RE: REQUEST FOR LIVE RADIO-TV COVERAGE OF THE TRIAL IN THE SANDIGANBAYAN OF THE PLUNDER CASES AGAINST FORMER PRESIDENT JOSEPH E. ESTRADA

A.M. No. 01-4-03-SC. September 13, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a motion for reconsideration of the decision denying petitioners' request for permission to televise and broadcast live the trial of former President Estrada before the Sandiganbayan. The motion was filed by the Secretary of Justice, as one of the petitioners, who argues that there is really no conflict between the right of the people to public information and the freedom of the press, on the one hand, and, on the other, the right of the accused to a fair trial; that if there is a clash between these rights, it must be resolved in favor of the right of the people and the press because the people, as the repository of sovereignty, are entitled to information; and that live media coverage is a safeguard against attempts by any party to use the courts as instruments for the pursuit of selfish interests.

On the other hand, former President Joseph E. Estrada reiterates his objection to the live TV and radio coverage of his trial on the ground that its allowance will violate the sub judice rule and that, based on his experience with the impeachment trial, live media coverage will only pave the way for so-called "expert commentary" which can trigger massive demonstrations aimed at pressuring the Sandiganbayan to render a decision one way or the other. Mr. Estrada contends that the right of the people to information may be served through other means less distracting, degrading, and prejudicial than live TV and radio coverage.

The Court has considered the arguments of the parties on this important issue and, after due deliberation, finds no reason to alter or in any way modify its decision prohibiting live or real time broadcast by radio or television of the trial of the former president. By a vote of nine (9) to six (6) of its members,[1] the Court denies the motion for reconsideration of the Secretary of Justice.

In lieu of live TV and radio coverage of the trial, the Court, by the vote of eight (8) Justices,[2] has resolved to order the audio-visual recording of the trial for documentary purposes. Seven (7) Justices[3] vote against the audio-visual recording of the trial.

What follows is the opinion of the majority.

Considering the significance of the trial before the Sandiganbayan of former President Estrada and the importance of preserving the records thereof, the Court believes that there should be an audio-visual recording of the proceedings. The recordings will not be for live or real time broadcast but for documentary purposes. Only later will they be available for public showing, after the Sandiganbayan shall have promulgated its decision in every case to which the recording pertains. The master film shall be deposited in the National Museum and the Records Management and Archives Office for historical preservation and exhibition pursuant to law.[4]

For the purpose of recording the proceedings, cameras will be inconspicuously installed in the courtroom and the movement of TV crews will be regulated, consistent with the dignity and solemnity of the proceedings. The trial shall be recorded in its entirety, except such portions thereof as the Sandiganbayan may decide should not be held public pursuant to Rule 119, §21 of the Revised Rules of Criminal Procedure. No comment shall be included in the documentary except annotations which may be necessary to explain certain scenes which are depicted. The audio-visual recordings shall be made under the supervision and control of the Sandiganbayan or its Division as the case may be.

There are several reasons for such televised recording. First, the hearings are of historic significance. They are an affirmation of our commitment to the rule that "the King is under no man, but he is under God and the law." (Quod Rex non debet esse sub homine, sed sub Deo et Lege.) Second, the Estrada cases involve matters of vital concern to our people who have a fundamental right to know how their government is conducted. This right can be enhanced by audio-visual presentation. Third, audio-visual presentation is essential for the education and civic training of the people.

Above all, there is the need to keep audio-visual records of the hearings for documentary purposes. The recordings will be useful in preserving the essence of the proceedings in a way that the cold print cannot quite do because it cannot capture the sights and sounds of events. They will be primarily for the use of appellate courts in the event a review of the proceedings, rulings, or decisions of the Sandiganbayan is sought or becomes necessary. The accuracy of the transcripts of stenographic notes taken during the trial can be checked by reference to the tapes.

On the other hand, by delaying the release of the tapes for broadcast, concerns that those taking part in the proceedings will be playing to the cameras and will thus be distracted from the proper performance of their roles - whether as counsel, witnesses, court personnel, or judges - will be allayed. The possibility that parallel trials before the bar of justice and the bar of public opinion may jeopardize, or even prevent, the just determination of the cases can be minimized. The possibility that judgment will be rendered by the popular tribunal before the court of justice can render its own will be avoided.

At the same time, concerns about the regularity and fairness of the trial - which, it may be assumed, is the concern of those opposed to, as much as of those in favor of, televised trials - will be addressed since the tapes will not be released for public showing until after the decision of the cases by the Sandiganbayan. By delaying the release of the tapes, much of the problem posed by real time TV and radio broadcast will be avoided.

Thus, many important purposes for preserving the record of the trials can be served by audio-visual recordings without impairing the right of the accused to a fair trial.

Nor is the right of privacy of the accused a bar to the production of such documentary. In Ayer Productions Pty. Ltd. v. Capulong,[5] this Court set aside a lower court's injunction restraining the filming of "Four Day Revolution," a documentary film depicting, among other things, the role of then Minister of National Defense Juan Ponce Enrile in the 1986 EDSA people power. This Court held: "A limited intrusion into a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitute matters of a public character."[6]

No one can prevent the making of a movie based on the trial. But, at least, if a documentary record is made of the proceedings, any movie that may later be produced can be checked for its accuracy against such documentary and any attempt to distort the truth can thus be averted.

Indeed, a somewhat similar proposal for documentary recording of celebrated cases or causes célèbres was made

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way back in 1971 by Paul Freund of the Harvard Law School. As he explained:

> In fairness let me refer to an American experience many of my lay friends found similarly moving. An educational television network filmed a trial in Denver of a Black Panther leader on charges of resisting arrest, and broadcast the document in full, in four installments, several months after the case was concluded - concluded incidentally, with a verdict of acquittal.
>
> No one could witness the trial without a feeling of profound respect for the painstaking way in which the truth was searched for, for the ways whereby law copes with uncertainties and ambiguities through presumptions and burden of proof, and the sense of gravity with which judge and jury carried out their responsibilities.
>
> I agree in general with the exclusion of television from the courtroom, for the familiar good reasons. And yet the use of television at a trial for documentary purposes, not for the broadcast of live news, and with the safeguards of completeness and consent, is an educational experiment that I would be prepared to welcome. Properly safeguarded and with suitable commentary, the depiction of an actual trial is an agency of enlightenment that could have few equals in its impact on the public understanding.
>
> Understanding of our legal process, so rarely provided by our educational system, is now a desperate need.[7]

Professor Freund's observation is as valid today as when it was made thirty years ago. It is perceptive for its recognition of the serious risks posed to the fair administration of justice by live TV and radio broadcasts, especially when emotions are running high on the issues stirred by a case, while at the same time acknowledging the necessity of keeping audio-visual recordings of the proceedings of celebrated cases, for public information and exhibition, after passions have subsided.

WHEREFORE, an audio-visual recording of the trial of former President Estrada before the Sandiganbayan is hereby ordered to be made, for the account of the Sandiganbayan, under the following conditions: (a) the trial shall be recorded in its entirety, excepting such portions thereof as the Sandiganbayan may determine should not be held public under Rule 119, §21 of the Rules of Criminal Procedure; (b) cameras shall be installed inconspicuously inside the courtroom and the movement of TV crews shall be regulated consistent with the dignity and solemnity of the proceedings; (c) the audio-visual recordings shall be made for documentary purposes only and shall be made without comment except such annotations of scenes depicted therein as may be necessary to explain them; (d) the live broadcast of the recordings before the Sandiganbayan shall have rendered its decision in all the cases against the former President shall be prohibited under pain of contempt of court and other sanctions in case of violations of the prohibition; (e) to ensure that the conditions are observed, the audio-visual recording of the proceedings shall be made under the supervision and control of the Sandiganbayan or its Division concerned and shall be made pursuant to rules promulgated by it; and (f) simultaneously with the release of the audio-visual recordings for public broadcast, the original thereof shall be deposited in the National Museum and the Records Management and Archives Office for preservation and exhibition in accordance with law.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Panganiban, and Gonzaga-Reyes, JJ., concur.
Bellosillo, J., I am for full live coverage hence I maintain my original view; nevertheless, I concur.
Vitug, J., pls. see Separate Opinion.
Kapunan, J., I maintain my original view prohibiting live T.V. and radio coverage and concur with the separate opinion of Justice Vitug.
Quisumbing, J., although earlier I respectfully Dissented, or I favor live TV coverage - I now concur in the Result.
Pardo, J., I concur with the denial of the motion for reconsideration only. The conditions are inadequate. I join J. Vitug's opinion.

Buena, J., I concur with the Separate Opinion of Justice Vitug.
Ynares-Santiago, J., I concur with the separate opinion of J. Jose Vitug.
De Leon, Jr., I concur with Separate Opinion of Justice Vitug.
Sandoval-Gutierrez, J., I concur but only in the denial with finality of the MR.

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[1] Nine (9) members of the Court, namely, JUSTICES VITUG, KAPUNAN, MENDOZA, PARDO, BUENA, GONZAGA-REYES, YNARES-SANTIAGO, DE LEON, and SANDOVAL-GUTIERREZ, vote to deny reconsideration, while six (6), namely, CHIEF JUSTICE DAVIDE, JR. and JUSTICES BELLOSILLO, MELO, PUNO, PANGANIBAN, and QUISUMBING, vote to grant a reconsideration.

[2] CHIEF JUSTICE DAVIDE, JR. and JUSTICES BELLOSILLO, MELO, PUNO, MENDOZA, PANGANIBAN, QUISUMBING, and GONZAGA-REYES.

[3] JUSTICES VITUG, KAPUNAN, PARDO, BUENA, YNARES-SANTIAGO, DE LEON, and SANDOVAL-GUTIERREZ.

[4] R.A. No. 8492 provides in pertinent parts:

> SEC. 7. Duties and Function. — The [National] Museum shall have the following duties and functions:
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> 7.1. Acquire documents, collect, preserve, maintain, administer and exhibit to the public, cultural materials, objects of art, archaeological artifacts, ecofacts, relics and other materials embodying the cultural and natural heritage of the Filipino nation, as well as those of foreign origin. Materials relevant to the recent history of the country shall be likewise acquired, collected, preserved, maintained, advertised and exhibited by the Museum. (Emphasis added)

DEPARTMENT ORDER No. 13-A, dated May 9, 1985, of the Department of Education, Culture and Sports provides:

> Rule 7. Transfer of Records to Archives. — . . .
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> 7.5 Preservation of Archival Records.
>
> 7.5.1 Archival records shall be stored under one roof and authorize their accessibility to the public, subject to certain security and safety measures to preserve the integrity of the records.
>
> 7.5.2 It shall be the responsibility of the Archives Division to protect archival documents in its custody and undertake corrective measures to rehabilitate weakened or brittled documents in accordance with modern techniques.

[5] 160 SCRA 861 (1988). Cf. Lagunzad v. Soto Vda. de Gonzales, 92 SCRA 476 (1979), involving the novelized film on the life of Moises Padilla, a majoralty candidate of Magallon, Negros Occidental, who was murdered for political reasons at the instance of then Governor Rafael Lacson.

[6] Id. at 870.

[7] Paul A. Freund, Contempt Power: Prevention, Not Retribution, TRIAL, January-February 1971 at 13.

SEPARATE OPINION

VITUG, J.:

Due process is timeless. It is a precious fundamental right that secures and protects, under a rule of law, the life and liberty of a person from the oppression of power. A cherished fixture in our bill of rights, its encompassing guarantee will not be diminished by advances in science and technology. I fail to perceive it to be otherwise.

Precisely, in its 29[th] June 2001 decision, the Court did not consider it propitious to allow live television and radio coverage of the trial in order to help ensure a just and fair trial. The Court felt it judicious to insulate not only the Sandiganbayan but also the trial participants, the lawyers and witnesses, from being unduly influenced by possible adverse effects that such a coverage could bring. Petitioner filed a motion for reconsideration of the above ruling and countered that, if one must be pitted against the other, the right to public information of grave national interest should be held more paramount than the right of the accused to a "fair and public trial," the former being appurtenant to the sovereign and the latter being merely a privilege bestowed to an individual.

I am not ready to accept such a notion. I see it as being an implicit retreat, unwisely, from an age-old struggle of the individual against the tyranny of the sovereign.[1] The right of the public to information, in any event, is not here really being sacrificed. The right to know can very well be achieved via other media coverage; the windows of information through which the public might observe and learn are not closed.

In addressing the present motion for reconsideration, colleagues on the Court opine that there should be an audio-visual recording of the proceedings for documentary purposes because, first, the hearings are of historic significance; second, the Estrada cases involve matters of vital concern to our people who have a fundamental right to know how their government works; third, the audio-visual presentation is essential for education and civic training of the people; and fourth, such recording can be used by appellate courts in the event that the review of the proceedings, ruling, or decisions of the Sandiganbayan is sought or becomes necessary.[2]

The proposition has novel features; regrettably, I still find it hard to believe that the presence of the cameras inside the courtroom will not have an untoward impact on the court proceedings. No empirical data has been shown to suggest otherwise. To the contrary, experience attests to the intimidating effect of cameras and electronic devices in courtrooms on the litigants, witnesses and jurors.[3] In addition, the natural reticence of witnesses at the stand can even easily be exacerbated by placing them on camera in contravention of normal experience.[4] The demeanor of the witnesses can also have an abstruse effect on the ability of the judge to accurately assess the credibility of such witnesses.[5] The presence of cameras, for whatever reason, may not adequately address the dangers mentioned in the Court's decision of 29 June 2001. There are just too many imponderables.

Most importantly, it does not seem right to single out and make a spectacle of the cases against Mr. Estrada. Dignity is a precious part of personality innate in every human being, and there can be no cogent excuse for impinging it even to the slightest degree. It is not the problem of privacy that can cause concern more than the erosion of reality that cameras tend to cast.

In the petition, albeit entitled an administrative matter, the only issue raised is whether the cases of a former President pending before the Sandiganbayan can be covered by live television and radio broadcast. The matter now being sought to be addressed by my esteemed colleagues is not even an issue. If it has to be considered at all, the rule must be of general application and promulgated after a thorough study and deliberation, certainly far more than what have been said and done in this case. Hearings, where expert opinion is sought and given, should prove to be helpful and of value.

WHEREFORE, I concur but only in the denial with finality of the motion for reconsideration.

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[1] See Frankfurter, J. in Bridges v. California, 314 US 252

[2] Resolution, pp. 3-4

[3] Picturing Justice: Images of Law and Lawyers in the Visual Media, Gerard uelmen, University of San Francisco law review, Summer 1996

[4] "The Continuing debate Over Cameras in the Courtroom," Federal Lawyers, July 1995

[5] Supra, pp. 1-2

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