

**ARTURO BORJAL A.K.A. ART BORJAL AND MAXIMO SOLIVEN,
PETITIONERS, VS. COURT OF APPEALS AND FRANCISCO
WENCESLAO, RESPONDENTS.***G.R. No. 126466. January 14, 1999*

Ponente: BELLOSILLO, J.

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PERPETUALLY HAGRIDDEN as the public is about losing one of the most basic yet oft hotly contested freedoms of man, the issue of the right of free expression bestirs and presents itself time and again, in cyclic occurrence, to inveigle, nay, challenge the courts to re-survey its ever shifting terrain, explore and furrow its heretofore uncharted moors and valleys and finally redefine the metes and bounds of its controversial domain. This, prominently, is one such case.

Perhaps, never in jurisprudential history has any freedom of man undergone radical doctrinal metamorphoses than his right to freely and openly express his views. Blackstone's pontifical comment that "where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished by English law . . . the liberty of the press, properly understood, is by no means infringed or violated," found kindred expression in the landmark opinion of England's Star Chamber in the *Libelis Famosis* case in 1603.[1] That case established two major propositions in the prosecution of defamatory remarks: first, that libel against a public person is a greater offense than one directed against an ordinary man, and second, that it is immaterial that the libel be true.

Until republicanism caught fire in early America, the view from the top on libel was no less dismal. Even the venerable Justice Holmes appeared to waffle as he swayed from the concept of criminal libel liability under the clear and present danger rule, to the other end of the spectrum in defense of the constitutionally protected status of unpopular opinion in free society.

Viewed in modern times and the current revolution in information and communication technology, libel principles formulated at one time or another have waxed and waned through the years in the constant ebb and flow of judicial review. At the very least, these principles have lost much of their flavor, drowned and swamped as they have been by the ceaseless cacophony and din of thought and discourse emanating from just about every source and direction, aided no less by an increasingly powerful and irrepressible mass media. Public discourse, laments Knight, has been devalued by its utter commonality; and we agree, for its logical effect is to benumb thought and sensibility on what may be considered as criminal illegitimate encroachments on the right of persons to enjoy a good, honorable and reputable name. This may explain the imperceptible demise of criminal prosecutions for libel and the trend to rely instead on indemnity suits to repair any damage on one's reputation.

In this petition for review, we are asked to reverse the Court of Appeals in "*Francisco Wenceslao v. Arturo Borjal and Maximo Soliven*," CA-G.R. No. 40496, holding on 25 March 1996 that petitioners Arturo Borjal and Maximo Soliven are solidarily liable for damages for writing and publishing certain articles claimed to be derogatory and offensive to private respondent Francisco Wenceslao.

Petitioners Arturo Borjal and Maximo Soliven are among the incorporators of Philippines Today, Inc. (PTI), now PhilSTAR Daily, Inc., owner of The Philippine Star, a daily newspaper. At the time the complaint was filed, petitioner Borjal was its President while Soliven was (and still is) Publisher and Chairman of its Editorial Board. Among the regular writers of The Philippine Star is Borjal who runs the column Jaywalker.

Private respondent Francisco Wenceslao, on the other hand, is a civil engineer, businessman, business consultant and journalist by profession. In 1988 he served as a technical adviser of Congressman Fabian Sison, then Chairman of the House of Representatives Sub-Committee on Industrial Policy.

During the congressional hearings on the transport crisis sometime in September 1988 undertaken by the House Sub-Committee on Industrial Policy, those who attended agreed to organize the First National Conference on Land Transportation (FNCLT) to be participated in by the private sector in the transport industry and government agencies concerned in order to find ways and means to solve the transportation crisis. More importantly, the objective of the FNCLT was to draft an omnibus bill that would embody a long-term land transportation policy for presentation to Congress. The conference which, according to private respondent, was estimated to cost around P1,815,000.00 would be funded through solicitations from various sponsors such as government agencies, private organizations, transport firms, and individual delegates or participants.[2]

On 28 February 1989, at the organizational meeting of the FNCLT, private respondent Francisco Wenceslao was elected Executive Director. As such, he wrote numerous solicitation letters to the business community for the support of the conference.

Between May and July 1989 a series of articles written by petitioner Borjal was published on different dates in his column Jaywalker. The articles dealt with the alleged anomalous activities of an "organizer of a conference" without naming or identifying private respondent. Neither did it refer to the FNCLT as the conference therein mentioned. Quoted hereunder are excerpts from the articles of petitioner together with the dates they were published[3] -

31 May 1989

Another self-proclaimed 'hero' of the EDSA Revolution goes around organizing 'seminars and conferences' for a huge fee. This is a simple ploy coated in jazzy letterheads and slick prose. The 'hero' has the gall to solicit fees from anybody with bucks to spare. Recently, in his usual straightforward style, Transportation Secretary Rainerio 'Ray' Reyes, asked that his name be stricken off from the letterheads the 'hero' has been using to implement one of his pet 'seminars.' Reyes said: 'I would like to reiterate my request that you delete my name.' Note that Ray Reyes is an honest man who would confront anybody eyeball to eyeball without blinking.

9 June 1989

Another questionable portion of the so-called conference is its unauthorized use of the names of President Aquino and Secretary Ray Reyes. The conference program being circulated claims that President Aquino and Reyes will be main speakers in the conference. Yet, the word is that Cory and Reyes have not accepted the invitation to appear in this confab. Ray Reyes even says that the conference should be unmasked as a moneymaking gimmick.

19 June 1989

x x x some 3,000 fund solicitation letters were sent by the organizer to every Tom, Dick and Harry and to almost all government agencies. And the letterheads carried the names of Reyes and Periquet. Agrarian Reform Secretary on leave Philip Juico received one, but he decided to find out from Reyes himself what the project was all about. Ray Reyes, in effect, advised Juico to put the fund solicitation letter in the waste basket. Now, if the 3,000 persons and agencies approached by the organizer shelled out 1,000 each, that's easily P3 million to a project that seems so unsophisticated. But note that one garment company gave P100,000, after

which the Garments Regulatory Board headed by Trade and Industry Undersecretary Gloria Macapagal-Arroyo was approached by the organizer to expedite the garment license application of the P100,000 donor.

21 June 1989

A 'conference organizer' associated with shady deals seems to have a lot of trash tucked inside his closet. The Jaywalker continues to receive information about the man's dubious deals. His notoriety, according to reliable sources, has reached the Premier Guest House where his name is spoken like dung.

x x x

The first information says that the 'organizer' tried to mulct half a million pesos from a garment producer and exporter who was being investigated for violation of the rules of the Garments, Textile, Embroidery and Apparel Board. The 'organizer' told the garment exporter that the case could be fixed for a sum of P500,000.00. The organizer got the shock of his life when the exporter told him: 'If I have that amount, I will hire the best lawyers, not you.' The organizer left in a huff, his thick face very pale.

x x x

Friends in government and the private sector have promised the Jaywalker more 'dope' on the 'organizer.' It seems that he was not only indiscreet; he even failed to cover his tracks. You will be hearing more of the 'organizer's' exploits from this corner soon.

22 June 1989

The scheming 'organizer' we have been writing about seems to have been spreading his wings too far. A congressional source has informed the Jaywalker that the schemer once worked for a congressman from the North as some sort of a consultant on economic affairs. The first thing the "organizer" did was to initiate hearings and round-the-table discussions with people from the business, export and -- his favorite -- the garments sector.

x x x

The 'organizer's' principal gamely went along, thinking that his 'consultant' had nothing but the good of these sectors in mind. It was only later that he realized that the 'consultant' was acting with a burst of energy 'in aid of extortion.' The 'consultant' was fired.

x x x

There seems to be no end to what a man could do to pursue his dubious ways. He has tried to operate under a guise of a well-meaning reformist. He has intellectual pretensions - and sometimes he succeeds in getting his thoughts in the inside pages of some newspapers, with the aid of some naive newspaper people. He has been turning out a lot of funny-looking advice on investments, export growth, and the like.

x x x

A cabinet secretary has one big wish. He is hoping for a broad power to ban crooks and influence-peddlers from entering the premises of his department. But the Cabinet man might not get his wish. There is one 'organizer' who, even if physically banned, can still concoct ways of doing his thing. Without a tinge of remorse, the 'organizer' could fill up his letterheads with names of Cabinet members, congressmen, and reputable people from the private sector to shore up his shady reputation and cover up his notoriety.

3 July 1989

A supposed conference on transportation was a big failure. The attendance was very poor and the few who participated in the affair were mostly leaders of jeepney drivers' groups. None of the government officials involved in regulating public transportation was there. The big names in the industry also did not participate. With such a poor attendance, one wonders why the conference organizers went ahead with the affair and tried so hard to convince 3,000 companies and individuals to contribute to the affair.

x x x

The conference was doomed from the start. It was bound to fail. The personalities who count in the field of transportation refused to attend the affair or withdrew their support after finding out the background of the organizer of the conference. How could a conference on transportation succeed without the participation of the big names in the industry and government policy-makers?

Private respondent reacted to the articles. He sent a letter to The Philippine Star insisting that he was the "organizer" alluded to in petitioner Borjal's columns.[4] In a subsequent letter to The Philippine Star, private respondent refuted the matters contained in petitioner Borjal's columns and openly challenged him in this manner -

To test if Borjal has the guts to back up his holier than thou attitude, I am prepared to relinquish this position in case it is found that I have misappropriated even one peso of FNCLT money. On the other hand, if I can prove that Borjal has used his column as a 'hammer' to get clients for his PR Firm, AA Borjal Associates, he should resign from the STAR and never again write a column. Is it a deal?[5]

Thereafter, private respondent filed a complaint with the National Press Club (NPC) against petitioner Borjal for unethical conduct. He accused petitioner Borjal of using his column as a form of leverage to obtain contracts for his public relations firm, AA Borjal Associates.[6] In turn, petitioner Borjal published a rejoinder to the challenge of private respondent not only to protect his name and honor but also to refute the claim that he was using his column for character assassination.[7]

Apparently not satisfied with his complaint with the NPC, private respondent filed a criminal case for libel against petitioners Borjal and Soliven, among others. However, in a Resolution dated 7 August 1990, the Assistant Prosecutor handling the case dismissed the complaint for insufficiency of evidence. The dismissal was sustained by the Department of Justice and later by the Office of the President.

On 31 October 1990 private respondent instituted against petitioners a civil action for damages based on libel subject of the instant case.[8] In their answer, petitioners interposed compulsory counterclaims for actual, moral and exemplary damages, plus attorney's fees and costs. After due consideration, the trial court decided in favor of private respondent Wenceslao and ordered petitioners Borjal and Soliven to indemnify private respondent P1,000,000.00 for actual and compensatory damages, in addition to P200,000.00 for moral damages, P100,000.00 for exemplary damages, P200,000.00 for attorney's fees, and to pay the costs of suit.

The Court of Appeals affirmed the decision of the court a quo but reduced the amount of the monetary award to P110,000.00 actual damages, P200,000.00 moral damages and P75,000.00 attorney's fees plus costs. In a 20-page Decision promulgated 25 March 1996, the appellate court ruled inter alia that private respondent was sufficiently identifiable, although not named, in the questioned articles; that private respondent was in fact defamed by petitioner Borjal by describing him variously as a "self-proclaimed hero," "a conference organizer associated with shady deals who has a lot of trash tucked inside his closet," "thick face," and "a person with dubious ways;" that petitioner's claim of privilege communication was unavailing since the privileged character of the articles was lost by their publication in a newspaper of general circulation; that petitioner could have performed his office as a newspaperman without necessarily transgressing the rights of Wenceslao by calling the attention of the government offices concerned to examine the authority by which Wenceslao acted, warning the public against contributing to a conference that, according to his perception, lacked the univocal indorsement of the responsible government officials, or simply informing the public of the letters Wenceslao wrote and the favors he requested or demanded; and, that when he imputed dishonesty, falsehood and misrepresentation, shamelessness and intellectual pretensions to Wenceslao, petitioner Borjal crossed the thin but clear line that separated fair comment from actionable defamation.

Private respondent manifested his desire to appeal that portion of the appellate court's decision which reduced the amount of damages awarded him by filing with this Court a Petition for Extension of Time to File Petition and a Motion for Suspension of Time to File Petition.[9] However, in a Resolution dated 27 May 1996, the Second Division denied both motions: the first, for being premature, and the second, for being a wrong remedy.

On 20 November 1996 when the First Division consolidated and transferred the present case to the Second Division, there was no longer any case thereat with which to consolidate this case since G.R. No. 124396 had already been disposed of by the Second Division almost six (6) months earlier.

On their part, petitioners filed a motion for reconsideration but the Court of Appeals denied the motion in its Resolution of 12 September 1996. Hence the instant petition for review. The petitioners contend that the Court of Appeals erred: (a) in ruling that private respondent Wenceslao was sufficiently identified by petitioner Borjal in the questioned articles; (b) in refusing to accord serious consideration to the findings of the Department of Justice and the Office of the President that private respondent Wenceslao was not sufficiently identified in the questioned articles, this notwithstanding that the degree of proof required in a preliminary investigation is merely prima facie evidence which is significantly less than the preponderance of evidence required in civil cases; (c) in ruling that the subject articles do not constitute qualifiedly privileged communication; (d) in refusing to apply the "public official doctrine" laid down in *New York Times v. Sullivan*; (e) in ruling that the questioned articles lost their privileged character because of their publication in a newspaper of general circulation; (f) in ruling that private respondent has a valid cause of action for libel against petitioners although he failed to prove actual malice on their part, and that the prosecutors of the City of Manila, the Department of Justice, and eventually, the Office of the President, had already resolved that there was no sufficient evidence to prove the existence of libel; and, (g) assuming arguendo that Borjal should be held liable, in adjudging petitioner Soliven solidarily liable with him. Thus, petitioners pray for the reversal of the appellate court's ruling, the dismissal of the complaint against them for lack of merit, and the award of damages on their counterclaim.

The petition is impressed with merit. In order to maintain a libel suit, it is essential that the victim be identifiable although it is not necessary that he be named. It is also not sufficient that the offended party recognized himself as the person attacked or defamed, but it must be shown that at least a third person could identify him as the object of the libelous publication.[10] Regrettably, these requisites have not been complied with in the case at bar.

In ruling for private respondent, the Court of Appeals found that Borjal's column writings sufficiently identified Wenceslao as the "conference organizer." It cited the First National Conference on Land Transportation, the letterheads used listing different telephone numbers, the donation of P100,000.00 from Julian Lim and the reference to the "organizer of the conference" - the very same appellation employed in all the column items - as having sufficiently established the identity of private respondent Wenceslao for those who knew about the FNCLT who were present at its inception, and who had pledged their assistance to it.

We hold otherwise. These conclusions are at variance with the evidence at hand. The questioned articles written by Borjal do not identify private respondent Wenceslao as the organizer of the conference. The first of the Jaywalker articles which appeared in the 31 May 1989 issue of *The Philippine Star* yielded nothing to indicate that private respondent was the person referred to therein. Surely, as observed by petitioners, there were millions of "heroes" of the EDSA Revolution and anyone of them could be "self-proclaimed" or an "organizer of seminars and conferences." As a matter of fact, in his 9 June 1989 column petitioner Borjal wrote about the "so-called First National Conference on Land Transportation whose principal organizers are not specified" (italics supplied).[11] Neither did the FNCLT letterheads[12] disclose the identity of the conference organizer since these contained only an enumeration of names where private respondent Francisco Wenceslao was described as Executive Director and Spokesman and not as a conference organizer.[13] The printout[14] and tentative program[15] of the

conference were devoid of any indication of Wenceslao as organizer. The printout which contained an article entitled "Who Organized the NCLT?" did not even mention private respondent's name, while the tentative program only denominated private respondent as "Vice Chairman and Executive Director," and not as organizer.

No less than private respondent himself admitted that the FNCLT had several organizers and that he was only a part of the organization, thus -

I would like to clarify for the record that I was only a part of the organization. I was invited then because I was the head of the technical panel of the House of Representatives Sub-Committee on Industrial Policy that took care of congressional hearings.[16]

Significantly, private respondent himself entertained doubt that he was the person spoken of in Borjal's columns. The former even called up columnist Borjal to inquire if he (Wenceslao) was the one referred to in the subject articles.[17] His letter to the editor published in the 4 June 1989 issue of The Philippine Star even showed private respondent Wenceslao's uncertainty -

Although he used a subterfuge, I was almost certain that Art Borjal referred to the First National Conference on Land Transportation (June 29-30) and me in the second paragraph of his May 31 column x x x[18]

Identification is grossly inadequate when even the alleged offended party is himself unsure that he was the object of the verbal attack. It is well to note that the revelation of the identity of the person alluded to came not from petitioner Borjal but from private respondent himself when he supplied the information through his 4 June 1989 letter to the editor. Had private respondent not revealed that he was the "organizer" of the FNCLT referred to in the Borjal articles, the public would have remained in blissful ignorance of his identity. It is therefore clear that on the element of identifiability alone the case falls.

The above disquisitions notwithstanding, and on the assumption *arguendo* that private respondent has been sufficiently identified as the subject of Borjal's disputed comments, we now proceed to resolve the other issues and pass upon the pertinent findings of the courts *a quo*.

The third, fourth, fifth and sixth assigned errors all revolve around the primary question of whether the disputed articles constitute privileged communications as to exempt the author from liability.

The trial court ruled that petitioner Borjal cannot hide behind the proposition that his articles are privileged in character under the provisions of Art. 354 of The Revised Penal Code which state -

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

- 1) A private communication made by any person to another in the performance of any legal, moral or social duty; and,
- 2) A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Respondent court explained that the writings in question did not fall under any of the exceptions described in the above-quoted article since these were neither "private communications" nor "fair and true report x x x without any comments or remarks." But this is incorrect.

A privileged communication may be either absolutely privileged or qualifiedly privileged. Absolutely privileged communications are those which are not actionable even if the author has acted in bad faith. An example is found in Sec. 11, Art. VI, of the 1987 Constitution which exempts a member of Congress from liability for any speech

or debate in the Congress or in any Committee thereof. Upon the other hand, qualifiedly privileged communications containing defamatory imputations are not actionable unless found to have been made without good intention or justifiable motive. To this genre belong "private communications" and "fair and true report without any comments or remarks."

Indisputably, petitioner Borjal's questioned writings are not within the exceptions of Art. 354 of The Revised Penal Code for, as correctly observed by the appellate court, they are neither private communications nor fair and true report without any comments or remarks. However this does not necessarily mean that they are not privileged. To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press.[19] As early as 1918, in *United States v. Cañete*,[20] this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels.

The concept of privileged communications is implicit in the freedom of the press. As held in *Elizalde v. Gutierrez*[21] and reiterated in *Santos v. Court of Appeals*[22] -

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

The doctrine formulated in these two (2) cases resonates the rule that privileged communications must, *sui generis*, be protective of public opinion. This closely adheres to the democratic theory of free speech as essential to collective self-determination and eschews the strictly libertarian view that it is protective solely of self-expression which, in the words of Yale Sterling Professor Owen Fiss,[23] makes its appeal to the individualistic ethos that so dominates our popular and political culture. It is therefore clear that the restrictive interpretation vested by the Court of Appeals on the penal provision exempting from liability only private communications and fair and true report without comments or remarks defeats, rather than promotes, the objective of the rule on privileged communications, sadly contriving as it does, to suppress the healthy efflorescence of public debate and opinion as shining linchpins of truly democratic societies.

To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[24]

There is no denying that the questioned articles dealt with matters of public interest. In his testimony, private respondent spelled out the objectives of the conference thus -

x x x The principal conference objective is to come up with a draft of an Omnibus Bill that will embody a

long term land transportation policy for presentation to Congress in its next regular session in July. Since last January, the National Conference on Land Transportation (NCLT), the conference secretariat, has been enlisting support from all sectors to ensure the success of the project.[25]

Private respondent likewise testified that the FNCLT was raising funds through solicitation from the public -

Q:

Now, in this first letter, you have attached a budget and it says here that in this seminar of the First National Conference on Land Transportation, you will need around One million eight hundred fifteen thousand pesos, is that right?

A: That was the budget estimate, sir.

Q: How do you intend as executive officer, to raise this fund of your seminar?

A: Well, from sponsors such as government agencies and private sectors or organizations as well as individual transport firms and from individual delegates/participants.[26]

The declared objective of the conference, the composition of its members and participants, and the manner by which it was intended to be funded no doubt lend to its activities as being genuinely imbued with public interest. An organization such as the FNCLT aiming to reinvent and reshape the transportation laws of the country and seeking to source its funds for the project from the public at large cannot dissociate itself from the public character of its mission. As such, it cannot but invite close scrutiny by the media obliged to inform the public of the legitimacy of the purpose of the activity and of the qualifications and integrity of the personalities behind it.

This in effect is the strong message in *New York Times v. Sullivan*[27] which the appellate court failed to consider or, for that matter, to heed. It insisted that private respondent was not, properly speaking, a "public official" nor a "public figure," which is why the defamatory imputations against him had nothing to do with his task of organizing the FNCLT.

New York Times v. Sullivan was decided by the U. S. Supreme Court in the 1960s at the height of the bloody rioting in the American South over racial segregation. The then City Commissioner L. B. Sullivan of Montgomery, Alabama, sued *New York Times* for publishing a paid political advertisement espousing racial equality and describing police atrocities committed against students inside a college campus. As commissioner having charge over police actions Sullivan felt that he was sufficiently identified in the ad as the perpetrator of the outrage; consequently, he sued *New York Times* on the basis of what he believed were libelous utterances against him.

The U. S. Supreme Court speaking through Mr. Justice William J. Brennan Jr. ruled against Sullivan holding that honest criticisms on the conduct of public officials and public figures are insulated from libel judgments. The guarantees of freedom of speech and press prohibit a public official or public figure from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice, i.e., with knowledge that it was false or with reckless disregard of whether it was false or not.

The *raison d'être* for the *New York Times* doctrine was that to require critics of official conduct to guarantee the truth of all their factual assertions on pain of libel judgments would lead to self-censorship, since would-be critics would be deterred from voicing out their criticisms even if such were believed to be true, or were in fact true, because of doubt whether it could be proved or because of fear of the expense of having to prove it.[28]

In the present case, we deem private respondent a public figure within the purview of the *New York Times* ruling. At any rate, we have also defined "public figure" in *Ayers Production Pty., Ltd. v. Capulong*[29] as -

x x x x a person who, by his accomplishments, fame, mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously, to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, infant prodigy, and no less a personage than the Great Exalted Ruler of the lodge. It includes, in short, anyone who has arrived at a position where the public attention is focused upon him as a person.

The FNCLT was an undertaking infused with public interest. It was promoted as a joint project of the government and the private sector, and organized by top government officials and prominent businessmen. For this reason, it attracted media mileage and drew public attention not only to the conference itself but to the personalities behind as well. As its Executive Director and spokesman, private respondent consequently assumed the status of a public figure.

But even assuming ex-gratia argumenti that private respondent, despite the position he occupied in the FNCLT, would not qualify as a public figure, it does not necessarily follow that he could not validly be the subject of a public comment even if he was not a public official or at least a public figure, for he could be, as long as he was involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.[30]

There is no denying that the questioned articles dealt with matters of public interest. A reading of the imputations of petitioner Borjal against respondent Wenceslao shows that all these necessarily bore upon the latter's official conduct and his moral and mental fitness as Executive Director of the FNCLT. The nature and functions of his position which included solicitation of funds, dissemination of information about the FNCLT in order to generate interest in the conference, and the management and coordination of the various activities of the conference demanded from him utmost honesty, integrity and competence. These are matters about which the public has the right to be informed, taking into account the very public character of the conference itself.

Concededly, petitioner Borjal may have gone overboard in the language employed describing the "organizer of the conference." One is tempted to wonder if it was by some mischievous gambit that he would also dare test the limits of the "wild blue yonder" of free speech in this jurisdiction. But no matter how intemperate or deprecatory the utterances appear to be, the privilege is not to be defeated nor rendered inutile for, as succinctly expressed by Mr. Justice Brennan in *New York Times v. Sullivan*, "[D]ebate on public issues should be uninhibited, robust and wide open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on the government and public officials." [31]

The Court of Appeals concluded that since malice is always presumed in the publication of defamatory matters in the absence of proof to the contrary, the question of privilege is immaterial.

We reject this postulate. While, generally, malice can be presumed from defamatory words, the privileged character of a communication destroys the presumption of malice.[32] The onus of proving actual malice then lies on plaintiff, private respondent Wenceslao herein. He must bring home to the defendant, petitioner Borjal herein, the existence of malice as the true motive of his conduct.[33]

Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm.[34] Malice is bad faith or bad

motive.[35] It is the essence of the crime of libel.[36]

In the milieu obtaining, can it be reasonably inferred that in writing and publishing the articles in question petitioner Borjal acted with malice?

Primarily, private respondent failed to substantiate by preponderant evidence that petitioner was animated by a desire to inflict unjustifiable harm on his reputation, or that the articles were written and published without good motives or justifiable ends. On the other hand, we find petitioner Borjal to have acted in good faith. Moved by a sense of civic duty and prodded by his responsibility as a newspaperman, he proceeded to expose and denounce what he perceived to be a public deception. Surely, we cannot begrudge him for that. Every citizen has the right to enjoy a good name and reputation, but we do not consider that petitioner Borjal has violated that right in this case nor abused his press freedom.

Furthermore, to be considered malicious, the libelous statements must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not.[37] "Reckless disregard of what is false or not" means that the defendant entertains serious doubt as to the truth of the publication,[38] or that he possesses a high degree of awareness of their probable falsity.[39]

The articles subject of the instant case can hardly be said to have been written with knowledge that these are false or in reckless disregard of what is false or not. This is not to say however that the very serious allegations of petitioner Borjal assumed by private respondent to be directed against him are true. But we nevertheless find these at least to have been based on reasonable grounds formed after the columnist conducted several personal interviews and after considering the varied documentary evidence provided him by his sources. Thus, the following are supported by documentary evidence: (a) that private respondent requested Gloria Macapagal-Arroyo, then head of the Garments and Textile Export Board (GTEB), to expedite the processing and release of the import approval and certificate of availability of a garment firm in exchange for the monetary contribution of Juliano Lim, which necessitated a reply from the office of Gloria Macapagal-Arroyo explaining the procedure of the GTEB in processing applications and clarifying that all applicants were treated equally;[40] (b) that Antonio Periquet was designated Chairman of the Executive Committee of the FNCLT notwithstanding that he had previously declined the offer;[41] and, (c) that despite the fact that then President Aquino and her Secretary of Transportation Rainerio Reyes declined the invitation to be guest speakers in the conference, their names were still included in the printout of the FNCLT.[42] Added to these are the admissions of private respondent that: (a) he assisted Juliano Lim in his application for a quota allocation with the GTEB in exchange for monetary contributions to the FNCLT;[43] (b) he included the name of then Secretary of Transportation Rainerio Reyes in the promotional materials of the conference notwithstanding the latter's refusal to lend his name to and participate in the FNCLT;[44] and, (c) he used different letterheads and telephone numbers.[45]

Even assuming that the contents of the articles are false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy.[46] In *Bulletin Publishing Corp. v. Noel*[47] we held -

A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.

To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies. It is for the same reason that the New York Times doctrine requires that liability for defamation of a public official or public figure may not be imposed in the absence of proof of "actual malice" on the part of the person making the libelous statement.

At any rate, it may be salutary for private respondent to ponder upon the advice of Mr. Justice Malcolm expressed in *U.S. v. Bustos*,^[48] that "the interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound may be assuaged by the balm of a clear conscience. A public official must not be too thin-skinned with reference to comments upon his official acts."

The foregoing disposition renders the second and seventh assigned errors moot and academic, hence, we find no necessity to pass upon them.

We must however take this opportunity to likewise remind media practitioners of the high ethical standards attached to and demanded by their noble profession. The danger of an unbridled irrational exercise of the right of free speech and press, that is, in utter contempt of the rights of others and in willful disregard of the cumbersome responsibilities inherent in it, is the eventual self-destruction of the right and the regression of human society into a veritable Hobbesian state of nature where life is short, nasty and brutish. Therefore, to recognize that there can be no absolute "unrestraint" in speech is to truly comprehend the quintessence of freedom in the marketplace of social thought and action, genuine freedom being that which is limned by the freedom of others. If there is freedom of the press, ought there not also be freedom from the press? It is in this sense that self-regulation as distinguished from self-censorship becomes the ideal mean for, as Mr. Justice Frankfurter has warned, "[W]ithout x x x a lively sense of responsibility, a free press may readily become a powerful instrument of injustice."^[49]

Lest we be misconstrued, this is not to diminish nor constrict that space in which expression freely flourishes and operates. For we have always strongly maintained, as we do now, that freedom of expression is man's birthright - constitutionally protected and guaranteed, and that it has become the singular role of the press to act as its "defensor fidei" in a democratic society such as ours. But it is also worth keeping in mind that the press is the servant, not the master, of the citizenry, and its freedom does not carry with it an unrestricted hunting license to prey on the ordinary citizen.^[50]

On petitioners' counterclaim for damages, we find the evidence too meager to sustain any award. Indeed, private respondent cannot be said to have instituted the present suit in abuse of the legal processes and with hostility to the press; or that he acted maliciously, wantonly, oppressively, fraudulently and for the sole purpose of harassing petitioners, thereby entitling the latter to damages. On the contrary, private respondent acted within his rights to protect his honor from what he perceived to be malicious imputations against him. Proof and motive that the institution of the action was prompted by a sinister design to vex and humiliate a person must be clearly and preponderantly established to entitle the victim to damages. The law could not have meant to impose a penalty on the right to litigate, nor should counsel's fees be awarded every time a party wins a suit.^[51]

For, concluding with the wisdom in *Warren v. Pulitzer Publishing Co.*^[52] -

Every man has a right to discuss matters of public interest. A clergyman with his flock, an admiral with his fleet, a general with his army, a judge with his jury, we are, all of us, the subject of public discussion. The view of our court has been thus stated: 'It is only in despotisms that one must speak sub rosa, or in whispers, with bated breath, around the corner, or in the dark on a subject touching the common welfare. It is the brightest

jewel in the crown of the law to speak and maintain the golden mean between defamation, on one hand, and a healthy and robust right of free public discussion, on the other.’

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals of 25 March 1996 and its Resolution of 12 September 1996 denying reconsideration are REVERSED and SET ASIDE, and the complaint for damages against petitioners is DISMISSED. Petitioners’ counterclaim for damages is likewise DISMISSED for lack of merit. No costs.

SO ORDERED.

Puno, Martinez, and Buena, JJ., concur.
Mendoza, J., in the result.

[1] Alfred H. Knight, *The Life of the Law*, Crown Publishers, Inc., New York, 1996, pp. 102, 230 and 231.

[2] Decision of the Court of Appeals in CA-G.R. No. 40496, Records, pp. 114-116.

[3] *Id.*, pp. 144-149; Exhs. “A” to “G.”

[4] Published in the 4 June 1989 issue of the *Philippines Star*; see Exh. “R.”

[5] TSN, 18 May 1992, p. 43; Exh. “1.”

[6] *Id.*, pp. 60-64; Exh. “21.”

[7] Exh. “16.”

[8] Docketed as Civil Case No. Q-90-7058, raffled to RTC-Br. 98, Quezon City.

[9] *Wenceslao v. Court of Appeals*, G.R. No. 124396.

[10] *Kunkle v. Cablenews-American*, 42 Phil. 757 (1922). See also *Corpus v. Cuaderno, Sr.*, No. L-16969, 30 April 1966, 16 SCRA 807; *People v. Monton*, No. L-16772, 30 November 1962, 6 SCRA 801.

[11] Exh. “B.”

[12] Exh. “8;” Annexes “3” and “5.”

[13] Exh. “SSS-1.”

[14] Annex “C,” Complaint.

[15] Annex “B,” *id.*

[16] TSN, 9 September 1991, p. 5.

[17] *Id.*, 18 May 1992, p. 20.

[18] Annex “R.”

[19] Art. III, Sec. 4, provides: No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances.

[20] 38 Phil. 253, 265 (1918).

[21] No. L-33615, 22 April 1977, 76 SCRA 448,454.

[22] G.R. No. 45031, 21 October 1991, 203 SCRA 110, 117.

[23] Author of "The Irony of Free Speech," Harvard University Press, Cambridge, Massachusetts, 1996.

[24] *People v. Velasco*, 40 O.G., No. 18, p. 3694.

[25] TSN, 29 July 1991, p. 15.

[26] *Id.*, 9 September 1991, pp. 11-12.

[27] 376 US 254.

[28] *NAACP v. Button*, 371 US 415.

[29] G.R. Nos. 82380 and 82398, 29 April 1988, 160 SCRA 861.

[30] *Rosenbloom v. Metromedia*, 403 US 296.

[31] See Note 27; see also *Terminiello v. Chicago*, 337 US 1, 4, 93 L Ed 1131, 69 S. Ct. 894.

[32] *Lu Chu Sing v. Lu Tiong Gui*, 76 Phil. 669 (1946).

[33] See *People v. Monton*, 116 Phil. 1116 (1962).

[34] See Note 20.

[35] *Potts v. Dies*, 132 Fed 734, 735.

[36] *Rice v. Simmons*, Del 2 Har. 309, 310.

[37] See Note 27.

[38] *St. Amant v. Thompson*, 390 US 731.

[39] *Garrison v. Louisiana*, 379 US 74.

[40] Exhs. "3" and "4."

[41] Exh. "5."

[42] Exhs. "6," "7," "8," "9," "10," and "11."

[43] TSN, 30 September 1991, p. 14.

[44] *Id.*, 9 September 1991, p. 36.

[45] *Id.*, 30 September 1991, p. 14.

[46] Concurring Opinion of US Supreme Court Justice Rutledge in *Pennekamp v. Florida*, 328 US 331, 371-372.

[47] G.R. No. 76565, 9 November 1988, 167 SCRA 255, 265.

[48] 37 Phil. 731 (1918).

[49] *Pennekamp v. Florida*, 328 U.S. 331, 356, 365, 90 L Ed 1295, 66 S Ct 1029 (1946).

[50] Mr. Justice White, concurring in *Miami Herald Publishing Co. v. Tornillo*, 418 US 241, 41 L Ed 2d 730, 94 S Ct 2831 (1974).

[51] See *Que v. Intermediate Appellate Court*, G.R. No. 66865, 13 January 1989, 169 SCRA 137; *Arenas v. Court of Appeals*, G.R. No. 56524, 27 January 1989, 169 SCRA 558.

[52] 78 S.W. 2, 413-416 (1934).

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