that the articles pertained to matters of public interest, which by its nature, invited scrutiny of the media on the purpose of the conference, its activities, and the qualifications of its organizers:

> The FNCLT was an undertaking infused with public interest. It was promoted as a joint project of the government and the private sector, and organized by top government officials and prominent businessmen. For this reason, it attracted media mileage and drew public attention not only to the conference itself but to the personalities behind as well. As its Executive Director and spokesman, private respondent consequently assumed the status of a public figure.
>
> But even assuming *ex-gratia argumenti* that private respondent, despite the position he occupied in the FNCLT, would not qualify as a public figure, it does not necessarily follow that he could not validly be the subject of a public comment even if he was not a public official or at least a public figure, for he could be, as long as he was involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.
>
> There is no denying that the questioned articles dealt with matters of public interest. A reading of the imputations of petitioner Borjal against respondent Wenceslao shows that all these necessarily bore upon the latter's official conduct and his moral and mental fitness as Executive Director of the FNCLT. The nature and functions of his position which included solicitation of funds, dissemination of information about the FNCLT in order to generate interest in the conference, and the management and coordination of the various activities of the conference demanded from him utmost honesty, integrity and competence. These are matters about which the public has the right to be informed, taking into account the very public character of the conference itself.[260] (Citations omitted)

The privilege of fair commentaries on a matter of public interest has been invoked in publications violating the confidentiality of administrative cases.

In *Palad v. Solis*,[261] this Court clarified that "as long as there is a legitimate public interest, the media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint."[262] In that case, the

---

260 *Id.* at 23.

261 796 Phil. 216 (2016) [Per J. Peralta, Third Division].

262 *Id.* at 228.

suspension of Atty. Raymund Palad, the counsel of Katrina Halili, who was a victim of voyeurism, was published in several newspapers. This Court did not find the writers and editors of the articles to be in contempt of court since they were reporting on a matter involving a public issue:

> As a general rule, *disciplinary proceedings are confidential in nature until their final resolution and the final decision of this Court.* However, in this case, the disciplinary proceeding against petitioner became a matter of public concern considering that it arose from his representation of his client on the issue of video voyeurism on the internet. The interest of the public is not in himself but primarily in his involvement and participation as counsel of Halili in the scandal. Indeed, the disciplinary proceeding against petitioner related to his supposed conduct and statements made before the media in violation of the Code of Professional Responsibility involving the controversy.
>
> *Since petitioner has become a public figure for being involved in a public issue, and because the event itself that led to the filing of the disciplinary case against petitioner is a matter of public interest, the media has the right to report the disciplinary case as legitimate news.* The legitimate media has a right to publish such fact under the constitutional guarantee of freedom of the press. Respondents merely reported on the alleged penalty of suspension from the practice of law for a year against petitioner, and the supposed grounds relied upon. It appeared that the respondents, as entertainment writers, merely acted on information they received from their source about the petitioner who used to appear before the media in representing his actress client. Also, there was no evidence that the respondents published the articles to influence this Court on its action on the disciplinary case or deliberately destroy petitioner's reputation. Thus, they did not violate the confidentiality rule in disciplinary proceedings against lawyers.[263] (Emphasis supplied)

Similarly, in *Roque v. Armed Forces of the Philippines Chief of Staff*,[264] this Court held that the confidentiality of disbarment proceedings yields to the fundamental right of the public to information.[265] In *Roque*, this Court declined to exercise its inherent power of contempt against a press statement on the filing of a disbarment complaint that involves public interest:

> The confidentiality in disciplinary actions for lawyers is not absolute. I t is not to be applied under any circumstance, to all disclosures of any nature.
>
> As a general principle, *speech on matters of public interest should not be restricted.* This Court recognizes the fundamental right to information, which is essential to allow the citizenry to form intelligent opinions and hold people accountable for their actions. Accordingly, matters of public interest should not be censured for the sake of an unreasonably strict application of the confidentiality rule. Thus, in *Palad v. Solis*, this Court dismissed claims that the confidentiality rule had been violated, considering that the lawyer therein represented a matter of public interest:

---

263 *Id.* at 231.

264 805 Phil. 921 (2017) [Per J. Leonen, Second Division].

265 *Id.* at 939–941.

A person, even if he was not a public official or at least a public figure, could validly be the subject of a public comment as long as he was involved in a public issue. Petitioner has become a public figure because he is representing a public concern. We explained it, thus:

> But even assuming . . . that [the person] would not qualify as a public figure, it does not necessarily follow that he could not validly be the subject of a public comment even if he was not a public official or at least a public figure, for he could be, as long as he was involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.
>
> As a general rule, disciplinary proceedings are confidential in nature until their final resolution and the final decision of this Court. However, in this case, the disciplinary proceeding against petitioner became a matter of public concern considering that it arose from his representation of his client on the issue of video voyeurism on the internet. The interest of the public is not in himself but primarily in his involvement and participation as counsel of Halili in the scandal. Indeed, the disciplinary proceeding against petitioner related to his supposed conduct and statements made before the media in violation of the Code of Professional Responsibility involving the controversy.

Indeed, to keep controversial proceedings shrouded in secrecy would present its own dangers. In disbarment proceedings, a balance must be struck, due to the demands of the legal profession.

In *Fortun v. Quinsayas*, despite recognizing that the disbarment complaint was a matter of public interest, it still declared the complainant therein in contempt for violating the confidentiality rule:

> Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. However, instead of preserving its confidentiality, Atty. Quinsayas disseminated copies of the disbarment complaint against

> petitioner to members of the media which act constitutes contempt of court. In *Relativo v. De Leon*, the Court ruled that the premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule. In that case, Atty. Relativo, the complainant in a disbarment case, caused the publication in newspapers of statements regarding the filing and pendency of the disbarment proceedings. The Court found him guilty of contempt.
>
> The complainant in *Fortun* bears the distinction of having distributed the actual disbarment complaint to the press. This case is different.
>
> The confidentiality rule requires only that "proceedings against attorneys" be kept private and confidential. It is the proceedings against attorneys that must be kept private and confidential. This would necessarily prohibit the distribution of actual disbarment complaints to the press. However, the rule does not extend so far that it covers the mere existence or pendency of disciplinary actions.
>
> Some cases are more public than others, because of the subject matter, or the personalities involved. Some are deliberately conducted in the public as a matter of strategy. A lawyer who regularly seeks attention and readily welcomes, if not invites, media coverage, cannot expect to be totally sheltered from public interest, himself.[266] (Emphasis supplied, citations omitted)

In *Roque*, nothing in the press statement violated the confidentiality rule. The statement was issued in relation to the official functions of the Armed Forces of the Philippines in addressing a matter of public concern, which was the "serious breach of security of a military zone."[267] The content of the statement referred to a factual announcement that a disbarment case would be filed without discussing the actual charges written in the complaint. It is the public disclosure of the proceedings, such as the distribution of the actual disbarment complaint, which is punishable by contempt of court.[268]

Qualified privilege is a matter of defense. Raising qualified privilege involves an implied admission that improper conduct has been committed for which the speaker seeks exemption from subsequent punishment. Thus, the one invoking this defense must prove why their speech should not be subject to subsequent punishment. Once proven, the burden shifts to the judge or plaintiff seeking to punish the publication for contempt to establish the existence of actual malice in the contemptuous publication.[269] This is in the form of knowledge of the falsity or a reckless disregard for the falsity of the statements.[270] The qualified privilege is *prima facie* only such that when actual malice has been proven to exist, the privilege no longer applies.[271]

---

266 *Id.*
267 *Id.* at 945.
268 *Id.* at 940–941.
269 *United States v. Bustos*, 37 Phil. 731 (1918) [Per J. Malcolm, *En Banc*].
270 *Daquer v. People*, G.R. No. 206015, June 30, 2021 [Per J. Leonen, Third Division].
271 *Santos v. Court of Appeals*, 280 Phil. 120, 124 (1991) [Per J. Fernan, Third Division].

VIII

In jurisprudence, this Court has started recognizing the importance of the internet. In 1998, *Ople v. Torres*[272] cited the internet and its benefits in facilitating better governance:

> Even while we strike down A.O. No. 308, we spell out in neon that the Court is not per se against the use of computers to accumulate, store, process, retrieve and transmit data to improve our bureaucracy. *Computers work wonders to achieve the efficiency which both government and private industry seek. Many information systems in different countries make use of the computer to facilitate important social objectives, such as better law enforcement, faster delivery of public services, more efficient management of credit and insurance programs, improvement of telecommunications and streamlining of financial activities. Used wisely, data stored in the computer could help good administration by making accurate and comprehensive information for those who have to frame policy and make key decisions.* The benefits of the computer has revolutionized information technology. It developed the internet, introduced the concept of cyberspace and the information superhighway where the individual, armed only with his personal computer, may surf and search all kinds and classes of information from libraries and databases connected to the net.[273] (Emphasis supplied, citations omitted)

In 1999, in *Mirpuri v. Court of Appeals*,[274] the importance of the internet was seen as an "electronic communications medium" in advertising. The internet has been described as paving the way for "growth and expansion of the product by creating and earning a reputation that crosses over borders, virtually turning the whole world into one vast marketplace."[275] *W Land Holding, Inc v. Starwood Hotels and Resorts Worldwide, Inc.*[276] reiterated that the internet is a commercial marketplace in relation to its actual use of a trademark. In 2021, these cases were reiterated in *Kolin Electronics Co., Inc. v. Taiwan Kolin Corp. Ltd.*,[277] which expanded the concept of the internet as an online marketplace:

> The industry for electronic equipment is no stranger to this phenomenon. Indeed, consumers nowadays can readily access information on electronic equipment and apparatus and easily and conveniently purchase electronic equipment online through the simple click of a mouse or the tap of a screen. An enterprise which seeks to establish its presence in the online marketplace and sell its products therein may do so by developing its own website, which has a corresponding domain name — an identifier analogous to a telephone number or street address. In turn, the modern day consumer frequently expects that a website consisting of or encompassing

---

272 354 Phil. 948 (1998) [Per J. Puno, *En Banc*].
273 *Id.* at 984–985.
274 376 Phil. 628 (1999) [Per J. Puno, First Division].
275 *Id.* at 649.
276 822 Phil. 23 (2017) [Per J. Perlas-Bernabe, Second Division].
277 G.R. Nos. 221347 & 221360–61, December 1, 2021 [Per J. Hernando, Second Division].

> a trademark used in the physical market is sponsored by or associated with the owner of that trademark, and readily use domain names as an indicator of the source or origin of the goods, i.e., a means of finding goods and services from a preferred source.[278] (Citations omitted)

In 2008, in *Chavez v. Gonzales*,[279] this Court remarked that regulating digital technology on the internet has the same rationale as regulating broadcast media. However, internet use remained largely unregulated:

> Parenthetically, these justifications are now the subject of debate. Historically, the scarcity of frequencies was thought to provide a rationale. However, cable and satellite television have enormously increased the number of actual and potential channels. Digital technology will further increase the number of channels available. But still, the argument persists that broadcasting is the most influential means of communication, since it comes into the home, and so much time is spent watching television. Since it has a unique impact on people and affects children in a way that the print media normally does not, that regulation is said to be necessary in order to preserve pluralism. It has been argued further that a significant main threat to free expression — in terms of diversity — comes not from government, but from private corporate bodies. These developments show a need for a reexamination of the traditional notions of the scope and extent of broadcast media regulation.
>
> The emergence of digital technology — which has led to the convergence of broadcasting, telecommunications and the computer industry — has likewise led to the question of whether the regulatory model for broadcasting will continue to be appropriate in the converged environment. *Internet, for example, remains largely unregulated, yet the Internet and the broadcast media share similarities, and the rationales used to support broadcast regulation apply equally to the Internet.* Thus, it has been argued that courts, legislative bodies and the government agencies regulating media must agree to regulate both, regulate neither or develop a new regulatory framework and rationale to justify the differential treatment.[280] (Emphasis supplied, citations omitted)

Two significant cases on the internet and the rights in cyberspace were decided in 2014.

First is *Vivares v. St. Theresa's College*,[281] where the right to privacy in social media in relation to the writ of *habeas data* was examined. This Court delved into the details of the social media platform Facebook to determine the expectation of online privacy. This Court looked at the various settings and features of the platform. It concluded, "Facebook's proclivity towards user interaction and socialization rather than seclusion or privacy, as it encourages broadcasting of individual user posts. In fact, it has been said that [online social network] have facilitated their users' self-tribute, thereby resulting into

---

278 *Id.*
279 569 Phil. 155 (2008) [Per C.J. Puno, *En Banc*].
280 *Id.* at 217–218.
281 744 Phil. 451 (2014) [Per J. Velasco Jr. Third Division].

the 'democratization of fame.'"[282] This Court introduced the concept of cyber responsibility but still adhered to the norm of self-regulation and parental supervision for the online privacy of minors:

> It has been said that "the best filter is the one between your children's ears." *This means that self-regulation on the part of OSN users and internet consumers in general is the best means of avoiding privacy rights violations.* As a cyberspace community member, one has to be proactive in protecting his or her own privacy. It is in this regard that many OSN users, especially minors, fail. Responsible social networking or observance of the "netiquettes" on the part of teenagers has been the concern of many due to the widespread notion that teenagers can sometimes go too far since they generally lack the people skills or general wisdom to conduct themselves sensibly in a public forum.
>
> Respondent STC is clearly aware of this and incorporating lessons on good cyber citizenship in its curriculum to educate its students on proper online conduct may be most timely. Too, it is not only STC but a number of schools and organizations have already deemed it important to include digital literacy and good cyber citizenship in their respective programs and curricula in view of the risks that the children are exposed to every time they participate in online activities. *Furthermore, considering the complexity of the cyber world and its pervasiveness, as well as the dangers that these children are wittingly or unwittingly exposed to in view of their unsupervised activities in cyberspace, the participation of the parents in disciplining and educating their children about being a good digital citizen is encouraged by these institutions and organizations. In fact, it is believed that "to limit such risks, there's no substitute for parental involvement and supervision."*
>
> As such, STC cannot be faulted for being steadfast in its duty of teaching its students to be responsible in their dealings and activities in cyberspace, particularly in OSNs, when it enforced the disciplinary actions specified in the Student Handbook, absent a showing that, in the process, it violated the students' rights.
>
> *OSN users should be aware of the risks that they expose themselves to whenever they engage in cyberspace activities. Accordingly, they should be cautious enough to control their privacy and to exercise sound discretion regarding how much information about themselves they are willing to give up. Internet consumers ought to be aware that, by entering or uploading any kind of data or information online, they are automatically and inevitably making it permanently available online, the perpetuation of which is outside the ambit of their control. Furthermore, and more importantly, information, otherwise private, voluntarily surrendered by them can be opened, read, or copied by third parties who may or may not be allowed access to such.*
>
> It is, thus, *incumbent upon internet users to exercise due diligence in their online dealings and activities and must not be negligent in protecting their rights.* Equity serves the vigilant. Demanding relief from the courts, as here, requires that claimants themselves take utmost care in safeguarding a right which they allege to have been violated. These are indispensable. We cannot afford protection to persons if they themselves

---

282 *Id.* at 476.

> did nothing to place the matter within the confines of their private zone. OSN users must be mindful enough to learn the use of privacy tools, to use them if they desire to keep the information private, and to keep track of changes in the available privacy settings, such as those of Facebook, especially because Facebook is notorious for changing these settings and the site's layout often.[283] (Emphasis supplied, citations omitted)

Second is *Disini v. Secretary of Justice*,[284] where this Court was directly confronted with the constitutionality of Republic Act No. 10175 or the Cybercrime Prevention Act of 2012 as to the extent of regulation of online speech, among other important issues in cyberspace. In the main decision, the majority recognized that the "culture associated with internet media is distinct from that of print."[285]

This Court sustained the constitutionality of cyberlibel as a crime punished in Section 4(c) of the Cybercrime Prevention Act. However, the related crimes of aiding or abetting cyberlibel and attempted cyberlibel under Section 5, paragraphs (a) and (b) of the same Act were declared unconstitutional for its chilling effect on online speech. In *Disini*, this Court examined how social media and its usage among Filipinos to determine the possible chilling effect that these crimes have on the exercise of online speech:

> Aiding or abetting has of course well-defined meaning and application in existing laws. When a person aids or abets another in destroying a forest, smuggling merchandise into the country, or interfering in the peaceful picketing of laborers, his action is essentially physical and so is susceptible to easy assessment as criminal in character. These forms of aiding or abetting lend themselves to the tests of common sense and human experience.
>
> But, when it comes to certain cybercrimes, the waters are muddier and the line of sight is somewhat blurred. The idea of "aiding or abetting" wrongdoings online threatens the heretofore popular and unchallenged dogmas of cyberspace use.
>
> According to the 2011 Southeast Asia Digital Consumer Report, 33% of Filipinos have accessed the internet within a year, translating to about 31 million users. Based on a recent survey, the Philippines ranks 6th in the top 10 most engaged countries for social networking. Social networking sites build social relations among people who, for example, share interests, activities, backgrounds, or real-life connections.
>
> Two of the most popular of these sites are Facebook and Twitter. As of late 2012, 1.2 billion people with shared interests use Facebook to get in touch. Users register at this site, create a personal profile or an open book of who they are, add other users as friends, and exchange messages, including automatic notifications when they update their profile. A user can post a statement, a photo, or a video on Facebook, which can be made visible to anyone, depending on the user's privacy settings.

---

283 *Id.* at 478–480.

284 727 Phil. 28 (2014) [Per J. Abad, *En Banc*].

285 *Id.* at 115.

If the post is made available to the public, meaning to everyone and not only to his friends, anyone on Facebook can react to the posting, clicking any of several buttons of preferences on the program's screen such as "Like," "Comment," or "Share." "Like" signifies that the reader likes the posting while "Comment" enables him to post online his feelings or views about the same, such as "This is great!" When a Facebook user "Shares" a posting, the original "posting" will appear on his own Facebook profile, consequently making it visible to his down-line Facebook Friends.

Twitter, on the other hand, is an internet social networking and microblogging service that enables its users to send and read short text-based messages of up to 140 characters. These are known as "Tweets." Microblogging is the practice of posting small pieces of digital content — which could be in the form of text, pictures, links, short videos, or other media — on the internet. Instead of friends, a Twitter user has "Followers," those who subscribe to this particular user's posts, enabling them to read the same, and "Following," those whom this particular user is subscribed to, enabling him to read their posts. Like Facebook, a Twitter user can make his tweets available only to his Followers, or to the general public. If a post is available to the public, any Twitter user can "Retweet" a given posting. Retweeting is just reposting or republishing another person's tweet without the need of copying and pasting it.

In the cyberworld, there are many actors: a) the blogger who originates the assailed statement; b) the blog service provider like Yahoo; c) the internet service provider like PLDT, Smart, Globe, or Sun; d) the internet cafe that may have provided the computer used for posting the blog; e) the person who makes a favorable comment on the blog; and f) the person who posts a link to the blog site. Now, suppose Maria (a blogger) maintains a blog on WordPress.com (blog service provider). She needs the internet to access her blog so she subscribes to Sun Broadband (Internet Service Provider).

One day, Maria posts on her internet account the statement that a certain married public official has an illicit affair with a movie star. Linda, one of Maria's friends who sees this post, comments online, "Yes, this is so true! They are so immoral." Maria's original post is then multiplied by her friends and the latter's friends, and down the line to friends of friends almost ad infinitum. Nena, who is a stranger to both Maria and Linda, comes across this blog, finds it interesting and so shares the link to this apparently defamatory blog on her Twitter account. Nena's "Followers" then "Retweet" the link to that blog site.

Pamela, a Twitter user, stumbles upon a random person's "Retweet" of Nena's original tweet and posts this on her Facebook account. Immediately, Pamela's Facebook Friends start Liking and making Comments on the assailed posting. A lot of them even press the Share button, resulting in the further spread of the original posting into tens, hundreds, thousands, and greater postings.

The question is: are online postings such as "Liking" an openly defamatory statement, "Commenting" on it, or "Sharing" it with others, to be regarded as "aiding or abetting?" In libel in the physical world, if Nestor places on the office bulletin board a small poster that says, "Armand is a thief!," he could certainly be charged with libel. If Roger, seeing the poster, writes on it, "I like this!," that could not be libel since he did not author the

> poster. If Arthur, passing by and noticing the poster, writes on it, "Correct!," would that be libel? No, for he merely expresses agreement with the statement on the poster. He still is not its author. Besides, it is not clear if aiding or abetting libel in the physical world is a crime.
>
> But suppose Nestor posts the blog, "Armand is a thief!" on a social networking site. Would a reader and his Friends or Followers, availing themselves of any of the "Like," "Comment," and "Share" reactions, be guilty of aiding or abetting libel? And, in the complex world of cyberspace expressions of thoughts, when will one be liable for aiding or abetting cybercrimes? Where is the venue of the crime?
>
> Except for the original author of the assailed statement, the rest (those who pressed Like, Comment and Share) are essentially knee-jerk sentiments of readers who may think little or haphazardly of their response to the original posting. Will they be liable for aiding or abetting? And, considering the inherent impossibility of joining hundreds or thousands of responding "Friends" or "Followers" in the criminal charge to be filed in court, who will make a choice as to who should go to jail for the outbreak of the challenged posting?
>
> *The old parameters for enforcing the traditional form of libel would be a square peg in a round hole when applied to cyberspace libel. Unless the legislature crafts a cyber libel law that takes into account its unique circumstances and culture, such law will tend to create a chilling effect on the millions that use this new medium of communication in violation of their constitutionally guaranteed right to freedom of expression.*[286] (Emphasis supplied, citations omitted)

Seven years from *Disini*, this Court promulgated *Cadajas v. People*[287] in 2021, involving an applied challenge to the Cybercrime Prevention Act. In *Cadajas*, this Court was asked to review a conviction of the cybercrime of child pornography. In the case, a child was induced to send photos of her private parts online to her alleged boyfriend. The concept of the right to privacy in cyberspace was expounded on in a concurring and dissenting opinion:

> As early as *Morfe v. Mutuc*, we have recognized the increasing importance of the protection of the right to privacy in the digital age. Such right is of particular importance given the nature of the internet and our inescapable dependence on it despite the possible disruption that it can bring. In my separate opinion in *Disini v. Secretary of Justice*, I explained:
>
> > The internet or cyberspace is a complex phenomenon. It has pervasive effects and are, by now, ubiquitous in many communities. Its possibilities for reordering human relationships are limited only by the state of its constantly evolving technologies and the designs of various user interfaces. The internet contains exciting potentials as well as pernicious dangers.

---

[286] *Id.* at 116–119.

[287] *Cadajas v. People*, G.R. No. 247348, November 16, 2021 [Per J. J. Lopez, *En Banc*].

> The essential framework for governance of the parts of cyberspace that have reasonable connections with our territory and our people should find definite references in our Constitution. However, effective governance of cyberspace requires cooperation and harmonization with other approaches in other jurisdictions. Certainly, its scope and continuous evolution require that we calibrate our constitutional doctrines carefully: in concrete steps and with full and deeper understanding of incidents that involve various parts of this phenomenon. The internet is neither just one relationship nor is it a single technology. It is an interrelationship of many technologies and cultures.
>
> xxx xxx xxx
>
> While the Internet has engendered innovation and growth, it has also engendered new types of disruption. A noted expert employs an "evolutionary metaphor" as he asserts:
>
> > [Generative technologies] encourage mutations, branchings away from the status quo — some that are curious dead ends, others that spread like wildfire. They invite disruption — along with the good things and bad things that can come with such disruption.
>
> Addressing the implications of disruption, he adds:
>
> > Disruption benefits some while others lose, and the power of the generative Internet, available to anyone with a modicum of knowledge and a broadband connection, can be turned to network-destroying ends . . . [T]he Internet's very generativity combined with that of the PCs attached — sows the seeds for a "digital Pearl Harbor."
>
> The Internet is an infrastructure that allows for a "network of networks." It is also a means for several purposes. As with all other "means enhancing capabilities of human interaction," it can be used to facilitate benefits as well as nefarious ends. The Internet can be a means for criminal activity.
>
> Parallel to the unprecedented escalation of the use of the Internet and its various technologies is also an escalation in what has been termed as cybercrimes.

Privacy scholars explain that the right to informational privacy, to a certain extent, requires "limitation on inspection, observation, and knowledge by others." Thus, it has the following aspects: (1) to keep inalienable information to themselves; (2) to prevent first disclosure; and (3) to prevent further dissemination in case the information has already been disclosed. More recently, the European Union has paved the way for the

fourth aspect — the right to be forgotten, or the right to prevent the storage of data.

As regards the first component of the right to informational privacy, a person has the right not to be exposed on the internet in matters involving one's private life, such as acts having no relation to public interest or concern. Closely related to the first component is the right to prevent first disclosure, allowing individuals to regulate the extent, time, and manner of disclosure, if at all, of their information. In case the data have been illegally disclosed, a person does not lose protection since they have the right to prevent their further dissemination. In some cases, one has the right to prevent the storage of their data, which gives one the right to be forgotten. Privacy scholars describe this right as "forced omission," or the process of making the information difficult to find on the internet.

Undue disclosure of digital information can already do damage even if deleted at a later time. Anyone who gains access to such information can use it for their own purpose. They can take it out of context and use it for a purpose contrary to what the person originally intended. For instance, intimate photos of lovers shared through private chats can be weaponized by a disgruntled lover. Applications that do not have end-to-end encryption can also be intercepted by unscrupulous third persons.

Even an innocent posting of photos on social media can be dangerous and consequential to a person's life. Take *Vivares v. St. Theresa's College*. Swimsuit photos of graduating high school students were taken during a birthday party and uploaded on Facebook. This seemingly inconsequential act gave cause for St. Theresa's College to conduct disciplinary procedure, which in turn prevented these students from graduating with their class.

Given the ease for which we can lose control of our information online, this Court's warning on the vigilance in exposing oneself in cyberspace is relevant:

. . . .

While the ponente cited the *Spouses Hing v. Choachuy* framework in assessing violations of the right to privacy vis-à-vis one's expectation of privacy, the current technological developments require us to reexamine our doctrine. Thus, in *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*, I cautioned the majority against the vulnerability of data and the necessity of redefining legitimate expectation of privacy in this digital age:

> The truth is that most of today's digital data is vulnerable to one who is curious enough, exceedingly determined, skillful, and willing to deploy the necessary time and resources to make discovery of our most private information. Ubiquitous surveillance systems that ensure the integrity as well as increase confidence in the security of the data kept in a system are ever present. Copying or transferring digital data occurs likewise with phenomenal speed. Data shared in cyberspace also tends to be resilient and difficult to completely delete. Users of various digital platforms, including bank accounts, are not necessarily aware of these vulnerabilities.

> Therefore, the concept of "legitimate expectation of privacy" as the framework for assessing whether personal information fall within the constitutionally protected penumbra need to be carefully reconsidered. In my view, the protected spheres of privacy will make better sense when our jurisprudence in the appropriate cases make clear how specific types of information relate to personal identity and why this is valuable to assure human dignity and a robust democracy in the context of a constitutional order.
>
> The need to protect this fundamental right is more imperative given the rise of surveillance capitalism. Digital infrastructures and technological advancements are being used to aggregate people and their choices as data objects. This is made possible with the indiscriminate buying and selling of our personal data and other sensitive information without regard to the informational aspect of privacy. Big technology companies and small startup businesses have been optimizing this model to predict and clandestinely manipulate human behavior for monetary and other purposes. This impels us to recalibrate how we view the right to privacy in cyberspace and how we can protect the vulnerable.[288]

Twenty-five years have passed since *Ople*[289] was promulgated in 1998 when this Court first recognized the role of the internet in our democracy. Ten years ago, in *Gonzales,* this Court observed that speech on the internet has been largely unregulated. The new Code of Professional Responsibility and Accountability shifted the norm in online speech from self-regulation or parental supervision to professional responsibility.

Canon II, Sections 36 to 44 of the Code of Professional Responsibility and Accountability imposes the duty of lawyers to "uphold the dignity of the legal profession in all social media interactions in a manner that enhances the people's confidence in the legal system, as well as promote its responsible use." These provisions recognize that using social media has ethical implications[290] regardless of the privacy setting,[291] and lawyers have the duty to safeguard their client's confidence therein.[292] In their online presence, lawyers are prohibited from disseminating disinformation,[293] using fraudulent

---

288 J. Leonen, Concurring and Dissenting Opinion in *Cadajas v. People*, G.R. No. 247348, November 16, 2021 [Per J. J. Lopez, *En Banc*].

289 354 Phil. 948 (1998) [Per J. Puno, *En Banc*].

290 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 36 provides:
SECTION 36. *Responsible use.* — A lawyer shall have the duty to understand the benefits, risks, and ethical implications associated with the use of social media.

291 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 37 provides:
SECTION 37. *Online posts.* — A lawyer shall ensure that his or her online posts, whether made in a public or restricted privacy setting that still holds an audience, uphold the dignity of the legal profession and shield it from disrepute, as well as maintain respect for the law.

292 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 41 provides:
SECTION 41. *Duty to safeguard client confidences in social media.* — A lawyer, who uses a social media account to communicate with any other person in relation to client confidences and information, shall exert efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, such an account.

293 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 38 provides:
SECTION 38. *Non-posting of false or unverified statements, disinformation.* — A lawyer shall not knowingly or maliciously post, share, upload or otherwise disseminate false or unverified statements,

accounts,[294] disclosing privileged information,[295] and influencing government agencies in their duties.[296] Lawyers are advised to exercise prudence in their interactions[297] and in giving legal information and advice online.[298]

IX

The proponents of the protection of free speech base their objection against censorship or prior restraint and subsequent punishment on the assumption that the best test of truth is its ability to gain adherence in the marketplace of ideas:

> Second, free speech should be encouraged under the concept of a market place of ideas. This theory was articulated by Justice Holmes in that "the ultimate good desired is better reached by [the] free trade in ideas:"
>
> > When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the *best test of truth is the power of the thought to get itself accepted in the competition of the market*, and that *truth is the only ground* upon which their wishes safely can be carried out.
>
> The way it works, the *exposure to the ideas of others allows one to "consider, test, and develop their own conclusions."* A free, open, and dynamic market place of ideas is constantly shaping new ones. This promotes both stability and change where recurring points may crystallize and weak ones may develop. Of course, free speech is more than the right to approve existing political beliefs and economic arrangements as it includes, "[t]o paraphrase Justice Holmes, [the] freedom for the thought that we hate, no less than for the thought that agrees with us." In fact, free speech

---

claims, or commit any other act of disinformation.

294 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 39 provides:
SECTION 39. *Prohibition against fraudulent accounts.* — A lawyer shall not create, maintain or operate accounts in social media to hide his or her identity for the purpose of circumventing the law or the provisions of the CPRA.

295 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 40 provides:
SECTION 40. *Non-disclosure of privileged information through online posts.* — A lawyer shall not reveal, directly or indirectly, in his or her online posts confidential information obtained from a client or in the course of, or emanating from, the representation, except when allowed by law or the CPRA.

296 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 42 provides:
SECTION 42. *Prohibition against influence through social media.* — A lawyer shall not communicate, whether directly or indirectly, with an officer of any court, tribunal, or other government agency through social media to influence the latter's performance of official duties.

297 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 44 provides:
SECTION 44. *Online posts that could violate conflict of interest.* — A lawyer shall exercise prudence in making posts or comments in social media that could violate the provisions on conflict of interest under the CPRA.

298 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 43 provides:
SECTION 43. *Legal information; legal advice.* — Pursuant to a lawyer's duty to society and the legal profession, a lawyer may provide general legal information, including in answer to questions asked, at any fora, through traditional or electronic means, in all forms or types of mass or social media.
A lawyer who gives legal advice on a specific set of facts as disclosed by a potential client in such fora or media dispenses Limited Legal Service and shall be bound by all the duties in the CPRA, in relation to such Limited Legal Service.

> may "best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." It is in this context that we should guard against any curtailment of the people's right to participate in the free trade of ideas. (Emphasis supplied, citations omitted)[299]

More speech is preferred over suppression and censorship because of the assumption that those with contrary views will vigorously and earnestly contest it to attain the truth.[300] Public discussions on matters of public concern should be as accessible as possible because "[t]he interest of society and the maintenance of good government demand a full discussion of public affairs."[301]

The guarantee of free speech is the ability to appeal to one's reason through peaceful means:

> Nowhere is the rationale that underlies the freedom of expression and peaceable assembly better expressed than in this excerpt from an opinion of Justice Frankfurter: "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. *Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope*. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." What was rightfully stressed is the abandonment of reason, the utterance, whether verbal or printed, being in a context of violence. It must always be remembered that this right likewise provides for a safety valve, allowing parties the opportunity to give vent to their views, even if contrary to the prevailing climate of opinion. For if the peaceful means of communication cannot be availed of, resort to non-peaceful means may be the only alternative. Nor is this the sole reason for the expression of dissent. It means more than just the right to be heard of the person who feels aggrieved or who is dissatisfied with things as they are. Its value may lie in the fact that there may be something worth hearing from the dissenter. That is to ensure a true ferment of ideas. There are, of course, well-defined limits. What is guaranteed is peaceable assembly. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. The Constitution frowns on disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided. The utmost calm though is not required. As pointed out in an early Philippine case, penned in 1907 to be precise, *United States v. Apurado*: "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the

---

299 *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 361–362 (2015) [Per J. Leonen, *En Banc*].

300 Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of Opinion and Sentiment on All Subjects: John Stuart M'll's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. MASS. L. REV. 2, 42 (2020).

301 *United States v. Bustos*, 37 Phil. 731, 740 (1918) [Per J. Malcolm, *En Banc*].

> feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers." It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided. To give free rein to one's destructive urges is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty in our scheme of values.[302] (Emphasis supplied, citations omitted)

This is why seditious speech or "advocacy of the use of force or of law violation . . . directed to inciting or producing imminent lawless action and is likely to produce such action"[303] are excluded from the guarantees of free speech. These are of little to no value to the exposition of truth. Unprotected speech are: "libelous statements, obscenity or pornography, false or misleading advertisement, insulting or 'fighting words', i.e., those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security."[304]

In our marketplace of ideas, the Constitution affords the greatest protection to political speech of citizens in their participation in government decision-making and demanding accountability from those in power:

> *Speech that enlivens political discourse is the lifeblood of democracy. A free and robust discussion in the political arena allows for an informed electorate to confront its government on a more or less equal footing. Without free speech, the government robs the people of their sovereignty, leaving them in an echo chamber of autocracy.* Freedom of speech protects the "democratic political process from the abusive censorship of political debate by the transient majority which has democratically achieved political power."
>
> In *The Diocese of Bacolod*:
>
> > Proponents of the political theory on "deliberative democracy" submit that "substantial, open, [and] ethical dialogue is a critical, and indeed defining, feature of a good polity." *This theory may be considered broad, but it definitely "includes [a] collective decision making with the participation of all who will be affected by the decision."* It anchors on the principle that the cornerstone of every democracy is that sovereignty resides in the people. To ensure order in running the state's affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people. *On this note, the theory on deliberative democracy may evolve to the right of the people to make government accountable.* Necessarily, this includes the right of the people to criticize acts made pursuant to governmental functions.

---

302 *Reyes v. Bagatsing*, 210 Phil. 457, 467–468 (1983) [Per C.J. Fernando, *En Banc*].

303 *Salonga v. Paño*, 219 Phil. 402, 425–426 (1985) [Per J. Gutierrez, Jr., *En Banc*], *citing Brandenburg v. Ohio*, 395 U.S. 444 (1969).

304 *Soriano v. Laguardia*, 605 Phil. 43, 97 (2009) [Per J. Velasco, Jr., *En Banc*], *citing Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942).

Speech with political consequences occupies a higher position in the hierarchy of protected speeches and is conferred with a greater degree of protection. The difference in the treatment lies in the varying interests in each type of speech. Nevertheless, the exercise of freedom of speech may be regulated by the State pursuant to its sovereign police power. In prescribing regulations, distinctions are made depending on the nature of the speech involved. In *Chavez*:

> Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant interests of one type of speech, e.g., political speech, may vary from those of another, e.g., obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech.

This Court recognized in *The Diocese of Bacolod* that political speech occupies a preferred rank within our constitutional order, it being a direct exercise of the sovereignty of the people. In a separate opinion in *Chavez*, Associate Justice Antonio Carpio underscored that "if ever there is a hierarchy of protected expressions, political expression would occupy the highest rank[.]"

In contrast, other types of speeches, such as commercial speech, are treated in this jurisdiction as "low value speeches."

> In *Disini, Jr. v. Secretary of Justice*, this Court has recognized that "[c]ommercial speech . . . is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression[.]" This is because, as I opined in that case, the protection accorded to commercial speech is anchored on its informative character and it merely caters to the market.

Since the value of protection accorded to commercial speech is only to the extent of its channel to inform, advertising is not on par with other forms of expression.

In contrast, political speech is "indispensable to the democratic and republican mooring of the state whereby the sovereignty residing in the people is best and most effectively exercised through free expression."[305] (Emphasis supplied, citations omitted)

The asymmetries in the marketplace of ideas do not make it truly accessible. The inherent inequality of life affects the value of one's message and their ability to convey and influence their target audience.[306] The liberty to speak per se is not important in deliberative democracy. Meaningful

---

[305] J. Leonen, Separate Concurring Opinion in *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560, 614–616 (2019) [Per J. J. Reyes, Jr. *En Banc*].

[306] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 358–359 (2015) [Per J. Leonen, *En Banc*].

participation requires quality of speech and the entire gamut of rights that is indispensable for its free exercise:

> *Political speech is motivated by the desire to be heard and understood, to move people to action.* It is concerned with the sovereign *right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic text of the Constitution.* The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC. *We evaluate restrictions on freedom of expression from their effects.* We protect *both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society.*[307] (Emphasis supplied)

The freedom to publish political speech includes the duty to publish "truthfully according to [one's] conscience."[308] One cannot exercise their freedoms in "utter contempt of the rights of others and in willful disregard of the cumbrous responsibilities inherent in it."[309]

In *Badoy, Jr. v. Ferrer*,[310] this Court upheld legislation on paid political advertisements requiring representatives of the Constitutional Commission to also mention the names of their opponents. This is in recognition of the greater benefit to the electorate who will ultimately decide who is the better candidate:

> The candidate, to enjoy the freedom, therefore has the concomitant duty to campaign for himself truthfully according to his conscience. If he is not truthful, he forfeits the freedom. His freedom of expression is not and should not be limited to his own personal right to know the truth of the claims of the other candidates. A candidate is prone to exaggerate his personal merits or qualifications. He invariably claims qualifications superior to those of his opponents. One test of the truth of his own pretensions as against those of his opponents is to require him to mention the names of the other candidates so that the electorate will know how to judge all the candidates. If the candidate omits the names of his opponents he is guilty of deception, which nullifies his right to enjoy the liberty he invokes for himself. At any rate, he usually mentions his opponents in an oral harangue. He must likewise do so in printed propaganda, so that the voter can decide who is the better man who can best represent in the constitutional convention their interests and articulate their longings and aspirations for an abundant life. The intrinsic merit of the candidate as a person and of his proposed amendments, not his wealth or lack of it, must be decisive.[311]

---

307 *Id.* at 325.
308 *Badoy, Jr. v. Ferrer*, 146 Phil. 299, 321 (1970) [Per J. Makasiar, *En Banc*].
309 *Borjal v. Court of Appeals*, 361 Phil 1, 28 (1999) [Per J. Bellosillo, Second Division].
310 146 Phil. 299 (1970) [Per J. Makasiar, *En Banc*].
311 *Id.* at 321.

Moreover, the right to publish one's political speech is not absolute, and it must not be abused to have the effect of intruding on the privacy of its captive audience:

> It is believed that, when so viewed, the limiting impact of Section 11 (b) upon the right to free speech of the candidates themselves may be seen to be not unduly repressive or unreasonable. For, once again, there is nothing in Section 11 (b) to prevent media reporting of and commentary on pronouncements, activities, written statements of the candidates themselves. All other fora remain accessible to candidates, even for political advertisements. The requisites of fairness and equal opportunity are, after all, designed to benefit the candidates themselves.
>
> *Finally, the nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded.* Realistically, the only limitation upon the free speech of candidates imposed is on the right of candidates to bombard the helpless electorate with paid advertisements commonly repeated in the mass media *ad nauseam. Frequently, such repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate.* It might be supposed that it is easy enough for a person at home simply to flick off his radio or television set. But it is rarely that simple. For the candidates with deep pockets may purchase radio or television time in many, if not all, the major stations or channels. Or they may directly or indirectly own or control the stations or channels themselves. The contemporary reality in the Philippines is that, in a very real sense, listeners and viewers constitute a "captive audience."
>
> The paid political advertisements introjected into the electronic media and repeated with mind-deadening frequency, are commonly intended and crafted, not so much to inform and educate as to condition and manipulate, not so much to provoke rational and objective appraisal of candidates' qualifications or programs as to appeal to the non-intellective faculties of the captive and passive audience. *The right of the general listening and viewing public to be free from such intrusions and their subliminal effects* is at least as important as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.[312] (Emphasis supplied, citation omitted)

The cases on freedom of speech encouraging "more speech" against false ideas did not consider disinformation in the marketplace and its ability to destroy the truth. The internet disrupts the fundamental assumptions of free speech.

Before the digital age, mass media was the "chief source of information on current affairs" and the "most powerful vehicle of opinion on public questions."[313] In performing their role to disseminate information, the media has "the right to gather and the obligation to check the accuracy of [the]

---

[312] *National Press Club v. Commission on Elections*, 283 Phil. 795, 816–817 (1992), [Per J. Feliciano, *En Banc*].

[313] *Chavez v. Gonzales*, 569 Phil. 155, 201 (2008) [Per C.J. Puno, *En Banc*].

information they disseminate."[314] Members of the press are bound by the high ethical standards of their profession.[315]

In 1988, several media organizations in the Philippines voluntarily agreed to the Philippine Journalist's Code of Ethics. The first and most important ethical duty of a journalist is to "scrupulously report and interpret the news, taking care not to suppress essential facts nor to distort the truth by omission or improper emphasis." This includes the "duty to air the other side and the duty to correct substantive errors promptly."[316] Journalists violate their Code when they fail to exercise "*bona fide* care in ascertaining the truth of the statements they publish."[317] However, it must be clarified that journalists do not guarantee the truth of what they publish in exercising their right to legitimate publicity.[318] They are given sufficient leeway and tolerance to fulfill their crucial roles in a democracy[319] by promptly correcting substantive errors.

However, the rise of the internet and the digital age have challenged the roles of the press. Technology has shifted the main sources of information and public discussions from traditional media to the internet, particularly in social media. It has removed costly barriers to publication such that anyone may post their desired content to their target audience.

In his article, "Cheap Speech and What It Will Do," Professor Eugene Volokh (Volokh) examined the effects of cheap speech in relation to the freedoms of speech, of expression, and of the press. The lower distribution cost of information through technological advancements alters what is available and how it is known to consumers.[320] Volokh explained that the social consequence of cheap speech would "democratize the information marketplace"[321] and shift control of the information from the distributors of information (i.e. broadcast, print media, and record labels) and empower the speakers and listeners to create, publish, and select the information they want to consume.[322]

The responsibilities involved in the creation, dissemination, and access to information in the media were seemingly forgotten in the democratization of the information marketplace. The internet removed traditional media's control over these processes, and the ethical standards in creating and disseminating information were lost in the process. Since the general

---

314 *Valmonte v. Belmonte*, 252 Phil. 264, 271 (1989) [Per J. Cortes, *En Banc*].
315 *Borjal v. Court of Appeals*, 361 Phil. 1, 28 (1999) [Per J. Bellosillo, Second Division].
316 Journalist's Code of Ethics, *available at* https://philpressinstitute.net/journalist-code-of-ethics.
317 *In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 168 (1995) [Per C.J. Narvasa, *En Banc*].
318 *Id.* at 168.
319 *Quisumbing v. Lopez*, 96 Phil. 510, 515 (1955) [Per C.J. Paras, *En Banc*].
320 Eugene Volokh, *Cheap Speech and What It Will Do*, 104 YALE L.J. 1805, 1826 (1995).
321 *Id.* at 1833.
322 *Id.* at 1834.

population did not bind themselves to voluntary codes of ethics, information can be created, shared, and disseminated for any reason other than the truth.

Similarly, Professor Richard Hasen, in his book "Cheap Speech," explores the foundational principle of the marketplace of ideas in the digital age and voting behavior. His theory is that information technologies have destroyed the gates to the marketplace of ideas where the ease and speed of sharing information has inundated the market with disinformation, undermining democratic institutions:

> No doubt cheap speech has increased convenience, dramatically lowered the cost of obtaining information, and spurred the creation and consumption of content from radically diverse sources. But the economics of cheap speech have undermined the mediating and stabilizing institutions of American democracy, including newspapers and political parties, a situation that has had severe social and political consequences for American elections. In place of media scarcity we now have a media firehose that has diluted trusted sources of information and led to the rise of "fake news" — falsehoods and propaganda spread by domestic and foreign sources for their own political and pecuniary purposes. The demise of local newspapers sets the stage for increased corruption among state and local officials.
>
> Rather than improving our politics, cheap speech makes political parties increasingly irrelevant by allowing demagogues to appeal directly and repeatedly at virtually no cost to voters for financial and electoral support, with incendiary appeals and often with lies. Social media can both increase intolerance and overcome collective action obstacles, allowing for peaceful protest but also supercharging polarization and raising the danger of violence, as we saw with the January 6, 2021, insurrection.
>
> *The decline of the traditional media as information intermediaries has transformed—and coarsened—social and political communication, making it easier for misinformation and vitriol to spread.* Political campaigns go forward under conditions of voter mistrust and groupthink, increasing the potential for foreign interference and domestic political manipulation through ever more sophisticated technological tools. *These dramatic changes raise important questions about the conditions of electoral legitimacy and threaten to shake the foundation of democratic governance.*
>
> Cheap speech—speech that is both inexpensive to produce and often of markedly low social value—raises deep concerns whether disseminated on social media, search engines, news cable channels, or otherwise. Platform technology allows politically and morally objectionable manipulation of the information used for voter choice. Viral anonymous speech, spread partly through "bots"—automated programs that communicate directly with users—lowers the accountability costs for sharing false information and manipulated content. It deprives voters of valuable information to judge the credibility of the messages directed at them. Platforms gather an unprecedented amount of intrusive data on people's backgrounds, interests, and choices, which allows campaigns to "microtarget" advertising, such as by sending one set of messages to older white male voters and another to young African American women. The practice drives profits for the platforms, but it can also fuel polarization and

> political manipulation. Political operatives may deploy microtargeting for negative messaging intended to depress voter turnout. The platforms' design may encourage extremism through the algorithms used to offer voters additional, more worrisome content similar to what they or their social media friends and contacts have chosen. Those who can control platform content may help one candidate and hurt another. Platforms influence elections when they make choices about whether to promote or remove content, including false content.[323] (Emphasis supplied, citations omitted)

The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and of expression reported on the impact of disinformation on democratic institutions and human rights.[324] While there is no universally accepted definition of disinformation, the rapporteur referred to the European Commission's description of disinformation as "verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm."[325] The special rapporteur noted the information disorder in cyberspace, namely misinformation, disinformation, and malinformation.[326] These are based on two primary dimensions: the information's falsity and the intent to cause harm.[327] Disinformation lies in the intersection of these factors, where false information is shared with intent to cause harm to its audience.[328]

On January 10, 2022, the United Nations General Assembly adopted a Resolution countering disinformation for the promotion and protection of human rights and fundamental freedoms. The Resolution expressed the concern of the General Assembly on the spread of disinformation on the internet and affirmed the responsibility of states to counter the spread of disinformation through various policy measures.[329]

---

323 RICHARD L. HASEN, CHEAP SPEECH: HOW DISINFORMATION POISONS OUR POLITICS AND HOW TO CURE IT 20–22 (2022).

324 Irene Khan, United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, April 13, 2021, *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/085/64/PDF/G2108564.pdf?OpenElement.

325 *Id.*, *citing* European Commission, *Joint Communication To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions* at 1, *available at* https://www.eeas.europa.eu/sites/default/files/action_plan_against_disinformation.pdf.

326 Misinformation is the sharing of false information without intent to cause harm, while malinformation is the opposite where genuine information is shared to cause harm. *See* Claire Wardle and Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking*, Council of Europe, 5 (2017), *available at* https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c.

327 Irene Khan, United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, at 3, April 13, 2021, *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/085/64/PDF/G2108564.pdf?OpenElement, *citing* Claire Wardle and Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking*, Council of Europe, 5 (2017) *available at* https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c.

328 Claire Wardle and Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking*, Council of Europe, 5 (2017), *available at* https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c.

329 United Nations General Assembly Resolution A/RES/76/227, *Countering disinformation for the*

In social media, disinformation is created, shared, and amplified organically through the use of technology, such as bots and algorithms, which are programmed to exploit the attentional and confirmation bias of its users. These mechanisms make it appear that the information disorder is widely shared in the same or similar social networks.[330] The age of disinformation has corrupted the marketplace of ideas "by denying facts and maintaining division."[331] It appears that "more speech" is not the remedy against false information. John Stuart Mill's assumption that contrary ideas will be vigorously and earnestly contested to attain the truth is no longer true, especially in social media. The speed at which information is shared, its volatility, and the reach of false information tend to drown out the truth. Echo chambers in social media make it difficult for competing information to penetrate personal circles, failing to lead to self-assessment and reflection as to the truth of their beliefs. Thus, an imputation, much more a lie, in social media, when spread far and wide several times, is taken as the truth.

Democracy entails the collective effort of the people. Political participation affects everyone in some form or manner, as simple as speaking about the public interest. Words have power and can influence, inspire, and move people to action. Thus, apart from the ability to speak freely, one must be mindful of their effect on their peers, their community, or anyone who may be listening. In social media, where everyone is an agent of information, either through their own invention or those of others, one has the responsibility to be critical about their statements validating the truth of their factual assertions or the soundness of their opinions. The power of political speech is assessed based on its ability to gain adherence in the marketplace of ideas. Thus, the more influence a speaker has, the more powerful their voice is, and necessarily, their responsibility to their audience and the information they share.

X

We summarize the permissible restrictions of the different participants in a judicial proceeding and the rules that apply as regards their speech. As Associate Justice Amy Lazaro-Javier (Associate Justice Lazaro-Javier) points out, the lengthy discussion summarizing the development of contempt powers in relation to speech about the courts is not merely academic. Combing through jurisprudence is necessary to demarcate the categories of speech and distill the applicable legal doctrines that apply to a participant in a judicial proceeding.[332]

---

promotion and protection of human rights and fundamental freedoms, December 24, 2021, *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/416/87/pdf/N2141687.pdf?OpenElement.

330 *Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression*, UNESCO, *available at* https://en.unesco.org/publications/balanceact.

331 Tim Wu, *Disinformation in the Marketplace of Ideas*, 51 SETON HALL L. REV. 169, 172 (2020).

332 Reflections of J. Lazaro-Javier, p. 3.

The following general principles in exercising the contempt powers of courts apply when public commentaries are made in relation to the courts, its processes, and its decisions. These are relevant in assessing violation of the *sub judice* rule or when unfair or illegitimate criticisms are made against the Judiciary, its judges and justices, and its decisions.

The *sub judice* rule has evolved from its first iteration in *In re Kelly* where a publication of criticism of a party or court to a pending case is already considered misbehavior punishable with contempt. Based on recent jurisprudence, a violation of the *sub judice* rule generally pertains to a publicized utterance relating to the merits of a pending case intended to influence, interfere, or intimidate the court to rule a certain way. There must be a showing of the serious and imminent threat of an utterance on the court's administration of justice before it can be punished.[333]

Ordinarily, "[m]ere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated."[334] Fair and legitimate criticisms of the courts and its decisions are not punishable, but when they transcend these limits amounting to defamation, scandalizing, or putting the court in disrepute, the speaker may be subsequently punished for indirect contempt.[335]

A violation of the *sub judice* rule and utterance of unfair and illegitimate criticisms against the courts constitute criminal contempt of court where the intent is a necessary element.[336] There must be a clear showing that the purpose of the contemptuous utterance is to impede, interfere, and embarrass the administration of justice.[337] The jurisprudence discussed shows that intent can be inferred from the language used and other relevant circumstances before and after the utterance was made.[338] Thus, the context of the utterance is relevant. Moreover, before punishing speech that criticizes the courts for exercising its functions, the effect of impairing the court's independence, integrity, or administration of justice must be demonstrable from the circumstances of each case.

Finally, the clear and present danger of a substantive evil to the administration of justice should be assessed based on the proximity of the speaker, the content of the speech, and the importance and saliency of the

---

333 *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 649 (2014) [Per J. Mendoza, Third Division].

334 *In re Vicente Sotto*, 82 Phil. 595, 600 (1949) [Per J. Feria, *En Banc*].

335 *People v. Godoy*, 312 Phil. 977, 1018 (1995) [Per J. Regalado, *En Banc*].

336 *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division] *citing Soriano v. Court of Appeals*, 474 Phil. 741 (2004) [Per J. Tinga, Second Division].

337 *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].

338 *In re Amzi B. Kelly*, 35 Phil. 944 (1916) [Per J. Johnson, *En Banc*]; *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642 (2014) [Per J. Mendoza, Third Division], *citing People v. Castelo*, 114 Phil. 892, 900 (1962) [Per J. Bautista Angelo, *En Banc*], *further citing People v. Alarcon*, 69 Phil. 265 (1939) [Per J. Laurel, *En Banc*].

information in relation to the stability of the Judiciary or the ability of such to craft an impartial decision.

Notwithstanding the applicability of these general guidelines to the contemptuous conduct of different participants in a judicial proceeding, there are standards which are category specific. Those in a different category cannot invoke defenses available to a speaker belonging in another due to the differences in their roles, their proximity to the court, and the relevant interests of the court in limiting a particular type of speech.

Historically, this Court has regulated three classes of speech. Restrictions depend on the proximity of the speaker to the courts and the interest of the courts on their speech.

The first class pertains to the speech of the litigants and their counsels, the second class to the speech of members of the bar and bench, and the third class pertains to the speech of the press and the public. Treatment of the respective speech of these actors in a judicial proceeding must necessarily be different.[339] The fourth and most recent class pertains to online speech, whose regulation is necessitated by the current exigencies of the proliferation of disinformation on the internet and social media.

Courts are protected if we are clear about what constitutes the punishable conduct of various constituents in a judicial proceeding. This will also inform them when their exercise of rights constitutes abuse, making them accountable and responsible for their contemptuous speech.

X (A)

Litigants and their counsels are in closest proximity to the courts as parties in judicial proceedings. Their speech is subject to the greatest restriction because they voluntarily agree to abide by the Rules of Court and the decorum required in judicial proceedings. In choosing to resolve their disputes before the courts, they agree to its resolution through fair and impartial proceedings without resorting to undue advantage other than arguing the merits of the case.[340]

Under the first class, the court has restricted public speech that violates the *sub judice* rule, the confidentiality of administrative proceedings, and illegitimate criticisms of litigants and their counsels that defame the courts and put them into disrepute. Litigants and their counsels are absolutely bound to comply with these policies, and their speech are subject to permissible restrictions for the courts' orderly disposition of their cases.

---

339 *Chavez v. Gonzales*, 569 Phil. 155, 203 (2008) [Per C.J. Puno, *En Banc*].

340 *In re Lozano and Quevedo*, 54 Phil. 801, 808 (1930) [J. Malcolm, *En Banc*].

The public speech of litigants and their counsel pertaining to the case should be assessed based on a clear and present danger of a substantive evil that will affect the administration of justice. This will be a matter for the court to assess based on the content of the speech, how it was delivered, and the platform used. This Court is very much aware that defendants must protect and defend their reputation when sued publicly and will give this the utmost consideration when they claim their freedom of speech.

However, the Court is also very aware of the unfortunate tendency of some lawyers and litigants to use the excuse of litigation on a controversy that they hope will propel them the fame or notoriety at the cost of their defendants and the administration of justice. This, too, may be considered in assessing the impact of their speech on the administration of justice. Lawyer-litigants who choose to use their skill to recklessly file cases to further their fame and notoriety rather than pursue the noble causes of justice will be subject to the appropriate provisions of the Code of Professional Responsibility and Accountability and their commitments under the Lawyers' Oath.

Litigants and their counsels who choose to speak publicly may not be punished if their speech is limited to a fair and true commentary of the proceedings,[341] provided, however, that public discussion was made in good faith and in furtherance of public interest. Counsels, owing to their duty of fidelity to the courts, must clearly provide the necessity of the utterance.

Given the proximity of litigants and their counsel to the courts, additional rules are imposed on their speech:

1. Lawyers can criticize the courts. However, the exercise of their freedom of speech as citizens is burdened by their responsibilities as officers of the court. Their criticism must be legitimate, and must support the administration of justice;

2. Counsels are responsible for advising their clients that in choosing the courts' forum, they are not allowed to attack the integrity of the courts unless they have actual proof that can sustain a disciplinary action, as in *Bustos*; and

3. Some cases are more public than others, owing to the public interest involved. A fair and true reporting of a matter relating to a pending case will not amount to a violation of the *sub judice* rule. Lawyers should also explain the arguments of the other party to give the public a balanced understanding of the case without editorializing. Comments or predictions as to how the courts will rule are not

---

[341] *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].

allowed.

X (B)

The second class of speech pertains to public commentaries of lawyers in general, specifically those engaging in public discourse in relation to cases of other lawyers.

Lawyers are officers of the court. Even if they are not representing clients in court, their public speech as regards the Judiciary are limited by their oath and the Code of Professional Responsibility and Accountability. This Court's disciplinary authority is broader than its contempt powers.[342] In their public commentaries, lawyers must be careful not to exceed the limits of fair comment and criticism. Moreover, lawyers cannot give an opinion on the services given by other lawyers in representing their clients as part of their duty to give courtesy, fairness, and candor to their colleagues.[343] They also cannot predict how the court will rule in a particular case.[344]

The same, if not higher, ethical standards apply to justices and judges. They should be the embodiment of competence, integrity, and independence.[345] The Code of Judicial Conduct provides that justices and judges "must be vigilant against any attempt to subvert the independence of the judiciary."[346] They "should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."[347] They are bound by stringent and exacting standards of a judicial office.[348] At all times and in all activities, they are guided by strict propriety and decorum.[349]

The exacting standards required of justices and judges also apply to public officials with quasi-judicial functions.[350]

X (C)

Contempt powers of the court can also be used to restrict the speech of the media and the public. However, we must not broadly exercise such power as to deter the freedom of the press and its right to give legitimate publicity to

---

342 *Zaldivar v. Sandiganbayan*, 248 Phil. 542, 555 (1988) [*Per Curiam, En Banc*].

343 CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, sec. 2 provides:
SECTION 2. *Dignified conduct* – A lawyer shall respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar[.]

344 *In re Ramon Torres*, 55 Phil. 799, 800 (1931) [Per J. Malcolm, *En Banc*].

345 CODE OF JUD. CONDUCT, Canon 1, rule 1.01.

346 CODE OF JUD. CONDUCT, Canon 1, rule 1.03.

347 CODE OF JUD. CONDUCT, Canon 1, rule 2.01.

348 *Lorenzana v. Austria*, 731 Phil. 82, 101–103 (2014) [Per J. Brion, Second Division].

349 *Office of the Court Administrator v. Atillo, Jr.*, A.M. No. RTJ-21-018 (September 29, 2021) [Per J. Inting, Second Division].

350 *Lahm III v. Labor Arbiter Mayor, Jr.*, 682 Phil. 1, 2 (2012) [Per J. Reyes, Second Division].

matters of public interest.[351] Our power to punish for contempt should never be wielded to stifle comments on public interest.[352]

Criticisms of judicial conduct are allowed because "[t]he administration of the law is a matter of vital public concern."[353] These may either be based on facts or opinions.

In *Kalalo v. Luz*,[354] "[t]he generally recognized distinction between a statement of 'fact' and an expression of 'opinion' is that whatever is susceptible of exact knowledge is a matter of fact, while that not susceptible of exact knowledge is generally regarded as an expression of an opinion."[355] In other words, a fact is a statement whose truth is not open to interpretation,[356] while an opinion usually pertains to a "person's thought, belief, or inference."[357]

Criticisms and comments are fair if they are grounded in truth and facts and, therefore, not punishable by contempt. Criticisms amounting to defamation, or those based on "false and unfounded allegations of fact," are not protected by any privileged communication:[358]

> Moreover the grounds of public policy upon which the so-called *privilege of "fair criticism" of the public acts of public officers,* and of directing public attention to the character and qualifications or lack of qualifications of candidates for office is based, *by no means justify or necessitate the extension of the privilege to* ***false and unfounded allegations of fact.*** The interests of society require that immunity should be granted to the discussion of public affairs, and that all acts and matters of a public nature may be freely published with fitting comments and strictures; *but they do not require that the right to criticize the public acts of public officers shall embrace the right to base such criticisms upon false statements of fact, or to attack the private character of the officer, or to falsely impute to him malfeasance or misconduct in office*; and as to candidates for office it has frequently been held in the United States that false allegations of fact even when made in good faith and with probable cause are not privileged[.][359] (Emphasis supplied)

Mistakes in fact or in opinion should be distinguished from publications made with deliberate or reckless falsehoods which are not protected under the guarantees of free speech and free press:

---

351 *Gonzales v. COMELEC*, 137 Phil. 471, 507 (1969) [Per J. Fernando, *En Banc*].

352 *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 939–940 (2017) [Per J. Leonen, Second Division].

353 *United States v. Bustos*, 37 Phil. 731, 741 (1918) [Per J. Malcolm, *En Banc*].

354 145 Phil. 152 (1970) [Per J. Zaldivar, *En Banc*].

355 *Id.* at 173–174, *citing Pitney Bomes Inc. vs. Sirkle, et al.*, 248 S. W. 2d. 920.

356 James H. Kuklinski, et. Al, *"Just the Facts, Ma'am": Political Facts and Public Opinion*, 560 ANNALS AM. ACAD. POL. & SOC. SCI. 143, 148 (1998).

357 BLACK'S LAW DICTIONARY 3468 (8th ed.)

358 *United States v. Sedano*, 14 Phil. 338, 343 (1909) [Per J. Carson, *En Banc*].

359 *Id.*

> The use of calculated falsehood, however, would put a different cast on the constitutional question. *Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity.* At the time the First Amendment was adopted, as today, there were those unscrupulous enough and skillful enough to use the deliberate or reckless falsehood as an effective political tool to unseat the public servant or even topple an administration. That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. For the use of the known lie as a tool is at once with odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected.[360] (Emphasis supplied)

Contemptuous speech may be published in various forms of media.[361] These include newspaper and magazine publications and television and radio broadcasts.[362] Journalists and other media practitioners are bound to comply with their Code of Ethics in giving publicity to that which the public has a right to know about.[363] Subsequent punishment cannot be imposed on the exercise of legitimate publicity as regards matters of public interest.[364] What is punishable is the abuse of the right to publish through a deliberate or reckless disregard of the truth or falsity of the publication.[365]

Qualified privileged communications are matters of defense which must be established by the one claiming them. Once established, the burden of proof to show the existence of actual malice in the publication or abuse of right of the members of the press is upon the court or person seeking to punish the publication.[366]

Associate Justice Lazaro-Javier points out that the deliberate or reckless disregard of truth or falsity of the publication may also be a relevant mental element for members of the press.[367] While this doctrine has been associated with comments that put the courts in disrepute, it may also apply in contempt proceedings for violation of the *sub judice* rule. Moreover, publications with unverified grave accusations against the courts are punishable with contempt.[368]

---

360 *Guingguing v. Court of Appeals*, 508 Phil. 193, 210–211 (2005) [Per J. Tinga, Second Division], *citing Garrison v. Louisiana*, 379 U.S. 64 (1964).

361 J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 654 (2010) [Per J. Abad, *En Banc*].

362 *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007*, 583 Phil. 391, 431–432 (2008) [Per J. Reyes, *En Banc*].

363 *In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 166 (1995) [Per C.J. Narvasa, *En Banc*].

364 *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].

365 *In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 168 (1995) [Per C.J. Narvasa, *En Banc*].

366 *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].

367 Reflections of J. Lazaro-Javier, p. 4.

368 *Re: News Report of Mr. Jomar Canlas in the Manila Times Issue of 8 March 2016*, A.M. No. 16-03-10-SC, October 15, 2019 [Per J. Carpio, *En Banc*].

As regards the public, they are spectators and consumers of public information. An ordinary person, without knowledge of the rules of procedure and required court decorum, cannot be punished in the exercise of their sovereign right to participate in public discussions of cases of public interest.

The courts have the least amount of interest in restricting this class of speech. Before their public utterance can be punished, the court must show a clear and present danger of an ordinary person's speech to the administration of justice. Such danger must be "extremely serious and the degree of imminence extremely high."[369]

The public's intemperate or false statements criticizing the conduct of courts or the propriety of its decisions, by themselves, are not automatically punishable. The mental element of these utterances, in order to be punishable, must amount to advocacy on the use of force or violation of law "directed to inciting or producing imminent lawless action and is likely to produce such action"[370] This includes holding or encouraging others to act violently against a judge or justice, or an incitement to affect the administration of justice.

X (D)

The regulation of online speech on the internet is a gray area. Currently, only the speech of a judge in social media has been the subject of jurisprudence.[371] What is clear, however, is that the right to speak online is not absolute. Criticisms or comments against the courts in social media must also be subject to the limits of fair criticism. This does not include malicious defamation against the courts, like the standard for the public.

Internet publicity and the danger it presents in the administration of justice cannot be discounted. A social media post can be shared infinitely and become viral in a matter of minutes. Organized networks of disinformation thrive in anonymity and the lack of effective regulatory mechanism in social media. The proliferation of fake news is a very significant threat on the courts' legitimacy, which is anchored on the public's confidence in our administration of justice. The internet may be weaponized by those who desire to defeat public confidence against a particular target, which may include the Judiciary.

We must recognize the dangers of unregulated speech against the Judiciary on the internet and in various social media where truth suffers from decay, where facts and objective analysis are inundated by false

---

369 *P/Supt. Marantan v. Diokno,* 726 Phil. 642, 649 (2014) [Per J. Mendoza, Third Division].

370 *Salonga v. Paño*, 219 Phil 402, 425–426 (1985) [Per J. Gutierrez, Jr., *En Banc*], *citing Brandenburg v. Ohio*, 395 U.S. 444 (1969).

371 *Lorenzana v. Austria*, 731 Phil. 82 (2014) [Per J. Brion, Second Division]; *Office of the Court Administrator v. Atillo, Jr.*, A.M. No. RTJ-21-018, September 29, 2021 [Per J. Inting, Second Division].

information.[372] This is a huge threat to democracy as it hampers the ability of citizens to make informed decisions based on facts.[373]

We illustrate this danger using the factual circumstances of *In re Macasaet*, except the publication was done through social media.

Suppose person "A" maliciously publishes a thread exposing an unverified bribery incident against an associate justice of this Court. Imagine the circumstances of the thread to contain allegations like *In re Macasaet*, where in consideration of an acquittal, boxes of money amounting to PHP 10 million were dropped off within the Supreme Court compound. The difference is that instead of publishing the story in a newspaper, the accusation was published on Twitter, which became a trending topic for several weeks, both in the Philippines and worldwide.

Judicial decorum restrains the ability of justices and judges to defend themselves fully in any other place outside the proper forum. By the time the investigation and contempt proceedings are over, a significant portion of the public who saw the tweet could have already lost confidence in the independence of the Supreme Court, regardless of the truth or falsity of the statements. Worse, the tweet can also be shared in other social media platforms and converted into different formats, which also gain traction separately from the original post. Those who saw the tweet in some form or another in other social media could have believed the disinformation, leading to further loss of public confidence.

There are two ways to address this and hopefully stop the cancerous spread of disinformation online: either censor freedom of speech online, imposing that no criticisms against the Judiciary may be allowed in the cyberspace, or, the better solution is to make it partly a responsibility of the online speaker to validate the information they share online.

There is already a framework for holding journalists accountable for publications made in reckless disregard for the falsity of the publication and penalizing the same for abuse of rights and a violation of its ethical responsibility.[374]

Apart from one's ability to speak, its exercise has the reciprocal duty to one's community. This responsibility is the ability to validate the truth of one's speech that is shared for everyone's consumption. The truth of these

---

372 Robert C. Blitt, *Misinformation, Disinformation, and the Law: Human Rights and Disinformation Under the Trump Administration: The Commission on Unalienable Rights*, 66 ST. LOUIS L.J. 1, 6.

373 *Id.*

374 *See In re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson*, 313 Phil. 119, 168 (1995) [Per C.J. Narvasa, *En Banc*].

statements, however, should not be addressed to the courts for we are not the arbiters of the truth.

Instead, the credibility of the information should be assessed prior to its creation, dissemination, and amplification online. The Council of Europe, a leading regional human rights organization, provides that aside from checking the veracity of the contents of an information or fact-checking, one may also resort to source-checking:

> Increasingly, *when assessing the credibility of a piece of information, the source who originally created the content or first shared it, can provide the strongest evidence about whether something is accurate.* Newsrooms, and people relying on social media for information, need to be investigating the source, almost before they look at the content itself. For example, routinely people should be researching the date and location embedded in domain registration information of a supposed 'news site' to seeing whether it was created two weeks ago in Macedonia. Similarly, people should be instinctively checking whether a particular tweeted message has appeared elsewhere, as it could be that the same message was tweeted out by ten different accounts at exactly the same time, and six of them were located in other countries. Newsrooms in particular need more powerful tools to be able to visually map online networks and connections to understand how dis-information is being created, spread and amplified.[375] (Emphasis supplied)

At the very least, a person who posts online must point to a valid source or basis for the allegations made against the courts. A comment based on false information that tends to put the courts in disrepute, even if proven to be false, should be punished only if there is a showing that the comment was not formed with a reasonable degree of care and has no reasonable basis.[376] As an added qualification, the clear and present danger of the online contemptuous speech to impair the administration of justice may be assessed based on the reach of the post.

The more viral online content is, as assessed from the volume of people who saw the original post or by way of shared posts within the same platform or cross-posting other social media, the greater its effect and propensity to affect the public. The language employed may also be deliberately used to infuriate the public to generate more public engagement. Thus, an influencer's speech is held to a greater standard than an average social media user.

Finally, courts should also be wary about the importance of posts in social media as to the court's administration of justice. There are posts that are so trivial in nature that should not be the concern of the Judiciary. This is

---

375 Hossein Derakhshan and Claire Wardle, *Information Disorder: Toward an interdisciplinary framework for research and policy making*, COUNCIL OF EUROPE REPORT 18–19 (2017), *available at* https://rm.coe.int/information-disorder-report-november-2017/1680764666.

376 *United States v. Sedano*, 14 Phil. 338, 343–344 (1909) [Per J. Carson, *En Banc*].

just noise that may distract the courts in the exercise of our mandate to the people.

XI

This Court applies the foregoing to the instant case.

Respondent contends that the Petition is not proper under Rule 45 of the Rules of Court because it involves factual determination of the procedure before the lower courts.[377]

On the other hand, petitioners contend that the only issue in the Petition is whether the Court of Appeals erred in refusing to correct the trial court's grave abuse of its discretion when it did not dismiss the Petition for Indirect Contempt for failure to state a cause of action.[378] They claim that in a motion for preliminary hearing on affirmative defenses, a trial court's duty is to decide whether to dismiss the case and not simply to hold hearings.[379] Essentially, they are praying for the dismissal of the Petition for Indirect Contempt for failure to state a cause of action. Thus, petitioners conclude that there is no question of fact involved in the Petition.[380]

We agree with petitioners.

At the outset, we note that a motion for preliminary hearing on affirmative defenses is a prohibited motion under the 2019 Rules of Court.[381] Prior to its amendment, such motion was allowed provided that a motion to dismiss had not been filed:

> SECTION 6. *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
>
> The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.[382]

Holding an actual preliminary hearing on the affirmative defenses is discretionary on the part of the trial court.[383] When the affirmative defense

---

377 *Rollo*, pp. 727–728.
378 *Id.* at 743.
379 *Id.* at 742.
380 *Id.* at 743–744.
381 RULES OF COURT, rule 15, sec. 12(b).
382 RULES OF COURT (1997), rule 16, sec. 6.
383 *246 Corporation v. Daway*, 461 Phil. 830, 839 (2003) [Per J. Ynares-Santiago, First Division].

raised is failure to state a cause of action, only the allegations in the complaint are relevant.[384] As pointed out by Associate Justice Lazaro-Javier, if an actual hearing is conducted, the same is not evidentiary.[385] The affirmative defense can be resolved by checking only the allegations of ultimate facts in the complaint:

> The trial court may indeed elect to hold a preliminary hearing on affirmative defenses as raised in the answer under Section 6 of Rules 16 of the Rules of Court. *It has been held, however, that such a hearing is not necessary when the affirmative defense is failure to state a cause of action,* and that it is, in fact, error for the court to hold a preliminary hearing to determine the existence of external facts outside the complaint. The reception and the consideration of evidence on the ground that the complaint fails to state a cause of action, has been held to be improper and impermissible. *Thus, in a preliminary hearing on a motion to dismiss or on the affirmative defenses raised in an answer, the parties are allowed to present evidence except when the motion is based on the ground of insufficiency of the statement of the cause of action which must be determined on the basis only of the facts alleged in the complaint and no other.* Section 6, therefore, does not apply to the ground that the complaint fails to state a cause of action. The trial court, thus, erred in receiving and considering evidence in connection with this ground.[386] (Emphasis supplied, citations omitted)

While a motion for preliminary hearing is filed in lieu of a motion to dismiss, both motions seek the same legal effect: the dismissal of the action or petition.

In *China Road and Bridge Corporation v. Court of Appeals*,[387] this Court ruled that a motion to dismiss based on failure to state a cause of action is a question of law:

> The ground for dismissal invoked by petitioner is that the complaint of JADEBANK before the trial court stated no cause of action, under Sec. 1, par. (g), Rule 16, [of] the 1997 Revised Rules of Civil Procedure. It is well settled that in a motion to dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations assuming them to be true. The court does not inquire into the truth of the allegations and declare them to be false, otherwise it would be a procedural error and a denial of due process to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence. To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint.

---

384 *Aquino v. Quiazon*, 755 Phil. 793, 810 (2015) [Per J. Mendoza, Second Division], *citing Insular Investment and Trust Corporation v. Capital One Equities Corporation*, 686 Phil. 819 (2012) [Per J. Mendoza, Third Division].

385 Reflections of Justice Lazaro-Javier, p. 4.

386 *Aquino v. Quiazon*, 755 Phil. 793, 816–817 (2015) [Per J. Mendoza, Second Division].

387 401 Phil. 590 (2000) [Per J. Bellosillo, Second Division].

> In *a motion to dismiss based on failure to state a cause of action, there cannot be any question of fact or "doubt or difference as to the truth or falsehood of facts," simply because there are no findings of fact in the first place*. What the trial court merely does is to apply the law to the facts as alleged in the complaint, assuming such allegations to be true. *It follows then that any appeal therefrom could only raise questions of law or "doubt or controversy as to what the law is on a certain state of facts."* Therefore, a decision dismissing a complaint based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. One is the legal and logical opposite of the other.[388] (Emphasis supplied, citations omitted)

In the present case, petitioners raised the affirmative defense of failure to state a cause of action. In resolving the same, this Court is only required to look at the sufficiency of the Petition. We find that the Petition is properly filed under Rule 45 and only questions of law are raised.

XII

Here, the Court of Appeals gravely erred that petitioners would have to go to trial to fully ventilate the merits of the case.[389] An indirect contempt petition for violation of the *sub judice* rule is criminal in nature.[390] A respondent in contempt proceedings, although *sui generis* in character, is entitled to due process to be informed of the nature and cause of the accusation against them.[391]

The rules on criminal procedure and evidence apply in criminal contempt proceedings, where all the elements of an offense must be stated in the information in order to sufficiently inform an accused of the charges.[392] When it is clear that the information does not charge an offense, it must be dismissed immediately because the accused need not be subjected to the "anxiety and inconvenience of a useless trial."[393]

Before punishing for contempt, courts must carefully consider the circumstances of the alleged act and the purpose for which they are being

---

388 *Id.* at 599–600.

389 *Rollo*, p. 17.

390 *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division], *citing Soriano v. Court of Appeals*, 474 Phil. 741 (2004) [Per J. Tinga, Second Division].

391 CONST., art. III, sec. 14 provides:
SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

392 *People v. Dimaano*, 506 Phil. 630, 649 (2005) [*Per Curiam, En Banc*].

393 *Cruz, Jr. v. Court of Appeals*, 271 Phil. 968, 976 (1991) [Per J. Cruz, First Division].

asked to punish.[394] Courts must first examine the allegations in an indirect contempt petition to determine whether there is sufficient basis to exercise its power to punish for contempt.

A complaint sufficiently states a cause of action when a hypothetical admission of the truth of the allegations therein, the reliefs prayed for may be granted:

> The familiar test for determining whether a complaint did or did not state a cause of action against the defendants is whether or not, *admitting hypothetically the truth of the allegations of fact made in the complaint, a judge may validly grant the relief demanded in the complaint.* In *Rava Development Corporation v. Court of Appeals*, the Court elaborated on this established standard in the following manner:
>
> > "The rule is that a defendant moving to dismiss a complaint on the ground of lack of cause of action is regarded as having hypothetically admitted all the averments thereof. The test of the sufficiency of the facts found in a petition as constituting a cause of action is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof.
> >
> > In determining the existence of a cause of action, only the statements in the complaint may properly be considered. It is error for the court to take cognizance of external facts or hold preliminary hearings to determine their existence. If the allegation in a complaint furnish sufficient basis by which the complaint may be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants.
>
> Thus, in determining the existence of a cause of action, only the allegations in the complaint may properly be considered. For the court to do otherwise would be a procedural error and a denial of the plaintiff's right to due process.[395] (Emphasis supplied, citations omitted)

The Petition for Indirect Contempt must sufficiently inform the respondent the basis for which their speech or conduct is being sought to be punished. Moreover, the Petition must spell out the clear and present danger of a speech to the court's administration of justice, identifying the interest of the court that is violated and ought to be punished.

Here, petitioners were alleged to have violated the *sub judice* rule. The ultimate facts required to be alleged in a petition for indirect contempt are as follows:

---

394 *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 943 (2017) [Per J. Leonen, Second Division].

395 *Aquino v. Quiazon*, 755 Phil. 793, 810 (2015) [Per J. Mendoza, Second Division].

First, public statements were made regarding the merits of the case while it is pending before the courts. The petition must clearly state the contemptible conduct and reproduce the content of the speech ought to be punished.

Second, since intent is necessary in criminal contempt,[396] the required mental element of the speaker who uttered the contemptuous speech in a judicial proceeding must be specifically alleged. It must appear from the story that the "ultimate purpose" of its publication is to impede, obstruct or degrade the administration of justice.[397] This is inferred from the totality of the story, the context of its publication, the wording used, the manner of reporting, and other relevant factors which may be derived from the story.

Third, the clear and present danger of the utterance to the court's administration of justice must be alleged, specifically identifying the importance and saliency of the information on the ability of courts to make an impartial decision. There must be a showing of the serious and imminent threat of an utterance on the court's administration of justice for it to be subject to subsequent punishment.[398]

Finally, the effect of the speech on the administration of justice must be shown, particularly, that the utterance will influence the court's independence in ruling on a case, which will, in turn, affect public confidence in the Judiciary.

Those accused of indirect contempt should not be compelled to proceed to trial when the charges are grossly insufficient. This is consistent with the policy that the courts' inherent power of contempt must be wielded judiciously, sparingly, and only when necessary in the interest of justice.[399] Courts must examine the allegations of a petition for indirect contempt before giving due course to it. This will allow the court to identify the speech and the limits of its power to subsequently punish for contempt.

The Petition for Indirect Contempt reads:

> 3. At about 7:00 p.m. on 23 June 2010, *ABS-CBN, through its news program TV Patrol World, aired an interview by Jorge Cariño with one Lakmodin alias "Laks" Saliao. That program is broadcasted nationwide and has a viewership of about 1 Million people.*
>
> Attached as Annex A is a video copy of said interview.

---

396 *People v. Godoy*, 312 Phil. 977, 999 (1995) [Per J. Regalado, *En Banc*].
397 *People v. Castelo*, 114 Phil. 892, 899 (1962) [Per J. Bautista Angelo, *En Banc*].
398 *P/Supt. Marantan v. Atty. Diokno*, 726 Phil. 642, 649 (2014) [Per J. Mendoza, Third Division].
399 *In re to Declare in Contempt of Court Hon. Simeon A. Datumanong*, 529 Phil. 619, 625 (2006) [Per J. Ynares-Santiago, First Division].

4. The interview by Cariño featured Saliao who claims to be a former "alalay" (errand boy) of the Ampatuan family, which includes petitioner.

. . . .

5. The Rules of Court punished as contemptuous conduct "any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1" of Rule 71. *Saliao's interview clearly falls within this category–it was calculated to interfere with court proceedings to serve Saliao's own interest without passing through the scrutiny of the police or the National Prosecution Service if it indeed is to form part of or used as evidence in the murder cases aforesaid.*

6. To explain his belated revelation of the Ampatuans' alleged involvement in the "Maguindanao Massacre", Saliao claims that he discovered that he was going to be killed by the Ampatuans or their employees for he knew too much about that murder. Hence he needed to make his expose before he was killed. Fact is, Saliao had been accused of stealing personal effects of one of petitioner's sisters, Bai Ameerah Ampatuan-Mamalapat, prompting him to disclose his unfounded stories to media to prevent Ameerah and her family from chasing after him for the crimes he has committed on them.

The purpose of the interview now becomes apparent—it was a retaliatory move. Saliao wants the theft charges file[d] against him by Ameerah Ampatuan-Mamalapat off his back. *He then presents himself to the media hoping for some sort of refuge at the expense of petitioner's right to a fair trial.*

7. The criminal justice system is founded on a set of rules aimed at protecting the rights of the accused. Any deviation from these rules may spell undue prejudice to the right of the accused to the proper administration of justice. The Rules, for one, mandate that witnesses be examined in open court, and under oath. A person who claims to have witnessed a crime or to possess knowledge of facts relating to a pending case must submit himself to the authority of the prosecutors, then the court, and abide by procedural rules before he may be allowed to give statements relating to the case. There is a proper forum for the disclosure of facts and evidence relating to a case and that is the Courts. *Any disclosure outside the confines of a courtroom, absent an opportunity for the other party to cross-examine the witness is an undue interference upon court processes and proceedings.*

8. *All of Saliao's claims are evidentiary matters which directly affect and can be used by the prosecution as evidence, if true (which is denied), in the aforesaid murder cases. Pending the actual admission of those disclosures as evidence and the use thereof in the resolution of the murder cases, those "disclosures" of respondent cannot be broadcasted and talked about in interviews on national television.* For, due process and fair play dictates that criminal cases must be tried free from extraneous influence, bias, prejudice or sympathies generated by media hype and irresponsible journalism which the report of respondent Cariño, ABS-CBN, and Saliao had provided the viewing public.

> 9. There is a purpose for the Supreme Court's ban on media coverage of the Maguindanao Massacre hearings–to even out the playing field between the Prosecutor and the persons prosecuted.
>
> 10. The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid the public's prejudging the issue, influencing the court, or obstructing the administration of justice.
>
> 11. Indeed, *the easiest and most cost-efficient way of influencing the outcome of a case is to generate a negative impression against a party.* Here, *respondent had created an untrue story connected with "Maguindanao Massacre" to cover up for his offenses*, and to leverage his position so that the Ampatuans (including Ameerah) will go slow on him or even forget his misdeeds. *Public perception—though ideally extraneous to the case—nonetheless finds its way into the psyche of the judge, thereby affecting the possible outcome of the murder cases.* This, we ought to prevent at all costs and the Supreme Court has mandated it to be the right thing to do.
>
> 12. Section 3, Rule 71 of the Rules punishes as indirect contempt "any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice."
>
> 13. Saliao's statements obstruct and impede the administration of justice. Those statements and the conduct of the interview and its subsequent broadcast on nationwide TV by respondents ABS-CBN and Cariño *indirectly interferes with the administration of justice.* And when that interview is broadcasted nationwide (as was done on 23 June 2010 by respondents ABS-CBN and Cariño), those persons or entities responsible for such dissemination are equally culpable for a violation of Section 3, Rule 71 as Saliao is. The *wanton disregard by respondents for the sub judice rule must not be tolerated.*
>
> 14. The impact of media coverage on pending trials is a matter that has been subject of a Supreme Court Resolution where its use was banned. Hence, in Re: Request for TV/Radio Coverage of Plunder Case, the Supreme Court observed:
>
> . . . .
>
> 15. Thus, by agreeing to the interview and making disclosures of fact or fiction which impact on the pending "Maguindanao Massacre" murder cases, Saliao has committed indirect contempt upon this Honorable Court. *So too, did ABS-CBN and Cariño by broadcasting and conducting said interview and airing it on nationwide television* at about 7:00 p.m. on 23 June 2010 (Annex A).[400] (Emphasis supplied)

This Court finds that the complaint sufficiently informs petitioners of their conduct for which their subsequent punishment is sought. Their acts of interviewing and broadcasting in national television during the pendency of the criminal cases "without passing through the scrutiny of the police or the National Prosecution Service if it indeed is to form part of or used as evidence"[401] supposedly violated the *sub judice* rule.

---

[400] *Rollo*, pp. 128–131.

[401] *Id.* at 128.

The first and fourth required allegations are clearly stated in the Petition for Indirect Contempt. Saliao's statements are evidentiary matters in the pending criminal cases. The interview was allegedly a deliberate and calculated move to interfere with the court proceedings. A copy of the interview was also attached to the Petition.[402] Respondent stated the effect of the interview and its broadcast to have unduly prejudiced his right to a fair trial and the proper administration of justice in the pending criminal cases.[403]

However, the second and third required allegations have not been sufficiently alleged, which are fatal to the Petition for Indirect Contempt.

The second required allegation pertains to the relevant mental element. Here, it is the reckless disregard of the truth or falsity of the story since the participants being held liable are members of the press. Since it is respondent's burden to prove the existence of actual malice or the deliberate or reckless disregard of the truth or falsity of the statement, it must first be alleged in the Petition for Indirect Contempt. As Associate Justice Lazaro-Javier points out, this mental element can be used to exercise this Court's power to punish for contempt.[404]

In this case, however, the mental element was not sufficiently alleged. Respondent stated that in agreeing to interview and make disclosures of fact or fiction that impact the pending criminal murder cases, petitioners committed indirect contempt.[405] He also alleged that petitioners are guilty of irresponsible journalism in creating media hype on Saliao's statements, notwithstanding the pendency of the criminal cases. However, nowhere in the Petition for Indirect Contempt did respondent specifically allege that petitioners recklessly disregarded the falsity of Saliao's statements or conducted *bona fide* efforts to ascertain its truth. Contrary to Associate Justice Lazaro-Javier's reading of the Petition, petitioners' supposed failure to pass through the scrutiny of the police or the National Prosecution Service is not a sufficient allegation of deliberate or reckless disregard of the truth or falsity of Saliao's statements.

More importantly, there was no sufficient allegation of the clear and present danger of the interview and its broadcast. The Petition states that Saliao created a false story that petitioners disseminated to the public, generating a negative impression against the accused in the murder cases. Respondent alleges that this sentiment will eventually find its way into the psyche of the judge, serving as an extraneous influence and affecting the outcome of the murder cases.[406]

---

402 *Id.*
403 *Id.* 128–129.
404 Reflections of J. Lazaro-Javier, pp. 12–13.
405 *Rollo*, p. 131.
406 *Id.* at 130.

This allegation shows the serious evil sought to be prevented by the *sub judice* rule. However, it fails to allege its imminence as regards the court's administration of justice. The eventuality is insufficient to show the imminence level required to satisfy the clear and present danger test. It is settled that "[p]ublicity does not, in and of itself, impair court proceedings."[407] In *Teehankee, Jr.*:

> *Pervasive publicity is not per se prejudicial to the right of an accused to fair trial.* The mere fact that the trial of the appellant was given a day-to-day, gavel-to-gavel coverage does not by itself prove that the publicity so permeated the mind of the trial judge and impaired his impartiality. *For one, it is impossible to seal the minds of members of the bench from pre-trial and other off-court publicity of sensational criminal cases. The state of the art of our communication system brings news as they happen straight to our breakfast tables and to our bedrooms. These news form part of our everyday menu of the facts and fictions of life. For another, our idea of a fair and impartial judge is not that of a hermit who is out of touch with the world.* We have not installed the jury system whose members are overly protected from publicity lest they lose their impartiality. Criticisms against the jury system are mounting and Mark Twain's wit and wisdom put them all in better perspective when he observed: "When a gentleman of high social standing, intelligence, and probity swears that testimony given under the same oath will outweigh with him, street talk and newspaper reports based upon mere hearsay, he is worth a hundred jurymen who will swear to their own ignorance and stupidity[.] Why could not the jury law be so altered as to give men of brains and honesty an equal chance with fools and miscreants?" Our judges are learned in the law and trained to disregard off-court evidence and on-camera performances of parties to a litigation. Their mere exposure to publications and publicity stunts does not *per se* fatally infect their impartiality.[408] (Emphasis supplied, citation omitted)

Contrary to Associate Justice Lazaro-Javier's reading of the Petition for Indirect Contempt, a substantial danger[409] is not a sufficient allegation for the court to exercise its contempt powers. The test required in subsequent punishment for which contempt proceedings fall under is the clear and present danger test.

Considering that the Petition for Indirect Contempt failed to state all the required allegations for violating the *sub judice* rule, this Court is constrained to dismiss the Petition.

---

407 *Roque, Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 936 (2017) [Per J. Leonen, Second Division].

408 319 Phil. 128, 191–192 (1995) [Per J. Puno, Second Division].

409 Reflections of J. Lazaro-Javier, pp. 13–14.

XIII

Had the Petition sufficiently stated a cause of action, petitioners would have been guilty of indirect contempt in interviewing and broadcasting Saliao's statements which are relevant in the pending criminal cases before he was even presented in court.

Undeniably, the media has a right to give publicity to matters of public interest. In *Ayer Productions v. Capulong*:[410]

> *The privilege of giving publicity to news, and other matters of public interest, was held to arise out of the desire and the right of the public to know what is going on in the world, and the freedom of the press and other agencies of information to tell it.* 'News' includes all events and items of information which are out of the ordinary humdrum routine, and which have 'that indefinable quality of information which arouses public attention.' To a very great extent the press, with its experience or instinct as to what its readers will want, has succeeded in making its own definition of news, as a glance at any morning newspaper will sufficiently indicate. It includes homicide and other crimes, arrests and police raid[]s, suicides, marriages and divorces, accidents, a death from the use of narcotics, a woman with a rare disease, the birth of a child to a twelve year old girl, the reappearance of one supposed to have been murdered years ago, and undoubtedly many other similar matters of genuine, if more or less deplorable, popular appeal.
>
> The privilege of enlightening the public was not, however, limited to the dissemination of news in the sense of current events. It extended also to information or education, or even entertainment and amusement, by books, articles, pictures, films and broadcasts concerning interesting phases of human activity in general, as well as the reproduction of the public scene in newsreels and travelogues. In determining where to draw the line, the courts were invited to exercise a species of censorship over what the public may be permitted to read; and they were understandably liberal in allowing the benefit of the doubt."[411] (Emphasis supplied, citations omitted)

Fortun expressly declared that any matter related to the Maguindanao Massacre is considered a matter of public interest. This Court upheld the right of the media to publish related matters, including the disbarment complaint against Atty. Philip Sigfrid A. Fortun, who became a public figure for his representation of the accused in the Maguindanao Massacre criminal cases:

> The Maguindanao Massacre is a very high-profile case. Of the 57 victims of the massacre, 30 were journalists. *It is understandable that any matter related to the Maguindanao Massacre is considered a matter of public interest and that the personalities involved, including petitioner, are considered as public figure*. The Court explained it, thus:
>
> > But even assuming a person would not qualify as a public figure, it would not necessarily follow that he could

---

[410] 243 Phil. 1007 (1988) [Per J. Feliciano, *En Banc*].
[411] *Id.* at 1023–1024.

> not validly be the subject of a public comment. For he could; for instance, if and when he would be involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.
>
> Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.[412] (Emphasis supplied, citation omitted)

Here, petitioners contend that their right to give legitimate publicity to matters of public interest should prevail over the *sub judice* rule.[413] They argue that the Petition for Indirect Contempt should be dismissed because the interview of Saliao is protected speech as it pertains to a matter of public interest, citing *Fortun*. The interview and its broadcast were done in good faith and thus, fair, and true reporting of Saliao's statements based on his personal knowledge.[414]

This Court agrees but only in part.

Breaking down the qualified privilege of fair and true reporting under Article 354 of the Revised Penal Code and applicable jurisprudence, its elements are as follows:

1. The report must be a true account of a newsworthy event;
2. The article is written fairly and balanced with the other side of the story where the subject of the article is given the opportunity to tell their side or version of events;[415]
3. The story must pertain to "judicial, legislative or other official proceedings which are not of confidential nature." This includes "any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions;"
4. There are no comments or remarks in the story; and
5. The article must be published in good faith and in furtherance of a public interest.[416]

---

412 703 Phil. 578, 596–597 (2013) [Per J. Carpio, Second Division].
413 *Rollo*, p. 47.
414 *Id.* at 39, 42–48.
415 *Ocampo v. Sun-Star Publishing, Inc.*, 401 Phil. 485, 493 (2000) [Per J. Ynares-Santiago, First Division].
416 *People v. Castelo*, 114 Phil. 892, 900–901 (1962) [Per J. Bautista Angelo, *En Banc*].

Qualified privileged communication is a matter of defense which must be established by the one invoking it. A fair and true report is only qualified in its scope. The privilege refers to a reporting of a proceeding, its incidents, and the acts performed by public officers. A statement, report, or speech *must be delivered in the judicial proceeding* for the qualified privilege of fair and true reporting can apply. The privilege does not extend to interviewing a witness and airing it on national television before they were delivered in the judicial proceeding, as in this case, before the witness was presented in trial. Due process requires that a witness testify in court where the opposing party may subject them to cross-examination.

An examination of the transcript of petitioners' broadcast of Saliao's statements shows that they represented Saliao's statements as testimony which they claim to be his personal knowledge directly bearing upon the guilt of respondent in the pending criminal cases. The transcript reads:

KAREN DAVILA:

Isang kasambahay ni Governor Andal Ampatuan Sr. ang bumaliktad ngayon at *tetestigo laban sa pamilya kaugnay ng Maguindanao Massacre*.

Nagdesisyon ang kasambahay na tumakas sa pamilya matapos niyang malaman na pati siya at ililigpit diumano para hindi na kumalat ang nalalaman niya tungkol sa massacre.

Exclusive. Nagpapatrol, Jorge Cariño.

JORGE CARIÑO:

Marami nang testigo tungkol sa Maguindanao Massacre pero sa pagkakataong ito, isang testigo ang buong tapang na inilantad ang kaniyang mukha – si Lakmodin Saliao na dating katulong at alalay ni Maguindanao Governor Andal Ampatuan Sr.

Paliwanag ni Laks, sa bahay na ito ng matandang Ampatuan sa Barang[]ay Bagong ng Shariff Aguak, unang nabuo ang plano. Ang sumunod na pulong ay sa bahay naman ni ARMM Governor Zaldy Ampatuan.

LAKMODIN "LAKS" SALIAO:

Six days before the massacre. Ang pinag-uusapan nila that time kung saan-saan pwede ilagay or magpoposisyon ng mga maghahawak or kung sino ang nandun sa massacre na yun.

JORGE CARIÑO:

Idinetalye ni Laks kung sino ang mga anak na kasama sa pagpaplano.

LAKMODIN "LAKS" SALIAO:

Si Governor Andal Ampatuan Sr., pangalawa si Datu Unsay, Jr., pangatlo si Datu Sajjid, pang-apat si Akmad Ampatuan.... Si Akmad Ampatuan atsaka si Anwar Ampatuan atsaka yung mga kapatid niyang babae – si Bai Amira Ampatuan-Mamalapat, si Bai Noria Ampatuan-Asim, si Bai Aloha Ampatuan-Ampatuan, si Bai Shaidy Ampatuan-Abutasil, si Datu Digo Mamalapat yun... si Datu Zaldy ang kasama nila.

JORGE CARIÑO:

Nang mangyari ang masaker, umaga ng veinte-tres sinabi ni Laks na magkatabi sila ni Andal, Sr.... siya ang tagahatid ng tubig, ng pagkain. Siya rin ang tagasagot ng cellphone ng matanda at dito niya umano narinig and mga pag-uusap nang tumawag si Datu Andal "Unsay" Ampatuan, Jr. bago patayin umano ang mga biktima.

JORGE CARIÑO to LAKS:

Papano mo nadidinig yung usapan? Telepono?

LAKMODIN "LAKS" SALIAO:

Yung galing sa masaker na yan, I-com ang ginagamit nila. Sabi ng matanda: "Ano bang gawin mo diyan"? Ano pang hinihintay mo? Titignan mo yung mga tao nay an—andiyan ba si Toto"? Sabi ni Datu Unsay: "Wala. Si Bai Eden ang nandun atsaka si... ang asawa ni Toto Mangudadatu."

"Kukunin mo silang lahat atsaka ang iba-iba pang mga taga-Buluan. Ang media i-separate mo.

"Wag, Ama. Kapag patayin ko itong tao na ito, idadamay ko na rin ang media. Walang isa man lang na mabubuhay. Kung mabuhay ang isang tao, yun ang makakapahamak po sa atin."

JORGE CARIÑO:

Wala umanong nagawa ang matandang Ampatuan – nangyari ang malagim na kagustuhan ni Datu Unsay. Limamput-pito ang patay kaya mismong ang matandang Ampatuan ay natago at namundok. Hangga't dinampot ng mga awtoridad at nakulong ang matandang Ampatuan. Hindi umano umalis si Laks kahit hindi na siya sinuswelduhan.

Sa videong ito na ibinigay noon[] ng pamilya Ampatuan, makikitang kasama pa si Laks sa nag-aalaga sa matandang Ampatuan.

Pero ang masakit umano, ayon kay Laks, minsan nadinig niya na plano na rin pala siyang iligpit.

LAKMODIN "LAKS" SALIAO:

Alang-alang sa pagbubuhay nila sa akin, pinalaki nila ako, kayang-kaya ko hindi sila mapahamak. Pero noong nalaman ko na pati ako papatayin nila atsaka si Atty. Pantojan po – sariling abogado namin papatayin nila para daw mapagbintangan ang Mangudadatu, kaya nga po nagdesisyon na po akong umalis.

JORGE CARIÑO:

> Personal na hiniling ni Laks na ilantad ko sa camera ang pagkatao niya. Gusto raw niya ipamukha sa pamilya Ampatuan na hindi na takot sa kanila ang katulong na lumalayas at ngayo'y tetestigo. *Ito rin ang paraan niya upang patunayan sa publiko na nagsasabi siya ng totoo.*[417] (Emphasis supplied).

Petitioners usurped the role of the courts in receiving his testimony in allowing Saliao to state matters of his personal knowledge relating to the murders on national television. It appears that at the time the interview aired, the criminal cases were undergoing pre-trial. It does not appear that petitioners secured leave from the prosecution to air the interview, notwithstanding the relevance of his statements to the pending criminal cases. Petitioners cannot deny that Saliao's statements are evidentiary matters relevant to the guilt of the accused in a pending case.

While petitioners are correct that the statement is a matter of grave public concern to which the press may give publicity, they should not have presented him as a witness on national television. The use of the term "*tetestigo*" in Saliao's presentation to the public removes the distinction between media interviews and witness presentations in open court. Moreover, Cariño ended the interview in a manner that bolstered the truth of Saliao's statements, again characterizing the interview as testimony. The observation of Associate Justice Lazaro-Javier is relevant:

> [T]he public interest character of a criminal proceeding does not justify petitioners' act to interview "Laks" and broadcast his "testimony" as if their platform is the parallel and shadow counterpart of the proceedings before the trial court and the prosecution. "Laks" was not then even a witness against the accused in the Maguindanao Massacre criminal cases but petitioners were already presenting him as such. To recall, "Laks" was interviewed on June 23, 2010, but he was only presented as a witness in *People v. Datu Andal "Unsay" Ampatuan, Jr. et al.* from September 8, 2010 onwards.[418]

As Associate Justice Lazaro-Javier points out, the public interest character of Saliao's statement is not an excuse to disregard the *sub judice* rule. This is especially true in criminal cases pending before the courts. Responsible journalism is said to be the "handmaiden of effective judicial administration, especially in the criminal field[.] The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism."[419]

---

417 *Rollo*, pp. 42–45.

418 Reflections of J. Lazaro-Javier, p. 18.

419 *Estrada v. Desierto*, 408 Phil. 194, 245–246 (2001) [Per J. Puno, *En Banc*], *citing People v. Teehankee, Jr.*, 319 Phil. 128 (1995) [Per J. Puno, Second Division] and *Larranaga v. Court of Appeals*, 346 Phil. 241 (1997) [Per J. Puno, Second Division].

In the exercise of their freedom to give publicity to the news, the press has the corresponding duty to ensure that they are not infringing upon the rights of the accused to a fair trial. In *Estrada v. Desierto*:[420]

> Petitioner again suggests that the Court should order a 2-month cooling off period to allow passions to subside and hopefully the alleged prejudicial publicity against him would die down. We regret not to acquiesce to the proposal. There is no assurance that the so called 2-month cooling off period will achieve its purpose. *The investigation of the petitioner is a natural media event.* It is the first time in our history that a President will be investigated by the Office of the Ombudsman for alleged commission of heinous crimes while a sitting President. His investigation will even be monitored by the foreign press all over the world in view of its legal and historic significance. *In other words, petitioner cannot avoid the kl[ie]glight of publicity. But what is important for the petitioner is that his constitutional rights are not violated in the process of investigation.* For this reason, *we have warned the respondent Ombudsman in our Decision to conduct petitioner's preliminary investigation in a circus-free atmosphere.* Petitioner is represented by brilliant legal minds who can protect his rights as an accused.[421] (Emphasis supplied)

This Court likewise denies petitioners' contention that actual prejudice is a required allegation in an indirect contempt proceeding. Actual prejudice is relevant in prejudicial publicity, but it is not applicable in contempt proceedings for violating the *sub judice* rule. While both have the same rationale, their effects are different. An accused has ample remedies when there is a finding of prejudicial publicity, including the invocation of the contempt powers of the courts:

> Moreover, an aggrieved party has ample legal remedies. He may challenge the validity of an adverse judgment arising from a proceeding that transgressed a constitutional right. As pointed out by petitioners, an aggrieved party may early on move for a change of venue, for continuance until the prejudice from publicity is abated, for disqualification of the judge, and for closure of portions of the trial when necessary. The trial court may likewise exercise its power of contempt and issue gag orders.[422]

However, a finding of a violation of the *sub judice* rule is more limited in scope as indirect contempt is punishable with either a fine, and/or imprisonment,[423] or the imposition of administrative liability for a judge or

---

[420] 408 Phil. 194 (2001) [Per J. Puno, *En Banc*].

[421] *Id.* at 247–248.

[422] *Re: Petition for Radio and Television Coverage of the Multiple Murder Cases against Maguindanao Governor Zaldy Ampatuan, et al.*, 667 Phil. 128, 139 (2011) [Per J. Carpio Morales, *En Banc*].

[423] RULES OF COURT, rule 71, sec. 7 provides:
SECTION 7. *Punishment for indirect contempt.* — If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five thousand pesos or imprisonment not exceeding one (1) month, or both. If the contempt consists in the violation of a writ of injunction, temporary restraining order or status quo order, he may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved.

lawyer. Moreover, in the exercise of contempt powers, the relevant test is clear and present danger, which does not require actual prejudice. Thus, to punish for contempt, it is not necessary that the existence of actual prejudice be alleged or proven.

In criminal cases, courts have an interest in shielding themselves from extraneous influence as it resolves a case that bears upon the life and liberty of an accused.[424] The *sub judice* rule is in place to address the danger of publicity in judicial proceedings. However, the rule is not intended to curtail the equally important right of the media to give legitimate publicity to newsworthy criminal investigations, especially high profile criminal cases and heinous crimes. Matters of public concern must not only be relevant, but also timely and reflective of what is happening in the society for which the attention of the public is being called. This right is not absolute, and its exercise must be balanced with the equally important duty of the court to administer justice and uphold its independence.

The judicial system does not operate outside of society. The Judiciary's inescapable exposure to the flow of information and discussion of sensational cases does not automatically undermine its impartiality.[425] The power to punish for contempt is not a weapon to stifle freedom of expression and the right to information on matters of public interest. Without sufficiently stating a cause of action for contempt, this Court is constrained to dismiss the Petition for Indirect Contempt.

Freedom of speech, of expression, and of the press have always been considered primordial and fundamental by this Court, but it has never been cast as absolute. Certainly, it should not be selfishly exercised at the expense of the fundamental right of others, to further injustice, to undermine the dignity of the human person or their identities, and to undermine the ability of our courts to fully administer justice.

Our Constitution has never imagined that everyone, in the exercise of their rights, will be privileged against the rights of other individuals. In recognizing the rights of others, even as we claim ours, we fulfill our responsibility towards what makes us true human beings: individuals who also know that their survival depends on community and compassion.

After all, the Constitution did not imagine that only one person, or one class, or one identity will lord over all the rest: it imagined a sovereignty composed of all our peoples.

The writ of execution, as in ordinary civil actions, shall issue for the enforcement of a judgment imposing a fine unless the court otherwise provides.

424 J. Sandoval-Gutierrez, Concurring Opinion in *Perez v. Estrada*, 412 Phil. 686, 725–726 (2001) [Per J. Vitug, *En Banc*].

425 *People v. Teehankee, Jr.*, 319 Phil. 128, 192 (1995) [Per J. Puno, Second Division].

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED**. The March 24, 2015 Decision and September 7, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 126985 affirming the challenged June 8, 2012 and August 14, 2012 Orders in SP. PROC. Case No. Q-10-67543 are **REVERSED** and **SET ASIDE**. Likewise, the Petition for Indirect Contempt is **DISMISSED** for failure to state a cause of action.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On leave
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

On leave
RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

ALEXANDER G. GESMUNDO
Chief Justice