EN BANC

[A.M. No. 07-09-13-SC. August 8, 2008.]

IN THE MATTER OF THE ALLEGATIONS CONTAINED IN THE COLUMNS OF MR. AMADO P. MACASAET PUBLISHED IN MALAYA DATED SEPTEMBER 18, 19, 20 AND 21, 2007

D E C I S I O N

REYES, R.T., *J.*:

FREEDOM of the press and judicial independence ***(kalayaan ng pamamahayag at kalayaang panghukuman)*** — two constitutional values which unfortunately clash in this case for indirect contempt of court — have to be weighed and balanced against each other.

The Antecedents

The case stemmed from certain articles that appeared in the "Business Circuit" column of Amado P. Macasaet in the Malaya, a newspaper of general circulation of which he is the publisher. The articles, containing statements and innuendoes about an alleged bribery incident in the Supreme Court, came out in four (4) issues of the newspaper on September 18, 19, 20 and 21, 2007, reproduced as follows:

September 18, 2007 —

Bribery in the Court

A lady justice (I have not been told whether she is from the Supreme Court or the Court of Appeals) did not report for a day last week.

Her secretary received a gift-wrapped box about the size of two dozen milk cans.

Believing that the "gift" might be something perishable, she opened the box. Indeed, it was a gift — estimated at P10 million. Posthaste, the secretary informed the magistrate about the gift. She thought she was doing her job. The lady justice fired her instead.

She would not have anybody catch her accepting a bribe. But she practically did.

The stupidity here is that the bribe-giver — what else would we call him or her — did not check whether the lady justice was in the office or not. Better still he or she could have the box full of money delivered to her home. But then her family would get to know about and ask who was the kind soul that was so liberal with money — a boxful of it.

The Supreme Court cannot let this pass. A full investigation should be conducted. The magistrate who was sent the bribe should be impeached.

The gift gives proof to the pernicious rumor that the courts are dirty. This

time, the lady justice is with a higher court.

The court is like a basket of apples. There a few which are rotten that makes the whole basket rotten.

The names and reputation of highly-respected jurists must be saved from suspicions they are thieves.

Here's the clue

The Court employee who was fired by the lady jurist is a niece of another lady justice who earlier retired. The worker was inherited by the incumbent lady justice.

My problem with this report is that while my source is definite about the employee opening a gift-wrapped box that contained at least P10 million, he won't confide to me the identity of the jurist.

Unless the employee who was fired talks against her boss — and she should as a matter of duty — we will never know who this justice really is. The members of the Supreme Court, the Court of Appeals, the Sandiganbayan are all called justices.

The head of the Office of Government Corporate Counsel is also honored by being addressed as such. So is the head of the Court of Tax Appeals.

Since the employee was fired for opening the box which she thought contained perishable goods but turned out there was an estimated P10 million in it, she should be loyal to her duty of telling the truth.

That way, she would have rendered a great service to the justice system. Without her talking, every lady with the title of Justice is suspect. There are more than a dozen of them in different courts but only one was caught red-handed taking a bribe. Her name should be known so that the Supreme Court can act swiftly on a clear case of bribery.

Otherwise, this case becomes one where the pot calls the kettle black. Or is that the reason the employee would not talk, that her former boss could spill the beans on her peers?

September 19, 2007 —

The Bribe Giver

I learned from some lawyers that the bribe money given to a lady justice came from a Chinese-Filipino businessman who has been criminally charged.

It is funny that the delivery of five boxes of money (I said only one earlier) coincided on the day the lady justice, obviously acting as *ponente,* acquitted the prospect.

The secretary of the lady justice who took the bribe made five trips to the guardhouse to pick up the boxes.

Incidentally, this secretary is a namesake of her aunt, a deceased associate justice of the Supreme Court.

I dare say that if her name is Cecilia, it is entirely possible that the lady justice is a member of the Supreme Court. The late justice Cecilia Muñoz-Palma

is the only lady justice I know who retired and died at a ripe old age and left behind a reputation of decency and integrity.

We are coming closer and closer to the truth. The lady justice shamed her court. She should resign or be impeached.

That is the only way the soiled reputation of the Highest Court could be restored.

September 20, 2007 —

Cecilia, please save the court

I have established the lady justice's secretary who opened one of the five milk boxes containing bribe money is a niece of the late, respected and honorable Associate Justice Cecilia Muñoz Palma from Batangas.

The secretary is a niece of the late justice and a namesake.

Cecilia, you have a duty to honor the memory of your aunt, who, during her stay in the court, was known for having balls.

More important than that, you have a duty to save the sagging reputation of the Supreme Court.

Cecilia, you must tell the Court *en banc* everything you know about the money that was sent in five boxes to your boss.

Not in retaliation for your dismissal, but for no other reason than as a duty to your country and, I must again say, to honor the memory of your late illustrious aunt, a legal luminary and staunch defender of the Constitution.

The other reason you must spill the beans is that if you do not, other lady justices are suspects. That is not fair to them.

September 21, 2007 —

Wrong date, same facts

On verification, I discovered that the secretary of a lady justice of the Supreme Court who was said to have accepted five milk boxes of money, was fired as early as March. Not last week as I mistakenly reported.

It turns out that Cecilia Muñoz-Delis from Bicol picked up the last five boxes several times in March.

She never opened the first four boxes which she picked up from the guardhouse of the Court.

She opened the last and saw the money because the lady justice was absent on that day. Forthwith, she was fired. Cecilia, who is from Bicol, never opened any of the first four boxes delivered on various dates (I have not been told when). She picked up all of them from the Supreme Court guardhouse and left them with the lady justice. She wouldn't dare open the first four because the lady justice was in her office. She opened the fifth one because the lady justice did not report for work on that day.

Cecilia thought that the gift-wrapped box contained some perishables like food. What she found was money instead. She was fired.

Whenever a gift for lady justice comes, she would order Cecilia to pick it up from the guardhouse. So the fifth she picked up was one of those errands.

Where is Cecilia?

I cannot get any information on the present whereabouts of Cecilia. However, if the Supreme Court has intentions to investigate what I have been saying, maybe the Chief Justice himself should find out where she could be sent an invitation to appear before an investigation group in the Court.

Better still, as I said, yesterday, Cecilia should disclose everything she knows regarding the box before the Court *en banc*.

Farthest thing from my mind is to embarrass the lady justice whose identity I do not know up to now.

It is my conviction that the Court should investigate reports of wrongdoing by any of its peers. Justice is served that way.

The Chief Justice and the rest of the justices should not have a problem finding out who she is.

It is a simple job of asking a clerk to go to personnel department of the Court and find out who Cecilia worked for. [1]

The September 18, 2007 article, the first of the series of articles, caught the attention of Assistant Court Administrator (ACA) Jose Midas P. Marquez, Chief of the Supreme Court Public Information Office, in the course of his monitoring the daily news reports and columns in major newspapers. However, since it was "vague about which 'court' was being referred to, whether the Supreme Court, the Court of Appeals, the Sandiganbayan, or the Court of Tax Appeals", [2] ACA Marquez opted to merely note it. [3]

The succeeding two articles, however, gave an indication that the supposed bribery happened in the Supreme Court. Respondent Macasaet, in his September 19, 2007 article, wrote, among others, that "I dare say that if her name is Cecilia, it is entirely possible that the lady justice is a member of the Supreme Court . . . . We are coming closer and closer to the truth. The lady justice shamed her court. She should resign or be impeached. That is the only way the soiled reputation of the Highest Court could be restored".

Similarly, in his September 20, 2007 article, respondent said that Cecilia had "a duty to save the sagging reputation of the Supreme Court".

Also on September 20, 2007, at around 6:00 p.m., Marites Dañguilan-Vitug, Editor in Chief of *Newsbreak,* faxed a letter to Supreme Court Associate Justice Consuelo Ynares-Santiago asking for three things —

1.In *(sic)* April 13, 2007, you concurred with a decision penned by Justice Romeo Callejo, Sr. ruling that the Sandiganbayan Fifth Division did not commit a grave abuse of discretion by finding probable cause against Henry Go. However, five months later (September 3, 2007), acting on Go's motion for reconsideration, you reversed yourself and ordered the dismissal of the graft case against Go. Please explain the circumstances that led to this reversal.

2.We have gathered from three sources that you received a cash gift of P10 million after you issued the decision early September. Please comment.

3.We're checking if this is accurate. Your secretary, who opened the gift-wrapped box thinking that it contained perishable items, found cash instead. It was after this incident that you removed her. [4]

Upon receipt of the faxed letter, Mme. Justice Ynares-Santiago called for ACA Marquez, showed him the letter of Dañguilan-Vitug, and requested him to tell Dañguilan-Vitug that she (Mme. Justice Ynares-Santiago) had been consistent on her position in the *Go* case, that she never reversed herself, that she never received a cash gift, and that no secretary was terminated for opening a gift-wrapped box containing money. Accordingly, ACA Marquez went back to his office, called up Dañguilan-Vitug and told her what Mme. Justice Ynares-Santiago told him. [5]

That same evening, at around seven, Dañguilan-Vitug faxed "the corrected version of the earlier letter" —

1.On April 13, 2007, you dissented against the decision penned by Justice Romeo Callejo, Sr. ruling that the Sandiganbayan Fifth Division did not commit a grave abuse of discretion by finding probable cause against Henry Go. The vote was 3-2 in favor of Calleja's *(sic)* decision. Five months later (September 3, 2007), acting on Go's motion for reconsideration (by that time, Callejo had already retired), you ordered the dismissal of the graft case against Go. I understand the exchanges were bitter and the deliberations long. Please explain the contentious issues.

2.We have gathered from three sources that you received a cash gift of P10 million in March 2007 in the midst of deliberations on the case. Please comment.

3.We're checking if this is accurate. Your secretary, who opened the gift-wrapped box thinking that it contained perishable items, found cash instead. It was after this incident that you removed her in March 2007. [6]

The following day, September 21, 2007, respondent Macasaet, in his column, named the supposed secretary who was "forthwith . . . fired" allegedly after opening the box of money: "It turns out that Cecilia Muñoz Delis from Bicol picked up the last five boxes several times in March".

From the foregoing series of articles, respondent Macasaet has **painted a clear picture**: a Chinese-Filipino businessman who was acquitted of a crime supposedly left P10 million in five different boxes with the security guard at the Supreme Court guardhouse, which was picked up by Cecilia Muñoz Delis who was forthwith fired for opening one of the boxes.

Upon the request of Mme. Justice Ynares-Santiago, the Chief Justice instructed ACA Marquez to have the 18th, 19th, 20th, and 21st September 2007 Business Circuit columns of respondent Macasaet included in the September 25, 2007 agenda of the Court *En Banc,* [7] which case was docketed as A.M. No. 07-09-13-SC. *(Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in* ***Malaya*** *dated September 18, 19, 20, and 21, 2007)*.

On September 24, 2007, Daisy Cecilia Muñoz Delis, accompanied by the Clerk of Court *En Banc,* Hon. Ma. Luisa D. Villarama, went to see Mme. Justice Ynares-Santiago and gave the latter copies of her letter to respondent Macasaet and her affidavit. Delis, in her letter to respondent Macasaet, described his articles as "baseless reports". "In other words", she wrote respondent Macasaet, "the scenario you painted

and continue to paint is improbable and could only have emanated from a polluted source, who, unfortunately, chose me to be a part of this fictional charge". She clarified that she was a Judicial Staff Officer, and not a secretary as the articles claimed she was; that she voluntarily resigned from office and was not fired; that as a matter of procedure, she would not have been tasked to receive boxes, as such was a duty assigned to their utility personnel; that it was "highly unlikely for something as blatant as [a] bribery attempt to have been done right in the doors of the Court". [8] Delis ended her letter to respondent Macasaet with a plea —

> My family and I have been suffering ever since your article came out last Tuesday, because I was being alluded to. This suffering has increased because the name of my beloved aunt . . . has been drawn into a controversy that should not have involved me or any member of my family in the first place.
>
> And so, I ask you, Sir, to please cease from mentioning my name or any of my relatives, living or deceased, in order to promote your tabloid journalism. If your source is as reliable as you believe, I suggest you practice better judgment and journalistic responsibility by verifying your data before printing anything and affecting the lives of innocent people. If this is some kind of war you are waging against the lady justice, we do not want to be collateral damage. [9]

In her affidavit, Delis stated that she "had nothing to do with, nor did . . . have any knowledge of such alleged attempted bribery", [10] and that she executed her affidavit "to allow Justice Consuelo Ynares-Santiago to defend her honor", [11] and "for the purpose of correcting the erroneous information of Mr. Macasaet". [12]

That same morning, too, despite the prior telephone conversation between ACA Marquez and Dañguilan-Vitug, *Newsbreak* posted an on-line article written by Danguilan-Vitug herself and Aries Rufo, which was regularly updated, entitled *"Supreme Court Justice Suspected of Accepting Payoff (update)"* [13] with the picture of Mme. Justice Ynares-Santiago —

> We pieced the story of the alleged bribery from accounts of various sources within and outside the Supreme Court who have requested not to be named because of their sensitive disclosures.
>
> In March this year, Ynares-Santiago fired her staff member, Cecilia Delis, supposedly after the latter opened a gift-wrapped box delivered to their office, thinking that it contained perishable items. Delis, however, found wads of peso bills instead. The amount, two sources say, is estimated at P10 million. [14]

Later that morning, Mme. Justice Ynares-Santiago called ACA Marquez to her office and gave him copies of her written statement "categorically deny(ing) the accusations and insinuations, all malicious and unfounded, published in *Malaya* and in *Newsbreak*"; and underscoring "that these are blatant lies clearly aimed at smearing and maligning my character and person, and the integrity of the Judiciary which (she has) been faithfully serving for 34 years now." [15] Mme. Justice Ynares-Santiago also gave ACA Marquez copies of Delis' letter to respondent Macasaet and her affidavit, which Delis herself had brought to Mme. Justice Ynares-Santiago earlier that morning. [16]

In the afternoon of September 24, 2007, ACA Marquez held a press conference and released to the media copies of Delis' letter to respondent Macasaet, her affidavit, and the written statement of Mme. Justice Santiago. [17]

On September 25, 2007, the Court *En Banc* issued a resolution stating —

> Upon evaluation of the columns "Business Circuit" of Amado P. Macasaet in the September 18, 19, 20, and 21, 2007 issues of the *Malaya,* it appears that certain statements and innuendoes therein tend, directly or indirectly, to impede, obstruct, or degrade the administration of justice, within the purview of Section 3(d), Rule 71 of the 1997 Rules of Civil Procedure.
>
> WHEREFORE, Amado P. Macasaet is ORDERED to EXPLAIN why no sanction should be imposed on him for indirect contempt of court in accordance with Section 3(d), (Rule 71) of the 1997 Rules of Civil Procedure, within five (5) days from receipt hereof. **Ynares-Santiago, J., no part**. [18]

The following day, September 26, 2007, *Newsbreak* posted its on-line article entitled *"Supreme Court Orders Malaya Publisher to Explain Stories"* with a banner headline, "This is not meant to chill the media".

On October 16, 2007, the Court *En Banc* noted respondent Macasaet's **Explanation** dated October 1, 2007, [19] and directed the Clerk of Court to include in the records of the case the affidavit of Delis dated September 24, 2007. The High Court also created an investigating committee composed of retired Supreme Court justices, namely, Justice Carolina Griño-Aquino as Chairperson; and Justices Vicente V. Mendoza and Romeo J. Callejo, Sr., as members, "to receive the evidence from all parties concerned. The Committee may, on its own, call such persons who can shed light on the matter. It shall be endowed with all the powers necessary to discharge its duty". The Committee was likewise directed "to submit its report and recommendation within thirty (30) days from the start of its hearing". [20] Retired Justices Mendoza and Callejo, however, both begged off and were eventually replaced by retired Supreme Court Justices Jose C. Vitug [21] and Justo P. Torres. [22]

The Investigation

From October 30, 2007 to March 10, 2008, the Investigating Committee held hearings and gathered affidavits and testimonies from the parties concerned.

The Committee invited respondent Macasaet, Dañguilan-Vitug, Delis, and ACA Marquez to a preliminary meeting, in which they were requested to submit their respective affidavits which served as their testimonies on direct examination. [23] They were then later cross-examined on various dates: respondent Macasaet on January 10, 2008, Dañguilan-Vitug on January 17, 2008, Delis on January 24, 2008, and ACA Marquez on January 28, 2008. The Chief of the Security Services and the Cashier of the High Court likewise testified on January 22 and 24, 2008, respectively.

According to the Committee —

> **AMADO P. MACASAET** testified on January 10, 2008 but, as expected, he invoked his right under R.A. No. 53, as amended by R.A. No. 1477 to refuse to disclose the source/s of his story regarding the rumored bribery of a Lady Justice (later identified as Justice Consuelo Ynares-Santiago) of a high court (later revealed as the Supreme Court) who allegedly received Php10 million contained in **a gift-wrapped Carnation carton box** (later changed to **five [5] gift-wrapped boxes**), for deciding a criminal case in favor of a rich Chinese-Filipino businessman. (Pls. see columns of September 18 and 19, 2007)
>
> The pay-off was allegedly discovered when Cecilia Muñoz-Delis (not the Lady Justice's secretary but a judicial staff officer V of the PET or Presidential

Electoral Tribunal) who is a niece and namesake of retired Supreme Court Justice Cecilia Muñoz Palma, allegedly opened the "**last**" box (according to his column of September 21, 2007 titled "Wrong date same facts"); but the "**first**" (according to his testimony on January 10, 2008, pp. 71, 89, 92, 125, tsn).

By his "**own conclusion**", the boxes of money were **delivered on different dates** because "I don't think a bribe giver will deliver five boxes at the same time" (87, tsn, January 10, 2008).

Macasaet testified that his "source" is not a relative of his, nor a government employee, certainly not an employee of the judiciary, and, that he (Macasaet) has known him for some 10 to 15 years (12-20, tsn, January 10, 2008).

Significantly, in his column of September 19, 2007, Macasaet revealed that he did not have only one source, but several sources, *i.e.*, "some lawyers", who told him "that the bribe money given to a lady justice came from a Chinese-Filipino businessman who has been criminally charged".

He emphatically declared on the witness chair that he trusts his source "with my heart and soul" and believes his word "as coming straight out of the Bible" (94, 113, tsn, January 10, 2008; 14, tsn, January 17, 2008). But because this source did not have direct knowledge of the bribery (26, tsn, January 10, 2008), he allegedly tried to verify from other sources the information he had received, but "**I could not get confirmation**" (29, tsn, January 10, 2008).

Notwithstanding the lack of confirmation and the paucity of details as to the identity of the Lady Justice and of the High Court where she sits, Macasaet believes that "the bribery had actually taken place" because "I trust my source with my heart and soul" (93-94, 113, tsn, January 10, 2008).

He decided to go ahead and publish the story because he "thought that eventually my effort at consistently . . . exposing the alleged bribery, one day sooner or later somebody will come up and admit or deny (it). And I think that (was) what really happened" (29, tsn, January 10, 2008).

He found out that the Lady Justice involved is Justice Consuelo Ynares-Santiago of the Supreme Court, after he received a letter dated September 21, 2007 from Cecilia Muñoz-Delis, the "Cecilia" mentioned in his columns, denying any knowledge of the alleged bribery or boxes of money for she had already **resigned** (**not dismissed**) from the Court on March 15, 2007, six (6) months before the alleged bribery supposedly occurred a week before Macasaet wrote about it in his column of September 18, 2007. (Annex "A", Letter dated September 21, 2007 of Cecilia Delis to Macasaet)

So, when did the bribery happen? The date was never made certain, for in his first column of September 18, 2007, Macasaet stated that the gift-wrapped box of money was delivered to the office of the Lady Justice, "a day last week" when the Lady Justice did not report for work. That must have been sometime on September 10-14, 2007 — the week before September 18, 2007.

However, the next day, September 19, 2007, he wrote in his column that the delivery of five boxes (not just one box) of money, "coincided on the day that the Lady Justice, acting as *ponente,* dismissed the criminal case against Chinese-Filipino businessman Henry T. Go in the Sandiganbayan. That must be September 3, 2007 because the Resolution in G.R. No. 172602 "Henry T. Go

versus The Fifth Division, Sandiganbayan, *et al.*" was promulgated on that date. This he affirmed when he testified on January 10, 2008 (46, 74, tsn, January 10, 2008).

However, when he returned to the witness chair on January 17, 2008, after going back to his informant (on his own request) to ascertain the dates when the boxes of money were delivered to the Office of Justice Santiago, so that the Investigating Committee could subpoena the relevant logbooks of the Security Services of the Court to verify the truth of the alleged deliveries, Macasaet again changed his earlier testimonies on date/dates of the deliveries. He informed the Committee that, according to his informant, the deliveries were made "between November 2006 and March 2007"; "before Cecilia Delis resigned or was dismissed from the Court". [24]

On March 11, 2008 the Investigating Committee submitted to the Office of the Chief Justice its March 10, 2008 Report and Recommendation, [25] with the following **findings of facts** on the subject columns —

The following statements in Macasaet's columns appear to the Supreme Court to be **"innuendoes (that) tend, directly or indirectly, to impede, obstruct, or degrade the administration of justice, within the purview of Section 3 (d), Rule 71 of the 1997 Rules of Civil Procedure".**

1)From the column of Tuesday, September 18, 2007 —

"**The gift gives proof to the pernicious rumor that the courts are dirty**. This time, the lady justice is with a higher court.

The court is like a basket of apples. There (are) a few which are rotten. That makes the whole basket rotten.

The names and reputation of highly-respected jurists must be saved from **suspicion that they are thieves**.

Her name should be known so that the Supreme Court can act swiftly on a clear case of bribery. Otherwise, this case becomes one where the pot calls the kettle black. Or, is that the reason the employee would not talk, that her former boss could spill the beans on her peers?"

2)From the column of Wednesday, September 19, 2007 —

"The lady justice shamed her court. She should resign or be impeached. That is the only way the soiled reputation of the Highest Court could be restored".

3)From the column of Thursday, September 20, 2007 —

"Cecilia . . . you have a duty to**save the sagging reputation of the Supreme Court**".

Inasmuch as Macasaet's snide remarks about the courts, particularly the Highest Court, and about the justices being suspected as thieves, appear to have [been] provoked by the rumored bribery in the Court, the Investigating Committee was constrained to find out how true the accusations were and whether the columnist had exercised due care and diligence in checking out the credibility of his informant and the veracity of the derogatory information fed to him before he published it in

his columns in the Malaya. [26]

Additional **observations and conclusion** were submitted, like the following —

> The Committee finds that **neither Macasaet's columns in *Malaya,* nor Ms. Vitug's story in *Newsbreak,*** about the pay-off of Php10 million to Justice Consuelo Ynares-Santiago for rendering a Resolution favorable to Henry T. Go in his petition against the Sandiganbayan (according to Macasaet), or, a decision favoring Barque against Manotok in a big land case (according to Ms. Vitug), **have a leg to stand on**. As Justice Vitug has observed during the last hearing before the Committee, **everything that has been heard thus far would appear to be hearsay**. Ms. Vitug admitted "there is no paper trail" to support the charge of bribery against Justice Santiago, for although her sources had pointed to Cecilia Muñoz Delis as the "root source" of the story, the information she received was "second-hand or may be third-hand" because none of her sources had talked with Delis herself (70, 72 tsn Jan. 17, 2008). Delis had refused to be interviewed by her, and had emphatically denied in her letter and affidavit any knowledge of the alleged bribery because she was no longer working in the Court when it supposedly happened.
>
> **Macasaet's sources likewise fed him double hearsay information** from a source that refused to reveal the identity of the Lady Justice nor a high court but alleged that the Php10 million bribe was discovered by her secretary named Cecilia, a niece and namesake of the late Justice Cecilia Muñoz Palma, who was fired from her job on account of it.
>
> The Committee observed that **Macasaet's story** about the bribery and of Cecilia's role in supposedly discovering it, **is full of holes, inconsistencies, and contradictions, indicating that he did not exercise due diligence, patience, and care in checking the veracity of the information fed to him, before giving it publicity in his columns. Nor was he bothered by the damage that his columns would inflict on the reputation of a member of the Highest Court and on the Court itself**. In fact, he was "happy" that he wrote the columns (103 tsn Jan. 10, 2008). Even if he failed to get confirmation of the bribery, one day sooner or later, somebody would come up and admit or deny it. **He did not care that he smeared the whole Judiciary** to fish her out, because "after she is fished out, the suspicion on the rest would be removed" (29-30 tsn Jan. 10, 2008). [27] (Emphasis supplied)

The Committee likewise noted the inconsistencies and assumptions of Macasaet, betraying lack of veracity of the alleged bribery —

1. For instance, he said that he could not get confirmation of the bribery story given to him by his source. Later, he said that his sources "told me they had personal knowledge" but would not reveal the name of the Lady Justice (65, tsn, January 10, 2008).

2. His allegation that the Lady Justice (later identified as Justice Santiago) did not report for work "last week", *i.e.*, the week before his first column came out on September 18, 2007, was refuted by the Court's Public Information Officer (PIO) Atty. Midas Marquez, who testified that no Lady Justice was absent that week.

3. The date when the gift-wrapped box of money was allegedly opened by Cecilia is also uncertain because of Macasaet's conflicting allegations about it.

Macasaet's first column of September 18, 2007, stated that it happened "last week", *i.e.*, sometime in the week of September 10-14, 2007.

The next day, September 19, 2007, he, however, wrote in his column that "the five boxes (not one) of money were delivered on the day (September 3, 2007) when the Lady Justice, acting as *ponente,* acquitted" the accused Henry T. Go.

But again, because his story about Cecilia's role in the discovery of the bribery in September 2007, was contradicted by the record of Cecilia's resignation from the Court on March 15, 2007 (Annexes "D" and "D-1", Cecilia Delis' Letter of Resignation & Clearance), Macasaet, after consulting his "source" again, changed his story when he testified on January 17, 2008. He said that, according to his source, the boxes of money were delivered, not any one time in September 2007, **but on different dates in November 2006 up to March 2007**, "before Cecilia resigned or was fired from the office of Justice Santiago" (5-6, tsn, January 17, 2008).

That allegation is, however, refuted by the logbooks of the Security Services for the period of November 2006 to March 2007 which contain no record of the alleged deliveries of boxes of money to the office of Justice Santiago. Danilo Pablo, head of the Court's Security Services affirmed that in his ten (10) years of service in the Court, he has not received any report of boxes of money being delivered to any of the Justices (45-46, tsn, January 22, 2008). [28]

The Committee further wondered which of the five (5) boxes was opened and yielded money. It found —

1.. . . In his column of September 21, 2007, Macasaet alleged that Cecilia picked up the five boxes of money "several times in March" ("not last week as I mistakenly reported"), and "she never opened the first four boxes . . . **she opened the last** and saw the money because the Lady Justice was absent on that day".

But when he testified before the Committee on January 10, 2008, Macasaet alleged that **it was "the first one** that was opened" according to his source (71, 89, 92, 125, tsn, January 10, 2008).

2.Contradicting his published story that five (5) boxes of money were delivered "on the day" the Lady Justice acquitted Henry Go, Macasaet testified at the investigation that they were delivered "**on different occasions** according to my source" (70, tsn, January 10, 2008).

But no sooner had he attributed that information "to my source" than he admitted that it was only "**my own conclusion . . . I assumed** that the giver of the money is not so stupid as to have them delivered all in one trip. As a matter of fact, I even wondered why said boxes were not delivered in the home of the Lady Justice" (72, tsn, January 10, 2008).

3.The amount of the bribe is also questionable. For while in his own column of September 18, 2007, Macasaet stated that the gift was "estimated at Php10 million", he later testified on January 10, 2008 that "**the amount was my own calculation** because I talked to people, I said this kind of box how much money in One Thousand Pesos bills can it hold, he told me

it is ten (million). So that was a **calculation**" (77, tsn, January 10, 2008).

He also merely "assumed that the money was in one thousand pesos bills (78, tsn, January 10, 2008). No one really knows their denomination.

He said he was told that the size of the box where the money was placed was "this milk called **carnation in carton**" (79, tsn, January 10, 2008). But, at the final hearing on February 1, 2008, he denied that said that, — "I never said carnation boxes; I said milk boxes that should make a lot of difference" (84, tsn, February 1, 2008).

4.Since only one gift-wrapped box of money was opened, Macasaet admitted that he has "no knowledge" of whether the four (4) other boxes were also opened, when and where they were opened, and by whom they were opened (90, tsn, January 10, 2008). Therefore, no one knows whether they also contained money.

That the five (5) boxes contained a total of ten million pesos, is just another **assumption** of Macasaet's. "It is a calculation based on estimates obtained from friends and how much five boxes can hold in one thousand peso bills, more or less ten million", he explained (91, tsn, January 10, 2008).

The "sin of assumption" which is a cardinal sin in Newsbreak's Guide to Ethical Journalistic Conduct was repeatedly committed by Macasaet in writing his story about the bribery of a Lady Justice of the Supreme Court. (Annex "E", page 1, Newsbreak Guide to Ethical Journalistic Conduct). [29]

Consequently, the Committee concluded —

In view of its tenuous underpinnings, we find the bribery story in Macasaet's columns of September 18-21, 2007, and in Ms. Vitug's Newsbreak issue of September 25, 2007, **unbelievable**. Why should five boxes supposedly containing a total of Php10 million as bribe money be delivered to the office of a Lady Justice in the Supreme Court, where it would have to pass examination by the security guards and the quizzical eyes of her own employees? Why not to her home? Or at some agreed meeting place outside the Court and her home? Or why not quietly deposit it in her bank account? And why was she absent from her office on the day of the presumably agreed date for the payment of the bribe? If the bribe was for dismissing the information against Henry Go in the Sandiganbayan, why was it paid prematurely in November 2006-March 2007 when the case of Henry Go was still up in the air and, in fact, was decided against him on April 13, 2007? The favorable resolution on his motion for reconsideration, penned by Justice Santiago, was promulgated on September 3, 2007, almost one year after the pay-off, if there was such a pay-off?

xxx xxx xxx

The Committee considers this case not just another event that should pass unnoticed for it has implications far beyond the allocated ramparts of free speech. Needless to say, that while we espouse the enjoyment of freedom of expression by media, particularly, it behooves it to observe great circumspection so as not to destroy reputations, integrity and character so dear to every individual, more so to a revered institution like the Supreme Court. Everyone deserves respect and dignity. [30]

Finding sufficient basis to hold respondent Macasaet in indirect contempt of court, the Committee **recommended** —

> The Committee finds that **the statements of respondent Amado P. Macasaet** about the Supreme Court in his "Business Circuit" columns in the September 18-21, 2007 issues of the newspaper *Malaya,* **maligning and degrading the Supreme Court and tending directly or indirectly to impede, obstruct, or degrade the administration of justice**, to be **utterly unjustified**.
>
> WHEREFORE, the Committee believes **there exist valid grounds** for this Honorable Court, if it is so minded, **to cite Amado P. Macasaet for indirect contempt** within the purview of Section 3 (d), Rule 71 of the 1997 Rules of Civil Procedure. [31] (Emphasis supplied)

Our Ruling

IN view of respondent's invocation of his right to press freedom as a defense, it is essential to first examine the nature and evolution of this preferred liberty, together with the countervailing interest of judicial independence, which includes the right to due process of law, the right to a fair trial, and the preservation of public confidence in the courts for the proper administration of justice.

Nature and History of Press Freedom

Freedom of expression, which includes freedom of speech and of the press, is one of the hallmarks of a democratic society. It has been recognized as such for centuries.

The history of press freedom dates back to the English *Magna Carta,* promulgated in 1215, which established the principle that not even the lawmaker should be above the law. Through the years, many treatises on press freedom arose in reaction to various measures taken to curtail it.

In the 17th Century, John Milton wrote *Areopagitica,* a philosophical defense of the right to free speech. It was a reaction to the Licensing Order of June 14, 1643, which declared that no "book, pamphlet, paper, nor part of any such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched or put to sale by any person or persons whatsoever, unless the same be first approved of and licensed under the hands of such person or persons as both, or either of the said Houses shall appoint for the licensing of the same". Milton advocated that a written work should not be suppressed before publication. Writers of treacherous, slanderous, or blasphemous materials should first be tried according to law. Only after it has been established that their writings are of a treacherous, slanderous, or blasphemous nature should they be subsequently punished for their wrongful acts.

Sir William Blackstone, 19th Century English jurist, in his still widely cited historical and analytical treatise on English common law, aptly described the twin aspects of press freedom:

> . . . Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and

> government. But to punish as the law does at present any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus, the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry: liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments destructive to the ends of society, is the crime which society corrects. [32] (Emphasis supplied)

In the United States, press freedom was first put into organic law with the First Amendment to its Constitution, declaring that "Congress shall make no law . . . abridging the freedom of speech, or of the press". This set in stone the basis for virtually all contemporary laws and jurisprudence on the subject of press freedom.

Our Constitutions and jurisprudence are no different. Section 4, Article III, 1987 Constitution, which in part provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press . . .," is a provision found in the 1935 and the 1973 Constitutions. [33]

Media and Its Multiplying Roles in Democracy

Due to their preferred position in the hierarchy of civil liberties, the freedoms of speech, of expression, and of the press have progressed dramatically. As early as 1942, even before the advent of television, the distinguished U.S. appellate court Judge Learned Hand had already observed that "[t]he hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country". He concluded that media's power was an unchangeable fact of life: "Whether we like or not, we must learn to accept it". There is much truth today in those statements.

One of the notable features of recent years is the accelerated development of the media. They have grown from strength to strength, and have substantially influenced people, either favorably or unfavorably, towards those in government. The use of information technology has firmed up the media networks' hold on power. Traditional media for mass communication — newspapers, magazines, radio, and standard television — have been joined by satellite and cable television, electronic mail, short messaging and multi-media service, and the internet, giving rise to new opportunities for electronic news and information companies to even intensify their influence over the general public.

Studies show that people rely heavily on the media for their knowledge of events in the world and for impressions that form the basis for their own judgments. The media exert a strong influence on what people think and feel. Certainly, the power of Philippine media is of no small measure —

> The power of the press to influence politics is proven. Policy issues and the implementation of government programs requiring greater public discussion are sometimes displaced in the government agenda by matters that have been given more importance in the news. Public officials are obliged to attend to media queries even if these are not necessarily the most important questions of the day. Nowhere in Southeast Asia are government officials so accessible to the press. Cabinet ministers are available from the earliest hours to answer questions from radio show hosts on the news of the day involving their responsibilities.

> Furthermore, television news programs have spawned media celebrities whose popularity with the masses has catapulted their entry into politics. Media's focus on celebrity has infected the political culture with exaggerated concern for personality and color, and the kind of impact associated with sports and entertainment. Political parties have tended to recruit popular figures from these fields to assure they have winners in the race for seats in Congress. [34]

The reach of Philippine media is quite extensive —

> In the Philippines radio has the biggest audience among all the mass media (85 percent), followed by television at 74 percent, and print, 32 percent. Print, however, has an 82 percent reach in Metropolitan Manila, which has a population of some 10 million and is the country's business, political, and cultural center. Print may thus be surmised to be as influential in the capital as television, which has a reach of 96 percent among residents. [35]

The mass media in a free society uphold the democratic way of life. They provide citizens with relevant information to help them make informed decisions about public issues affecting their lives. Affirming the right of the public to know, they serve as vehicles for the necessary exchange of ideas through fair and open debate. As the Fourth Estate in our democracy, they vigorously exercise their independence and vigilantly guard against infringements. Over the years, the Philippine media have earned the reputation of being the "freest and liveliest" in Asia. [36]

Members of Philippine media have assumed the role of a watchdog and have been protective and assertive of this role. They demand accountability of government officials and agencies. They have been adversarial when they relate with any of the three branches of government. They uphold the citizen's right to know, and make public officials, including judges and justices, responsible for their deeds or misdeeds. Through their watchdog function, the media motivate the public to be vigilant in exercising the citizens' right to an effective, efficient and corrupt-free government.

Open Justice and Judicial Independence

Closely linked with the right to freedom of speech and of the press is the public right to scrutinize and criticize government. The freedom to question the government has been a protected right of long-standing tradition throughout American history. There is no doubt that the fundamental freedom to criticize government necessarily includes the right to criticize the courts, their proceedings and decisions. Since the drafting of their Constitution over 200 years ago, American judges have anticipated and sometimes even encouraged public scrutiny of themselves, if not of the judiciary as a whole. [37]

This open justice principle, which is as fundamental to a democratic society as freedom of speech, has been an accepted doctrine in several jurisdictions. It is justified on the ground that if the determination of justice cannot be hidden from the public, this will provide: (1) a safeguard against judicial arbitrariness or idiosyncrasy, and (2) the maintenance of the public's confidence in the administration of justice. [38]

While most agree that the right to criticize the judiciary is critical to maintaining a free and democratic society, there is also a general consensus that healthy criticism only goes so far. [39] Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary.

The debate over the independence of the judiciary is nothing new. More than 200

years ago, the Founding Fathers of the American Constitution engaged in heated arguments, both before and after the Constitutional Convention, focusing on the extent and nature of the judiciary's role in the newly-formed government. [40] The signers of the Declaration of Independence, well aware of the oppressive results of the unchecked political power of the King of England who established absolute tyranny over American colonies, recognized the importance of creating a stable system of justice to protect the people.

Cognizant of the need to create a system of checks and balances to ensure that the rule of law shall rule, the resulting Constitution provided for a three-tiered system of government, so structured that no branch holds limitless power.

The judicial branch is described as the "least dangerous" branch of government. [41] But it holds a special place in the tripartite system, as it is primarily responsible for protecting basic human liberties from government encroachment. It completes the nation's system of checks and balances. It serves as an arbiter of disputes between factions and instruments of government.

In our constitutional scheme and democracy, our courts of justice are vested with judicial power, which "includes the duty . . . 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." [42] The present judicial system allows the people to rely upon our courts with substantial certainty; it encourages the resolution of disputes in courtrooms rather than on the streets.

To accomplish these tasks, an independent judiciary is very vital. Judicial independence is the backbone of democracy. It is essential not only to the preservation of our justice system, but of government as well. Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court has observed that judicial independence encompasses two distinct but related concepts of independence. [43]

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.

For sure, judicial criticism can be constructive, uncovering and addressing a problem that merits public attention. Public awareness, debate, and criticism of the courts ensure that people are informed of what they are doing that have broad implications for all citizens. Informed discussion, comment, debate and disagreement from lawyers, academics, and public officials have been hallmarks of a great legal tradition and have played a vital role in shaping the law.

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. [44] 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 and can translate to licenses, which could lead to disorder and anarchy.

Thus, in *Gonzales v. Commission on Elections,* [45] this Court ruled that "[f]rom the language of the specific constitutional provision, it would appear that the right (to free expression) is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude, however, a literal interpretation. Freedom of expression is **not** absolute. It would be too much to insist that, at all times and under all circumstances, it should remain unfettered and unrestrained. There are other societal values that press for recognition." [46]

In *Lagunzad v. Vda. De Gonzales,* [47] it was held that while the right of freedom of expression occupies a preferred position in the hierarchy of civil liberties, it is not without limitations. As the revered Holmes once said, the limitation on one's right to extend one's fist is when it hits the nose of another.

Indeed, freedom of speech cannot be absolute and unconditional. In legal, political, and philosophical contexts, it is always regarded as liable to be overridden by important countervailing interests, such as state security, public order, safety of individual citizens, protection of reputation, and due process of law, which encompasses not only the right to a fair trial, but also the preservation of public confidence in the proper administration of justice.

As early as 1930, this Court, speaking through Mr. Justice George Malcolm, declared that "[a]s 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". [48]

In *Zaldivar v. Gonzalez,* [49] the Court said that "freedom of speech and expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with requirements of equally important public interests. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antinomy between free expression and the integrity of the system of

administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community".

As Mr. Justice Felix Frankfurter put it:

> . . . A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society.
>
> The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press. [50]

Even the major international and regional human rights instruments of civil and political rights — the International Covenant on Civil and Political Rights (ICCPR), [51] the European Convention on Human Rights (ECHR), [52] the American Convention on Human Rights (ACHR), [53] and the African Charter on Human and People's Rights (ACHPR) [54] — protect both freedom of expression and the administration of justice. Freedom of expression is protected under Article 19 of the ICCPR —

> (1)Everyone shall have the right to hold opinions without interference.
>
> (2)Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

However, Article 19 of the ICCPR is made subject to Article 14 (1), which guarantees the right of individuals to "be equal before the courts and tribunals" and "be entitled to a fair . . . hearing by a competent, independent and impartial tribunal", where "[t]he press and the public may be excluded from all or part of a trial for reasons of morals, public order (*order public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice . . . ."

Article 10 (2) of the ECHR goes further by explicitly mentioning the maintenance of the authority and impartiality of the judiciary —

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or *for maintaining the authority and impartiality of the judiciary*. (Emphasis supplied)

Judges have an affirmative duty to defend and uphold the integrity and independence of the judiciary. The courts need to be able to sanction those who obstruct their processes. The judiciary itself must continue to be a voice that explains and preserves its own independence. The respect accorded to judges is an adjunct of the social-contract necessity for impartial judges in the creation of a civil society. In the

words of the great political philosopher John Locke —

> The great and chief end, therefore, for men's uniting into commonwealths, and putting themselves under government, is the preservation of their property, **to which in the state of nature there are many things wanting . . . there wants an established, settled, known law . . . there wants a known and indifferent judge, with authority to determine all differences according to the established law** . . . there often wants power to back and support the sentence when right, and to give it due execution. [55] (Emphasis supplied)

A Survey of Philippine Jurisprudence

The very first case decided by the Supreme Court, *In the matter of the proceedings against Marcelino Aguas for contempt of the Court of First Instance of Pampanga,* [56] was a contempt proceeding. Before, as it is now, this Court had to use this power to impress upon contemnors the legal theory and constitutional premises of judicial legitimacy complementing popular sovereignty and public interest. Writing for the Court, Mr. Justice James Smith stated that contempt proceedings against a contemnor were against someone who had done an act or was about to do such act which *"was disrespectful to the court or offensive to its dignity".* [57]

Through the years, the Court has punished contemnors for a variety of offenses that have attempted to degrade its dignity and impeded the administration of justice.

In 1916, Amzi B. Kelly was fined P1,000 and sentenced to six months in prison for contempt of court after he published a letter to the editor of *The Independent* criticizing the Court for its decision to hold him in contempt for having published a book stating that various government officials, including the members of the Supreme Court, were guilty of politically assassinating General Mariano Noriel, who was executed for the killing of a political rival in 1915. [58]

In 1949, Atty. Vicente Sotto was fined P1,000.00 for publishing a statement in the *Manila Times* objecting to one of the High Court's decisions, citing that such decision by the majority was but another evidence of "the incompetency or narrow-mindedness of the majority of its members" and called for the resignation of the Court's entire membership "in the wake of so many mindedness of the majority deliberately committed during these last years". [59]

In 1987, Eva Maravilla-Ilustre, [60] in almost identical letters dated October 20, 1986 sent to four (4) Justices of the Supreme Court (all members of the First Division), stated among others —

> It is important to call your attention to the dismissal of (case cited) by an untenable minute-resolution . . . which we consider as anunjust resolution deliberately and knowingly promulgated by the First Division of the Supreme Court of which you are a member.
>
> We consider the three minute-resolutions . . railroaded with such hurry/promptitude unequalled in the entire history of the SC under circumstances that have gone beyond the limits of legal and judicial ethics.
>
> There is nothing final in this world. We assure you that this case is far from finished by a long shot. For at the proper time, we shall so act and bring this case before another forum where the members of the Court can no longer deny action with minute resolutions that are not only unjust but are knowingly and deliberately

promulgated . . . .

> Please understand that we are pursuing further remedies in our quest for justice under the law. We intend to hold responsible members of the First Division who participated in the promulgation of these three minute-resolutions in question . . . .
>
> In our quest for justice, we wish to avoid having injustice to anyone, particularly the members of the First Division, providing that they had no hand in the promulgation of the resolution in question. . . . If, however, we do not hear from you after a week, then we will consider your silence that you supported the dismissal of our petition. We will then be guided accordingly. [61]

The letter to one of the Justices further stated —

> We leave the next move to you by informing us your participation. . . . Please do not take this matter lightly. . . .The moment we take action in the plans we are completing, we will then call a press conference with TV and radio coverage. Arrangements in this regard are being done. The people should or ought to know why we were thwarted in our quest for plain justice. [62]

These letters were referred by the First Division *en consulta* to the Court *en banc*.

True to her threats, after having lost her case before the Supreme Court, Ilustre filed on December 16, 1986 an affidavit-complaint before the Tanodbayan, charging, among others, some Justices of both the Supreme Court and the CA with knowingly and deliberately rendering "unjust resolutions".

On January 29, 1987, the Supreme Court *en banc* required Ilustre to show cause why she should not be held in contempt for her foregoing statements, conduct, acts, and charges against the Supreme Court and/or official actions of the justices concerned which, unless satisfactorily explained, transcended the permissible bounds of propriety and undermined and degraded the administration of justice.

In her answer, Ilustre contended, *inter alia,* that she had no intention to affront the honor and dignity of the Court; that the letters to the individual justices were private in character; that the Court was estopped, having failed to immediately take disciplinary proceedings against her; and that the citation for contempt was a vindictive reprisal against her.

The Supreme Court found her explanation unsatisfactory. The claim of lack of evil intention was disbelieved in the face of attendant circumstances. Reliance on the privacy of communication was likewise held as misplaced. "Letters addressed to individual Justices in connection with the performance of their judicial functions become part of the judicial records and are a matter of public concern for the entire Court". (Underscoring supplied)

The Court likewise stated that it was only in the exercise of forbearance that it refrained from immediately issuing a show-cause order, expecting that she and her lawyer would realize the unjustness and unfairness of their accusations. Neither was there any vindictive reprisal involved. "The Court's authority and duty under the premises is unmistakable. It must act to preserve its honor and dignity from the scurrilous attacks of an irate lawyer, mouthed by his client, and to safeguard the morals and ethics of the legal profession".

In resumÄ¨, the Court found that Ilustre had transcended the permissible bounds of fair comment and criticism to the detriment of the orderly administration of justice: (a) in her letters addressed to the individual Justices, quoted in the show-cause Resolution, particularly the underlined portions thereof; (b) in the language of the charges she filed before the Tanodbayan quoted in the same Resolution; (c) in her statement, conduct, acts, and charges against the Supreme Court and/or official actions of the Justices concerned and her description of improper motives; and (d) in her unjustified outburst that she could no longer expect justice from the Court.

> The fact that said letter was not technically considered pleadings nor the fact that they were submitted after the main petition had been finally resolved does not detract from the gravity of the contempt committed. The constitutional right of freedom of speech or right to privacy cannot be used as a shield for contemptuous acts against the Court. [63]

Ilustre was fined P1,000.00 "for contempt", evidently considered as **indirect**, taking into account the penalty imposed and the fact that the proceedings taken were not summary in nature.

In *Perkins v. Director of Prisons,* [64] the Court had an occasion to examine the fundamental foundations of the power to punish for contempt: "The power to punish for contempt is **inherent** in all courts; its existence is **essential** to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the courts, and, consequently, to the due administration of justice". [65]

The Court there held that "the exercise of this power is as old as the English history itself, and has always been regarded as a necessary incident and attribute of courts. Being a common-law power, inherent in all courts, the moment the courts of the United States were called into existence they became vested with it. It is a power coming to us from the common law, and, so far as we know, has been universally admitted and recognized." [66]

After World War II, this Court reiterated it had an 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. [67] This power to punish for contempt is "**necessary** for its own protection against improper interference with the due administration of justice . . . . It is not dependent upon the complaint of any of the parties-litigant". [68] These twin principles were to be succinctly cited in the later case of *Zaldivar v. Gonzales*. [69]

Of course, the power to punish for contempt is exercised on the **preservative principle**. There must be caution and hesitancy on the part of the judge whenever the possible exercise of his awesome prerogative presents itself. "The power to punish for contempt", as was pointed out by Mr. Justice Malcolm in *Villavicencio v. Lukban,* [70] "should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power to retain that respect without which the administration of justice must falter or fail". But when called for, most especially when needed to preserve the very existence and integrity of no less than the Highest Court, this principle bears importance.

In the 1995 case *People v. Godoy,* [71] the Court, citing *In Re: Vicente Sotto,* [72] had the opportunity to define the relations of the courts and of the press. Quoting the statements made by Judge Holmes in *U.S. v. Sullen,* [73] the Court 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. . . . **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, the Court will not hesitate to exercise 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. [74] *(Emphasis supplied)*

Thus, while the Court in *Godoy* agreed that our Constitution and our laws recognize the First Amendment rights of freedom of speech and of the press, these two constitutional guaranties "must not be confused with an abuse of such liberties". Quoting *Godoy* further —

> Obstructing, by means of the spoken or written word, the administration of justice by the courts has been described as an abuse of the liberty of the speech or the press such as will subject the abuser to punishment for contempt of court. [75]

Finally, in the more recent 2007 case *Roxas v. Zuzuarregui,* [76] the Court *en banc* in a unanimous *per curiam* resolution imposed a P30,000 fine on Atty. Romeo Roxas for making "unfair and unfounded accusations against a member of this Court, and mocking the Court for allegedly being part of the wrongdoing and being a dispenser of injustice". We found the letter of Atty. Roxas full of "contemptuous remarks that tended to degrade the dignity of the Court and erode public confidence that should be accorded to it". We also said that his invocation of free speech and privacy of communication "will not, however, free him from liability. As already stated, his letter contained defamatory statements that impaired public confidence in the integrity of the judiciary. The making of contemptuous statements directed against the Court is not an exercise of free speech; rather, it is an abuse of such right. Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefore and confidence therein. Free expression must not be used as a vehicle to satisfy one's irrational obsession to demean, ridicule, degrade and even destroy this Court and its magistrates." Accordingly, Atty. Roxas was found guilty of indirect contempt of court and fined P30,000.00, with a warning that a repetition of a similar act would warrant a more severe penalty.

Application of Existing Jurisprudence to the Case at Bar

In determining the liability of the respondent in this contempt proceeding, we weigh the conflicting constitutional considerations — respondent's claim of his right to press freedom, on one hand; and, on the other hand, ensuring judicial independence by upholding public interest in maintaining the dignity of the judiciary and the orderly administration of justice — both indispensable to the preservation of democracy and the maintenance of a just society.

The apparently conflicting constitutional considerations summed up by a distinguished former Judge of the Supreme Court of India, Justice H.R. Khanna, bears a hand in resolving the issue —

> There are one or two matters to which I would like to make pointed reference in the context of the freedom of the press. One of them relates to the danger of trial by the press. Certain aspects of a case are so much highlighted by the press that the publicity gives rise to strong public emotions. The inevitable effect of that is to prejudice the case of one party or the other for a fair trial. We must consider the question as to what extent are restraints necessary and have to be exercised by the press with a view to preserving the purity of judicial process. At the same time, we have to guard against another danger. A person cannot . . . by starting some kind of judicial proceedings in respect of matter of vital public importance stifle all public discussions of that matter on pain of contempt of court. A line to balance the whole thing has to be drawn at some point. It also seems necessary in exercising the power of contempt of court . . . vis-Ã -vis the press that no hyper-sensitivity is shown and due account is taken of the proper functioning of a free press in a democratic society. This is vital for ensuring the health of democracy. At the same time, the press must also keep in view its responsibility and see that nothing is done as may bring the courts . . . into disrepute and make people lose faith in these institution(s). One other matter which must not be lost sight of is that while comment is free, facts are sacred. [77]

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.

The Investigating Committee could not have put it any better when it found respondent feigning his "highest respect for this Court" —

> Macasaet's diatribes against the Court generate public distrust in the administration of Justice by the Supreme Court, instead of promoting respect for its integrity and honor. They derogate his avowal of "highest respect for this Court" (10, tsn, Jan. 10, 2008); his declaration that he has "always upheld the majesty of the law as interpreted by the Court" (96, tsn, Jan. 10, 2008); that his opinion of the Court has actually been "elevated ten miles up" because of its

decisions in the cases involving Proclamation No. 1017, the CPR, E.O. 464, and the People's Initiative (97, tsn, Jan. 10, 2008); that he has "done everything to preserve the integrity and majesty of the Court and its jurists" (84-85, tsn, Feb. 1, 2008); that he wants "the integrity of the Court preserved because this is the last bastion of democracy" (32, tsn, Jan. 10, 2008).

These tongue-in cheek protestations do not repair or erase the damage and injury that his contemptuous remarks about the Court and the Justices have wrought upon the institutional integrity, dignity, and honor of the Supreme Court. As a matter of fact, **nowhere in his columns** do we find a single word of **respect for the Court** or the **integrity and honor of the Court**. On the contrary, what we find are allegations of "pernicious rumor that the **courts are dirty**", suspicions that the jurists are "thieves", that the Highest Court has a **"soiled reputation"**, and that the Supreme Court has a **"sagging reputation"**.

He admitted that the rumor about the courts being "dirty" referred "specifically (to) the Supreme Court" (100, tsn, Feb. 1, 2008) and was "**based on personal conclusion** which (was), in turn, based on confidential information fed to me. It is in that respect that I thought that I have (a) duty to protect and keep the Honor of this Court" (98, tsn, Feb. 1, 2008).

He unburdened his heretofore hidden anger, if not disgust, with the Court when he clarified "that the word **dirty . . . is not necessarily related to money**" (101, tsn, Feb. 1, 2008). "It is my belief that lack of familiarity with the law is . . . kind of dirty" referring to then Associate Justice Artemio Panganiban's support for, and Chief Justice Hilario Davide, Jr.'s act of swearing into office then Vice-President Gloria Macapagal Arroyo as Acting President of the Philippines even while then President Joseph Estrada was still in Malacañang, which Macasaet believed to be **"quite a bit of dirt"** (102-106, tsn, Feb. 1, 2008).[78]

To reiterate the words of the Committee, this case is "not just another event that should pass unnoticed for it has implications far beyond the allocated ramparts of free speech".[79] To allow respondent to use press freedom as an excuse to capriciously disparage the reputation of the Court and that of innocent private individuals would be to make a mockery of this liberty.

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 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.[80]

Indeed, the confidential information allegedly received by respondent by which he swears with his "heart and soul"[81] was found by the Investigating Committee *unbelievable.* It was a story that reeked of urban legend, as it generated more questions than answers.[82]

Respondent Macasaet's wanton disregard for the truth was exhibited by his apathetic manner of verifying the veracity of the information he had gathered for his

September 18, 19, 20, and 21, 2007 articles concerning the alleged bribery of a Lady Justice. His bases for the amount of money, the number of boxes, the date of delivery of the boxes, among other important details, were, by his own admission founded on personal assumptions. This nonchalant attitude extended to his very testimony before the investigating committee —

Justice Aquino:

> You did not endeavor to verify the information given by your source before publishing the story about the bribery?

Mr. Macasaet:

> I tried, I could not get confirmation, I thought that eventually my effort at consistently trying or exposing the alleged bribery one day sooner or later somebody will come up and admit or deny.

xxx xxx xxx

Justice Vitug:

> Do you confirm the fact of authorship of the columns of September 18, 19, 20, and 21, 2007?

Mr. Macasaet:

> On a stack of Bible, I confirm it.

Justice Vitug:

> Does that mean that you also confirm the accuracy of those information that were said?

Mr. Macasaet:

> I am not confirming the accuracy of the information and I think that is precisely the reason for this hearing, I must repeat that the purpose is to fish [the Lady Justice] out so that the rest of the Lady Justices in all the Courts suspicion can be removed from them. I failed in the sense that one denied, she felt alluded to and said she is not involved. [83]

Respondent thus admits to having written his articles as means to "fish out" the Lady Justice involved in an alleged bribery fed to him by his source, with reckless disregard of whether or not such bribery indeed took place. It defies reason why any responsible journalist would go on to publish any material in a newspaper of general circulation without having ascertained even the five W's and one H of the story. [84]

That he could not, through his extensive network of informants, confirm the approximate date when the alleged bribery took place, the identities of the persons involved, or any other important detail, before he began his series of articles only leads to the rational conclusion that he did not care whether or not the story he published was true. His aim, as he admits, was to go on a fishing expedition to see if someone would confirm or deny his now clearly baseless accusations. This practice of "fishing" for information by publishing unverified information in a manner that leads the reading public to believe such is true cannot be tolerated.

Aggravating respondent's affront to the dignity of the Court is his unwillingness to show any remorse or repentance for his contemptuous acts. In fact, as he made clear

in his testimony before the Investigating Committee when asked what his thoughts were about his having published the instant articles, he replied that he was "happy in the sense that [he] did a job in [his] best lights and the effort ended up in the creation of [the investigating panel]." [85]

However, such assertions of having acted in the best interest of the Judiciary are belied by the fact that he could have caused the creation of an investigating panel to look into such allegations in a more rational and prudent manner. In the words of the Investigating Committee —

> If he had no malice toward the Court, if, as he professes, the purpose of his columns was to save the integrity and honor of the Court, Macasaet should, and could, have reported the rumored bribery directly to the Chief Justice and asked for its investigation. He should have refrained from calling the Court names, before giving it a chance to act on his report and on his suggestion to investigate the matter. Since he knew the name of the Court employee who allegedly discovered the bribe money, the Court could have begun its investigation with her to ascertain the identity of the nameless Lady Justice and the veracity of the rumored bribery. His disparaging remarks about the Court and jurists in conjunction with his unverified report on the alleged bribery were totally uncalled for and unjustified. [86]

It is precisely because of his failure to abide by the tenets of responsible journalism that we accept the findings of the Investigating Committee in holding respondent Macasaet guilty of indirect contempt of court. He must be made accountable for his complete failure to exercise even a single vestige of responsible journalism in publishing his unfounded and ill-thought diatribes against the Judiciary and the honorable people who serve it.

Respondent also asserts that the subject matter of his articles is within the exclusive jurisdiction of Congress. He cites Section 2, Article XI of the 1987 Constitution which partly states that ". . . members of the Supreme Court . . . may be removed from office, on impeachment for, and conviction of . . . bribery . . ." and Section 3 (1), Article XI, which provides that "[t]he House of Representatives shall have the exclusive power to initiate all case of impeachment".

We cannot agree. What Macasaet conveniently forgets is that no impeachment complaint has been filed against Mme. Justice Ynares-Santiago. Thus, his cited constitutional provisions do not come into play.

Respondent claims that there is a violation of his right to due process. From the time his articles were published, no formal charge has been filed against him as required under Section 3, Rule 71 of the 1997 Rules of Civil Procedure.

Respondent fails to see, however, that under Section 4 of the same Rule, proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed, by an order or any other formal charge requiring respondent to show why he should not be punished for contempt. Our Resolution dated September 25, 2007 satisfies the Rule. He cannot validly claim that such resolution is vague. He cannot feign ignorance of the contents of his September 18, 19, 20, and 21, 2007 articles in the **Malaya**.

Rule 71 of the 1997 Rules of Civil Procedure pertinently provides:

> SEC. 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.

xxx xxx xxx

(d)Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

xxx xxx xxx

SEC. 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. . . . (Underscoring supplied)

We are not unaware of the vigorous dissent of then Associate Justice, now our Chief Justice, Reynato S. Puno, in an earlier case, [87] in which he so lucidly argued for the right to journalistic shield, behind which the Dissenting Opinion of an esteemed colleague, Mr. Justice Carpio, and respondent Macasaet, take full refuge. While we hold his thesis in high regard, the case at bar does not fall within his erudite defense of press freedom. The critical issues then were the right of newsmen to refuse subpoenas, summons, or "invitations" to appear in administrative investigations, and not to reveal their confidential sources of information under R.A. No. 53, as amended. None of these are the issues at hand. Be that as it may, elementary decision-making teaches that we cite the majority opinion as precedent, not lonely dissenting opinions. [88]

In his Dissenting Opinion, Mr. Justice Carpio assails the Committee proceedings as "fatally defective for patent denial of due process" [89] because "when the witnesses the Committee summoned testified, the Committee monopolized the right to propound questions to the witnesses, denying to Macasaet such right". [90] He continues to say that "[w]ith the procedure the Committee adopted, Macasaet was reduced to a passive participant, unable to subject the testimonies of adverse witnesses to rigorous probing under cross-examination. As matters stand, Macasaet will be subjected to punitive sanctions based on evidence he had no opportunity to scrutinize." [91]

We disagree on triple grounds.

First, the proceedings of the Committee are presumed to be regular. Thus, the *onus probandi* to prove otherwise rests on Macasaet, not on the Committee. Suffice it to say that the Dissenting Opinion which cites *People v. Godoy* as to the "criminal" character of a contempt proceeding, [92] fails to state what *Godoy* likewise instructs —

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. [93]

Second, assuming *arguendo* that Macasaet was not able to cross-examine his witnesses, this does not necessarily mean that his right to due process of law was violated.

The right of an accused to cross-examine the witnesses against him, although an adjunct of the Constitutional right "to meet the witnesses face to face," [94] **can be waived when not timely asserted**. In the case of Macasaet, never did he assert his right to cross-examine the witnesses against him despite the opportunity to do so. During the entire course of the proceedings in the Committee, respondent was vigorously represented by counsel *de parte*. Respondent or his counsel could have moved to cross-examine the adverse witnesses. Respondent had every opportunity to do so. Lamentably, he failed to exercise the said right.

Interestingly, during the last hearing date, counsel for respondent requested that respondent be allowed to say something, which the Committee granted. Respondent then proceeded with a lengthy discourse, all of 45 pages, on everything and anything, except his right to cross-examination. [95] Verily, it cannot be validly claimed now that his right to cross-examine was violated.

Third, the Court is bereft of any power to invoke the right to cross-examine the witnesses against respondent, for and in his behalf. Otherwise, the Court will be acting as his counsel, which is absurd.

Just a Word More

A free press is regarded as a key pillar of democracy. Reporters must be free to report, expose, and hold government officials and agencies — including an independent judiciary — accountable. Press attention surrounding the judiciary ensures public accountability. Such publicity acts as a check on judicial competence and integrity, exposes inefficiencies and irregularities, keeps vigil over various public interest cases, and puts pressure on responsible judicial officials. This freedom has been used and has benefited the cause of justice. The press has become an important actor — a judicial watchdog — in the ongoing judicial transformation. When properly validated, its acts are protected speech from an accepted function.

Freedom, however, has not guaranteed quality journalism. The press has been vulnerable to a host of legitimate criticisms such as incompetence, commercialism, and even corruption. By disproportionately informing the public about specific court processes, or by spreading unsubstantiated allegations about corruption and other forms of judicial misconduct, the press dramatically undermines the public's faith in the courts and threatens the very foundation of our democratic government.

Oftentimes, journalists writing about the judiciary and court cases lack basic knowledge of the law and judicial procedures, on the basis of which they draw faulty conclusions which they pass on to their readers as gospel truths. Trial by publicity also influences the independence of judges as the public is fed with partial information and vocal opinions, and judges are pressured to decide in accordance with the public opinion. Faith in the judiciary is undermined when judges rule against the expectations of the public which has been brainwashed by dramatic reports and graphic comments. In some cases, unchecked rumors or allegations of irregularities are immediately published because journalists lack professional competence to verify the information, or are simply eager to break the news and attract a wider readership.

The role of the press in relation to the judiciary needs to be regulated. This can be done through voluntary codes of conduct on the part of the press and through judicial policies, such as the rule on *sub judice* and contempt of court rulings. The absence of clear voluntary codes developed by the press, as its self-regulator, strengthens the need for the Court to use its power in the meantime to cite critics for contempt. This is necessary in cases where such criticism is obviously malicious or in violation of the *sub judice* rule, or where there is an evident attempt to influence the outcome of a case. Judges have the duty to defend and uphold the integrity and independence of the judiciary. They should sanction those who obstruct or impede the judicial processes. The effective administration of justice may only be realized with the strong faith and confidence of the public in the competence and integrity of the judiciary, free from political and popular pressure.

Criticism at every level of government is certainly welcome. After all, it is an essential part of the checks and balances in our republican system of government. However, criticisms should not impede or obstruct an integral component of our republican institutions from discharging its constitutionally-mandated duties.

As the Court said in *In Re: Almacen*: [96]

> Courts and judges are not sacrosanct. They should and expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizen whom it is expected to serve.
>
> xxx xxx xxx
>
> 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. . . . [97]

All told, illegitimate and uninformed criticisms against the courts and judges, those which cross the line and attempt to subvert the judicial process, must be avoided. They do a great disservice to the Constitution. They seriously mislead the public as to the proper functioning of the judiciary. While all citizens have a right to scrutinize and criticize the judiciary, they have an ethical and societal obligation not to cross that too important line.

Senator Ernesto Maceda, the seasoned politician who has graced both the executive and the legislative departments in various capacities, in a Privilege Speech, once appealed for voluntary self-restraint with respect to this Court —

> There are proper procedures for dealing with instances of official misdemeanor without setting an entire institution on fire. Arson is not the best means for pest-control.
>
> In case of possibility of corruption in the Supreme Court, one possible means is the initiation of impeachment proceedings against specifically identified justices. A move for impeachment, of course, requires much sobriety and solid evidence. Whatever charges are brought forward must be substantiated. Those who dare prosecute must come into the open and append their names to the accusations they make, with courage and conviction. This is the manner civil society conserves its civility . . . .

> The ends of justice are not served by heckling nor by crude insinuation or by irresponsible reporting. The house of democracy is never strengthened by those who choose to throw rocks under the cover of darkness and anonymity. The institutions of our liberty are never enriched by the irresponsible accusations of the uninformed. The bedrocks of our Republic are not reinforced by those who evade responsibility under the veil of freedom. [98]

During interpellation, he went on to say —

> . . . And in the context of what I have just said, I think that all newspapers, all media are welcome to do their worse, criticize the members of the Executive Department, Members of the Senate, and any other agency of the Government. But I am just suggesting that when it comes to the judiciary, and specifically to the Supreme Court, that a different policy, one of more caution, should be adopted precisely because . . . people may lose faith in the Executive or the President; they may lose faith in Congress, the Congressmen and the Senators, but as long as they have their faith unshaken and complete in the last bulwark of democracy . . . which is the Supreme Court, then our democracy will survive. [99]

Each of us has important responsibilities in a constitutional democracy. We, judges, will continue to discharge our judicial functions with fairness. We urge all and sundry to abide by theirs. We need to respect each other. As the golden rule goes — let us not do to others what we do not want others to do to us. ***Igalang natin ang isa't-isa. Huwag nating gawin sa iba ang ayaw nating gawin nila sa atin.***

Given the gravity of respondent Macasaet's improper conduct, coupled with the recalcitrant manner in which he responded when confronted with the reality of his wrongdoing, a penalty of fine in the amount of P20,000.00 would be right and reasonable.

Disposition

WHEREFORE, the Court declares respondent Amado P. Macasaet GUILTY of indirect contempt of court and sentences him to pay a fine of P20,000.00, in accordance with Sections 3 (d) and 7, Rule 71 of the 1997 Rules of Civil Procedure.

SO ORDERED.

Quisumbing, Austria-Martinez, Corona, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro and *Brion, JJ.,* concur.

Puno, C.J., I respectfully reiterate my dissent in the *in re: Emil Jurado* case. I vote to dismiss the contempt charge.

Ynares-Santiago, J., took no part.

Carpio, J., see dissenting opinion.

Carpio-Morales, J., I join the dissent of *J.* Carpio.

Tinga, J., in the result.

Footnotes

1. *Rollo,* pp. 2-6.

2. *Id.* at 138; affidavit of ACA Jose Midas P. Marquez, par. 4, p. 1.

3. *Id.*

4. *Id.* at 146; faxed letter of Marites Dañguilan-Vitug to Mme. Justice Consuelo Ynares-Santiago dated September 20, 2007.

5. *Id.* at 139-140; affidavit of ACA Marquez, pars. 7-9, pp. 2-3.

6. *Id.* at 147; corrected faxed letter of Marites Danguilan-Vitug to Mme. Justice Consuelo Ynares-Santiago dated September 20, 2007.

7. *Id.* at 141; affidavit of ACA Jose Midas P. Marquez, par. 14, p. 4.

8. *Id.* at 9-10; letter of Ms. Daisy Cecilia Muñoz Delis to Mr. Amado P. Macasaet, dated September 21, 2007, pp. 1-2.

9. *Id.* at 10-11; *id.* at 2-3.

10. *Id.* at 7; affidavit of Ms. Daisy Cecilia Muñoz Delis dated September 24, 2007, par. 8b, p. 1.

11. *Id.*; *id.*, par. 9, at 1.

12. *Id.*; *id.*, par. 10, at 10.

13. *Id.* at 101-103; *id.* at 1-3.

14. *Id.* at 101; *id.* at 1.

15. *Id.* at 149.

16. *Id.* at 141; Marquez, par. 15, p. 4.

17. *Id.* at 141; Marquez, par. 14.

18. *Id.* at 13; Min. Res. A.M. No. 07-09-13-SC *(Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in* ***Malaya*** *Dated September 18, 19, 20, and 21, 2007),* dated September 25, 2007.

19. *Id.* at 14-43. In his sworn explanation, Macasaet, assisted by counsel, argued on the following points:

    1.His statements were precisely a call for an investigation to preserve the integrity of the Supreme Court and the administration of justice pursuant to the Court's crusade in curbing perceived corruption in the judiciary;

    2.In light of revelations not sourced from him, the subject of the statements is already demonstrably under the exclusive jurisdiction of Congress;

    3.The proceedings for indirect contempt stifles freedom of the press;

    4.There was no reckless disregard by the publication of the subject statements and he exerted bona fide efforts to ascertain the truth of such statements; and

    5.Under the circumstances, continuation of the proceedings constitutes an unconditional denial of his right to due process of law and equal protection.

    On November 6, 2007, Macasaet submitted his affidavit practically reiterating his sworn explanation dated October 1, 2007. (*Id.* at 160-174.)

20. *Id.* at 133.

21. No known relation to Ms. Marites Dañguilan-Vitug.

22. *Rollo,* pp. 223-229. Retired Supreme Court Associate Justice Vicente V. Mendoza resigned from the Committee upon finding out that the allegations of bribery involved an executive of PIATCO, a party to an international arbitration case in which he is an expert witness for the Philippine Government, and he did "not wish to burden the legal panel of the Philippine Government in the arbitration cases with the task of explaining or justifying his participation" in the Investigating Committee. Retired Justice Romeo J. Callejo, Sr., on the other hand, requested to be relieved, as he was the *ponente of Go v. Sandiganbayan* promulgated on April 13, 2007, while retired Justice Arturo Buena had likewise requested to be inhibited from the investigating committee. These requests were approved by the Court *En Banc* in a Resolution dated November 13, 2007. (*Id.* at 232.)

23. TSN, October 30, 2007, p. 18.

24. TSN, January 17, 2008, p. 6.

25. *Rollo,* pp. 326-347; Report and Recommendation *(Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in Malaya Dated September 18, 19, 20, and 21, 2007),* pp. 1-22.

26. *Id.* at 333; *id.* at 8.

27. *Id.* at 340-341; *id.* at 15-16.

28. *Id.* at 341-342; *id.* at 16-17.

29. *Id.* at 342-343; *id.* at 17-18.

30. *Id.* at 343-346; *id.* at 18-21.

31. *Id.* at 346-347; *id.* at 21-22.

32. Blackstone, W., Commentaries, 145 (1876).

33. Record of the Constitutional Commission: Proceedings and Debates (1987), p. 758.

34. De Jesus, M.Q., Overview, Press Freedom in the Philippines (2004).

35. Teodoro, L.V., Survey of Media, Press Freedom in the Philippines (2004).

36. Guidebook for Journalists Covering the Courts: Strengthening Judiciary-Media Relations, Asian Institute of Journalism and Communication (2004), p. 13.

37. Jacobson, M.K., Assault on the Judiciary: Judicial Response to Criticism Post-Schiavo, 61 U. Miami L. Rev. 931 (2007).

38. *Attorney-General v. Leveller Magazine, Ltd.*, AC 440 (1979); *Scott v. Scott,* AC 417 (1913).

39. Coker, H.C., Responding to Judicial Criticism, 73 Fla. B.J. 10 (1999).

40. Blatz, K., The State of the Judiciary, 62 Bench & B. Minn 26, 27 (2005).

41. The Federalist No. 78.

42. CONSTITUTION (1987), Art. VIII, Sec. 1.

43. See Abrahamson, S.S., Remarks of the Hon. Shirley S. Abrahamson before the American Bar Association Commission on the Separation of Powers and Judicial Independence, Washington, D.C., December 13, 1996, 12 St. John's J. Legal Comment. 71 (1996).

44. Kelson, S., Judicial Independence and the Blame Game: The Easiest Target Is a Sitting One, 15 Utah B.J. 15-16 (2002).

45. G.R. No. L-27833, April 18, 1969, 27 SCRA 835.

46. *Gonzales v. Commission on Elections, id.* at 858.

47. G.R. No. L-32066, August 6, 1979, 92 SCRA 476.

48. *In Re: Lozano,* 54 Phil. 801 (1929).

49. G.R. Nos. 79690-707 & L-80578, October 7, 1988, 166 SCRA 316.

50. *Zaldivar v. Gonzalez, id.* at 354, citing the concurring opinion of Mr. Justice Frankfurter in *Pennekamp v. Florida,* 328 US 331, 354-356 (1946).

51. Adopted and opened for signature, ratification and accession by the UN General Assembly Resolution 2200A (XXI), December 16, 1966, entered into force on January 3, 1976.

52. E.T.S. No. 5, adopted November 4, 1950, entered into force on September 3, 1953.

53. Adopted at San Jose, Costa Rica, November 22, 1969, entered into force on July 18, 1978.

54. Adopted at Nairobi, Kenya, June 26, 1981, entered into force on October 21, 1986.

55. Locke, J., Second Treatise of Government (1689), Sections 124-126, reprinted in Locke, J., Political Writings 325 (1985 ed.).

56. 1 Phil. 1 (1901).

57. *In the matter of the proceedings against Marcelino Aguas for contempt of the Court of First Instance of Pampanga, id.* at 2.

58. *In Re: Amzi B. Kelly,* 35 Phil. 944 (1916).

59. *In Re: Vicente Sotto,* 82 Phil. 595 (1949).

60. *In the Matter of Proceedings for Disciplinary Action Against Atty. Wenceslao Laureta and of Contempt Proceedings Against Eva Maravilla-Illustre in G.R. No. 68635, entitled "Eva Maravilla-Illustre vs. Hon. Intermediate Appellate Court, et al.,"* G.R. No. 68635, March 12, 1987, 148 SCRA 382.

61. *Id.* at 390-391.

62. *Id.* at 392-393.

63. *Id.* at 421.

64. 58 Phil. 271 (1933).

65. *Perkins v. Director of Prisons, id.* at 274, citing *Ex parte Terry,* 128 US 225, 32 L Ed., 405; *In re Kelly,* 35 Phil. 944; *State v. Magee Publishing Company,* 38 ALR 142, 144.

66. *Id.* at 274-275, citing 4 Lewis' Bl. Com., Sec. 286, p. 1675; Oswald, Contempt, Canadian ed., pp. 1-3, 6 RCL 489; *State v. Morrill,* 16 Ark. 390; *State ex rel. Rodd v. Verage,* 177 Wis. 295, 23 ALR 491, 187 NW 830; and *People ex rel. Brundage v. Peters,* 305 Ill. 223; 26 ALR 16, 137 NE 118.

67. *In Re: Vicente Sotto, supra* note 59.

68. *Halili v. Court of Industrial Relations,* G.R. No. L-24864, April 30, 1985, 136 SCRA 112.

69. *Supra* note 49.

70. 39 Phil. 778 (1919).

71. 312 Phil. 977 (1995).

72. *Supra* note 59.

73. 36 F. 2d 220.

74. *People v. Godoy, supra* note 71, at 1003.

75. *Id.* at 1004.

76. G.R. Nos. 152072 & 152104, July 12, 2007, 527 SCRA 446.

77. Khanna, H.R., Freedom of Expression with Particular Reference to Freedom of the Media, 2 SCC (Jour) 1 (1982).

78. *Rollo,* pp. 344-345; Report and Recommendation *(Re: In the Matter of the Allegations Contained in the Columns of Mr. A.P. Macasaet Published in Malaya Dated September 18, 19, 20, and 21, 2007),* pp. 19-20.

79. *Id.* at 346; *id.* at 22.

80. See notes 26 and 27.

81. TSN, January 10, 2008, pp. 92-93, 113.

82. See note 28.

83. TSN, January 10, 2008, pp. 28-40.

84. The five W's and one H: Who, What, When, Where, Why, and How are generally known as the basic information that all news stories should contain.

85. *Rollo,* p. 103; TSN, January 10, 2008.

86. *Id.* at 346.

87. *In Re: Emil P. Jurado,* A.M. No. 93-2-037 SC, April 6, 1995, 243 SCRA 299.

88. Then Associate Justice, now Chief Justice Puno was joined by Justice Padilla in his Dissenting Opinion in the *Jurado* case where the Court voted 10-3, with two justices taking no part.

89. Dissenting Opinion, p. 8.

90. *Id.*

91. *Id.* at 9.

92. *Id.* at 7.

93. *Supra* note 71, at 1001.

94. CONSTITUTION (1987), Art. III, Sec. 14 (2).

95. TSN, February 1, 2008, pp. 84-129.

96. G.R. No. 27654, February 18, 1970, 31 SCRA 562.

97. *In Re: Almacen, id.* at 578-580.

98. Maceda, E.M., In Defense of the Supreme Court, Privilege Speech delivered on the Senate Floor, February 2, 1993.

99. *Id.*