

LINCONN UY ONG, PETITIONER, VS. THE SENATE OF THE PHILIPPINES, THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON COMMITTEE); HON. SENATOR...

G.R. No. 257401. March 28, 2023

Ponente: INTING, J.

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INTING, J.:

Before the Court are two consolidated petitions for certiorari and prohibition under Rule 65 of the Rules of Court which ultimately plead for a clearer definition and delineation of the scope and extent of the Senate's power of inquiry in aid of legislation.

G.R. No. 257401: The Ong Petition

Linconn Uy Ong (Ong), a member of the Board of Directors and the Supply Chain Manager of Pharmally Pharmaceuticals Corporation (Pharmally) filed the first Petition[1] for Certiorari and Prohibition with Very Urgent Prayers for Status Quo Ante Order/Temporary Restraining Order and Writ of Preliminary Injunction.

In the main, Ong assails the Order[2] dated September 10, 2021 (Contempt Order), which respondent Senate Committee on Accountability of Public Officers and Investigations (Senate Blue Ribbon Committee, or Committee) issued against him.[3] In particular, the Senate Blue Ribbon Committee cited him in contempt and ordered his arrest for testifying falsely and evasively during the September 10, 2021 hearing conducted relative to the Commission on Audit (COA) Consolidated Annual Audit Report for Fiscal Year 2020 [4] (COA Report) relating to the expenditures of the Department of Health (DOH) on the "fight against COVID."

Ong also challenges the constitutionality of: (1) Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, as amended[5] (Senate Rules on Inquiries); and (2) Section 6, Article 6 of the Rules of the Senate Blue Ribbon Committee[6] (collectively, assailed rules) insofar as they punish for contempt his alleged act of "testifying falsely or evasively" is concerned.

G.R. No. 257916: The Yang Petition

Meanwhile, Michael Yang Hong Ming (Yang), a Chinese citizen with permanent residency in the Philippines, a former Presidential Economic Adviser, and member of the Philippine Full Win Group of Companies, Inc., filed the second Petition[7] for Certiorari and Prohibition under Rule 65 of the Rules of Court seeking the nullification of the Arrest Orders[8] dated September 7 and 10, 2021. He also seeks for the nullification of the Lookout Bulletin issued by the Bureau of Immigration in accordance with the Committee's Letter-Request[9] dated September 13, 2021. Further, he prays that the Committee be ordered to desist from compelling him to disclose information involving his properties and business interests, as embodied in the Committee's Letter-Request[10] dated November 9, 2021.[11]

The Antecedents

Following the COA Report, the Committee resolved to conduct an investigation in aid of legislation pertaining in particular to DOH's expenditures in relation to the "fight against COVID." Consequently, it sent invitations via electronic mail to resource persons, referring to them matters subject of the inquiry and requesting them to attend the hearings.[12]

On August 18, 2021, the Committee conducted its first hearing.[13] In the course thereof, it found out that Pharmally, the incorporators of which were identified to have personal links with Yang, was able to secure a total of P8.868 Billion worth of contracts from the Procurement Service of the Department of Budget and Management (PS-DBM).[14]

On August 23, 2021, Senator Risa Hontiveros (Sen. Hontiveros) delivered a privilege speech[15] that was later referred to the Committee. That same day until August 25, 2021, the following were filed: (1) Proposed Senate Resolution (PSR) No. 858,[16] by Senate Majority Leader, Juan Miguel F. Zubiri (Sen. Zubiri); (2) PSR No. 859,[17] by Sen. Leila M. De Lima (Sen. De Lima); and (3) PSR No. 880,[18] by Sen. Hontiveros. These PSRs were all referred to the Committee.[19] The privilege speech and the subject PSRs all pertained to expenditures relative to the government's response to COVID-19 and other health concerns.

On August 26, 2021, the Committee issued Subpoena Ad Testificandum directing the following: Huang Tzu Yen (Huang), Mohit Dargani (Mohit), and Twinkle Dargani (Twinkle), all of Pharmally; and Yang to attend the hearing on August 27, 2021 and testify on the matter under inquiry.[20] However, Huang, Mohit, Twinkle, and Yang failed to attend the hearing set on August 27, 2021.[21]

On August 31, 2021, the Committee sent a Subpoena Ad Testificandum directing Yang to attend the September 7, 2021 hearing.[22] Similar subpoenas were sent on September 4, 2021 to Ong and Krizle Grace Mago (Mago).[23]

On September 7, 2021, Ong, Mago, Yang, and other Pharmally officials failed and/or refused to appear at the hearing. Accordingly, the Committee issued Orders[24] citing Ong, Mago, Mohit, Twinkle, and Yang in contempt for failure to appear in the scheduled hearings. It ordered their arrest and detention at the Office of the Senate Sergeant-at-Arms (OSAA) until such time that they appear and give their testimony, or otherwise purge themselves of the contempt.[25]

Incidents involving Ong

According to Ong, he learned from the media reports on September 7, 2021 that he was among those cited in contempt and ordered arrested and detained for "refusing to appear, despite notice" at the Committee hearings of August 27, 2021 and September 7, 2021. He alleged that he did not receive any subpoena or invitation from the Committee. Still, he voluntarily attended the online videoconferencing hearing on September 10, 2021.[26]

In the course of his examination during the hearing, the Committee again cited Ong in contempt and ordered his arrest and detention for "testifying falsely and evasively." The assailed Contempt Order[27] dated September 10, 2021 was issued by the Committee,[28] signed by Sen. Richard J. Gordon (Sen. Gordon) as Chairperson and approved by Senate President Vicente C. Sotto III (Sen. Pres. Sotto III).

However, Ong was not immediately taken to the Senate premises because he was then suffering from COVID-19. The Senators allowed him to stay at his residence but ordered the Sergeant-at-Arms to post a guard outside his abode.[29]

Several hearings of the Committee were further conducted on September 13, 17, and 21, 2021, with the attendance and participation of Ong.[30]

On September 21, 2021, the OSAA arrested Ong, who was attending the online Committee hearings remotely at his residence, and detained him under its custody at the Senate Complex, Pasay City on authority of the assailed Contempt Order.[31]

On September 22, 2021, Ong filed a Respectful Manifestation and Motion for House Arrest. However, the Committee did not act on the manifestation and motion.[32]

On September 24, 2021, the Committee continued with its hearings with Ong in attendance through videoconference. In the course of Ong's examination, Sen. Franklin M. Drilon (Sen. Drilon) moved, seconded by Sen. Francis Pangilinan (Sen. Pangilinan), to transfer Ong to the Pasay City Jail.[33]

On October 5, 2021, Ong, through counsel, filed the present petition. Thereafter, respondents filed their comment.[34]

On November 12, 2021, Ong filed his Motion to Resolve Prayer for Status Quo Ante Order or Temporary Restraining Order.[35]

On November 29, 2021, the Committee transferred Ong, together with Mohit, to the Pasay City Jail.[36]

Incidents involving Yang

According to Yang, the Committee sent a subpoena on August 27, 2021 to his office, PAILI Holdings Corporation (PAILI). While it required his attendance at the hearing scheduled at 1:30 p.m. that day, the receptionist of PAILI received the subpoena only at 8:00 a.m. of the same day. Allegedly, Yang's secretary was unable to contact Yang, who was in Subic where the telephone signal was poor, until the next day. The secretary sent an email to the Committee informing it that Yang could not be contacted on such short notice.[37]

Yang also alleged that he was: (1) not informed of and duly served with the subpoena served at PAILI on September 2, 2021; (2) not notified that he had to appear before the Committee on September 7, 2021; and (3) also not informed of the subpoena served at his residence at 19 Narra St., Forbes Park, Makati City on September 3, 2021 because he was in Davao and there was no one in his Makati City residence duly authorized to receive court processes in his behalf.[38]

Purportedly, Yang learned of the Committee's order for him to attend the hearing on September 7, 2021 only through friends and online news. He insisted that it was only on September 6, 2021 that he was able to hire a lawyer, who emailed the Director General of the Committee stating that "(a)lthough [Yang] has not received a copy of the subpoena, he has expressed his full and complete cooperation to provide information that [the] Committee may need from him in aid of legislation." [39] A hard copy of the letter of appearance was immediately sent to the Chairperson of the Committee.[40]

Nonetheless, the Committee issued a warrant for Yang's arrest in the afternoon of September 7, 2021.[41]

On September 10, 2021, Yang appeared before the Committee for the first time. In the course of the hearing, it issued an Order placing Yang under arrest for allegedly giving evasive answers which amounted to a contempt of the Committee.[42]

Thereafter, Yang attended the hearings on September 17, 21, and 24, 2021.[43] Subsequently, a Look-Out Bulletin was issued against Yang.[44]

On November 9, 2021 the Committee, through its Director-General, issued the letter-request asking Yang to supply documents and information pertaining to his property and business interests.[45]

The Petitions

G.R. No. 257401: The Ong Petition

As grounds for his petition, Ong alleges:

I. THE RESPONDENT COMMITTEE'S ORDER OF CONTEMPT AGAINST [ONG] HAS NO CONSTITUTIONAL BASIS;

I.A. THE ASSAILED RULES, WHICH ARE MADE THE BASIS FOR THE CONTEMPT ORDER, ARE VAGUE, HAVING NO CLEAR STANDARDS AS TO WHAT CONSTITUTES "TESTIFYING FALSELY OR EVASIVELY;" [and]

I.B. [ONG's] RIGHTS ... HA[VE] NOT BEEN RESPECTED, IN VIOLATION OF THE INJUNCTION UNDER SECTION 21, ARTICLE VI OF THE CONSTITUTION.

II. IN RULING ON THE FALSITY OF [ONG]'S TESTIMONY, FINDING HIM GUILTY THEREOF AND PUNISHING HIM THEREFOR, RESPONDENTS ILLEGALLY ENCROACHED UPON THE EXCLUSIVE CONSTITUTIONAL DOMAIN OF THE JUDICIARY.

III. THE RESPONDENT COMMITTEE PROCEEDED AGAINST [ONG] UNDER AN ERRONEOUS CONCEPT AND GRAVELY ABUSIVE EXERCISE OF ITS CONTEMPT POWER.[46]

Senates Comment

The Senate filed its Comment[47] contending that the validity or constitutionality of the Senate Rules on Inquiries may not be looked into by the court because it constitutes a political question. It likewise asserts that Section 18 of the rules is neither vague nor impermissibly broad, and has complied with the requirements of Section 21, Article VI of the 1987 Constitution. Finally, it finds no sufficient ground to justify the grant of status quo ante order, TRO or preliminary injunction.[48]

G.R. No. 257916: The Yang Petition

Meanwhile, Yang insists that the Committee committed grave abuse of discretion amounting to lack or excess of jurisdiction:

I.

x x x WHEN IT ISSUED ARREST ORDERS DESPITE LACK OF LEGAL BASIS THEREFOR, AS WELL AS CAUSING THE ISSUANCE OF A LOOKOUT ORDER DESPITE THE ABSENCE OF ANY CRIMINAL CHARGES FILED AGAINST THE PETITIONER IN COURT.

II.

x x x IN THE ARBITRARY APPLICATION OF ITS INTERNAL RULES THAT HAS EFFECTIVELY DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO COUNSEL.

III.

x x x BY ITS HIGH-HANDED AND OPPRESSIVE CONDUCT OF PROCEEDINGS IN VIOLATION OF HIS RIGHT TO BE HEARD. SPECIFICALLY, PETITIONER QUESTIONS THE RESPONDENT SENATE COMMITTEE TREATMENT OF RESOURCE PERSONS BEFORE IT, SUCH AS PETITIONER, WORSE THAN AN ACCUSED IN A CRIMINAL PROCEEDING.

IV.

x x x BY COMPELLING HIM TO ANSWER QUESTIONS AND TO SUBMIT DOCUMENTS AND INFORMATION THAT ARE BEYOND THE SCOPE OF THE LEGISLATIVE INQUIRY AND IN CLEAR VIOLATION OF HIS RIGHTS TO PRIVACY.[49]

Senate's Comment

The Senate filed its Comment asserting that: (1) the Committee legally cited Yang in contempt, ordered his arrest and detention, and validly caused the issuance of a lookout order against him; (2) the Committee respected Yang's constitutional rights as required under the Senate rules; (3) the questions propounded to Yang and the documents and information required from him during the proceedings are within the scope of legislative inquiry and in consonance with his right to privacy; and (4) there was a plain, speedy and adequate remedy available to Yang which he should have exhausted before filing the instant suit with the court.[50]

OSG 's Comment on the Petitions

Invoking the mandate of its office, the Office of the Solicitor General (OSG) deems it necessary to intervene in the case as the present petitions raise the issue of constitutionality of the Senate Rules, as well as a transgression of the Bill of Rights.[51] The participation of the OSG is anchored on Section 35(3), Chapter 12, Title III, Book IV of the Administrative Code of 1987, entitling it to be heard in any action which involves the validity of a statute, executive order or regulation, or any government regulation.[52]

The OSG argues:

I.

Direct resort to this Honorable Court is proper because the instant Petitions present a matter of transcendental importance.[53]

II.

The Petitions fall within this Honorable Court's expanded power of judicial review.[54]

III.

There is grave abuse of discretion when a branch of government has exceeded the exercise of its powers vested under the Constitution.

A.

The Respondents' powers under Secs. 21 and 22, Article VI of the 1987 Constitution arise from the exercise of the different functions of Congress.[55]

B.

The Respondents' inquiries are pursuant to the power to conduct question hour, which is exercised as an oversight function against the Executive Department.[56]

C.

The Senate (i) Rules of Procedure Governing Inquiries in Aid of Legislation, including any amendatory Resolution; and (ii) Rules of the Committee on Accountability of Public Officers and Investigations of the present 18th Congress must be duly published.[57]

D.

The power of contempt does not include the power to order arrest during the conduct of legislative investigation.[58]

IV.

The constitutional rights of the resource persons must be respected during Senate Investigations.[59]

A.

The Senate Rules, in so far as they punish as contempt the act of "testifying falsely or evasively," are unconstitutional for being vague and lacking clear standards.[60]

B.

The hearings conducted by Respondents should always uphold the right to due process of the resource persons.[61]

C.

The hearings conducted by Respondents should respect the right against self-incrimination of the resource persons.[62]

D.

The Respondents' power to detain, which is corollary to the power of contempt and compulsory processes, arises only in the conduct of inquiry in aid of legislation.[63]

V.

Respondents encroached upon the exclusive domain of the Executive and Judiciary when they issued the assailed Order.[64]

VI.

Here, there is a basis to state that Ong had complied with requisites for the issuance of injunctive reliefs.[65]

On June 7, 2022, respondents filed a Manifestation and Motion praying that the petitions be dismissed on the ground of mootness, by reason of the voluntary release of Ong pursuant to the Order of Release issued by Sen. Pres. Sotto III, and the termination of the subject legislative inquiry.

Issues

Finding no procedural infirmities in the petitions, the Court narrows down the inquiry to the following substantive issues:

(A)

In the Ong Petition (G.R. No. 257401):

(1)

Whether the assailed rules should be declared unconstitutional; and

(2)

Whether the Contempt Order dated September 10, 2021 against Ong should be nullified; and

(B)

In the Yang Petition (G.R. No. 257916):

(1)

Whether the Arrest Orders dated September 7, 2021 and September 10, 2021 and the Request for Issuance of Lookout Bulletin were issued without legal bases;

(2)

Whether Yang was deprived of his rights to counsel and to be heard; and

(3)

Whether Yang was compelled to answer questions and submit documents and information that are beyond the scope of the legislative inquiry, in violation of his right to privacy.

The Court's Ruling

Both petitions are partly meritorious.

Preliminarily, it bears noting that on June 30, 2022, the 18th Congress of the Philippines conducted its final session which in effect terminated all proceedings of the House of Representatives and the Senate, including the Senate Committee's inquiry pertinent to the case. In their Manifestation and Motion, respondents aver that the petitions had been rendered moot by the voluntary release of Ong pursuant to the Order of Release issued by Sen. Pres. Sotto III and the termination of the subject legislative inquiry.

"A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition." [66] "Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion." [67] In *Balag v. Senate of the Philippines*, [68] the Court explained:

The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts. [69]

However, the moot and academic principle does not automatically dissuade the courts from resolving a case, [70] under the following instances: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review. [71] The Court finds that the issues raised in the petitions fall under the exceptions.

I

In resolving the issues raised, the Court deems it necessary to discuss the nature and incidents of the Senate's power to conduct inquiries in aid of legislation and its contempt power.

Power of the Legislature to Conduct

Inquiries in Aid of Legislation

Time and again, the Court has affirmed the power of the Legislature to conduct investigation. The Legislature's power of inquiry, being broad, encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed statutes. [72]

In *Arnault v. Nazareno* [73] (*Arnault*), which was decided when the 1935 Constitution was in effect, the Court recognized an implied legislative power to conduct investigations with the necessary process to enforce it; this is

to the end that it may legislate wisely or effectively by being able to compel the availability of information which will serve as basis for legislation. The Court discussed:

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations is intended to effect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person.[74] (*Italics supplied; citations omitted.*)

While the power of legislative investigation was only implicit under the 1935 Constitution, the 1973 Constitution and the 1987 Constitution are explicit as to the existence of such power.[75]

Section 21, Article VI of the 1987 Constitution provides:

Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

The power of the Legislature and its committees to conduct inquiries in aid of legislation has been upheld in *The Senate Blue Ribbon Committee v. Hon. Majaducom*,^[76] *Senate of the Philippines v. Exec. Sec. Ermita*^[77] (*Ermita*), *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*^[78] (*Sabio*), *Standard Chartered Bank v. Senate Committee on Banks*^[79] (*Standard Chartered Bank*), *Neri v. Senate Committee on Accountability of Public Officers and Investigations*^[80] (*Neri*), and *Romero II v. Senator Estrada*.^[81] This means that the mechanisms available to both the Senate and the House of Representatives, in order that they may effectively perform their legislative functions, are also available to their respective committees.^[82]

Senates concomitant Power of Contempt

Concomitant to the power of the Legislature to conduct inquiries in aid of legislation is its power of contempt impliedly provided under the 1987 Constitution. Unlike the Legislature's power to make investigations in aid of legislation, there is no provision in the 1987 Constitution expressly granting either the Senate or the House of Representatives with the authority or process to enforce this power of inquiry. Nevertheless, it must be emphasized that the Legislature's power of contempt is inherent and arises by implication.^[83] This coercive process is essential to the Legislature's discharge of its functions. This power permits either House of the Legislature to perform its duties without impediment^[84] as it enables the Senate or the House of Representatives to legislate wisely or effectively because they have the power to compel the availability of information necessary in shaping legislation.^[85]

Indeed, the exercise of the contempt power by the Legislature is anchored on the principle of self-preservation.^[86] As that branch of the government vested with the legislative power, it can assert its authority and punish contumacious acts against it independently of the Judicial Branch.^[87] Such power of the Legislature is *sui generis* as it "attaches not to the discharge of legislative functions per se but to the character of

the Legislature as one of the three independent and coordinate branches of government." [88]

Power to Arrest Concomitant to the Senates Contempt Power

Strictly speaking, the power to arrest a witness is not specified under the Senate Rules of Procedure. Such Rules only cite the explicit power of the Senate to detain a witness. The Court, however, views that an arrest is necessary to carry out the coercive process of compelling attendance, testimony, and production of documents relevant and material in a legislative inquiry.

As observed in *Arnault*, "[e]xperience has shown that mere requests for [relevant] information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed." [89] Indeed, the power of the Legislature to conduct inquiries in aid of legislation is intended to be full and complete, [90] according to the processes necessary to carry out its core function of legislation. The Senate, or the Congress as a whole, may effectively and wisely legislate for as long as it may compel the availability of information which in turn will be basis of a proposed law emanating from the proceedings in aid of legislation. The Congress is not precluded from causing the appearance of a resource person who is not before it. As long as the testimony of a resource person is primordial in the Legislature's inquiry in aid of legislation, then any House of Congress or its committees may compel, by way of an arrest, his or her appearance in the inquiry proceedings. Necessarily, compelled testimony connotes truthful declaration by a resource person subject of the legislative inquiry.

In *Arnault*, the Court stressed the power of the Senate to conduct investigations along with necessary processes to enforce it. Being inherent and necessary for it to effectively perform its function of inquiry in aid of legislation, [91] this power to compel attendance, testimony, and production of documents relevant and necessary in a legislative inquiry need not find textual basis in the Senate Rules of Procedure Governing Inquiries in Aid of Legislation. As the grant of legislative power which includes the power to conduct inquiries in aid of legislation is intended to be complete, i.e., without need to resort to judicial process in order that the Legislature may be able to perform its function, it follows that the Legislature likewise has the power to resort to mechanisms to obey its processes. Indeed, depriving the Senate of this inherent and necessary power to compel a witness to appear, give a truthful testimony and produce documents before it will amount to a serious handicap to its Constitutional function to gather information relevant and material to its legislative inquiries.

Limitations on the Powers of Legislative Investigation and Contempt

As provided in Section 21, Article VI of the 1987 Constitution, however, the power of legislative investigation is subject to three limitations: (1) the inquiry must be "in aid of legislation;" (2) the inquiry must be conducted in accordance with its duly published rules of procedure; and (3) "[t]he rights of persons appearing in or affected by such inquiries shall be respected." [92] Also, where there is factual basis for the contempt, the resource person's detention should only last until the termination of the legislative inquiry. [93]

Here, the Court finds that while satisfying the first two limitations, the Committee failed to accord petitioners their rights relative to the conduct of its proceedings. The scope and nature of these rights, as well as the Committee's violation thereof, is thoroughly addressed following the discussion of the first two limitations.

First Limitation: The subject hearings
were conducted in aid of legislation.

As earlier mentioned, PSR Nos. 858, 859, and 880, together with the privilege speech of Sen. Hontiveros,[94] were filed and referred to the Committee which called for the conduct of an inquiry in aid of legislation.[95] Notably, all these Senate Resolutions underscored that they are proposed precisely to conduct an inquiry in aid of legislation as regards the vaccination program and procurement of COVID-19 Vaccines (PSR No. 858), COA findings on unspent and/or misused government funds (PSR No. 859), and payment claims issues between the Philhealth and private hospitals (PSR No. 880). The Subpoenae Ad Testificandum[96] referred not only to the COA Report but also to PSR Nos. 858, 859 and 880, together with the privilege speech of Sen. Hontiveros.[97]

The Court has also held that Senate investigations of government transactions are proper exercises of the power of inquiry. Being related to the expenditure of public funds of which the Legislature is the guardian, such transactions involve government agencies created by the Legislature and officers, whose positions are within the power of Legislature to regulate or even abolish.[98]

The Court finds proper the Senate's explanation that because the National Expenditure Program (NEP) for 2022 had not yet been released by the DBM to the Legislature when the subject COA Report came out in July 2021, it was fitting that the Committee hear and investigate the findings in the COA Report on the DOH, as early as August 18, 2021. This was necessary to determine if the funds appropriated under Republic Act Nos. (RA) 11469[99] and 11494[100] for the COVID-19 pandemic were properly utilized. The inquiry of the Committee was necessary as the COA Report seemed to point out severe underutilization of funds, malfeasance, misfeasance and nonfeasance by government officials in the use of the DOH funds. Given this factual milieu, the hearings of the Committee, which began on August 18, 2021, were in aid of legislation because it investigated the use of funds appropriated in RAs 11469 and 11494, not only as part of its oversight function, but also to look into the proposed budget of the DOH for Fiscal Year (FY) 2021 which will eventually be contained in the General Appropriations Act (GAA) that will be enacted by the Legislature.[101]

Second Limitation: The assailed rules are compliant with the publication requirement of Section 21, Article VI of the 1987 Constitution.

Section 21, Article VI of the 1987 Constitution requires that the inquiry be done in accordance with the duly published rules of procedure of the Senate or the House of Representatives, necessarily implying the constitutional infirmity of an inquiry conducted without duly published rules of procedure.[102]

As a rule, the Legislature is given a wide latitude to enact its own rules in view of Section 16(3),[103]Article VI of the 1987 Constitution.

In *Spouses Dela Paz (Ret.) v. Senate Committee on Foreign Relations*,[104] the Court said:

This provision has been traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

x x x Further, pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.[105] (Italics supplied.)

The rule, however, does not divest the Court of its expanded jurisdiction, i.e., the power to intervene whenever grave abuse of discretion amounting to lack or excess of jurisdiction is committed by any branch—the Legislature

or any of its Houses in this case, or instrumentality of government.[106] The expanded certiorari jurisdiction of the Court is encapsulated in the second paragraph of Section 1, Article VIII of the 1987 Constitution which provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (*Italics supplied.*)

In *Neri*, the Court nullified the Senate Order, which cited Romulo L. Neri in contempt and directed his arrest and detention, after finding that the Senate Blue Ribbon Committee committed grave abuse of discretion in issuing such order. In that case, the Court noted that: (1) then Senate Blue Ribbon Committee violated the voting requirements under Section 18 of the Senate Rules on Inquiries because only a minority of the members were present during the deliberation; and (2) the Committee violated the publication requirement under the 1987 Constitution which requires that the inquiry be in accordance with the duly published rules of procedure.

The Court finds that the circumstances in the instant case are different from those in the *Neri* case. Here, Section 18[107] of the Senate Rules on Inquiries is compliant with the requirement under Section 21, Article VI of the 1987 Constitution: that the rules governing the conduct of inquiries in aid of legislation by the Senate or the House of Representatives be duly published.

In the present case, the Senate Rules on Inquiries was unanimously adopted by the Senate as Resolution (Reso.) No. 5 on August 9, 2010 at a session where a quorum was present.[108] Section 24 of Reso. No. 5, on Effectivity, states:

SEC 24. Effectivity. - These Rules shall take effect after seven (7) days following complete publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed. A copy of these Rules shall be posted in the official website of the Senate of the Philippines.

The Senate Rules on Inquiries was then published in the August 11, 2010 issues of *Malaya* and *Manila Bulletin*, two (2) newspapers of general circulation.[109] It was also posted in the Senate's website: www.senate.gov.ph. The rules took effect on August 18, 2010 and remained in force until amended.[110]

Section 18 of the Senate Rules on Inquiries was subsequently amended by Reso. No. 145 which was unanimously adopted by the Senate on February 6, 2013 at a session where a quorum was present.[111] Reso. No. 145, states that the amendment to the Senate Rules on Inquiries "shall take effect immediately upon publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed."[112]

Reso. No. 145 was published in the February 18, 2013 issues of the *Manila Bulletin* and *Daily Tribune*, two (2) newspapers of general circulation. It was also posted in the Senate's website.[113]

Simply stated, the adoption and amendment of the Senate Rules on Inquiries complied with the requirements of quorum, voting, and publication as stated in Reso. Nos. 5 and 145.

It bears emphasis that unlike the scenario in *Neri*, here, the Senate Rules on Inquiries and its amendments state that the rules "shall remain in force until amended or repealed."[114] Thus, the Senate Rules on Inquiries remain effective although Reso. No. 5[115] and Reso. No. 145, which amended Section 18, were adopted not by the present Senate 18th Congress but by its earlier counterparts.

Following the assailed rules, there was a quorum at the commencement of the hearings and acting throughout. On September 10, 2021, in particular, when the assailed Contempt Order was issued, those present at the start and throughout the proceedings were Sen. Pres. Sotto III, Senators Gordon, Villanueva, Lacson, Marcos, Hontiveros, Revilla, Pangilinan, Zubiri, Villar, Tolentino, Pacquiao, and Drilon.[116] There were therefore more than seven Senators present. Such attendance was more than 1/3 of all the regular members plus its ex officio members as required under Section 4 of the Senate Rules.[117]

II

The Committees Grave Abuse of Discretion

Third Limitation: The Committee

failed to accord petitioners their

Constitutional right to due process

relative to the conduct of its

proceedings. The Contempt Order

dated September 10, 2021 finding that

Ong and Yang testified falsely and

evasively lacks factual basis.

As stated earlier, while the Committee satisfied the first and second constitutional limitations of its power to conduct the subject inquiry in aid of legislation, it failed to accord petitioners their rights in the conduct of its proceedings, more in the exercise of its contempt power. These rights refer to no other than those enshrined under the Bill of Rights, more particularly to the right to due process and the right against unreasonable seizures under Sections 1 and 2, Article III of the 1987 Constitution, viz.:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The violation and disregard of petitioners' rights were brought about by the Senate's exercise of its power of contempt punishing the act of "testifying falsely or evasively," under the assailed rules, the pertinent provisions of which read:

[Section 18 of Senate Rules on Inquiries]

"SEC. 18. Contempt. -

(a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor.
x x x.

"A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge

himself/herself of that contempt.

"[(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate." [118] (Italics supplied)

[Section 6, Article 6 of the Rules of the Senate Blue Ribbon Committee]

SECTION 6. Contempt. - (a) The Committee, by a vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee, including refusal to produce documents pursuant to a subpoena duces tecum, or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively.

A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself on that contempt.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate. [119] (Italics supplied and in the original; underscoring in the original.)

First, the Committee ascribed evasiveness to Ong in answering its queries relating to the following: the agreement between him and/or Pharmally, on the one hand, and Yang, on the other; and the payment made to the suppliers of PPEs and the nature of the agreement with said suppliers. The Committee referred to the excerpts of the September 10, 2021 Transcript of Stenographic Notes (TSN), as follows:

SEN. LACSON. Linconn, naririnig mo lahat iyong sinabi ni Mr. Yang? Maliwanag?

MR. ONG. Yes po. Yes po. Opo, opo.

SEN. LACSON. Ano ang masasabi mo doon sa kanyang pahayag na ang role lang niya in-introduce ka niya doon sa apat na Chinese suppliers, wala na siyang kinalaman at all? Ikaw na lahat ang nakipagdeal. Ikaw nakipag-transact x x x.

MR. ONG. Mr. Chairman, totoo po iyon na may ipinapakilala si Mr. Michael Yang na mga suppliers at iyong mga friends na tumulong para dito sa PPE project. Totoo po iyon.

SEN. LACSON. Iyong lang ang role niya, hindi na siya nakialam pagkatapos ka maipakilala sa mga suppliers?

MR. ONG. I am not privy what's their discussion, pero may ipinapakilala talaga siya. Kung ano iyong discussion nila, hindi ko alam.

SEN. LACSON. Hindi maliwanag, ano? Okay.

Ang sabi ni Mr. Yang, ang role niya tang ipinakilala sa iyo iyong mga tao sa China na kakilala niya. Pagkatapos, wala na siyang kinalaman, ikaw na lahat ang nakipag-deal doon sa mga suppliers. Is that true?

MR. ONG. Mr. Chair, nakikipag-usap talaga kami isa mga supplier na ipinakilala niya. Yes po.

SEN. LACSON. Hindi. Ang tinatanong ko, wala na ba siyang kinalaman? Umalis na siya, kayo na lang ang nagtuloy-tuloy na nagusap at hindi na nakialam si Mr. Yang?

MR. ONG. Hind ko—well, paano itong hindi—

SEN. LACSON. Iyong diretsong sagot tang, Mr. Linconn.

MR. ONG. Sige po, Mr. Chairman. Ano po ulit iyong tanong ninyo para maintindihan ko nang maayos at masagot ko nang maayos?

SEN. LACSON. Ganito ang flow. Sabi ni Mr. Yang, ang papel lang niya, ipinakilala ka sa apat na suppliers from China ...

MR. ONG. Opo, opo.

SEN. LACSON at wala na siyang ginawang iba pa. Ikaw na lahat ang nagpatuloy kung papaano makipagtransaksyon, kung papaano tumanggap ng supplies at makipag-deal doon sa mga suppliers na sinasabi niyang pinakilala lamang sa iyo.

MR. ONG. In addition to that, Mr. Chair, he also guarantees for us. Nagga-guarantee sila para sa amin kasi totoo po iyong analysis ni Mr. Chairman na medyo challenging talaga pagdating sa financial.

x x x x

SEN. LACSON. Thank you, Mr. Chairman.

Dahil sinabi mo na wala nang kinalaman si Mr. Yang kundi maggarantiya, papaano mo binabayaran iyong mga Chinese suppliers? LC, money transfer or cash? Papaano mo binayaran sila? Kasi malaking halaga ito.

MR. ONG. Yes po, Mr. Chair. May mga portion na kami na nagdiretso nagbayad sa mga suppliers dahil mayroon po naman kaming mga pondo sa amin, at siyempre, mga savings ng mga incorporators and partners. And then there are certain items that we don't have enough funds to settle. So, Mr. Michael Yang guarantees for us.

SEN. LACSON. So, hindi totoo na pinakilala ka lang at tapos na. Tuloy-tuloy ang kanyang participation by way of continuously guaranteeing sa mga suppliers na babayaran sila. Parang utang. Sabihin na natin na credit.

MR. ONG. Mr. Chairman, I think medyo may na-miss si Interpreter kanina na I think Mr. Michael Yang also mentioned that he guaranteed for us.

SEN. LACSON. No, guarantee, meaning salita lamang, laway lang na, "Ito si Mr. Ong, kaya kayong bayaran nito." Iyon tang. Ikaw lahat ang nagbabayad. Ang tanong ko sa iyo, how did you pay the suppliers? Money transfer, LC?

MR. ONG. Iyong mga ibang supplier namin talaga nagta-transfer talaga kami. Wala pa naman pong LC noong time na iyan. Tapos may mga ibang supplier na hindi namin kayang bayaran, humihingi na po kami ng tulong kay Mr. Michael Yang, which he guaranteed with the supplier na pag nakatanggap po kami ng bayad from the government and then that is the time we pay na lang.

x x x x

MR. ONG. Mr. Chairman, noong time na iyon, actually we are expecting the project to be very quick. So, iyon po, humingi talaga kami ng tulong kay Mr. Michael Yang.

x x x x

SEN. LACSON. Hindi. Hindi talaga madali.

Alam mo, Linconn, hindi nga kapani-paniwala na ganoon kadali ang transaksyon involving billions of pesos Iyon ang sinabi ko. Na garantiya lang ni Mr. Yang darating iyong supply ninyo at sigurado na kayong makakasingil. Ngayon, paano magagarantiyahan ni Mr. Yang na makakasingil kayo kaagad para mabayaran iyong mga sinu-supply ng mga Chinese firms, iyong apat na Chinese firms?

MR. ONG. Mr. Chair, I cannot answer for Mr. Michael Yang.

SEN. LACSON. Iyon nga, nagtuturuan na kayong dalawa ngayon. Sabi ni Mr. Yang ikaw ang diretsong nakipagtransaksyon diyan sa mga Chinese firms at siya tang ang nagpakilala. Ngayon, hindi ka privy sa

pag-uusap ni Michael Yang doon sa mga Chinese suppliers. Ang sinasabi naman ni Mr. Yang, hindi sya privy sa pakikipag-usap mo sa mga Chinese suppliers. Now, which is the truth?

MR. ONG. The truth is talagang, Mr. Chairman, tumulong talaga po si Mr. Michael Yang, and then I think he is really connected with—in China. Tapos po, mayroon naman po kaming MOA noong time na iyan, so I think it is also a good proof and boost of confidence to these suppliers.

SEN. LACSON. Yes, I know that. But this is a government transaction. Hindi ito yung bilihan, nagkita tayo sa isang lugar, sa isang restaurant, pinakilala ko sa iyo iyong supplier at naniwala iyong supplier, sinuplyan ka ng kung anoman iyong pinag-uusapan ninyong bilihan. This involves billions of pesos. Sabi ko nga, hindi ganoon kasimple na isang garantiya pagbibigyan ka ng suppliers. Ang sabi ni Mr. Yang, hindi niya na alam kung papaano kayo nag-usap noong suppliers. Ang sinasabi mo ngayon, hindi mo na alam kung papaano nakipag-usap si Mr. Yang sa mga suppliers. Ang tanong ko, alin ang totoo sa dalawa?

MR. ONG. Totoo po iyon na pagdating sa negotiation ng mga delivery at pricing, kami na po talaga ni supplier ang nagpa-finalize. Totoo po iyon. At inaamin ko rin po na pagdating sa mga bayaran, we also need Mr. Michael Yang's guarantee.

SEN. LACSON. Parang... paniwalaan iyan, Linconn, ano. Kasi napakalaking halaga nito at government transaction pa ito para isimplify ninyo ng ganoon ang inyong pakikipag-usap.

So, wala kayong LC?

MR. ONG. Ano po? LC po? Wala po.

x x x x

SEN. LACSON. Do you have documents to show your proof of payment doon sa mga suppliers?

MR. ONG. We have all those documents as long as it's--wala naman pong rights or—maba-violate sa amin, we are more than willing to cooperate.

SEN. LACSON. Okay. How much in total did you pay the four suppliers? Doon sa mga dumating, iyong na-procure ninyo and supplied to the PS-DBM, magkano iyong binayaran ninyo sa mga suppliers?

MR. ONG. Mr. Chairman, wala po kasi sa amin iyong mga --- sa akin, wala talaga sa akin ang record. I think I have to access our accounting records.

SEN LACSON No. But ikaw ang nakikipag-usap sa mga suppliers, may idea ka kung magkano iyong presyo na binayaran mo doon, hindi ba?

MR. ONG. Mr. Chairman, kasi medyo ano po iyon, trade secret na iyon. Parang hindi po kami komportable na ibulgar na po sa publiko.

x x x x

SEN. DRILON. x x x these are public funds. These are subject to audit by the COA. And even if you do not testify, COA has the power to inquire. x x x

x x x x

THE CHAIRPERSON. Kaya nga, di sabihin mo na. Makikipagcooperate, tinatanong ka na, hindi mo naman sinasagot:

MR. ONG. Mr. Chair, I myself alone cannot answer that question kasi kumpanya po kami. Allow us to have a meeting on it, tapos pag-usapan namin and we need guidance with our accountants and lawyers. Definitely, pag kinakailangan naming makipag-cooperate sa COA, gagawin po namin iyon.

SEN. LACSON. Mr. Linconn Ong x x x x

Did you have any document x x x mayroon kayong parang joint venture agreement with Mr. Yang?

MR. ONG. We do have agreement po.

SEN. LACSON. Yes. Do you have a copy of that agreement?

MR. ONG. I don't have it with me, Mr. Chairman.

SEN. LACSON. What kind of agreement do you have with Mr. Yang?

MR. ONG. Hindi ko po talaga maalala noong, noong mga—specific content na iyan, Mr. Chairman, but sana po maintindihan ninyo na kami po, sa community naming minsan—totoo po iyan. Pagka-minsan may mga transaksyon kami na minsan verbal-verbal talaga- negosyante lang po.

SEN. LACSON. No. But in this particular case, iyong supplies ng mga PPEs, sinabi mo, mayroon kayong pinirmahan na agreement with Mr. Yang. Ang tanong ko, anong klaseng agreement? Anong klase iyong pinirmahan ninyong dokumento? Anong form? Is it a joint venture agreement?

x x x x

MR. ONG. Mr. Chairman. I'm not really privy or hindi ko talaga ma-recall ngayon kung ano iyong content, but we have—we do have kasulatan po.

SEN. LACSON. A very important document, hindi mo matandaan kung anong form? Joint venture ba? Contract ba? Hindi mo man lang maalala kung ano iyon?

MR. ONG. Mayroon po talagang ganoon.

SEN. LACSON. Anong klase nga?

MR. ONG. Mr. Chair, hindi ko po maka—hindi aka maka-ano. hindi maka-kasi baka po mali iyong masabi ko ngayon, tapos iyong iba naman iyong nakita ko.

SEN LACSON. Can you produce that and submit it to this Committee?

MR. ONG: Hanapin ko po, sir. Yes po. yes po.[120] (*Italics supplied; emphases omitted.*)

The Committee observed that Ong confessed that he and/or Pharmally had an agreement with Yang, but he could not remember the terms thereof. When asked to produce a copy of the agreement, he said that he would look for it.[121]

The Committee also concluded that Ong testified falsely in the course of the hearing of September 10, 2021, when he stated that Pharmally used its corporate funds to pay its suppliers before it was able to secure a loan. Sen. Drilon pointed out that Pharmally had no capacity to pay the initial order from its suppliers in the amount of P54 Million considering that Pharmally only had P625,000.00 as paid-up capital at the beginning of the year 2020; thus:

SEN. LACSON. Yes, Mr. Chairman, thank you.

Ang sunod na tanong ko, dahil sinabi nila, binabayaran nila ng money transfer or cash iyong suppliers. So saan kayo bumibili ng foreign exchange? Kasi hindi naman ninyo pwedeng bayaran ng pesos, hindi ba?

THE CHAIRPERSON. Tama.

SEN. LACSON. So, how did you do it? Where do you buy your foreign exchange? In this case, renminbi, how

do you secure the foreign currency to pay your suppliers?

MR. ONG. Proper bank transaction po iyon, Mr. Chairman. Hindi po siya renminbi Mr. Chairman, US dollar, Mr. Chairman.

THE CHAIRPERSON. Hindi tinatanong kung renminbi. Ang tinatanong sa iyo, saan ka kumukuha ng foreign exchange para bayaran iyong mga tao doon?

MR. ONG. Mr. Chair.

THE CHAIRPERSON. Siyempre kung magre-remit ka—magreremit ka, hindi ba? So, saan kayo kumukuha ng pera pambayad doon?

MR. ONG. Pag dito po sa Philippines side, we transact with our bank.

THE CHAIRPERSON. Sinong bank?

SEN. DRILON. UnionBank.

MR. ONG. UnionBank.

THE CHAIRPERSON. So, kalian, kailan kayo unang nagtransact?

MR. ONG. We have to check the record pero continuous naman iyong transaction namin dito.

THE CHAIRPERSON. Sinabi nga ni Huang na ang unang transaksyon ninyo sa Union Bank ay November, that is a full seven months, pitong buwan magmula noong nakakuha kayo ng malalaking kontrata na sunod-sunod na linggo... Abril. Nasa record iyan, binasa ko na kanina.

MR. ONG. Yes po.

THE CHAIRPERSON. So, it took you seven months bago kayo...

Ang hiniram ninyo doon 500 million. Sarnakatuwid, nagbabayad kayo between that time ng pera. Saka lang kayo urnutang noong nagkaroon na kayo ng pera, kuno, kuno ha, kuho. Hindi ako naniniwala dahil ang tingin ko nagbabayad kayo pero hindi ninyo masabi kung saan ninyo kinukuha iyong pera. Galing ba iyan sa ibang sources na illicit.

MR. ONG. Hindi po, Mr. Chair. Mayroon po kaming mga sariling pondo rin at...

THE CHAIRPERSON: O, biglang may sariling pondo na naman. O, sige.

MR. ONG. Opo.

SEN. DRILON. Specifically, Senator Gordon, kaninong pera, bank accounts kung saan nanggaling iyong ni-remit ninyo sa mga supplier?

MR. ONG. If ever magre-remit kami sa mga supplier, dapat po talaga manggagaling sa ano namin, sa bank account namin.

SEN. DRILON. Kaya nga. So aling bank--sino ang may-ari nitong mga bank accounts at magkano ang ni-remit ninyo?

MR. ONG. Corporation po namin, iyong Pharmally Pharmaceutical po.

SEN. DRILON. Iyong korporasyon ninyo, Mr. Ong, ang pera is 625,000 lang.

SEN. LACSON. Pesos.

SEN. DRILON. Ikaw naman. Oo, pesos, 625,000 pesos lang. Kaya hindi pwedeng manggagaling sa korporasyon ninyo kung milyonmilyon ang binabayad ninyo sa Chinese suppliers. Sabi mo galing sa bangko. Tanong ngayon, sino ba may-ari ng mga account na iyon?

MR. ONG. Corporate account po, Mr. Chairman.

SEN. DRILON. Mr. Chairman, talagang nagsisinungaling ito. How can it be a corporate account when the account--

SEN. LACSON. Mr. Chairman.

SEN. DRILON. Yes. Sorry, Senator, Ping.

THE CHAIRPERSON. Senator Lacson, go ahead.

SEN. LACSON....establish very clearly na ang pera ninyo P625. Ang tanong ni Senator Drilon--

SEN. DRILON. Thousand.

SEN. LACSON. Six hundred twenty-five thousand pesos. Ang tanong ni Senator Drilon, P625,000, tapos ang nire-remit ninyo, sabi mo, galing din sa corporation ninyo, sa Pharmally. Maliwanag iyan, hindi sa ibang corporation, hindi kayo nangutang at lahat. Saan nanggaling iyong perang nire-remit ninyo sa China. Sabihin na nating galing sa bangko rito--

MR. ONG. Opo, opo.

SEN. LACSON. Ang sagot ninyo po, galing sa corporation ninyo. Ang liit ng capital ng corporation ninyo, 625. That's the question. How do you reconcile that?

MR. ONG. Okay, Mr. Chairman, can I—pwede na po ba akong magpaliwanang?

SEN. LACSON. All right. Go ahead.

THE CHAIRPERSON. Kanina ka pa nagpapaliwanag, hindi naman kita pinipigilan.

MR. ONG. Thank you, Mr. Chairman. Thank you, Mr. Chairman, Marami po kasing series of transaction iyon. So, mayroon naman po kaming naiipon na pera. So, that's our pondo. And then at the same time, sa mga series of transactions, pagka medyo malaki na po iyong project, kinakailangan din po namin mangutang sa mga kaibigan. So, hindi ko po dine-deny na mayroon kaming mga utang sa labas.

THE CHAIRPERSON. Hindi naman iyon ang problema. Bilyonbilyon ang tina-transact ninyo, marami kayong kaibigan. Kailangan ring ipaliwanag kung saan rin kinuha noong mga kaibigan ninyo iyang perang iyan. Magpapaliwanag kayo sa Money Laundering Council.

MR. ONG. Definitely, we—sige po, sige po.

THE CHAIRPERSON. Sige, sagutin mo.

MR. ONG. Definitely po. Kinakailangan po naming makipagcooperate sa Anti-money Laundering Council.

THE CHAIRPERSON. Talagang magko-cooperate kayo.

SEN. DRILON. Senator Dick.

THE CHAIRPERSON. Senator Drilon, you have questions.

x x x x

SEN. DRILON. Yes. Just to go back to Mr. Lincoln Ong. Here is a resource person who is clearly lying on the

record because he says the funds were corporate funds, corporate funds of Pharmally. But the audited financial statement indicates that beginning of 2020, they had only 625,000 which is the paid-up capital. Clearly, the corporation had no capacity to pay the initial order of 54 million. So, it is not true at all and there is a deliberate effort to mislead the Committee by saying these are corporate funds. We asked him, "Who advanced this payment?" He said it was from bank accounts of Union Bank or something "Who owns the bank accounts?" He is already evasive.

This witness, Mr. Chairman, is clearly lying—is clearly lying. And in the case of Arnault, which is a 1950 case, this Senate has the power to detain, as we have detained, people until they tell us the truth. This witness is both evasive and refuses to answer or telling a lie. And, therefore, he has been declared in contempt earlier. We move that the contempt order be now executed and we send our sherfffs, our security people to arrest Mr. Ong right now.[122] (*Italics and underscoring supplied; emphases omitted.*)

Evidently, the Committee was fixated on the fact that Pharmally had no capacity to pay the initial order of P54 Million, it having a paid-up capital of P625,000.00 only at the beginning of the year 2020. As can be gleaned from his testimony, however, Ong was able to subsequently aver that they had other funds sourced from the savings of the incorporators, and that they also borrowed money from friends. He even manifested his willingness to cooperate with the Anti-Money Laundering Council to explain where his friends got the funds.

Further, that Ong may have shown hesitancy in giving direct answers as regards the documents pertaining to the supplies of PPEs does not conclusively establish that he was evasive. The totality of his responses evince that he was mindful of his right against self-incrimination. Again, he manifested his willingness to cooperate in the investigation by committing to produce and submit documents required by the Committee.

As regards Yang, the Committee pointed out in its Comment dated February 19, 2022, his alleged questionable, incomplete, evasive and inconsistent answers or replies specifically as to his knowledge of Pharmally, thus:

For example, when asked as to when, how and why he became involved with Pharmally, he answered that he knows nothing about Pharmally and had nothing to do with it and that he came to know Pharmally only through the news. He replied that he had nothing to do with the registration, formation or operations of Pharmally Pharmaceuticals. He said that he did not have business dealings with Mr. Linconn Ong, either in his personal capacity or as incorporator of Pharmally Pharmaceuticals. But as the questioning went on, he later admitted that Pharmally people like Mr. Ong and Mr. Garrick Hung approached him for assistance and that he introduced them to at least four (4) suppliers and helped them with the funding of their deal with the government. It was revealed that he acted as the financier or creditor of Pharmally and/or guarantor to the Chinese suppliers and also as the middleman or go-between the government and Pharmally. xx x.[123]

The pertinent excerpts from the September 10, 2021 TSN read:

SEN. LACSON. Twenty-two years. Okay.

My next question is, when, how and why did you become involved with Pharmally?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang said that he doesn't know and he has no relation to Pharmally.

SEN. LACSON. I would like to remind Mr. Yang that he is under oath, Mr. Interpreter.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR.YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Yes, Mr. Chairman. Mr. Yang is aware that he is under oath. And it is only through the news that he found out about the existence of Pharmally Pharmaceutical.

SEN. LACSON. So, he maintains that he has nothing to do, nothing to do at all with Pharmally. Is that correct?

x x x x

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR.YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay. Mr. Chairman, what Mr. Yang said is that, initially, he doesn't know of the existence or the whereabouts or anything about Pharmally Pharmaceutical. Later they did approach him for some assistance.

SEN. LACSON. So, it is not true that he has nothing to do or he had nothing to do with Pharmally?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR.YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, your question pertains to the corporation or on the operations? We just like to clarify on that part.

SEN. LACSON. First, the corporation, Pharmally Pharmaceuticals.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG, [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay. Mr. Chairman, we'd like to clarify in terms of the registration or setup of Pharmally Pharmaceutical, Mr. Yang has nothing to do with it.

SEN. LACSON. That is correct. But does he have anything to do with the operations of Pharmally Pharmaceuticals at any point?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, in terms of operations, Mr. Yang has not been involved or he has no idea.

SEN. LACSON. Does he know Huang Tzu Yen, the chairman of Pharmally?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR.YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] During that 2017, he met Mr Huang Tzu Yen, together with his father. And after that, they have no any communications.

SEN. LACSON. Does he know a certain Linconn Ong?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Yes. He knows Mr. Linconn Ong, Mr. Chairman.

x x x x

SEN. LACSON. Did he have any business dealings with Mr. Linconn Ong whether in his personal capacity or in his capacity as one of the incorporators of Pharmally Pharmaceuticals?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, no.

SEN. LACSON. No business dealings with Mr. Linconn Ong?

MR. HUNG. Mr. Chairman, can you just be more—sorry, can you just repeat the question?

SEN. LACSON. Did they have any business dealings with Linconn Ong, whether in his personal capacity or as a stockholder incorporator of Pharmally Pharmaceuticals?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay, Mr. Chairman, Mr. Yang would like to ask in terms of what specific period you were pertaining to?

SEN. LACSON. In the supply of PPEs, medical supplies like face masks, shields, et cetera, et cetera in relation to the transaction dealings of Pharmally with the PS-DBM, to be specific.

MR. HUNG. So, Mr. Chair. just to clarify. Your question is, if he has any dealing or anything to do with the transactions pertaining to PS-DBM and Pharmally Pharmaceuticals?

SEN. LACSON. Yes, PPEs—supply of PPEs. supply of surgical masks, face shields, face masks.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang would like to say that when Pharmally did get their contracts, he has nothing to do with any of those contracts or awards.

MR. YANG. [speaking in Chinese]

MR. HUNG. Then, eventually, Mr. Linconn did approach Mr. Yang and then he helped him—them—or Mr. Yang introduced friends to Linconn who could help them with their supplies.

SEN. LACSON. That is correct. That is the point I was trying to point out, Mr. Chairman, that Mr. Michael Yang was the one who acted as a go-between or middleman between Linconn Ong or Pharmally Pharmaceuticals and the suppliers from China. Is that correct?

MR. HUNG. So, Mr. Chair. Your question, again, that Linconn and—

SEN. LACSON. No. Mr. Michael Yang acted as a middleman between Pharmally Pharmaceuticals through Mr. Linconn Ong and the Chinese suppliers of the medical supplies in relation to the procurement.

MR. HUNG. [interpreting Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang said that he only introduced and let them discuss things on their own.

SEN. LACSON. So that was his only role? He introduced the suppliers to Mr. Linconn Ong and then he had nothing do with the supplies anymore?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] So, Mr. Chairman, Mr. Yang said that he only introduced them and then they discussed things on their own.

SEN. LACSON. And he stopped all his participation?

MR. HUNG. I'm sorry, come again, Mr. Chairman?

SEN. LACSON. And he stopped all his participation in the dealings between the Chinese suppliers of the medical supplies that mentioned and Mr. Linconn Ong? He just left them on their own?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay Mr. Chairman, Mr. Yang said that he only introduced as to where or who they close their dealings. He does not know who or where did he actually purchase those stocks.

SEN. LACSON. And he never guaranteed with his Chinese suppliers the credibility or the ability Mr. Linconn Ong to pay them?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay. So, Mr. Yang only introduced and then they negotiated on their own. And then probably, he first initially introduced friends, introduced some other friends for them to negotiate all of their dealings.

SEN LACSON. How many suppliers did he introduce to Mr. Ong.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding Chinese]

MR. HUNG, [interpreting for Mr. Yang] Around four suppliers, Mr. Chairman.

SEN. LACSON. These are individuals or these are companies in China?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay. So, he introduced friends, individuals, and then probably these people could have introduced some other friends or companies directly to them.

SEN. LACSON. That's it? That's his participation? Introduced, then left them alone?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding Chinese]

MR. HUNG. [interpreting for Mr. Yang] Yes. Mr. Chairman.[124] (*Italics supplied; emphases omitted.*)

Sen. Pangilinan observed that Yang gave inconsistent answers, thus:

SEN. PANGILINAN. The questions raised earlier by Senator Lacson, first, Mr. Yang said, he had no connection with Pharmally and learned only about Pharmally in the news. That's on record. And then, after which, he changed his position. He said he only met Pharmally in 2017 and never met them again. And then, later on, Mr. Yang admits to knowing Mr. Linconn Ong of Pharmally. And then he says, he introduced Linconn Ong to the suppliers. So, just like the virus, his answers are mutating.[125] (*Italics supplied; emphases omitted.*)

As keenly observed by Senior Associate Justice Marvic M.V.F. Leonen, even inconsistent answers were equated by the Committee with "testifying evasively." [126] As he aptly pointed out, "[w]hether a witness genuinely did not know or did not recall the answer, or was evasive in answering a question is largely a matter of judgment or opinion." [127] He further pointed out that "falsely or evasively" should be understood as "false" which means "not genuine, intentionally untrue, adjusted or made so as to deceive, intended or tending to mislead, not true, based on mistaken ideas, inconsistent with the facts." [128] This determination requires "an assessment of the totality of the evidence presented to determine whether a witness speaks truthfully or merely trying to evade answering the question directly." [129] Surely, this determination could not have been made on the basis of his testimony given in the hearing of September 10, 2021 alone. [130]

Evidently, Sen. Lacson's series of repetitive questions as regards Yang's knowledge of Pharmally evoked different answers. However, the fact that Yang made inconsistent or incomplete answers in the course of his testimony does not conclusively establish that he was evasive within the context of contempt, that is, there was refusal or unwillingness to testify on his part. While Yang initially tried to avoid giving any leading information as regards his connection with Pharmally, he was able to subsequently aver in the course of the proceedings that he introduced the suppliers of facemasks and PPEs to Ong. Again, the Committee immediately surmised on the incredulity of his testimony, thus citing him in contempt and ordering his arrest on the ground that he gave inconsistent or incomplete answers.

In *Bro. Oca v. Custodio*, [131] the Court classified punishment for contempt in judicial proceedings into civil and criminal. This is anchored on the two-fold aspect of contempt which seeks to (1) compel the party to do an act or duty which it refuses to perform; and (2) punish the party for disrespecting the court or its orders. [132] The characterization of the proceedings is "determined by the relief sought, or the dominant purpose." [133] Under the second aspect, judicial contempt proceedings are characterized as criminal or punitive:

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved. [134] (*Emphases and underscoring supplied.*)

Following the above characterization, a legislative contempt is essentially criminal or punitive in nature. Notably,

the contumacious act of testifying falsely or evasively finds criminal definition under Article 183[135] of the Revised Penal Code (RPC) penalizing false testimony and perjury. In the case, the Committee's treatment of petitioners' supposed contumacious acts as criminal in nature is even bolstered when it ordered their arrest and, worse, the subsequent transfer of Ong to the Pasay City Jail. Indeed, the power to punish crimes is punitive in nature as it involves a proceeding brought by the State before the courts to punish offenders.[136]

It bears underscoring that the purpose of the Committee's proceedings is to conduct an inquiry or investigation to aid the Senate in crafting relevant legislation, and not to conduct a trial or make an adjudication. Legislative inquiries do not share the same goals as the criminal trial process,[137] and "cannot be punitive in the sense that they cannot result in legally binding deprivation of a person's life, liberty or property." [138] Thus, punishment for legislative contempt, albeit *sui generis* in character, must similarly observe the minimum requirements of due process.

As succinctly pointed out by Chief Justice Alexander G. Gesmundo, witnesses who are charged by Congress with "giving false or evasive testimony" must be accorded stricter due process requirements, such as the opportunity to explain one's side before being penalized, consistent with the due process safeguards used in criminal proceedings. Considering the broad definition of "giving false or evasive testimony," the witness must, at the very least, given a chance to explain why his or her testimony is not false or evasive.[139]

In the case, the Committee's grave abuse of discretion lay in its precipitate act of citing petitioners Ong and Yang in contempt and ordering their arrests without giving them the opportunity to be heard.

III

The assailed rules are not vague.

Let it be clarified that the Court's finding of grave abuse of discretion in the case—the Committee's failure to accord petitioners their Constitutional right to due process relative to the conduct of its proceedings—does not lead to an invalidation of the Legislature's implicit authority to make a determination whether a person is "testifying falsely or evasively."

Ong argues that the Senate Rules of Procedure on Inquiries is vague for having no clear standards as to what constitutes "testifying falsely or evasively." [140] He insists that the phrase "testifying falsely or evasively" is utterly vague as it does not fairly notify the witness of how it can be committed, nor does it restrict in any manner the discretion of the Senate Committee to adjudge an act as falling within its ambit.[141]

Further, Ong maintains that the determination of whether a witness testifies falsely or evasively falls exclusively within the ambit of judicial power. For Ong, the question of falsity of an utterance is a highly evidentiary matter and its determination requires the stringent application of the rules on evidence.

Ong's arguments fail to persuade.

Implicit in the Legislature's power to punish recalcitrant witnesses by declaring them in contempt is the power to determine whether the witness is recalcitrant or is guilty of contumacious acts. As the grant of legislative power which includes the power to conduct inquiries in aid of legislation is intended to be complete—i.e., without need to resort to judicial process in order that the Legislature may be able to perform its function—it follows that the Legislature likewise has the power to resort to mechanisms to obey its processes. As in the case, the Legislature has the power to determine whether a witness is testifying falsely or evasively and, consequently, declare a witness in contempt with the end that the witness may be compelled to purge his or her contempt by giving a truthful testimony.

It must be emphasized that the Legislature, considering the statements as well as the actuations of the witness, is by no means helpless in determining whether a witness is testifying falsely or evasively. The varying levels of ease or difficulty by which the Legislature may make such determination on a case-to-case basis does not lead to the conclusion that it should solely belong to the courts. When a witness' testimony is glaringly false or when his/her answers are evasive, the Court will not prevent the Legislature from exercising its power just because the courts may also punish false testimony as a violation of penal laws. If at all, the Court in certain instances can only consider the Legislature to have ruled whimsically or arbitrarily if its finding that a witness testified falsely or evasively is evidently without basis. It does not, however, lead to an invalidation of the Legislature's implicit authority to make such determination.

Contrary to Ong's proposition, the phrase "testifying falsely or evasively" is not vague.

A statute or act is vague when it lacks comprehensible standards that persons of common intelligence must necessarily guess at its meaning and differ as to its application.[142] In such instance, it is unconstitutional based on two grounds: "(1) it violates due process for failure to accord persons, especially the parties targetted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." [143]

However, the Court has stressed that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld, i.e., not absolute precision or mathematical exactitude.[144] "Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions." [145]

In the case, the Court finds that the phrase "testifies falsely or evasively" in Section 18 of the Senate Rules on Inquiries is not vague.

False testimony has been defined in several provisions of the RPC.[146] It is committed by any person who, being under oath, and required to testify as to the truth of certain matter at a hearing before a competent authority, shall deny the truth or say something contrary to it.[147]

A false statement is a statement that is known or believed by its maker to be incorrect or untrue and is made especially with intent to deceive or mislead.[148] It is also defined as one made knowingly false or made recklessly without honest belief in its truth, and within the purpose to mislead or deceive.[149]

On the other hand, an evasive answer refers to a response that is given, which does not directly answer the question posed.[150] Evasive answers are often seen in the legal world when a party refuses to confirm or deny allegation(s) against him or her.[151] An evasive answer is likewise defined as "one which consists in refusing either to admit or to deny a matter in a direct, straightforward manner as to which a person is necessarily presumed to have knowledge." [152]

As early as 1950, the Court, in *Arnault*, already pronounced that a testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable.[153] Thus, in *Arnault*, the Court recognized the power of the Senate and its committees to cite a witness in contempt for testifying falsely and evasively during an inquiry.

In *People v. Saure*, [154] the Court considered a testimony of a witness as evasive when he did not remember the facts which he ought to know because they were related to his own self-serving allegation.

There is no doubt that the phrase "testifies falsely or evasively" can be understood by any person of common

knowledge or intelligence.

IV

No Grave Abuse of Discretion on the Part of the Senate Committee in Requesting for the Issuance of a Lookout Bulletin

In a Letter^[155] dated September 13, 2021 addressed to the Department of Justice (DOJ), the Committee, through Sen. Gordon, requests that Yang be "placed on the Bureau of Immigration Hold Departure Order, Watch List, or Lookout Bulletin, whichever is appropriate, and that the Committee be informed whenever he is about to leave, or whenever he arrives from without the country."^[156]

Yang ascribes grave abuse of discretion to the Committee in "causing the issuance of a lookout order," invoking the absence of any criminal charge filed in court against him. Characterizing the letter--request as a directive to Immigration Commissioner Jaime H. Morente, Yang contended that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation does not grant the Senate or any of its Committees the power to request for a Hold Departure Order, Watch List, or Lookout Bulletin. Thus, Yang questions the legality of the request.

Yang's argument is misplaced.

In its comment, the OSG confirms that Justice Secretary Menardo Guevarra acted on the request and issued an immigration lookout bulletin order (ILBO) against Yang on or about September 14, 2021. As correctly pointed out by the OSG, the Senate Committee only made a request. It bears underscoring that the DOI and the Bureau of Immigration (BI) are not impleaded in this case. Indeed, the Court cannot pass upon the propriety of the ILBO issued by Secretary Guevarra without violating the requirements of fair play and due process.^[157] Suffice it to state that the questioned act of the Senate Committee pertains to a mere request, which cannot be legally considered as the authority or basis for the issuance by the DOI of the ILBO. Being a mere request, the same may or may not be heeded by the DOI. Contrary to Yang's proposition, the request does not partake of a directive or order mandating the DOI to issue the ILBO, from which grave abuse of discretion may be imputed to the Senate.

In any event, the Court had the occasion of addressing a similar invocation against requests for assistance of the BI made by the Senate in the conduct of legislative investigations. In *Standard Chartered Bank*, the Court held:

[I]t is axiomatic that the power of legislative investigation includes the power to compel the attendance of witnesses. Corollary to the power to compel the attendance of witnesses is the power to ensure that said witnesses would be available to testify in the legislative investigation. In the case at bench, considering that most of the officers of SCB- Philippines are not Filipino nationals who may easily evade the compulsive character of respondent's summons by leaving the country, it was reasonable for the respondent to request the assistance of the Bureau of Immigration and Deportation to prevent said witnesses from evading the inquiry and defeating its purpose. In any event, no HDO was issued by a court. The BID instead included them only in the Watch List, which had the effect of merely delaying petitioners' intended travel abroad for five (5) days, provided no HDO is issued against them.^[158] (Italics supplied; citation omitted.)

Thus, far from acting with grave abuse of discretion, the Senate has legal and factual reasons to request for the DOJ to place Yang under a lookout bulletin.

V

No Grave Abuse of Discretion on the Part of the Senate Committee in Compelling Yang to Answer Questions and to Submit Documents and Information Pertaining to Him, His Property and Business Interests

Yang admits that the Senate certainly has the right to investigate the possible abuse or misuse of government funds in relation to the enactment of RA 11469. However, he posits that the Senate Committee is engaged in a fishing expedition by asking for documents about his properties and business dealings.[159]

More particularly, Yang argues that the Senate Committee committed grave abuse of discretion as it compelled him to answer questions and submit documents that are beyond the scope of the legislative inquiry and in clear violation of his right to privacy.[160] He asserts that the Senate Committee directed him to provide information on his non-filing of income tax return, studies, and length of stay in the Philippines.[161] He also contends that questions regarding his past are outside the scope of the Senate investigation, and that he, nonetheless, complied with the order to bring the documents to avoid being cited in contempt under the misguided notion that he was being evasive.[162]

It is settled that in the absence of information pertinent to a contemplated legislation, the Congress will not be able to fully and effectively perform its function to conduct inquiries in aid of legislation.

In this regard, the Congress makes use of compulsory process to gather material information for its inquiry but such exercise must be in accordance with its rules of procedure and must take into account the rights of those affected or appearing during inquiries in aid of legislation.

In the case of Yang, the Court is unconvinced that his right to privacy was violated when the Senate Committee directed him to produce the subject documents.

First, in *Standard Chartered Bank*, the Court stressed that the right to privacy is not an absolute right. While the Constitution guarantees the respect of persons affected by a legislative inquiry under Section 21, Article VI of the Constitution, not every assertion of one's right to privacy must be allowed to prevent a legitimate legislative inquiry.

Too, in *Sabio*, the Court elucidated that the right to privacy is recognized and protected by laws. Any intrusion to one's right to privacy is not allowed unless it is excused by law and in accordance with established legal process. Definitely, "'no one shall be subjected to arbitrary interference with his [or her] privacy' and 'everyone has the right to the protection of the law against such interference or attacks.'"[163] In that case, the Court explained that in resolving whether a person's right to privacy was violated, a court must determine two important questions: (1) did the concerned person exhibit a reasonable expectation of privacy; and (2) did the government violate such expectation?

In the case of Yang, the foregoing questions are answered in the negative as there is absence of an arbitrary intrusion to his right to privacy.

To underscore, central to the inquiry in aid of legislation and of which Yang was invited by the Senate is his alleged participation in the *Pharmally* controversy. In this regard, the Senate Committee's inquiry covers the acts of Yang related to the contemplated legislation to improve government procurement procedure and processes in relation to RA 11494. It follows that the presentation of documents with regard to Yang's properties and business interests is allowed as it is intimately related to the issue of whether he acquired and/or accumulated wealth in connection with the subject government funds.

Yang therefore had no reasonable expectations of privacy over matters relating to *Pharmally* and his business interests therein as the government itself has an interest insofar as the Congress contemplates the enactment and/or amendment of a law relating government procurement law. While there must be ideally a balance between the interest of resource persons and the demand by the Congress for information, the right to privacy cannot prevail where there is an overriding compelling state interest, as in the present case.

In other words, the right to privacy of Yang cannot prevail over the compelling state interest as the Senate Committee conducts inquiries anent a contemplated legislation relating to RA No. 11494. The purpose of the inquiry of the Senate to resolve the misuse of government funds in connection with the pandemic response of the government is a compelling state reason for it to proceed with its inquiry and require Yang to produce the subject documents.

Second, pieces of information which relate to personal circumstances are not by themselves beyond the scope of legislative inquiry especially so where, as above stated, a contemplated legislation is being considered by the Congress. Verily, in the absence of showing that the production of the subject documents will in any way prejudice Yang, his contention that his right to privacy was violated remains as a bare allegation without proof supporting the claim.

Third, Yang failed to convince the Court of any recognized public interest in the confidentiality of the information asked by the Senate Committee. In fact, he did not assail at the outset and before the Senate the obligatory force of the subpoena duces tecum it issued against him. In contrast, Yang himself admitted having complied with the subpoena and brought the subject documents when he appeared before the Senate Committee. In the absence of a formal and proper invocation by Yang of his right to privacy before the Senate, stating the specific reasons for the preservation of the confidentiality of the information being asked from him as a resource person, no grave abuse of discretion can be imputed against the Senate in directing him to produce the subject documents.[164]

All told, the Court finds that the Senate Committee committed grave abuse of discretion amounting to lack or excess of jurisdiction only insofar as it issued the assailed Contempt Order dated September 10, 2021, citing Ong and Yang in contempt for testifying falsely or evasively and ordering their arrest.

WHEREFORE, the petitions are PARTLY GRANTED. The Order dated September 10, 2021, citing petitioners Linconn Uy Ong and Michael Yang Hong Ming in contempt of the Senate Blue Ribbon Committee and directing their arrest, is NULLIFIED for having been issued with grave abuse of discretion.

The phrase "testifies falsely or evasively" both under Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, as amended, and Section 6, Article 6 of the Rules of the Senate Blue Ribbon Committee, on the basis of the challenges raised in these petitions, is NOT UNCONSTITUTIONAL.

SO ORDERED.

Hernando, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez and Kho, Jr., JJ., concur.

Gesmundo, C.J., see separate concurring opinion.

Leonen SAJ (on official leave but left a vote). See separate concurring opinion.

Caguioa and Lazaro-Javier, JJ., see concurring and dissenting.

[*]On official leave.

[1] Rollo (G.R. No. 257401), pp. 2-51.

[2] Id. at 359. Signed by Senator Richard J. Gordon, Chairman of the Senate Blue Ribbon Committee and approved by Senate President Vicente C. Sotto III.

[3] Id. at 3-4.

[4] Available Commission on Audit official website
<<https://www.coa.gov.ph/reports/annual-audit-reports/aar-ngs#49-3719-department-of-health-1628579484>> (last

accessed on April 11, 2023).

[5] Adopted via Senate Resolution No. 5 on August 9, 2010, as amended by Senate Resolution No. 145; id. at 4-5.

[6] Adopted by the Senate Blue Ribbon Committee on August 14, 2019; id. at 5.

[7] Rollo (G.R. No. 257916), pp. 3-60.

[8] Id. at 69 and 360.

[9] Id. at 361.

[10] Id. at 61.

[11] Id. at 55-56.

[12] Rollo (G.R. No. 257401), p. 384 and 386.

[13] Id. at 386-387.

[14] Rollo (G.R. No. 257916), p. 8.

[15] Entitled, "Mandate of the Commission on Audit/Incompetence of the DOH," rollo (G.R. No. 257401), pp. 386, 480-481.

[16] Entitled "Resolution Directing the Senate Committee of the Whole on the Vaccination Program to Conduct an Inquiry on the Procurement of Covid-19 Vaccines by Local Government Units and the Private Sector through Multi-Party Agreements, with the End in View Ramping Up Vaccination in the Rural Areas and in the Private Sector and Achieving Herd Immunity against Covid-19 for the Country," id. at 482-483.

[17] Entitled "Resolution Directing the Appropriate Senate Committee to Conduct an Inquiry, In Aid of Legislation on the Findings of the Commission on Audit (COA) Report on the Department of Health (DOH) on the Reported Unspent Funds, Misstatements, Irregularities and Deficiencies, with the End View of Addressing Recurrent Issues that Has Plagued Its Services, as well as the Persistent Faults and Lapses that Give Rise to Wastage Even Amidst Times of Scarcity and Shortage, and Holding Accountable those Responsible for the Same," id. at 484-490.

[18] Entitled "Resolution Directing the Appropriate Senate Committee to Conduct an Investigation In Aid of Legislation on the Payment Claims Issues Between Phil health and Private Hospitals with the End in View of Ensuring Un interruptible Health Care and Social Protection for Filipinos," id at 491-492.

[19] Id. at 386-387.

[20] Id. at 387 and 493-497.

[21] Id. at 387.

[22] Id. at 518-519.

[23] Id. at 514-519.

[24] Id. at 524-525.

[25] Id. at 388.

[26] Id. at 7-8.

[27] Id. at 359. The Contempt Order states:

"IN RE: 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH), ESPECIALLY ITS EXPENDITURES RELATED TO THE FIGHT AGAINST COVID; Privilege Speech of Senator Risa Hontiveros entitled, "MANDATE OF THE COMMISSION ON AUDIT/INCOMPETENCE OF THE DOH";

P.S. RES. NO. 858 xxx by Senator Juan Miguel "Migz" F. Zubiri;

P.S. RES. NO. 859 xxx by Senator Leila M. De Lima;

P.S. RES. NO. 880 xxx by Senator Risa Hontiveros

x-----x

ORDER

For testifying falsely and evasively before the Committee on September 10, 2021 and thereby delaying, impeding and obstructing the inquiry into the 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH), ESPECIALLY ITS EXPENDITURES RELATED TO THE FIGHT AGAINST COVID, therefore, upon motion of the Senators Panfilo M. Lacson and Franklin M. Drilon and seconded by Senator Risa Hontiveros, the Committee hereby cites MR. LINCONN ONG in contempt and ordered arrested and detained at the Office of the Sergeant-At-Arms until such time that he gives his testimony without evasion, or otherwise purges himself of that contempt.

The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement.

SO ORDERED." (Emphases omitted.)

[28] Id. at 8.

[29] Id. at 25 and 395.

[30] Id. at 25 and 412-429.

[31] Id. at 25 and 432.

[32] Id. at 433.

[33] However, the Order for Ong's transfer to the Pasay City Jail was not implemented right away due to humanitarian considerations as he had just recovered from Covid-19; id. at 433, 443.

[34] Id. at 382-478.

[35] Id. at 1128-1137.

[36] Ramos, C.M. (November 29, 2021), Senate transfers Pharmally's Dargani, Ong to Pasay City Jail Inquirer News, Inquirer.Net (last accessed on June 7, 2022).

[37] Rollo (G.R. No. 257916), pp. 8-9.

[38] Id. at 9.

[39] Id.

[40] Id. at 9-10.

[41] Id. at 10.

[42] Id. at 10-18.

[43] Id. at 20.

[44] Id. at 34, 361.

[45] Id. at 61. Specifically, the Committee required Yang to supply documents and information on:

1. ALL PROPERTY - CARS, REAL ESTATE CORPORATIONS, TAXES PAID (ALL TAX RECORDS) PERSONAL AND CORPORATE WHICH YOU OWN BENEFICIALLY EVEN IF NOT IN YOUR NAME;
2. DETAILS OF THE LAND, THE BUILDING, EMPLOYEES OF PAILI, FULL WIN, DCLA, OTHER CORPORATIONS/COMPANIES WHICH YOU OWN OR BENEFICIALLY OWN - INCLUDING THE EMPLOYEES' SSS, PHILHEALTH AND PAG-IBIG RECORDS;
3. INFORMATION ON THE DONATIONS WHICH YOU AND YOUR COMPANY/IES HAVE MADE TO THE PHILIPPINES - PUBLIC OR PRIVATE - WHAT, WHEN, HOW MUCH ETC.; and
4. LOCATION" OF MR. JAYSON USON AND MR. GERALD CRUZ."

[46] Rollo (G.R. No. 257401), pp. 26-27.

[47] Id. at 382-478.

[48] Id. at 445-446.

[49] Rollo (G.R. No. 257916), pp. 35-36.

[50] Id. at 517.

[51] Rollo (G.R. No. 257401), p.1671.

[52] Id. at 1672.

[53] Id. at 1677.

[54] Id. at 1681.

[55] Id. at 1689.

[56] Id. at 1706.

[57] Id. at 1712.

[58] Id. at 1718.

[59] Id. at 1727.

[60] Id. at 1729.

[61] Id. at 1733.

[62] Id. at 1742.

[63] Id. at 1749.

[64] Id. at 1760.

[65] Id. at 1763.

[66] Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration, 728 Phil. 535, 540 (2014).

[67] *Express Telecommunications Co., Inc. v. AZ Communications, Inc.*, G.R. No. 196902, July 13, 2020, citing *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016).

[68] 835 Phil. 451 (2018).

[69] *Id.* at 461, citing *Lim Bio Hian v. Lim Eng Tian*, 823 Phil. 12, 16-17 (2018).

[70] *Id.* at 462.

[71] *Lim Bio Hian v. Lim Eng Tian*, *supra* at 17 (2018), citing *Rep. of the Phils. v. Moldex Realty, Inc.*, 780 Phil. 553, 561 (2016).

[72] *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, 535 Phil. 687, 705 (2006), citing *Watkins v. United States*, 354 U.S. 178 (1957), pp. 194-195.

[73] 87 Phil. 29 (1950).

[74] *Id.* at 45.

[75] Bernas S.J., *The 1987 Constitution of the Republic of the Philippines*, 2003 Ed. at p. 737. See also Section 12, Article VIII of the 1973 Constitution provides:

SEC. 12. (1) There shall be a question hour at least once a month or as often as the Rules of the Batasang Pambansa may provide, which shall be included in its agenda, during which the Prime Minister, the Deputy Prime Minister or any Minister may be required to appear and answer questions and interpellation by Members of the Batasang Pambansa. Written questions shall be submitted to the Speaker at least three days before a scheduled question hour. Interpellations shall not be limited to the written questions, but may cover matters related thereto. The agenda shall specify the subjects of the question hour. When the security of the State so requires and the President so states in writing, the question hour shall be conducted in executive session.

(2) The Batasang Pambansa or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

[76] 455 Phil. 61 (2003).

[77] 522 Phil. 1 (2006).

[78] *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, *supra* note 72.

[79] 565 Phil. 744 (2007).

[80] 586 Phil. 135 (2008).

[81] 602 Phil. 312 (2009).

[82] *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, *supra* note 72 at 704-705, citing Bernas S.J., *The 1987 Constitutional the Republic of the Philippines*, 2003 Ed., p. 739.

[83] *Lopez v. De Los Reyes*, 55 Phil. 170, 185 (1930).

[84] *Id.* at 180.

[85] See *Arnault v. Nazareno*, *supra* note 73 at 45.

[86] *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglungsod of Dumaguete*, 239 Phil. 403

(1987); see also *Standard Chartered Bank. v. Senate Committee on Banks*, 565 Phil. 744, 761 (2007).

[87] *Standard Chartered Bank. v. Senate Committee on Banks*, supra note 79 at 761 (2007), citing *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglungsod of Dumaguete*, supra at 412, further citing *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955).

[88] *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglungsod of Dumaguete*, supra at 412; See also *Standard Chartered Bank v. Senate Committee on Banks*, supra note 79 at 761.

[89] *Arnault v. Nazareno*, supra note 73 at 45, citing *McGrain v. Daugherty*, 273 U.S., 135; 71 L. ed., 580; 50 A.L.R.,1.

[90] *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955).

[91] *Id.*

[92] *Bernas S.J., The 1987 Constitution of the Republic of the Philippines*, 2003 Ed., p. 737.

[93] *Balag v. Senate of the Philippines*, supra note 68 at 475.

[94] See *Senate Journal*, Session 6, August 4 & 23, 2021, rollo (G.R. No. 257401), pp. 479-481.

[95] *Id.* at 386-387, 459.

[96] *Id.* at 493-497.

[97] *Id.* at 459

[98] *Senate of the Philippines v. Exec. Sec. Ermita*, supra note 77 at 35.

[99] Entitled, "An Act Declaring the Existence of a National Emergency Arising from the Corona virus Disease 2019 (Covid-19) Situation and a National Policy in Connection Therewith, and Authorizing the President of the Republic of the Philippines for a Limited Period and Subject to Restrictions, to Exercise Powers Necessary and Proper to Carry Out the Decided National Policy and For Other Purposes, approved on March 24, 2020. Also known as the "Bayanihan to Heal as One Act."

[100] Entitled, "An Act Providing for Covid-19 Response and Recovery Interventions and Providino Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and For Other Purposes," approved on September 11, 2020.

[101] Rollo (G.R. No. 257401), p. 459.

[102] *Senate of the Phils. v. Exec. Sec. Ermita*, supra note 77 at 36.

[103] Section 16 (3), Article VI of the 1987 Constitution provides:

Section 16. x x x

x x x

(3) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

[104] 598 Phil. 981 (2009).

[105] *Id.* at 986, citing *Marero v. Bocar*, 37 O.G. 445.

[106] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers*

Association. Inc., 802 Phil. 116, 136-140 (2016).

[107] Section 18 of the Senate Rules on Inquiries provides: "The Committee, by a vote of majority of all its members, may punish for contempt any witness before it who disobey any order of the Committee or refuses to be sworn or to testify or to answer proper questions by the Committee or any of its members."

[108] Rollo (G.R. No. 257401), pp. 59 and 448.

[109] Id. at 448.

[110] Id.

[111] Id.

[112] Id. at 62.

Resolution No. 145 states:

"Resolved, further, That this Resolution shall take effect immediately upon publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed. A copy of this Resolution shall be posted in the official website of the Senate of the Philippines."

[113] Id. at 448-449.

[114] In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 80 at 198-199, the Court ruled:

However, it is evident that the Senate has determined that its main rules are intended to be valid from the date of their adoption until they are amended or repealed. Such language is conspicuously absent from the Rules. The Rules simply state "(t)hese Rules shall take effect seven (7) days after publication in two (2) newspapers of general circulation." The latter does not explicitly provide for the continued effectivity of such rules until they are amended or repealed. In view of the difference in the language of the two sets of Senate rules, it cannot be presumed that the Rules (on legislative inquiries) would continue into the next Congress. The Senate of the next Congress may easily adopt different rules for its legislative inquiries which come within the rule on unfinished business.

The language of Section 21, Article VI of the Constitution requiring that the inquiry be conducted in accordance with the duly published rules of procedure is categorical. It is incumbent upon the Senate to publish the rules for its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until they are amended or repealed to sufficiently put public on notice.

If it was the intention of the Senate for its present rules on legislative inquiries to be effective even in the next Congress, it could have easily adopted the same language it had used in its main rules regarding effectivity.

Lest the Court be misconstrued, it should likewise be stressed that not all orders issued or proceedings conducted pursuant to the subject Rules are null and void. Only those that result in violation of the rights of witnesses should be considered null and void, considering that the rationale for the publication is to protect the rights of witnesses as expressed in Section 21, Article VI of the Constitution. Sans such violation, orders and proceedings are considered valid and effective.

[115] Section 24 of Resolution No. 5 on Effectivity states:

"These Rules shall take effect after seven (7) days following complete publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed. A copy of these Rules shall be posted in the official website of the Senate of the Philippines."

[116] Rollo (G.R. No. 257401), p. 578.

[117] Id. at 53. Section 4 of Resolution No. 5, Rules of Procedure Governing Inquiries in Aid of Legislation, as amended, provides:

Section 4. Quorum. - One third of all the regular members of the Committee shall constitute a quorum but in no case shall it be less than two. The presence of ex officio members may be considered in determining the existence of a quorum."

[118] Id. at 61.

[119] Id. at 67-68.

[120] Rollo (G.R. No. 257916), pp. 237-249; TSN, September 10, 2021.

[121] Id. at 246-248.

[122] Id. at 257-270; TSN, September 10, 2021.

[123] Id. at 487.

[124] Id. at 228-237.

[125] Id. at 274.

[126] See Concurring Opinion of Senior Associate Justice Marvic M.V.F. Leonen, pp. 17 and 21.

[127] Id. at 21

[128] Id.

[129] Id.

[130] Id.

[131] 814 Phil. 641 (2017).

[132] Id. at 678, citing *Halili v. Court of Industrial Relations*, 220 Phil. 507, 527 (1985).

[133] Id. at 679, citing *People v. Godoy*, 312 Phil. 977 (1995).

[134] *People v. Godoy*, 312 Phil. 977, 1000-1001 (1995).

[135] Article 183 of the Revised Penal Code provides:

Article 183. False testimony in other cases and perjury in solemn affirmation. - The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[136] See *Lopez v. De los Reyes*, 55 Phil. 170, 180 (1930).

[137] See Concurring Opinion of Associate Justice Dante O. Tinga in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 80 at 687 (2008).

[138] Id.

- [139] See Concurring Opinion of Chief Justice Alexander G. Gesmundo pp. 14-16.
- [140] Rollo (G.R. No. 257401), pp. 30-31.
- [141] Id. at 32.
- [142] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452, 488 (2010).
- [143] Id., citing *People v. Nazario*, 247-A Phil. 276, 286 (1988).
- [144] See *Garcia v. Judge Drilon*, 712 Phil 44 103 (2013).
- [145] Id., citing *Estrada v. Sandiganbayan*, 421 Phil. 290, 353 (2001).
- [146] Articles 180-183 of the Revised Penal Code.
- [147] Reyes, Luis B, *The Revised Penal Code, Criminal law, Book II*, (13th Ed.), p. 235.
- [148] Available at <<https://www.merriam-webster.com/legal/false%20statement>>(last accessed on April 10, 2023).
- [149] Black's Law Dictionary with Pronunciations (16th Ed.), p. 602.
- [150] Available at <<http://legaldictionary.net/evasive-answer/>> (last accessed on April 10, 2023).
- [151] Available at <<http://legaldictionary.net/evasive-answer/>> (last accessed on April 10, 2023).
- [152] Black's Law Dictionary with Pronunciation (16th Ed.), p. 554.
- [153] *Arnault v. Nazareno*, supra note 73 at 65, citing *Mason vs. U.S.*, 61 L. ed., 1198.
- [154] 428 Phil. 916 (2002).
- [155] Rollo (G.R. No. 257916), p. 361.
- [156] Id.
- [157] See *Civil Service Commission v. Rasuman*, G.R. No. 239011, June 17, 2019.
- [158] *Standard Chartered Bank v. Senate Committee on Banks*, supra note 79 at 762.
- [159] Rollo (G.R. No. 257916), pp. 52-54.
- [160] Id. at 5.
- [161] Id. at 51.
- [162] Id.
- [163] In the Matter of the Petition for Issuance of Writ of Habeas Corpus of *Sabio v. Senator Gordon*, supra note 72 at 715, citing Article 12 of the Universal Declaration of Human Rights. See also Article 17 (1) and (2) of the International Covenant on Civil and Political Rights.
- [164] See *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 137.

CONCURRING OPINION[1]

GESMUNDO, C.J.:

I agree with the ponencia that grave abuse of discretion was committed when the Senate cited in contempt and directed the arrest of Linconn Uy Ong (Ong) and Michael Yang Hong Ming (Yang) for supposedly testifying "falsely or evasively." To my mind, the arrest order must be nullified for being issued without sufficiently observing due process. I also agree with the ponencia's enlightened stance that the phrase "testifies falsely and evasively" in the Senate Rules is not vague, and as such, should not be declared unconstitutional. On the whole, I write this Opinion to further examine the scope of the power of legislative contempt as an inherent power of Congress.

As a background, Ong and Yang were invited by the Senate Committee on Accountability of Public Officers and Investigations (Committee) as resource speakers in its legislative inquiry regarding Pharmally Pharmaceutical Corporation's transactions with the government. Considering that Ong and Yang, among others, failed or refused to attend the hearing, the Committee issued an Order dated September 7, 2021 (1st Contempt Order) citing them in contempt and ordering their arrest and detention at the Office of the Senate Sergeant-at-Arms.

Later, Ong voluntarily attended the online video conference hearing on September 10, 2021. In the course of his examination, the Committee issued an Order dated September 10, 2021 (2nd Contempt Order)[2] citing him in contempt and ordering his arrest for "testifying falsely and evasively" during the hearing. Considering that Ong was then suffering from the COVID-19 virus, he was allowed to stay at his residence with a guard. He continued to attend and participate in the subsequent two hearings. A few days after, he was arrested at his residence and detained at the Senate Complex. The Committee members later moved to transfer him to the Pasay City Jail. Ong filed a petition before the Court assailing the validity of the contempt orders and the pertinent Senate rules, particularly, Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation (Senate Rules on Inquiries)[3] and Sec. 6, Article 6 of the Rules of the Committee,[4] insofar as they punish for contempt the act of testifying "falsely or evasively." The similarly worded provisions read, thus:

Contempt.* (a) The Chairman with the concurrence of at least one (1) member of the Committee may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor.

A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.

x x x. (Emphasis supplied)

As regards Yang, an arrest order was issued against him for failing to attend a hearing. On September 10, 2021, Yang appeared before the Committee. During said hearing, the Committee also issued an order placing Yang under arrest for allegedly giving evasive answers which amounted to contempt of the Committee.[5] Yang later filed a petition seeking, among others, nullification of the arrest orders issued against him.

In its Comments, the Senate emphasized that no grave abuse of discretion was committed when it cited them in contempt and ordered their arrest and detention. It claimed full compliance with the requirements of Sec. 21, Art.

VI of the Constitution and the Senate Rules on Inquiries for the hearings it conducted.[6] The Senate stressed that constitutional rights were protected. It also asserted that the assailed provisions of the Senate Rules on Inquiries and Rules of the Committee are constitutional.

As intervenor, the Office of the Solicitor General (OSG) posited that the assailed Rules were unconstitutional insofar as they punish as contempt the act of "testifying falsely or evasively" for being vague and lacking clear standards. It stressed that the legislative hearings should always uphold the rights of the resource persons to due process and against self-incrimination. Moreover, the OSG argued that the power of contempt does not include the power to order arrest during the conduct of legislative investigation.

Two of the substantive issues raised by these consolidated petitions are: (a) whether the assailed Senate rules, which allow a witness who "testifies falsely or evasively" to be cited in contempt, is constitutional; and (b) whether the assailed orders that directed the arrest of Ong and Yang, are valid.

Exception to the mootness doctrine

Preliminarily, the ponencia holds that while the petitions have been rendered moot by Ong's voluntary release and the termination of the subject legislative inquiry, the Court can still decide on the issues based on the exceptions to the mootness doctrine.[7] Delving into the merits, the ponencia upholds the Senate's power of contempt as concomitant to the power of legislative inquiry.[8] It also underscores that the power to arrest is concomitant to the power of legislative contempt.[9] As regards the 2nd Contempt Order, it finds that the Senate Committee gravely abused its discretion in issuing such order for failing to accord Ong and Yang their constitutional right to due process in the conduct of the proceedings.[10] Moreover, the ponencia declares not unconstitutional the phrase "testifies falsely or evasively" in Sec. 18 of the Senate Rules on Inquiries and Sec. 6, Art. 6 of the Rules of the Senate Blue Ribbon Committee, and rejects the argument that such phrase is vague.[11]

I concur. A judicious resolution of this case requires an examination of the scope and limitations on legislative contempt power.

Extent of the legislative power of contempt

Contempt has been defined as "an act of disobedience or disrespect toward a judicial or legislative body of government or interference with its orderly process for which a summary punishment is usually exacted." [12] The Court has emphasized that the power to punish persons in contempt is allowed "to maintain the respect due" to the government branch involved and "to ensure the infallibility of justice where defiance is so clear and contumacious and there is an evident refusal to obey." [13] Considering however the serious implications on the rights of supposed contemnor, the Court notes such power must be "exercised cautiously, sparingly, and judiciously." [14]

The inherent nature of the legislative power of contempt has long been recognized in our jurisdiction. During the American occupation, [15] the Court noted in *Lopez v. De Los Reyes* [16] that "the legislative bodies may inflict punishment on those guilty of acts which tend directly to defeat, embarrass, or obstruct legislative proceedings." [17] However, the exercise of such power should only be to the extent necessary to preserve and carry out its legislative powers, to wit:

The power to deal directly by way of contempt, without criminal prosecution, may be implied from the constitutional grant of legislative power to the Congress in so far, and so far only, as such authority is necessary to preserve and carry out the legislative power granted. The two Houses of the Congress, in their separate relations, possess such auxiliary powers as are appropriate to make the express powers effective. In

these latter cases, the power to punish for contempt rests solely upon the right of self-preservation. Proceeding on this theory, punishment has been imposed for assaults upon members of the House of Representatives which prevented members from attending the sessions of the House. But the power does not extend to the infliction of punishment of such. In the apt phrase of Chief Justice White of the United States Supreme Court, "It is a means to an end and not the end itself." [18] (Emphasis supplied)

Under the auspices of the 1935 Constitution, the Court in *Arnault v. Nazareno* [19] also acknowledged the existence of the legislature's inherent power of contempt, as auxiliary to its power to conduct investigations, viz.:

[T]he power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to effect or change; and where the legislative body does not itself possess the requisite information — which is not infrequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. [20] (Emphasis supplied)

The breadth of Congress' power to punish witnesses before it for contempt was elucidated further in *Arnault v. Balagtas*, [21] thus:

The principle that Congress or any [of its] bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power, or necessary to effectuate said power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of the other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with the affronts committed against its authority or dignity. The process by which a contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authority must be distinguished from the judicial process by which offenders are brought to the courts of justice for the meting of the punishment which the criminal law imposes upon them. The former falls exclusively within the legislative authority, the latter within the domain of the courts; because the former is a necessary concomitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law.

We must also and (sic) that provided the contempt is related to the exercise of the legislative power and is committed in the course of the legislative process, the legislature's authority to deal with the defiant and contumacious witness should be supreme, and unless there is a manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference. [22] (Emphases supplied)

The early pronouncements on the scope of legislative contempt reveal that it was understood to have an expansive scope, granting Congress broad authority to punish recalcitrant witnesses. For instance, in *Arnault v. Nazareno*, [23] a senator propounded a question to elicit the identity of a person to whom he gave a sum of money, but the witness "refused to reveal it" by claiming that "he did not remember" and that his answer might incriminate him. [24] The Senate adopted a resolution committing the witness to the custody of the Sergeant-at-Arms to be "imprisoned until he shall have purged the contempt by revealing" the name of the person to whom he gave the money. [25] The Court held that the Senate has the authority to commit a witness if he

"refuses to answer a question pertinent to a legislative inquiry, to compel him to give the information, i.e., by reason of its coercive power, not its punitive power." [26] The Court added that the witness' answers were "obviously false," [27] noting that his insistent claim that he would incriminate himself by revealing the name necessarily implies that he knew the name. The Senate itself decided that the given information was false. [28] The Court concluded that:

Testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable. [29]

In the subsequent case of *Arnault v. Balagtas*, [30] the same witness answered the question by giving the name "Jess D. Santos" but the Senate refused to believe that it was true. Affirming the Senate's finding of contempt, the Court held the witness did not purge himself of the contempt, viz.:

In order that the petitioner may be considered as having purged himself of the contempt, it is necessary that he should have testified truthfully, disclosing the real identity of the person subject of the inquiry. No person guilty of contempt may purge himself by another lie or falsehood; this would be repetition of the offense. It is true that he gave a name, Jess D. Santos, as that of the person to whom delivery of the sum of P440,000 was made. The Senate Committee refused to believe, and justly, that is the real name of the person whose identity is being the subject of the inquiry. The Senate, therefore, held that the act of the petitioner continued the original contempt, or reiterated it. Furthermore, the act further interpreted as an affront to its dignity. It may well be taken as insult to the intelligence of the honorable members of the body that conducted the investigation. The act of defiance and contempt could not have been clearer and more evident. Certainly, the Senate resolution declaring the petitioner in contempt may not be claimed as an exertion of an arbitrary power. [31] (Emphases supplied)

In the succeeding years, limitations to the exercise of Congress' power to punish contempt were further emphasized and refined in this jurisdiction. When Congress' power to conduct investigations in aid of legislation was made explicit in the 1973 Constitution, [32] and later in the 1987 Constitution, [33] the framers made sure to emphasize three limitations: (1) the power must be exercised in aid of legislation; (2) it must be in accordance with duly published rules of procedure; [34] and (3) the "rights of persons appearing in, or affected by, such inquiries shall be respected." [35] It has been explained that the incorporation of this constitutional provision was not intended to authorize the conduct of such inquiries, such power being inherent, "but to limit them and to forestall possible abuse" in light of excesses made in the past. [36]

Recently, the detention period of those cited for legislative contempt was re-examined and shortened. In *Balag v. Senate of the Philippines*, [37] the Senate conducted an inquiry in aid of legislation on the death of a student due to hazing. The Senate committee involved called upon a member of a fraternity as a witness. The witness refused to answer a senator's question (i.e., if he was the president of the fraternity) while invoking his right against self-incrimination. Despite being cautioned that he could be cited in contempt, he continued to refuse to answer. A contempt order was then issued against him for "testifying falsely and evasively" and directed his arrest and detention at the Office of the Sergeant-at-Arms "until such time that he gives true testimony, or otherwise purges himself of that contempt." [38] While the Court denied the petition for being mooted by supervening events, it deemed it necessary to resolve the issue presented thus: "what is the duration of the detention for a contempt ordered by the Senate?" Notably, neither the Senate rules nor the contempt order specified a precise period of detention. The Court held that the duration of detention pursuant to the Senate's inherent power of contempt is not indefinite, and is only "until the termination of the legislative inquiry." [39]

In *Calida v. Trillanes IV*, [40] the Court emphasized that the purpose of legislative inquiries is to be "in aid of legislation." It is not meant to embolden Congress to take on powers that are reposed upon the prosecutorial

bodies and the courts. Indeed, "Congress is neither a law enforcement nor a trial agency," which functions reside in the Executive and Judicial branches, respectively, viz.:

In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, this Court explained further that a legislative inquiry must prove to be in aid of legislation and not for other purposes, pronouncing that "Congress is neither a law enforcement nor a trial agency." It declared:

No matter how noble the intentions of respondent Committees are, they cannot assume the power reposed upon our prosecutorial bodies and courts. The determination of who is/are liable for a crime or illegal activity, the investigation of the role played by each official, the determination of who should be haled to court for prosecution and the task of coming up with conclusions and finding of facts regarding anomalies, especially the determination of criminal guilt, are not functions of the Senate. Congress is neither a law enforcement nor a trial agency. Moreover, it bears stressing that no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress, i.e., legislation. Investigations conducted solely to gather incriminatory evidence and "punish" those investigated are indefensible. There is no Congressional power to expose for the sake of exposure.[41]

This is consistent with the previous rulings on legislative contempt that "disclosures by witnesses may be compelled constitutionally 'to enable the respective bodies to discharge their legitimate functions.'" [42] The presumption is that Congress will not "exert power beyond its proper bounds, or without due regard to the rights of witnesses." [43]

In conducting legislative inquiries, the Court further stressed that rights of persons appearing or affected therein must be respected. It noted that "the power of legislative inquiry must be carefully balanced with the private rights of those affected. A person's right against self-incrimination and to due process cannot be swept aside in favor of the purported public need of a legislative inquiry." [44]

As may be gleaned from the foregoing, although an inherent power of legislative contempt exists and is broad in scope, it is subject to limitations that safeguard constitutionally guaranteed freedoms.

Dual aspect of judicial
contempt may not be squarely
applicable in legislative
contempt

Contempt in judicial proceedings has a dual aspect; it may either be criminal (punitive) or civil (remedial). The type of proceeding varies depending on the nature of the contempt involved. During the deliberations on this case, it was posited that the dual aspect also applies in legislative contempt, to which I disagreed. To clarify the matter, I write to assess the applicability of this distinction as regards legislative contempt.

To reiterate, the legislature's inherent power of contempt is auxiliary to its power to conduct investigations. The power to punish for contempt is the means by which Congress can enforce or compel obedience to its directives in the course of its investigation. The power of legislative contempt rests fundamentally on the power of self-preservation,[45] because absent such power, Congress may not effectively obtain information that will enable it to formulate intelligent and effective laws.

Being wholly ancillary to the power to investigate, the contempt power of Congress is *sui generis* and allows it to punish a person for noncompliance in order to remove obstructions to the investigation or otherwise assert its authority to inquire. Hence, a witness' refusal to be sworn, or to testify, or to answer a proper question, or to appear, or to bring required documents constitute contemptuous acts for which Congress can order the witness' detention.[46] Such punishment is "necessary to preserve and carry out"[47] the legislative power. Based on the

Senate rules, the imposition of the punishment may be immediate - without need for further notice or opportunity to be heard.

Nevertheless, when "more [than preservation] is desired, where punishment as such is to be imposed, a criminal prosecution must be brought, and in all fairness to the culprit, he must have thrown around him all the protections afforded by the Bill of Rights." [48] Hence, an imposition of punishment in the exercise of legislative contempt is not "essentially criminal" [49] in nature. The resulting detention in legislative contempt serves mainly to coerce the witness to comply with orders. The distinction between "punishment for [legislative] contempt" and "punishment for crime" was explained thus:

The implied power to punish for [legislative] contempt is coercive in nature. The power to punish crimes is punitive in nature. The first is a vindication by the House of its own privileges. The second is a proceeding brought by the State before the courts to punish offenders. The two are distinct, the one from the other. [50] (Citation omitted)

Judicial contempt is different. Contempt as used in judicial proceedings, which is expounded under Rule 71 of the Rules of Court, is further developed in jurisprudence. The dual purpose of the power to punish for contempt in judicial proceedings as punitive (criminal) and coercive (civil) is explained in *People v. Godoy*: [51]

The exercise of the power to punish for contempt has a dual aspect, primarily, the proper punishment of the guilty party for his disrespect to the court, and, secondarily, his compulsory performance of some act or duty required of him by the court and which he refuses to perform. Due perhaps to this two fold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal. However, the line of demarcation between acts constituting criminal contempt, as distinguished from civil contempt, is quite indistinct. x x x. [52] (Citations omitted)

In the aforementioned case, the Court has exhaustively discussed the difference between criminal and civil contempt as used in judicial proceedings, as follows:

A. As to the Nature of the Offense

x x x x

A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court.

x x x x

C. As to the Character of the Contempt Proceeding

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

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In

general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience. The rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings. x x x

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.[53] (Emphases supplied; citations omitted)

More succinctly, the difference between the two classes of contempt in judicial proceedings lies in the purpose of punishment: in criminal contempt, it is to assert the court's authority or to punish for disobedience (punitive), while in civil contempt, it is to preserve the right of private persons in whose behalf the violated order was made (remedial or compensatory).

To my mind, however, the distinction between civil and criminal contempt as used in judicial proceedings may not be squarely applicable to the legislative setting. It must be emphasized that the power of contempt of the legislature is *sui generis*. It is not absolutely similar with judicial contempt. Considering that there are no private persons for whose benefit an order is issued, there will not be an occasion for the contempt order of Congress to constitute civil contempt in the sense discussed above. Verily, a legislative body's directive to appear during its proceeding is for the benefit of the public - towards the end of legislation - and not for any private entity. Moreover, by citing a person in contempt, Congress primarily asserts its authority as one of the three independent branches of government. On this basis, if the civil contempt and criminal contempt dichotomy is used, the order of Congress citing a person in contempt will always be punitive in nature, which may not be an accurate characterization. Nevertheless, legislative contempt proceedings should be conducted pursuant to "the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings." [54]

To be clear, Congress is still mandated by the Constitution to respect the rights of persons appearing before it in the conduct of legislative inquiry.[55] A balance must be struck between the power of Congress to compel compliance and the rights of the persons affected.

The 1st Contempt Order is
valid; the 2nd Contempt Order is
invalid for failure to accord due
process to Ong and Yang

In my view, persons who receive an order of Congress to attend, testify, or produce documents must dutifully

comply, and those who fail to do so may be immediately cited for contempt. Hence, the 1st Contempt Order issued against Ong and Yang are valid. Their recourse is to comply with the directive.

On the other hand, it is my opinion that witnesses who are deemed by Congress to have testified falsely or evasively, must be accorded stricter due process requirements, such as an opportunity to explain one's side before being penalized, consistent with the due process safeguards used in criminal proceedings. In *In Re Oliver*,^[56] the U.S. Supreme Court held that "the failure to afford petitioner a reasonable opportunity to defend himself against the charge of giving false and evasive testimony was a denial of due process of law." In the Philippines, giving false testimony in an official proceeding is a crime punishable under the Revised Penal Code.^[57]

Similarly, I posit that a legislative body cannot immediately cite a witness in contempt for giving false or evasive testimony. The Court has held that the "exercise of the summary power to imprison for contempt is a delicate one and care is needed to avoid arbitrary or oppressive conclusions."^[58]

Again, in exercising its powers, including the power of contempt, Congress is mandated by the Constitution to respect the rights of persons appearing before it. Thus, when there is preliminary assessment that the witness before it is giving a false or evasive testimony, the witness must first be ordered to show cause why he or she should not be cited in contempt. Thereafter, if Congress remains convinced that the testimony is false or evasive, Congress can cite such person in contempt pursuant to its inherent power. Consistent with the ruling in *Balag v. Senate of the Philippines*,^[59] the detention can last only until the termination of the legislative inquiry. Thereafter, a criminal prosecution needs to be initiated against such person if he or she needs to be further detained.^[60]

Stated differently, indeed, Congress may declare a witness in contempt for "giving false or evasive testimony." However, considering the broad definition on this ground and to afford the witness the opportunity to be heard, at the very least, the witness must be given a chance to explain why his or her testimony is not false or evasive. Only after giving the requisite due process, as mandated under the Constitution, should Congress declare the witness in contempt.

Further, witnesses who are cited in contempt on this ground are not left without recourse. If there is no clear factual basis for citing them in contempt, they can assail the order of Congress on the ground of grave abuse of discretion. It bears stressing, however, that Congress only needs to show that it has a clear factual basis for such determination, and did not exercise its contempt power with grave abuse of discretion. If a clear factual basis is shown, the Court will respect such finding as was done in *Arnault v. Balagtas*.^[61] This is consistent with the Court's respect to a co-equal branch of government and the sui generis character of legislative contempt.

Applying the foregoing discussion to the present case, I find that the 2nd contempt order which directed the arrest of Ong and Yang must be nullified, not because the Senate Rules regarding contempt are invalid, but due to the failure of the Senate Committee to provide the witnesses a prior opportunity to be heard via a show cause order, as a due process measure.

The phrase "testifies falsely or evasively" in the assailed Senate rules is not vague; hence, not unconstitutional

Notably, the ponencia declares not unconstitutional the phrase "testifies falsely or evasively" in the assailed Senate rules.^[62]

I agree. To my mind, the terms 'false' and 'evasive' are not vague because they can be understood using simple

statutory construction. False means "intended to or tending to mislead" or "intentionally untrue." On the other hand, to evade or be evasive means to "avoid answering directly" or to "turn aside." [63] Given that the terms can be reasonably understood in its ordinary usage, the resulting phrase should not be declared void.

Further, a provision may be challenged on its face based on the vagueness doctrine if the provision is "vague in all its possible applications." [64] The challenger must establish that "no set of circumstances exists under which the [provision] would be valid." [65] Based on this standard, the petitioners failed to prove how the resulting phrase (i.e., "testifies falsely or evasively") is vague as to render it void.

Again, I believe that the Senate has the power to declare a witness in contempt for giving false or evasive testimony. However, as a minimum due process requirement, the witness should be given an opportunity to be heard so that the legislative body will have sufficient factual basis before it can cite the witness in contempt. Failure to afford such due process requirement, resulting to a lack of factual basis, shall render the contempt invalid on the ground of grave abuse of discretion on the part of the legislature.

The power to arrest is
necessary to carry out
legislative contempt power; it
may be executed even without
an explicit statement in the
Senate Rules

To be clear, the Senate may order the arrest of a person when cited for contempt. There is no need for the Senate rules to be amended to specifically indicate arrest as a consequence of being cited in contempt. Otherwise, the inherent power of contempt would be toothless. The ponencia accurately pronounced thus:

Strictly speaking, the power to arrest a witness is not specified under the Senate Rules of Procedure. Such Rules only cite the explicit power of the Senate to detain a witness. The Court, however, views that an arrest is necessary to carry out the coercive process of compelling attendance, testimony, and production of documents relevant in a legislative inquiry. [66]

During the deliberations on this case, it was intimated that there is difference between the power to arrest and the power to detain, as posited by Justice Corona in his dissenting opinion in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, [67] viz.:

Under the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee, respondent Committees are authorized only to detain a witness found guilty of contempt. On the other hand, nowhere does the word "arrest" appear in either rules of procedure.

There is a whale of a difference between the power to detain and the power to arrest.

To detain means to hold or keep in custody. On the other hand, to arrest means to seize, capture or to take in custody by authority of law. Thus, the power to detain is the power to keep or maintain custody while the power to arrest is the power to take custody. The power to detain implies that the contumacious witness is in the premises (or custody) of the Senate and that he will be kept therein or in some other designated place. In contrast, the power to arrest presupposes that the subject thereof is not before the Senate or its committees but in some other place outside.

The distinction is not simply a matter of semantics. It is substantial, not conceptual, for it affects the fundamental right to be free from unwarranted governmental restraint.

Since the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee speak only of a power

to order the detention of a contumacious witness, it cannot be expanded to include the power to issue an order of arrest. Otherwise, the constitutional intent to limit the exercise of legislative investigations to the procedure established and published by the Senate or its committees will be for naught.[68] (Emphases supplied)

I respectfully differ. To my mind, requiring physical presence in the premises of the Senate before it can execute an arrest fails to take into account technological advancements that enable witnesses to appear before the Senate without being within the physical confines of the legislative halls. Surely, such witnesses who appear remotely before the legislative body are not beyond the reach of the legislative power of contempt. Hence, a witness, such as Ong, who attended the legislative hearings online via video conference, can properly be subject of arrest and detention even if he is located beyond the physical walls of the Senate.

Moreover, the formulation renders the power of contempt ineffective against witnesses who refuse to obey a subpoena to attend a legislative hearing, and are therefore also situated outside the premises of the Senate. It is for these reasons that I cannot subscribe to the previously suggested distinction between the two terms relative to the exercise of the power of legislative contempt. Hence, I commend the corrected stance in the ponencia on this matter.

To reiterate, the Senate rules need not be amended to explicitly indicate the power to take or "arrest" a person from outside the legislative halls.

In sum, I concur with the ponencia. I respectfully vote not to declare unconstitutional the phrase "testifies falsely or evasively" in the Senate Rules on the ground of vagueness. The 2nd contempt order which directed the arrest of Ong and Yang must be held invalid for noncompliance with due process, particularly by failing to provide a prior opportunity to be heard before citing them in contempt. Hence, in the 2nd contempt order, the Senate committed grave abuse of discretion.

WHEREFORE, I vote to PARTLY GRANT the petitions. The September 10, 2021 Order of the Senate Committee on Accountability of Public Officers and Investigations is ANNULLED and SET ASIDE. Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation is CONSTITUTIONAL.

[1] In response to the ponencia as circulated for the agenda on March 28, 2023.

[2] The Contempt Order provides thus: "For testifying false and evasively before the Committee on September 10, 2021 and thereby delaying, impeding, and obstructing the inquiry into the 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH), ESPECIALLY ITS EXPENDITURES RELATED TO THE RIGHT AGAINST COVID, therefore, upon motion of Senators Panfilo M. Lacson and Franklin M. Drilon and seconded by Senator Risa Hontiveros, the Committee hereby cites MR. LINCONN ONG in contempt and ordered arrested and detained at the Office of the Sergeant-At-Arms until such time that he gives his testimony without evasion, or otherwise purges himself of that contempt.

The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement." (See ponencia p. 6)

[3] Senate Rules of Procedure Governing Inquiries in Aid of legislation, Senate Resolution No. 5, as amended by Resolution No. 145 adopted on February 6, 2013, available at <<http://legacy.senate.gov.ph/about/rules82216.pdf>>.

[4] See Rules of the Committee on Accountability of Public Officers and Investigations, adopted by the Blue Ribbon Committee on August 14, 2019.

[5] See Annex H (Senate Order dated September 10, 2021) of Yang's Petition (G.R. No. 257916), which reads: "For testifying falsely and evasively before the Committee on September 10, 2021 and thereby delaying, impeding, and obstructing the inquiry into the 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH) ESPECIALLY ITS EXPENDITURES RELATED TO THE FIGHT AGAINST COVID, therefore, upon motion of Senator Panfilo M. Lacson and seconded by Senator Risa Hontiveros, the Committee hereby cites MR. MICHAEL YANG AKA YANG HONG MING in contempt and ordered arrested and detained at the Office of the Sergeant-At-Arms until such time that he gives his testimony without evasion, or otherwise purges himself of that contempt." (Underscoring supplied)

[6] See Senate's Comment (G.R. No. 257916), p. 78.

[7] Ponencia, p. 14.

[8] Id. at 16-17.

[9] Id. at 17-18.

[10] Id. at 24-42.

[11] Id. at 43-35.

[12] GOLDFARB, THE CONTEMPT POWER (1963) as cited in Watkins C. Gaylord. "The Enforcement of Conformity to law through Contempt Proceedings." Osgoode Hall Law Journal 5.2 (1967): 125-158; see also Ronald Goldfarb, The History of the Contempt Power, Wash. U.L.Q. 1 (1961); Contempt has also been broadly defined as a "willful disregard or disobedience of a public authority," (Black's Law Dictionary, 4[th] ed.) or of "the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body." (Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines, 672 Phil. 1, 10 [2011]).

[13] Bro. Oca v. Custodio, 814 Phil. 641, 681(2017).

[14] Id. at 683; see Province of Camarines Norte v. Province of Quezon, 419 Phil. 372, 389 (2001), stating that the power to "punish contemptuous acts should be exercised on the preservative and not on the vindictive principle"; see also Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines, supra, at 19-20, reminding judges to exercise the "power to punish contempt judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the power for the correction and preservation of the dignity of the Court, not for retaliation or vindictiveness."

[15] See also C.S. Potts, Power of Legislative Bodies to Punish for Contempt, University of Pennsylvania law Review and American law Register, Vol. 74, No. 8 (1962), p. 782, which explains that commentators on American constitutional law recognizes the ground of "necessity" as basis for the legislative contempt power. Writing of the power to punish for contempt, Chancellor Kent wrote in 1826 that it "is a power inherent in all legislative assemblies, and is essential to enable them to execute their great trusts with freedom and safety."

[16] 55 Phil. 170 (1930). The Court held that "the power to punish for contempt is inherent in the bodies composing the legislative branch."

[17] Id. at 178.

[18] Id. at 177-178.

[19] 87 Phil. 29 (1950).

[20] Id. at 45, citing *McGrain v. Daugherty*, 273 U.S., 135 (1927).

[21] 97 Phil. 358 (1955).

[22] Id. at 370-371.

[23] *Supra*.

[24] Id. at 41.

[25] Id. at 43.

[26] *Arnault v. Balagtas*, *supra*, at 367.

[27] *Arnault v. Nazareno*, *supra* note 19, at 64-65.

[28] Id.

[29] Id. at 65, citing 12 Am. Jur., sec. 15, *Contempt*, pp. 399-400.

[30] *Supra*.

[31] Id. at 371.

[32] CONSTITUTION, (1973), Art. VIII, Sec. 12, par. (2), states thus:

The National Assembly or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in such inquiries shall be respected.

[33] CONSTITUTION, (1987), Art. VI, Sec. 21, states thus:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

[34] *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 586 Phil. 135 (2008). The language of Section 21, Article VI of the 1987 Constitution is categorical in saying that the inquiry must be conducted "in accordance with the duly published rules of procedure." The Court stressed that the required promulgation of the rules pertaining to legislative inquiries is for the benefit of the witnesses, and the Senate committee does not have the discretion to set aside their rules anytime they wish. Thus, the Senate had abused its authority when it ordered the petitioner's arrest despite non--publication of its rules pertaining to contempt.

[35] See Concurring Opinion of J. (later Chief Justice) Corona in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 572 Phil. 554, 675-676 (2008).

[36] Id. at 675, citing Cruz, Isagani A., *Philippine Political Law*, 2002 edition, Central Lawbook Publishing Co., Inc., pp. 163-164 thus: "[I]n the past this power was much abused by some legislators who used it for illegitimate ends or to browbeat or intimidate witnesses, usually for grandstanding purposes only. There were also times when the subject of the inquiry was purely private in nature and therefore outside the scope of the powers of the Congress."

[37] 835 Phil. 451 (2018).

[38] Id. at 464.

[39] Id. at 471.

[40] G.R. No. 240873, September 3, 2019, 917 SCRA 490.

[41] Id. at 498-499.

[42] *McGrain v. Daugherty*, supra note 20.

[43] Id. Should such happen, however, the "witness may rightfully refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry." (*McGrain v. Daugherty*, supra, citing *Kilbourn v. Thompson*, 103 U.S. 168 [1880], and *In Re Chapman*, 243 U.S. 521 [1917]).

[44] *Calida v. Trillanes IV*, supra, at 499.

[45] *Lopez v. De Los Reyes*, supra note 16, at 184; see also C.S. Potts, *Power of Legislative Bodies to Punish for Contempt*, *University of Pennsylvania law Review and American law Register*, Vol. 74, No. 8 (1962), p. 782. (See footnote on *Ex parte McCarthy*, 29. Cal 395 [1866]).

[46] See Section 18 of the Senate Rules on Inquiries.

[47] *Lopez v. Delos Reyes*, supra, at 177. "The power to deal directly by way of contempt, without criminal prosecution, may be implied from the constitutional grant of legislative power to the Congress in so far, and so far only, as such authority is necessary to preserve and carry out the legislative power granted." (Emphasis supplied). See also *Marshall v. Gordon*, 243 U.S. 521 (1917).

[48] *Lopez v. Delos Reyes*, supra, at 184.

[49] Ponencia, p. 41 .

[50] *Lopez v. Delos Reyes*, supra, at 180.

[51] 312 Phil. 977 (1995).

[52] Id. at 988.

[53] Id. at 999-1002; see also *Atty. Ceniza v. Wistehuff, Sr.*, 524 Phil. 462, 479-480 (2006), to wit:

In the recent case of *Montenegro v. Montenegro*, the Court distinguished criminal contempt from civil contempt, as follows:

Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court to disrepute or disrespect." On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made. If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil.

Thus, contempt proceedings has a dual function: (1) vindication of public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court.

Contempt proceedings are neither wholly civil nor altogether criminal. It may not always be easy to classify a particular act as belonging to one of those two classes. It may partake of the characteristics of both. If it is remedial and coercive in nature, it is civil; the parties are the individuals whose private rights and remedies they

were instituted to protect or enforce. The absence of willfulness does not release one from civil contempt. It is civil if it is instituted to preserve and enforce the rights and administer the remedies of the parties to which the court has to force them to obey.

Proceedings for contempt are criminal in nature if presented to preserve the power of the courts and to punish for disobedience to their orders. Criminal contempt involves no element of personal injury; it is directed against the power and dignity of the court and the private parties have little if any interest in the proceedings for its punishment.

The Rules of Court provides for the following punishment for the contemnor: fine or imprisonment, or both.

It is not the fact of punishment, but rather its character and purpose, that often serve to distinguish between the two classes of contempt. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court. But if the contempt consists in the refusal of a party or a person to do an act which the court has ordered him to do for the benefit or the advantage of a party to a suit or action pending before it, and he is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court, and the party in whose favor that judgment was rendered is the real party-in-interest in the proceedings. (Emphases supplied, citations omitted)

[54] *People v. Godoy*, supra note 51, at 1001.

[55] CONSTITUTION, (1987), Art. VI, Sec. 21, states: The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

[56] 333 U.S. 257 (1948).

[57] REVISED PENAL CODE Art. 184, provides:

Art. 184. Offering false testimony in evidence. - Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this Section. (Emphases supplied)

[58] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, supra note 12, at 13; citation omitted.

[59] Supra note 37.

[60] *Id.* at 471.

[61] Supra note 21.

[62] Ponencia, pp. 43-45.

[63] Merriam Websters Dictionary (available at <https://www.merriam-webster.com/dictionary/evade>).

[64] *Estrada v. Sandiganbayan*, 421 Phil. 290, 354 (2001).

[65] *Id.* at 354.

[66] Ponencia, pp. 17-18.

[67] Supra note 35.

[68] Id. at 678-679.

SEPARATE CONCURRING OPINION

LEONEN, J.:

Respondent Senate of the Philippines, acting through the Senate Committee on Accountability of Public Officers and Investigations, otherwise known as the Senate Blue Ribbon Committee, has the inherent power to punish non-members for legislative contempt, pursuant to its power to conduct inquiry in aid of legislation. Being implied or incidental to its power of inquiry, the power of contempt should also be limited in the same manner: "in aid of legislation in accordance with its duly published rules of procedure[;]" and "the rights of persons appearing in or affected by such inquiries shall be respected."^[1]

Under its Rules of Procedure Governing Inquiries in Aid of Legislation, the Senate may punish or cite in contempt any witness who testifies falsely or evasively before the proceedings. However, the term "evasively" is vague and should be struck down as unconstitutional "on its face" as it sends a chilling effect on the right to free speech. Also, for failure to accord due process to petitioners Linconn Uy Ong and Michael Yang Hong Ming, as the arrest orders were not in the Rules, the Orders citing petitioners in contempt and directing their arrests were issued by the Senate with grave abuse of discretion amounting to lack or excess of jurisdiction.

I

Concomitant with legislative power is the power of Congress to conduct inquiries in aid of legislation and the power to enforce it.^[2] Although the 1973 Constitution^[3] and 1987 Constitution^[4] explicitly grant the legislative department with the power to conduct inquiries in aid of legislation, it does not expressly grant the power to enforce or punish non-members for legislative contempt.

Nevertheless, in the 1930 case of *Lopez v. De los Reyes*,^[5] the Court recognized the inherent power of the Legislature to punish persons not members for contempt although no express power to punish for contempt was granted by the Organic Act. It held that the legislative power to punish for contempt "arises by implication, is justified only by the right of self-preservation, and is the least possible power adequate to the end proposed."^[6]

Subsequently, in *Arnault v. Nazareno*,^[7] a case decided by the Court under the 1935 Constitution, the Court defined the power to conduct inquiries and to punish a person not its member for contempt as "essential and appropriate auxiliary to the legislative function", to wit:

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not frequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. The fact that the Constitution expressly gives to congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person.

But no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire.^[8] (Citations omitted)

Arnault was called upon by the Senate to testify on the questionable purchase of the Buenavista and Tambobong estates by the Rural Progress Administration. He was detained for contempt for his refusal to answer the questions by the senators.

In the subsequent case of *Arnault v. Balagtas*[9] arising from the same facts as *Arnault v. Nazareno*, this Court expounded on the power to punish for contempt as implied or incidental to the exercise of legislative power, or necessary to effectuate the power, and its exercise not being subject to judicial interference, absent manifest, and absolute disregard of discretion:

The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power, or necessary to effectuate said power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of the other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with the affronts committed against its authority or dignity.

....

We must also and that provided the contempt is related to the exercise of the legislative power and is committed in the course of the legislative process, the legislature's authority to deal with the defiant and contumacious witness should be supreme, and unless there is a manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference.[10] (Citations omitted)

Contempt power is inherent in the same way that "courts wield an inherent power to 'enforce their authority, preserve their integrity, maintain their dignity, and ensure the effectiveness of the administration of justice.'"[11] Still, the contempt power of the Legislative must be distinguished from the contempt power of the Judiciary, as explained in the subsequent case of *Arnault v. Balagtas*:

The process by which a contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authority must be distinguished from the judicial process by which offenders are brought to the courts of justice for the meting of the punishment which the criminal law imposes upon them. The former falls exclusively within the legislative authority, the latter within the domain of the courts; because the former is a necessary concomitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law.[12]

In *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*,[13] this Court is explicit that the contempt power of Congress is *sui generis* and independent of the Judiciary:

The exercise by the legislature of the contempt power is a matter of self-preservation as that branch of the government vested with the legislative power, independently of the judicial branch, asserts its authority and punishes contempts thereof. The contempt power of the legislature is, therefore, *sui generis*, and local legislative bodies cannot correctly claim to possess it for the same reasons that the national legislature does. The power attaches not to the discharge of legislative functions per se but to the character of the legislature as one of the three independent and coordinate branches of government.[14]

Contempt power has been characterized as a "matter of self-preservation" as the branch of government vested

with legislative power.[15] Thus, in *Standard Chartered Bank v. Senate Committee on Banks, Financial Institutions and Currencies*,^[16] this Court found the contempt citation against petitioners reasonable and justified because petitioners' imputation that the investigation was "in aid of collection" was a direct challenge against the authority of the Senate Committee and ascribed ill motive to it.

The power to punish for contempt is grounded on necessity of information to legislate wisely and effectively, as stated in *Senate of the Philippines v. Ermita*:^[17]

As discussed in *Arnault*, the power of inquiry, "with process to enforce it," is grounded on the necessity of information in the legislative process. If the information possessed by executive officials on the operation of their offices is necessary for wise legislation on that subject, by parity of reasoning, Congress has the right to that information and the power to compel the disclosure thereof.^[18]

In *In re Sabio v. Gordon*,^[19] this Court held that it is the duty of the Presidential Commission on Good Government chairperson and its commissioners to cooperate with the Senate Committees in their efforts to obtain facts needed for intelligent legislative action. This Court underscored each citizen's obligation to respond "to subpoenae, to respect the dignity of the Congress and its Committees, and to testify fully with respect to matters within the realm of proper investigation."^[20]

Thus, the contempt power of Congress is in aid of legislation, and not pursuant to adjudication. In *Oca v. Custodio*,^[21] this Court found that petitioners ought to be cited in contempt for their willful disobedience of court orders under the Rules of Court. It went on to distinguish between civil and criminal contempt to determine the quantum of proof and punishment necessary for a finding of contempt against the court:

Civil contempt is committed when a party fails to comply with an order of a court or judge "for the benefit of the other party." A criminal contempt is committed when a party acts against the court's authority and dignity or commits a forbidden act tending to disrespect the court or judge.

This stems from the two (2)-fold aspect of contempt which seeks: (i) to punish the party for disrespecting the court or its orders; and (ii) to compel the party to do an act or duty which it refuses to perform.

In *Halili v. Court of Industrial Relations*:

Due to this twofold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal. A civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein; and a criminal contempt, is conduct directed against the authority and dignity of a court or of a judge, as in unlawfully assailing or discrediting the authority or dignity of the court or judge, or in doing a duly forbidden act. Where the punishment imposed, whether against a party to a suit or a stranger, is wholly or primarily to protect or vindicate the dignity and power of the court, either by fine payable to the government or by imprisonment, or both, it is deemed a judgment in a criminal case. Where the punishment is by fine directed to be paid to a party in the nature of damages for the wrong inflicted, or by imprisonment as a coercive measure to enforce the performance of some act for the benefit of the party or in aid of the final judgment or decree rendered in his behalf, the contempt judgment will, if made before final decree, be treated as in the nature of an interlocutory order, or, if made after final decree, as remedial in nature, and may be reviewed only on appeal from the final decree, or in such other mode as is appropriate to the review of judgments in civil cases.... The question of whether the contempt committed is civil or criminal, does not affect the jurisdiction or the power of a court to punish the same....

The difference between civil contempt and criminal contempt was further elaborated in *People v. Godoy*:

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

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

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience. The rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.

Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. In proceedings for civil contempt, there is no presumption, although the burden of proof is on the complainant, and while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence. It has been said that the burden of proof in a civil contempt proceeding lies somewhere between the criminal "reasonable doubt" burden and the civil "fair preponderance" burden.

Civil contempt proceedings seek to compel the contemnor to obey a court order, judgment, or decree which he or she refuses to do for the benefit of another party. It is for the enforcement and the preservation of a right of a private party, who is the real party in interest in the proceedings. The purpose of the contemnor's punishment is to compel obedience to the order. Thus, civil contempt is not treated like a criminal proceeding and proof beyond reasonable doubt is not necessary to prove it.[22] (Emphasis supplied, citations omitted)

Therefore, the distinction of civil and criminal contempt as discussed by the ponente,[23] citing *Oca*, should only apply to cases involving contempt of courts, and not cases involving the legislative's exercise of its contempt powers in aid of legislation, as in the present case. Thus, the characterization of legislative contempt as criminal or punitive[24] has no basis.

Despite the wide latitude granted to the legislative department to conduct inquiries in aid of legislation, such is not without limitation. These limitations also impliedly safeguard the power of Congress to cite in contempt. Article VI, Section 21 of the 1987 Constitution provides that:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or

affected by such inquiries shall be respected.

Pursuant to the provision, the investigation must be: (1) "in aid of legislation in accordance with its duly published rules of procedure;" and (2) "the rights of persons appearing in or affected by such inquiries shall be respected." [25] Congress must exercise its powers subject to the limitations of the Bill of Rights. [26] In *Calida v. Trillanes*: [27]

[L]egislative inquiry must respect the individual rights of the persons invited to or affected by the legislative inquiry or investigation. Hence, the power of legislative inquiry must be carefully balanced with the private rights of those affected. A person's right against self-incrimination and to due process cannot be swept aside in favor of the purported public need of a legislative inquiry.

It must be stressed that persons invited to appear before a legislative inquiry do so as resource persons and not as accused in a criminal proceeding. Thus, they should be accorded respect and courtesy since they were under no compulsion to accept the invitation extended before them, yet they did so anyway. Their accommodation of a request should not in any way be repaid with insinuations.

The basic rules of decorum and decency must govern any undertaking done in one's official capacity as an agent of the State, in tacit recognition of one's role as a public servant. However, the deportment and decorum of the members of any constitutional organ, such as both Houses of Congress during a legislative inquiry, are beyond the judicial realm. All this Court can do is exercise its own power with care and wisdom, acting in a manner befitting its dignified status as public servant and never weaponizing shame under the guise of a public hearing. [28]

Nevertheless, the power of legislative inquiry, if patently abused, may be subjected to judicial review pursuant to the Court's certiorari powers under Article VIII, Section 1 of the Constitution. [29]

Here, both petitioners invoke the certiorari powers of this Court in claiming that the respondent committed grave abuse of discretion amounting to lack of or excess of jurisdiction in issuing the contempt and arrest orders against them. Petitioner Ong alleges that the Order citing him in contempt for falsely and evasively testifying during the September 10, 2021 hearing was unconstitutional, since the term "testifying falsely or evasively" in the Senate Rules of Procedure Governing Inquiries in Aid of Legislation is vague for having no clear standards. [30] He likewise contends that respondent has no power to order his arrest. [31] Petitioner Yang also questions the legal basis of the arrest orders issued against him. [32]

II

Pursuant to Article VI, Section 21 of the 1987 Constitution on its power to conduct inquiries and Article VI, Section 16(3) [33] of the same on its power to determine the rules of its own proceedings, respondent Senate adopted the Rules of Procedure Governing Inquiries in Aid of Legislation in 2010. These rules are presumed valid and constitutional based on the respect that the Judiciary accords to the Legislature as noted in *Estrada v. Sandiganbayan*: [34]

Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.

If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full

knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.[35]

However, the validity of laws and rules may be constitutionally challenged either: (1) "as applied" upon considering the "actual facts affecting real litigants;" or (2) "on its face," or a "facial challenge" upon "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities." [36]

In an "as applied" challenge, the petitioner must allege and prove that there is an actual case or controversy through facts showing breach of rights or a demonstrable contrariety of legal rights.[37]

On the other hand, a facial challenge has been considered as a narrow exception to strike down a law despite lack of an actual case or controversy.[38] Thus, invalidation of the law "on its face" is specifically limited to the following circumstances:

The first situation involves a statute that flagrantly violates the right to freedom of expression and its cognate rights. Freedom of expression is the cornerstone of a democratic government and occupies the highest rank in the hierarchy of civil liberties. Section 4 of the Constitution states, "No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." Consequently, a facial challenge is permitted in cases involving freedom of expression and its concomitant rights to prevent prior restrictions on free speech or overly broad language that has a chilling effect on free speech.

In *Southern Hemisphere Engagement Network, Inc. v. Anti--Terrorism Council*, this Court explained: A facial invalidation of a statute is allowed only in free speech cases, wherein certain rules of constitutional litigation are rightly excepted.

The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "in terrorem effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights

The second scenario permits judicial review in the absence of actual facts when a violation of fundamental rights is so grievous or imminent that judicial restraint would lead to serious violations of fundamental rights. In these instances, the violation of rights must be so egregious and pervasive that almost any citizen could raise the issue. In *Parcon-Song v. Parcon*, this Court held:

There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy a deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it...

The third instance in which judicial review is appropriate despite the absence of actual facts is when a Constitutional provision invokes emergency or urgent measures. By its very nature, emergency or urgent measures are temporary thus allowing it to avoid judicial review even if its capable of repetition. This contemplates situations in which waiting for an actual dispute or injury to occur may result in irreversible damage or harm to an individual. However, with the risk that the relevant measure would be repealed or rendered obsolete, the filing of a lawsuit or seeking judicial recourse would be futile. In such a situation, this Court may determine the applicable doctrine regarding the provision. This may be applied, but is not limited to, challenges regarding the suspension of habeas corpus, the declaration of martial law, and the exercise of emergency powers.[39]

In free speech cases, a facial challenge on a statute has been allowed. The primacy and high esteem accorded the right to free speech has been emphasized by this Court in *Chavez v. Gonzales*:[40]

Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence. When atrophied, the right becomes meaningless. The right belongs as well — if not more — to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though if be hostile to or derided by others; or though such view "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. " To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.

The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.

The constitutional protection is not limited to the exposition of ideas. The protection afforded free speech extends to speech or publications that are entertaining as well as instructive or informative.[41] (Emphasis supplied)

An analytical tool to test statutes in free speech cases "on their faces" is the doctrine of vagueness, as explained in *People v. Nazario*:[42]

As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[43]

Under the doctrine of vagueness, a statute can be facially challenged "if it is vague in all its possible applications" to prevent a chilling effect, which deters third persons not before the court from exercising their right to free speech, thus:

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or prescribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution,

the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity."

....

As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.[44] (Emphasis supplied, citations omitted)

As I noted in *Disini v. Secretary of Justice*,^[45] the doctrine on "chilling effect" from the United States Supreme Court jurisprudence is advisory before us:

The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. *Marcus v. Search Warrant*, 367 U.S. 717, 367 U.S. 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.[46] (Emphasis in the original)

The "chilling effect," however, has been incorporated in our jurisprudence as in the case of *Chavez*. There, this Court held that the press statements of the Secretary of Justice and of the National Telecommunications Commission constituted impermissible forms of prior restraints on the right to free speech and press. This Court found enough evidence of chilling effect due to the complained acts on record, after considering the totality of the injurious effects of the violation to private and public interest:

We rule that not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. Our laws are of different kinds and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, by itself and without more, cannot support suppression of free speech and free press. In fine, violation of law is just a factor, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom of speech and of the press. The totality of the injurious effects of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. In calling for a careful and calibrated measurement of the circumference of all these factors to determine compliance with the clear and present danger test, the Court should not be misinterpreted as devaluing violations of law. By all means, violations of law should be vigorously prosecuted by the State for they breed their own evil consequence. But to repeat, the need to prevent their violation cannot per se trump the exercise of free speech and free press, a preferred right whose breach can lead to greater evils.

....

There is enough evidence of chilling effect of the complained acts on record. The warnings given to media came from no less the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media. They also came from the Secretary of Justice, the alter ego of the Executive, who wields the awesome power to prosecute those perceived to be violating the laws of the land. After the warnings, the KBP inexplicably joined the NTC in issuing an ambivalent Joint Press Statement. After the warnings, petitioner Chavez was left alone to fight this battle for freedom of speech and of the press. This silence on the sidelines on the part of some media practitioners is too deafening to be the subject of misinterpretation.[47] (Emphasis in the original)

In *Calleja v. Executive Secretary*,[48] this Court permitted a facial challenge of the provisions in the Anti-Terrorism Act of 2020, which involved and raised chilling effects on freedom of expression and its cognate rights.

Here, petitioner Ong challenges the Senate Rules of Procedure Governing Inquiries in Aid of Legislation pertaining to contempt, specifically the term "testifies falsely or evasively," as applied to him.

I submit that the term "evasively" is vague and should be struck down "on its face" as sending a chilling effect on the right to free speech.

The pertinent provision of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation states that:

Section 18. Contempt. - (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. A majority of all the members of the Committee may, however, reverse or modify the aforesaid order of contempt within seven (7) days. (Emphasis supplied)

Unlike an evasive testimony, a false testimony can easily be understood and discerned based on facts, as the term "false"[49] indicates.

Respondents Senate et al. cited petitioner Ong in contempt for allegedly testifying falsely and evasively during the September 10, 2021 hearing for not being able to answer respondents' questions, like "how much was the payment made to the suppliers, where did the payment come from, what kind of agreement they had with the suppliers," thus:

SEN. LACSON: Do you have documents to show your proof of payment doon sa mga suppliers?

MR. ONG: We have all those documents as long as it's--- wala naman pong rights or--- maba-violate sa amin, we are more than willing to cooperate.

SEN. LACSON: Okay. How much in total did you pay the four suppliers? Doon sa mga dumating, iyong na-procure ninyo and supplied to the PS-DBM, magkano iyong binayaran ninyo sa mga suppliers?

MR. ONG: Mr. Chairman, wala po kasi sa amin iyong mga --- sa akin, wala talaga sa akin ang record. I think I have to access our accounting records.

SEN LACSON: No. But ikaw ang nakikipag-usap sa mga suppliers, may idea ka kung magkano iyong presyo na binayaran mo doon, hindi ba?

MR. ONG: Mr. Chairman, kasi medyo ano po iyon, trade secret na iyon. Parang hindi po kami komportable na ibulgar na po sa publiko.

....

THE CHAIRPERSON: Kaya nga, di sabihin mo na. Makikipagcooperate, tinatanong ka na, hindi mo naman sinasagot.

MR. ONG. Mr. Chair, I myself alone cannot answer that question kasi kumpanya po kami. Allow us to have a meeting on it, tapos pag-usapan namin and we need guidance with our accountants and lawyers. Definitely, pag kinakailangan naming makipag-cooperate sa COA, gagawin po namin iyon.

SEN. LACSON: Mr. Linconn Ong xxx did you have any document... mayroon kayong parang joint venture agreement with Mr. Yang?

MR. ONG: We do have agreement po.

SEN. LACSON: Yes. Do you have a copy of that agreement?

MR. ONG: I don't have it with me, Mr. Chairman.

SEN. LACSON: What kind of agreement do you have with Mr. Yang?

MR. ONG: Hindi ko po talaga maalala noong, noong mga --- specific content na iyan, Mr. Chairman, but sana po maintindihan ninyo na kami po, sa community naming minsan --- totoo po iyan. Pagka- minsan may mga transaksyon kami na minsan verbal-verbal talaga- negosyante lang po.

SEN. LACSON: No. But in this particular case, iyong supplies ng mga PPEs, sinabi mo, mayroon kayong pinirmahan na agreement with Mr. Yang. Ang tanong ko, anong klaseng agreement? Anong klase iyong pinirmahan ninyong dokumento? Anong form? Is it a joint venture agreement?

MR. ONG. Mr. Chairman, I'm not really privy or hindi ko talaga ma- recall ngayon kung ano iyong content, but we have- we do have kasulatan po.

SEN. LACSON: A very important document, hindi mo matandaan kung anong form? Joint venture ha? Contract ba? Hindi mo man lang maalala kung ano iyon?

MR. ONG: Mayroon po talagang ganoon.

SEN. LACSON: Anong klase nga?

MR. ONG. Mr. Chair, hindi ko po maka- hindi ako maka-ano, hindi maka-kasi baka po mali iyong masabi ko ngayon, tapos iyong iba naman iyong nakita ko.

SEN. LACSON: Can you produce that and submit it to this Committee?

MR. ONG: Hanapin ko po, sir. Yes po, yes po.[50] (Emphasis supplied)

Senator Drilon also pointed out that petitioner Ong was testifying falsely and evasively during the hearing:

SEN. LACSON: Six hundred twenty-five thousand pesos. Ang tanong ni Senator Drilon, [PHP] 625,000, tapos ang nire-remit ninyo, sabi mo, galing din sa corporation ninyo, sa Pharmally. Maliwanag iyan, hindi sa ibang corporation, hindi kayo nangutang at lahat. Saan nanggaling iyong perang nire-remit ninyo sa China. Sabihin na nating galing sa bangko rito -

MR. ONG: Opo, opo.

SEN. LACSON: Ang sagot ninyo po, galing sa corporation ninyo. Ang liit ng capital ng corporation ninyo, 625. That's the question. How do you reconcile that?

MR. ONG: Okay, Mr.Chairman, can I- pwede na po ba akong magpaliwanang?

SEN. LACSON: All right. Go ahead.

THE CHAIRPERSON: Kanina ka pa nagpapaliwanag, hindi naman kita pinipigilan.

MR. ONG: Thank you, Mr. Chairman. Thank you, Mr. Chairman, Marami po kasing series of transaction iyon. So, mayroon naman po kaming naiipon na pera. So, that's our pondo. And then at the same time, sa mga series of transactions, pagka medyo malaki na po iyong project, kinakailangan din po namin mangutang sa mga kaibigan. So, hindi ko po dine-deny na mayroon kaming mga utang sa labas.

THE CHAIRPERSON: Hindi naman iyon ang problema. Bilyon bilyon ang tina-transact ninyo, marami kayong kaibigan. Kailangan ring ipaliwanag kung saan rin kinuha noong mga kaibigan ninyo iyang perang iyan. Magpapaliwanag kayo sa Money Laundering Council.

SEN. DRILON: Yes. Just to go back to Mr. Lincoln Ong. Here is a resource person who is clearly lying on the record because he says the funds were corporate funds, corporate funds of Pharmally. But the audited financial statement indicates that beginning of 2020, they had only 625,000 which is the paid-up capital. Clearly, the corporation had no capacity to pay the initial order of 54 million. So, it is not true at all and there is a deliberate effort to mislead the Committee by saying these are corporate funds. We asked him, "Who advanced this payment?" He said it was from bank accounts of Union Bank or something. "Who owns the bank accounts?" He is already evasive. This witness, Mr. Chairman, is clearly lying— is clearly lying. And in the case of Arnault, which is a 1950 case, this Senate has the power to detain, as we have detained, people until they tell us the truth. This witness is both evasive and refuses to answer or telling a lie. And, therefore, he has been declared in contempt earlier. We move that the contempt order be now executed and we send our sheriffs, our security people, to arrest Mr. Ong right now.[51] (Emphasis supplied)

On the other hand, petitioner Yang was also cited in contempt for allegedly testifying evasively, although the records show that petitioner Yang's testimony was inconsistent:

SEN. LACSON: Twenty-two years. Okay. My next question is, when, how and why did you become involved with Pharmally.

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang said that he doesn't know and he has no relation to Pharmally.

SEN. LACSON: I would like to remind Mr. Yang that he is under oath, Mr. Interpreter.

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Yes, Mr. Chairman. Mr. Yang is aware that he is under oath. And it is only through the news that he found out about the existence of Pharmally Pharmaceutical.

SEN. LACSON: So, he maintains that he has nothing to do, nothing to do at all with Pharmally. Is that correct?

MR. HUNG: [interpreting in Chinese for Mr. Yang] MR. YANG.

[responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Okay. Mr. Chairman, what Mr. Yang said is that, initially, he doesn't know of the existence or the whereabouts or anything about Pharmally Pharmaceutical. Later they did approach him for some assistance.

SEN. LACSON: So, it is not true that he has nothing to do or he had nothing to do with Pharmally?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, your question pertains to the corporation or on the operations? We just like to clarify on that ...

SEN. LACSON: First, the corporation, Pharmally Pharmaceuticals.

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Okay. Mr. Chairman, we'd like to clarify in terms of the registration or setup of Pharmally Pharmaceutical, Mr. Yang has nothing to do with it.

SEN. LACSON: That is correct. But does he have anything to do with the operations of Pharmally Pharmaceuticals at any point?

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, in terms of operations, Mr. Yang has not been involved or he has no idea.

SEN. LACSON: Does he know Huang Tzu Yen, the chairman of Pharmally?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] During that 2017, he met Mr. Huang Tzu Yen, together with his father. And after that, they have no any communications.

SEN. LACSON: Does he know a certain Linconn Ong?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Yes. He knows Mr. Linconn Ong, Mr. Chairman.

....

SEN. LACSON: Did he have any business dealings with Mr. Linconn Ong whether in his personal capacity or in his capacity as one of the incorporators of Pharmally Pharmaceuticals?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, no.

SEN. LACSON: No business dealings with Mr. Linconn Ong?

MR. HUNG: Mr. Chairman, can you just be more - sorry, can you just repeat the question?

SEN. LACSON: Did they have any business dealings with Linconn Ong, whether in his personal capacity or as a stockholder incorporator of Pharmally Pharmaceuticals?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese].

MR. HUNG: [interpreting for Mr. Yang] Okay, Mr. Chairman, Mr. Yang would like to ask in terms of what specific period you were pertaining to?

SEN. LACSON: In the supply of PPEs, medical supplies like face masks, shields, et cetera in relation to the transaction.

SEN. LACSON: in relation to the transaction dealings of Pharmally with the PS-DBM, to be specific.

MR. HUNG: So, Mr. Chair. just to clarify. Your question is, if he has any dealing or anything to do with the transactions pertaining to PS- DBM and Pharmally Pharmaceuticals?

SEN. LACSON: Yes, PPEs - supply of PPEs. supply of surgical masks, face shields, face masks.

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang would like to say that when Pharmally did get their contracts, he has nothing to do with any of those contracts or awards.

MR. YANG: [speaking in Chinese]

MR. HUNG: Then, eventually, Mr. Linconn did approach Mr. Yang and then he helped him-them -or Mr. Yang introduced friends to Linconn who could help them with their supplies.

SEN. LACSON: That is correct. That is the point I was trying to point out, Mr. Chairman, that Mr. Michael Yang was the one who acted as a go-between or middleman between Linconn Ong or Pharmally Pharmaceuticals and the suppliers from China. Is that correct?

MR. HUNG: So, Mr. Chair. Your question, again, that Linconn and —

SEN. LACSON: No. Mr. Michael Yang acted as a middleman between Pharmally Phannaceuticals through Mr. Linconn Ong and the Chinese suppliers of the medical supplies in relation to the procurement.

MR. HUNG: [interpreting Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang said that he only introduced and let them discuss things on their own.

SEN. LACSON: So that was his only role? He introduced the suppliers to Linconn Ong and then he had nothing do with the supplies anymore?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] So, Mr. Chairman, Mr. Yang said that he only introduced them and then they discussed things on their own.

SEN. LACSON: And he stopped all his participation?

MR. HUNG: I'm sorry, come again, Mr. Chairman?

SEN. LACSON: And he stopped all his participation in the dealings between the Chinese suppliers of the medical supplies that mentioned and Mr. Linconn Ong? He just left them on their own?

MR. HUNG: [interpreting in Chinese for Mr. Yang] MR. YANG.

[responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Okay Mr. Chairman, Mr. Yang said that he only introduced as to where or who they close their dealings. He does not know who or where did he actually purchase those stocks.

SEN. LACSON: And he never guaranteed with his Chinese suppliers the credibility or the ability of Mr. Linconn Ong to pay them?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. HUNG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Okay. So, Mr. Yang only introduced and then they negotiated on their own. And then probably, he first initially introduced friends, introduced some other friends for them to negotiate all of their dealings.[52]

Whether a witness genuinely did not know or did not recall the answer or was evasive in answering a question is largely a matter of judgment or opinion. It requires an assessment of the totality of the evidence presented to determine whether a witness speaks truthfully or is merely trying to evade answering the question directly.

Here, petitioner Ong was immediately adjudged as testifying evasively based on the September 10, 2021 hearing alone. As for petitioner Yang, the ponente pointed out that "Sen. Lacson's series of repetitive questions as regards Yang's knowledge of Pharmally evoked different answers ... While Yang initially tried to avoid giving any leading information as regards his connection with Pharmally, he was able to subsequently aver in the course of the proceeding that he introduced the suppliers of facemasks and PPEs to Ong." [53] Thus, even inconsistent answers were equated with testifying evasively. It appears then that respondents have an unbridled discretion in carrying out the term "evasively" and therefore became an "arbitrary flexing of the Government muscle." Furthermore, petitioners were not fairly notified of the conduct or testimony to avoid since the term "evasively" is not defined in the rules. Considering that being cited in contempt by testifying "evasively" affects substantive rights, technical rules of evidence applicable to judicial proceedings should have been observed.[54]

"Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act[.]" [55] However, here, not only is the term "evasively" not defined, but also the legislative will in using this term is not clear as can be gathered from the respondents' varying interpretation of the term.

By citing in contempt a witness on the ground of testifying "evasively," which is vague, respondent Senate sends a chilling effect on the right to free speech.

The scope of freedom of expression is as broad as the matters by which the Senate may inquire in aid of legislation:

The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.

The constitutional protection is not limited to the exposition of ideas. The protection afforded free speech extends to speech or publications that are entertaining as well as instructive or informative.[56] (Emphasis supplied)

To immediately adjudge a testimony as "evasive" during an inquiry in aid of legislation would be to straitjacket the exercise of freedom of speech. The Senate may then fail to acquire the information necessary to legislate wisely or effectively, or it may limit its exercise of legislative power to conventional ideas. The ultimate purpose of its contempt powers—to obtain the necessary information to legislate wisely or effectively—will be defeated. Thus, unlike "falsely," the term "evasively" in Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation should be struck down as unconstitutional for being void for vagueness.

However, to pass constitutionality, the term "evasive" should be defined as failure to directly and satisfactorily respond to any relevant question, without any express and valid claim of right or privilege.

III

In its conduct of inquiries in aid of legislation, the Constitution clearly provides that the Senate or House of Representatives respects the rights of persons appearing in or are affected by such inquiries.[57] The rights of a person refers to the rights under the Bill of Rights, which includes the right to due process[58] and the right against unreasonable searches and seizures. Thus, Article III, Sections 1 and 2 of the 1987 Constitution specifically provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee do not provide for the power to order an arrest, but only the power to detain:

Section 18. Contempt. — . . . A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate. (Emphasis supplied)

The power to arrest must be differentiated from the power to detain:

To detain means to hold or keep in custody. On the other hand, to arrest means to seize, capture or to take in custody by authority of law. Thus, the power to detain is the power to keep or maintain custody while the power to arrest is the power to take custody. The power to detain implies that the contumacious witness is in the premises (or custody) of the Senate and that he will be kept therein or in some other designated place. In contrast, the power to arrest presupposes that the subject thereof is not before the Senate or its committees but in some other place outside.

The distinction is not simply a matter of semantics. It is substantial, not conceptual, for it affects the fundamental right to be free from unwarranted governmental restraint.

Since the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee speak only of a power to order the detention of a contumacious witness, it cannot be expanded to include the power to issue an order of arrest. Otherwise, the constitutional intent to limit the exercise of legislative investigations to the procedure established and published by the Senate or its committees will be for naught.[59]

Furthermore, cognizant that the power to arrest deprives a person of one's cherished fundamental right to liberty, Article III, Section 2 of the 1987 Constitution and Rules 112 and 113 of the Revised Rules of Criminal Procedure specify the guidelines and procedure for the execution of arrest.

As the ponente admitted, unlike the power to detain, the power to arrest a witness is not provided in the Senate Rules of Procedure Governing Inquiries in Aid of Legislation.[60] Since the power to arrest inevitably poses a potential derogation of individual rights to liberty and due process, the rules cannot be liberally construed to have impliedly granted such power. Thus:

The arrest of a citizen is a deprivation of liberty. The Constitution prohibits deprivation of liberty without due process of law. The Senate or its investigating committees can exercise the implied power to arrest only in accordance with due process which requires publication of the Senate's Rules of Procedure. This Court has required judges to comply strictly with the due process requirements in exercising their express constitutional power to issue warrants of arrest. This Court has voided warrants of arrest issued by judges who failed to comply with due process. This Court can do no less for arrest orders issued by the Senate or its committees in violation of due process.[61]

As legislators, respondent Senate et al. are fully conscious of the significance and impact of words used in crafting laws and rules. It could have easily indicated in its own rules the power to arrest if they intended to do so. Thus, Senate et al. must strictly observe the rules they themselves created to govern their own proceeding. The Senate has another recourse to compel the attendance of petitioners. For refusal without legal excuse, the Senate can file a criminal case for violation of Article 150[62] of the Revised Penal Code, as amended, against such person, instead of ordering the arrest, which is not specifically provided for in its rules.

An action as critical and as important as an order of arrest must be done strictly in accordance with a specific provision in the duly published rules of procedure, for it to be constitutionally valid.[63] Since the power to arrest is not in its duly published rules of procedure, the Senate cannot issue the arrest orders against petitioners without violating the Constitutional limitations on the legislative's power to conduct inquiries which are "in accordance with [their] duly published rules of procedure." Ordering the arrest of petitioners, which is not provided for in the Senate's duly published rules of procedure, is consequently violative of petitioners' right to due process. Further, this clearly contravenes the Constitution on the limitations on inquiries in aid of legislation.

"There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment, as when the assailed order is bereft of any factual and legal justification."[64] For ordering the arrest of petitioners, the respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction.

ACCORDINGLY, I vote that the Petitions be PARTLY GRANTED. The Order dated September 10, 2021, citing petitioners Linconn Uy Ong and Michael Yang Hong Ming in contempt of the Senate Blue Ribbon Committee, and directing their arrest, should be NULLIFIED for having been issued with grave abuse of discretion.

[1] CONST., art. VI sec. 21.

[2] *Arnault v. Nazareno*, 87 Phil. 29, 62 (1950) [Per J. Ozaeta, En Banc].

[3] 1973 CONST., art. VIII, sec. 12(2) provides:

"The Batasang Pambansa or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected."

[4] CONST., art. VI sec. 21 provides:

"The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected."

[5] 55 Phil. 170 (1930) [Per J. Malcolm, En Banc].

[6] *Lopez v. Delos Reyes*, 55 Phil. 170, 185 (1930) (Per J. Malcolm, En Banc).

[7] 87 Phil. 29 (1950) [Per J. Ozaeta, En Banc].

[8] *Id.* at 45.

[9] 97 Phil. 358 (1955) (Per J. Labrador, First Division).

[10] *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955) [Per J. Labrador, First Division].

[11] *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*, 239 Phil. 403, 409 410 (1987) [Per J. Cortes, En Banc].

[12] *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955) [Per J. Labrador, First Division].

[13] 239 Phil. 403 (1987) [Per J. Cortes, En Banc].

[14] *Id.* at 412.

[15] *Id.*

[16] 565 Phil. 744 (2007) [Per J. Nachura, En Banc].

[17] 522 Phil. 1 (2006) [Per J. Carpio Morales, En Banc].

[18] *Senate of the Philippines v. Ermita*, 522 Phil. 1, 35 (2006) [Per J. Carpio Morales, En Banc].

[19] 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[20] *In re Sabio v. Gordon*, 535 Phil. 687, 718 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[21] 814 Phil. 641 (2017) [Per J. Leonen, Second Division].

[22] *Oca v. Custodio*, 814 Phil. 641, 678-680 (2017) [Per J. Leonen, Second Division].

[23] *Ponencia*, pp. 41-42.

[24] *Id.* at 42.

[25] *Bengzon Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 841 (1991) (Per J. Padilla, En Banc).

[26] *In re Sabio v. Cordon*, 535 Phil. 687, 715 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[27] 861 Phil. 656 (2019) [Per J. Leonen, En Banc].

[28] *Calida v. Trillanes*, 861 Phil. 656, 663-664 (2019) [Per J. Leonen, En Banc].

[29] Senate of the Philippines v. Ermita, 522 Phil. 1, 35 (2006) [Per J. Carpio Morales, En Banc].

[30] Ponencia, p. 9.

[31] Id.

[32] Id. at 10.

[33] Art. VI, sec. 16 (3) provides:

"Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days."

[34] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[35] Estrada v. Sandiganbayan, 421 Phil. 290. 342-343 (2001) [Per J. Bellosillo, En Banc].

[36] Falcis III v. Civil Registrar General, 861 Phil. 388 (2019) [Per J. Leonen, En Banc].

[37] Universal Robina v. Department of Trade and Industry, G.R. No. 203352, February 14, 2023 [Per J. Leonen, En Banc], citing Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain, 589 Phil. 387, 481 (2008) [Per J. Carpio Morales, En Banc].

[38] Estrada v. Sandiganbayan, 421 Phil. 290, 353 (2001) [Per J. Bellosillo, En Banc].

[39] Executive Secretary v. Pilipinas Shell, G.R. No. 209216, February 21, 2023 [Per J. Leonen, En Banc].

[40] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[41] Chavez v. Gonzales, 569 Phil. 155, 197-198 (2008) [Per C.J. Puno, En Banc].

[42] 247-A Phil. 276 (1998) [Per J. Sarmiento, En Banc].

[43] People v. Nazario, 247-A Phil. 276, 286 (1998) [Per J. Sarmiento, En Banc].

[44] Estrada v. Sandiganbayan, 421 Phil. 290, 353, 354-355 (2001) (Per J. Bellosillo, En Banc).

[45] 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[46] J. Leonen, Dissenting and Concurring Opinion in Disini v. Secretary of Justice, 727 Phil. 28, 360 (2014) [Per J. Abad, En Banc], citing National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 431-433 (1963).

[47] Chavez v. Gonzales, 569 Phil. 155, 219-221 (2008) [Per C.J. Puno, En Banc].

[48] G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, En Banc].

[49] MERRIAM-WEBSTER DICTIONARY, "false," available at <https://www.merriam-webster.com/dictionary/falsely> (last accessed on July 4, 2022)

[50] Ponencia, pp. 29-31.

[51] Id. at 33-35.

[52] Id. at 36-40.

[53] Id. at 41.

[54] Rules of Procedure Governing Inquiries in Aid of Legislation, sec. 10.

[55] Estrada v. Sandiganbayan, 421 Phil. 290, 347-348 (2001) [Per J. Bellosillo, En Banc].

[56] Chavez v. Gonzales, 569 Phil. 155, 198 (2008) [Per C.J. Puno, En Banc].

[57] CONST., art. VI, sec. 21.

[58] Senate of the Philippines v. Ermita, 522 Phil. 1 (2006) [Per J. Carpio Morales, En Banc]; Bengzon Jr. v. Senate Blue Ribbon Committee, 280 Phil. 829 (1991) [Per J. Padilla, En Banc].

[59] J. Corona, Concurring Opinion in Neri v. Senate Committee on Accountability, 586 Phil. 135 (2008) [Per J. Leonardo-de Castro, En Banc].

[60] Ponencia, p. 17.

[61] J. Carpio, Dissenting and Concurring Opinion in Neri v. Senate Committee on Accountability, 586 Phil. 135 (2008) [Per J. Leonardo-de Castro, En Banc].

[62] Article 150. Disobedience to summon issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions. - The penalty of arresto mayor or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official.

[63] J. Corona, Concurring Opinion in Neri v. Senate Committee on Accountability, 586 Phil. 135 (2008) [Per J. Leonardo-de Castro, En Banc].

[64] The Senate Blue Ribbon Committee v. Majaducon, 455 Phil. 61, 71 (2003) (Per J. Ynares-Santiago, En Banc).

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

After the Commission on Audit (COA) released its Consolidated Annual Audit Report for Fiscal Year 2020, the Senate Committee on Accountability of Public Officers and Investigations (Senate Blue Ribbon Committee) initiated an inquiry in aid of legislation relative to the Department of Health's disbursement of funds for addressing the Coronavirus Disease 2019 pandemic. Pursuant to the conduct of the inquiry, several resource persons were requested to attend, which included the officials of Pharmally Pharmaceuticals Corporation (Pharmally), a corporation that secured P8.868 Billion worth of contracts from the Procurement Service of the Department of Budget and Management (PS-DBM).[1]

As a member of the Board of Directors, and as the Supply Chain Manager of Pharmally, petitioner Linconn Ong (Ong) was among the resource persons invited by the Senate Blue Ribbon Committee. Petitioner Michael Yang

Hong Ming (Yang) was likewise invited after the Senate Blue Ribbon Committee discovered that the incorporators of Pharmally had links with Yang.[2] Accordingly, subpoenas ad testificandum were sent to Ong and Yang (together, petitioners), to appear on various dates before the Senate Blue Ribbon Committee.[3]

Due to the failure of petitioners to appear on various dates, despite having received the subpoenas directing them to do so, the Senate Blue Ribbon Committee cited them both in contempt. Thus, on September 7, 2021, Orders were issued directing the Office of the Senate Sergeant-at-Arms (OSAA) to arrest and detain petitioners until they appear and give their testimonies.[4]

Subsequently, petitioners appeared during the September 10 2021 hearing, where they were again cited in contempt by the Senate Blue Ribbon Committee for "testifying falsely and evasively." [5] Ong was eventually arrested and detained at the Pasay City Jail, while a Lookout Bulletin was issued by the Bureau of Immigration against Yang, pursuant to a request from the Senate Blue Ribbon Committee.[6]

Ong and Yang separately filed petitions for certiorari and prohibition directly before the Court, assailing the September 7 and 10, 2021 Orders of Contempt. Ong, in particular, challenges the constitutionality of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, as amended (Senate Rules of Procedure on Inquiries), as well as the Rules of the Senate Blue Ribbon Committee, insofar as these rules punish for contempt the act of "testifying falsely or evasively." [7]

The pertinent portions of the assailed provisions are as follows:

RULES OF PROCEDURE GOVERNING INQUIRIES
IN AID OF LEGISLATION

x x x x

SECTION 18. Contempt. —

(a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. A majority of all the members of the Committee may, however, reverse or modify the aforesaid order of contempt within seven (7) days.

A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate.[8] (Emphasis supplied)

RULES OF THE SENATE BLUE RIBBON COMMITTEE
ARTICLE 6
INVESTIGATIONS

x x x x

SECTION 6. Contempt. — (a) The Committee, by vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee, including refusal to produce documents pursuant to a subpoena duces tecum, or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively. A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be

detained in such place as it may designate under the custody of the Sergeant-at-Arms until he [or she] agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself [or herself] on that contempt.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate. (Emphasis supplied)

According to Ong, the determination of whether a witness testifies falsely or evasively is an evidentiary matter that is within the power of the courts to resolve. He further assails the rules for being vague, there being no clear standards on what constitutes "testifying falsely or evasively," which is entirely within the discretion of the Senate Blue Ribbon Committee to determine.[9]

The ponencia acknowledges the Legislature's power of contempt corollary to its authority to conduct inquiries in aid of legislation, as well as its concomitant power to arrest contumacious witnesses. It likewise finds the argument of Ong untenable and rules that the phrase "testifies falsely or evasively" is sufficiently clear and understandable by any person of common knowledge or intelligence.[10]

However, the ponencia nonetheless holds that Yang's "inconsistent or incomplete answers in the course of his testimony does not conclusively establish that x x x [there was] refusal or unwillingness to testify." [11] The ponencia further rules that the Senate Blue Ribbon Committee failed to accord petitioners with due process consistent with the safeguards in criminal proceedings. Accordingly, the ponencia rules that the Senate Blue Ribbon Committee gravely abused its discretion in citing petitioners in contempt and ordering their arrest without an opportunity to be heard.[12]

I respectfully submit this Opinion to register my concurrence and dissent with the ponencia.

In particular, I concur with the finding that the phrase "testifies falsely or evasively" does not suffer the vice of vagueness. However, I dissent as to the ruling that the September 10, 2021 Order citing petitioners in contempt should be nullified.

The inherent contempt power of the Legislature, or in this case, the Senate, rests on the principle of self-preservation. As a mechanism for compulsion, its contempt power is integral to conducting inquiries in aid of legislation, which, in turn, is vital to its exercise of its core functions — to legislate policies wisely and effectively.[13] Thus, I respectfully submit that its findings of contempt, particularly whether a witness committed a contumacious act, should be accorded respect by the Court.

As well, witnesses or resource persons invited to attend legislative investigations are reasonably expected not only to be present during the hearing, but to provide accurate and correct information. Viewed through this lens, a witness who "testifies falsely or evasively" may be penalized by the Senate pursuant to its contempt power as this essentially amounts to the obstruction of its legislative functions. Indeed, the phrase "testifies falsely or evasively" can hardly be construed as unclear or ambiguous, especially when read in relation to the entire purpose of a legislative inquiry.

I.

In the early case of *Arnault v. Balagtas*[14] (*Balagtas*), the Court acknowledged that the Legislature's exercise of its power of contempt is auxiliary to its power to conduct inquiries in aid of legislation. As a necessary consequence of its legislative functions, the broad prerogative of the Legislature in wielding this power was recognized by the Court:

There is an inherent fundamental error in the course of action that the lower court followed. It assumed that courts have the right to review the findings of legislative bodies in the exercise of the prerogative of

legislation, or interfere with their proceedings or their discretion in what is known as the legislative process. The courts avoid encroachment upon the legislature in its exercise of departmental discretion in the means used to accomplish legitimate legislative ends. Since the legislature is given a large discretion in reference to the means it may employ to promote the general welfare, and alone may judge what means are necessary and appropriate to accomplish an end which the Constitution makes legitimate, the courts cannot undertake to decide whether the means adopted by the legislature are the only means or even the best means possible to attain the end sought, for such course would best the exercise of the police power of the state in the judicial department. It has been said that the methods, regulations, and restrictions to be imposed to attain results consistent with the public welfare are purely of legislative cognizance, and the determination of the legislature is final, except when so arbitrary as to be violative of the constitutional rights of the citizen. Furthermore, in the absence of a clear violation of a constitutional inhibition, the courts should assume that legislative discretion has been properly exercised. (11 Am. Jur., pp. 901-902)

These the judicial department of the government has no right or power or authority to do, much in the same manner that the legislative department may not invade the judicial realm in the ascertainment of truth and in the application and interpretation of the law, in what is known as the judicial process, because that would be in direct conflict with the fundamental principle of separation of powers established by the Constitution. The only instances when judicial intervention may lawfully be [invoked] are when there has been a violation of a constitutional inhibition, or when there has been an arbitrary exercise of the legislative discretion.[15]

While Balagtas was decided prior to the expansion of the Court's power of judicial review under the 1987 Constitution, the Court recognized that it may review the exercise of the contempt power "when there has been a violation of a constitutional inhibition, or when there has been an arbitrary exercise of the legislative discretion." [16] Thus, it nonetheless passed upon the extent of the Senate's contempt power by determining whether the person cited in contempt was accorded due process.

In the much more recent case of Balag v. Senate of the Philippines [17] (Balag), the Court ruled on the duration of detention for persons cited by the Senate in contempt. On one hand, the Court recognized that the rights of persons appearing in legislative inquiries must be respected, and on the other, it emphasized the significant role of the Senate's inherent power of contempt in the effective discharge of its legislative functions. For this purpose, the Court held that there should be a balance between the interests of the Senate and the rights of persons cited in contempt.[18]

Verily, there is no question that the Court may pass upon the issues raised in the petition, there being an allegation of grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the Senate for ordering the arrest and detention of petitioners. As in Balag, the Court is once again tasked with the onerous duty of having to strike a balance between the rights of persons appearing in legislative inquiries and the inherent contempt power of a co-equal branch.

II.

The power of Congress to conduct inquiries in aid of legislation is essential to its legislative function. This enables the Legislature to obtain information for potential legislation and ensures that policies are not mere guesswork. The significance of the power of Congress to conduct inquiries in aid of legislation was particularly highlighted in Sabio v. Gordon, [19] where the Court held that the breadth of the power to conduct legislative inquiries is as wide as its legislative power:[20]

Dispelling any doubt as to the Philippine Congress' power of inquiry, provisions on such power made their maiden appearance in Article VIII, Section 12 of the 1973 Constitution. Then came the 1987 Constitution incorporating the present Article VI, Section 12. What was therefore implicit under the 1935 Constitution, as influenced by American jurisprudence, became explicit under the 1973 and 1987 Constitutions.

Notably, the 1987 Constitution recognizes the power of investigation, not just of Congress, but also of "any of its committee." This is significant because it constitutes a direct conferral of investigatory power upon the committees and it means that the mechanisms which the Houses can take in order to effectively perform their investigative function are also available to the committees.

It can be said that the Congress' power of inquiry has gained more solid existence and expansive construal. The Court's high regard to such power is rendered more evident in *Senate v. Ermita*, where it categorically ruled that "the power of inquiry is broad enough to cover officials of the executive branch." Verily, the Court reinforced the doctrine in *[Nazareno]* that "the operation of government, being a legitimate subject for legislation, is a proper subject for investigation" and that "the power of inquiry is co-extensive with the power to legislate."^[21] (Emphasis supplied)

In fine, the power to punish for contempt is inextricably linked to the power of inquiry of Congress. The contempt power is conferred to Congress "as a means of preserving its authority and dignity in the same way that courts wield an inherent power to 'enforce their authority, preserve their integrity, maintain their dignity, and ensure the effectiveness of the administration of justice.'"^[22] Thus, while there is no explicit constitutional grant of the power of contempt, its critical role in enforcing the authority of Congress to conduct legislative inquiries is well-entrenched.

As far back as 1950, in *Arnault v. Nazareno*^[23] (*Nazareno*), the Court stated:

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations [are] intended to affect or change; and where the legislative body does not itself possess the requisite information — which is not frequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. (*McGrain vs. Daugherty*, 273 U.S., 135; 71 L. ed., 580; 50 A. L. R., 1.) The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person. (*Anderson vs. Dunn*, 6 Wheaton. 204; 5 L. ed., 242.)^[24] (Emphasis and underscoring supplied)

The Court then expounded in *Balagtas* that the contempt power is essential to the legislative function to "require and compel the disclosure of x x x knowledge and information [on which to base intended legislation]."^[25] Simply put, the contempt power of Congress, for all intents and purposes, effectuates its legislative function.

As an integral aspect of the functions of a co-equal branch, the Court's review of its contempt power must be in line with the constitutional limitations to the conduct of legislative investigations, namely: (1) the power must be exercised in aid of legislation; (2) it must be in accordance with the duly published rules of procedure; and (3) the rights of persons appearing in or affected by such inquiries shall be respected.^[26]

Here, the ponencia does not take any issue with the first two limitations. As to the third limitation, however, the ponencia holds that the Senate Blue Ribbon Committee failed to accord due process to petitioners prior to citing them in contempt.^[27] It further rules that the finding of contempt "lacks factual basis," as petitioners cannot be held in contempt for testifying evasively solely on the basis of the testimony given during the hearing of September 10, 2021.^[28] Thus, the ponencia nullifies the Senate Blue Ribbon Committee's Order dated September 10, 2021 on these grounds.

With due respect, I dissent.

A careful review of the records reveals that petitioners were unable to establish a capricious and whimsical exercise of discretion on the part of the Senate Blue Ribbon Committee. The pertinent portions of the September 10, 2021 Transcript of Stenographic Notes^[29] (TSN) patently show that Ong's responses to the questions concerning Yang's participation in the supply contracts were far from ideal. Senator Lacson repeated the question to Ong several times, giving him opportunities to grasp the matters being inquired upon. Ong, however, answered in a roundabout manner that largely avoided providing definite and concrete responses to the members of the Senate Blue Ribbon Committee, and in the main, denied any firm recollection of the transactions of his company.^[30]

Yang, for his part, was asked how he became involved with Pharmally. Despite having the benefit of an interpreter to translate the questions in the language he understands, Yang provided inconsistent answers — initially denying any involvement, but subsequently revealing, in piecemeal answers, that he introduced Ong to the suppliers of face masks and protective equipment.^[31]

The ponencia maintains, however, that the evasiveness of the witnesses "could not have been made on the basis of [their testimonies] given in the hearing of September 10, 2021 alone."^[32] With due respect, this finding glosses over the undisputed fact that petitioners, despite duly issued subpoenas of the Senate Blue Ribbon Committee, refused to, as they did not, appear in the hearings scheduled before the September 10, 2021 hearing. To be sure, the records bear out that petitioners complied with the subpoenas only after the Order dated September 7, 2021 was issued, citing them in contempt and directing their arrest and detention.

Stated simply, it is in the context of these factual antecedents, that the Senate Blue Ribbon Committee made its appreciation of petitioners' testimonies as being "evasive."

To be sure, the initial refusal of petitioners to follow the subpoena and appear during the prior hearings, taken together with their purposeful stonewalling during the hearing of September 10, 2021, totally negates any allegation of capriciousness on the part of the Senate Blue Ribbon Committee.

This conclusion may have been different had the members of the Senate Blue Ribbon Committee cited them both in contempt and ordered their arrest at the first instance that they answered the queries, instead of allowing petitioners several chances to provide a clear answer. But that is not what happened here. The Senate Blue Ribbon Committee in fact gave Ong several opportunities to provide a direct answer to the questions propounded by its members, not only during the September 10, 2021 hearing but in the subsequent proceedings thereafter. In the September 13, 2021 proceedings of the Senate Blue Ribbon Committee, Ong adamantly refused to testify as to the cost of the surgical masks that Pharmally obtained from its supplier, providing the cost only after painstaking requests and pleas from various members of the Senate Blue Ribbon Committee:

THE CHAIRPERSON. Bakit ba lumilihis ka?

MR. ONG. Sige po.

THE CHAIRPERSON. Anong sige po? Hindi mo pa sinasagot anong pangalan. Iyan ang mahirap, pag nagsisinungaling, nagkakalubak- lubak ka.

MR. ONG. Hindi po ako nagsisinungaling, Mr. Chair. Ang tawag po naming doon sa —

THE CHAIRPERSON. Huwag mong sagutin iyon. Sinasabi ko lang iyon dahil iyon ang impression ko. Ilang araw mo na kaming pinapasyal. Ito ano, anong pangalan?

MR. ONG. Ang tawag ko po doon sa pangalan ng supplier ay si "Brother Tiger." Mayroon po siyang Chinese

name. I have to confirm it.

x x x x

THE CHAIRPERSON. Okay, sige, ipasyal mo kami. Sasagot ako sa iyo. Sige. Magkano ang binayad mo sa kanya? Sabi sa iyo...kayo diyan.

MR. ONG. Mr. Chairman, trade secret po iyon, baka po puwedeng —

THE CHAIRPERSON. No, no, walang secret dito. Corruption investigation ito.

MR. ONG. Costing po kasi namin iyon, Mr. Chairman.

x x x x

SEN. DRILON. Mayroon silang seven billion na cost of sales. So hindi talaga secret ito dahil dine-declare nila sa financial statement nila, "Cost of sales, seven billion." Kasama diyan iyong binayad siguro doon sa 500,000. So kalokohan iyong sinasabi ni Mr. Ong na trade secret.

THE CHAIRPERSON. Magkano ba ang halaga ng ibabayad mo dapat?

MR. ONG. I'm sorry, Mr. Chair. I'm really sorry.

x x x x

SEN. DELA ROSA. Bakit takot kang sabihin kung ano iyong tinatanong ni Senator Gordon na—Bakit mahiya kang malaman ng taongbayan kung magkano ang kinita mo? Hindi naman illegal iyong kumita ka dahil negosyante ka, bakit ayaw mong sabihin kung magkanong ibiniyad mo kay—iyong sabi mong Brother Tiger? Para hindi magduda ang taongbayan sa hearing na ito na mayroon kang tinatago, sabihin mo kung magkanong ibinayad mo at magkano ang kinita mo. Bakit illegal ba iyong kumita? You're a businessman, kikita ka diyan, basta hindi ka lang—hindi lang nagkakaroon ng ghost delivery. Tatanungin kita tungkol sa ghost delivery, ghost delivery ba ito o hindi?

MR. ONG. Hindi po, Mr. Chairman.

x x x x

SEN. DELA ROSA. Magsalita ka kung ano iyong tinatanong ng Chairman natin. Sabihin mo kung magkano ang kinita mo, wala namang problema diyan dahil negosyo ito.

x x x x

SEN. RECTO. Thank you very much.

Material iyong tanong ng ating Chairman kung magkanong binayaran mo sa supplier in the same month may local na kompanya na nag- supply at P13. Okay. Ito ang supply ninyo, ang presyo, bente-siyete. Ang local supplier, 13.50. Okay. Kaya palagay ko kung mayroon kayo—sabi nga, negosyo naman ito, sabi nga ni Senator Bato, puwede mo bang sagutin kung magkano nga naman ang binayaran ninyo doon sa Tiger for the supply?

MR. ONG. Opo, Mr. Chairman. Opo, Mr. Chairman. Ang naalala ko po, mga nasa P23 po.[33] (Emphasis supplied)

In the succeeding hearing, or on September 21, 2021, it was established by direct reference to the invoice that the cost provided by Ong was actually inaccurate:

THE CHAIRPERSON. And Mr. Linconn Ong, when you got that, how much did you sell it to—you were quoted 27.35, right?—27.72. So, you made a profit of how much? Twenty-seven minus 11.

MR. L. ONG. Mr. Chariman, hindi ko po—

THE CHAIRPERSON. Answer my question, 27.72 minus [11.95]?

MR. L. ONG. Mr. Chairman, hindi po 11. Paki-clarify ulit kay Mr. Ke.

THE CHAIRPERSON. Ayan ang resibo. Tingnan mo nasa papel mo—nasa harap mo.

MR. L. ONG. Ano po?

THE CHAIRPERSON. Iyan ang mga resibo. Controlling document, iyan o.

MR. L. ONG. [27.72] po ang presyo namin sa gobyerno.

THE CHAIRPERSON. Pinatungan mo iyong [11.95] at ibinenta mo ng P27.72, correct?

MR. L. ONG. I think iyong cost po namin, 23.

THE CHAIRPERSON. Alam mo iyan ang mahirap sa nagsisingunaling. Na-confront ka na ng papel, nakalagay kung magkano. So, kumita ka nang malaki diyan. Correct?

MR. L. ONG. Mr. Chairman, pwede ba, please lang, paki-tanong ulit si TigerPhil nang maayos.

THE CHAIRPERSON. I think the document speaks for itself. Sinasabi mo 23, pero we have documents to show that you got it for [11.95]. Iyan ang nakalagay, "Sold to Pharmally." Nakikita mo ba? Basahin mo iyong dokumento, nasa harap mo.

MR. L. ONG. Hindi ko po makita.[34] (Emphasis supplied)

In the September 24, 2021 hearing, several members of the Senate Blue Ribbon Committee moved to transfer the custody of Ong to a City Jail or the New Bilibid Prison. The Chairperson did not immediately approve the motion. Instead, Ong was granted the option of providing information and documents in an executive session, with another member of the Senate Blue Ribbon Committee floating the idea of having him admitted into the witness protection program.[35]

On the other hand, except for the September 21 and 24, 2021 hearings,[36] Yang no longer appeared in the hearings following the September 10, 2021 inquiry. This constrained the Senate Blue Ribbon Committee to ask Yang to submit several documents, which were pertinent to the legislative inquiry.[37] The requests were made on two separate occasions, i.e., on October 29, 2021 and on November 9, 2021. He did not comply with either request.[38]

Based on the foregoing, petitioners were clearly not deprived of due process. Ong, in particular, was not arrested until September 21, 2021, or 11 days after the issuance of the assailed Order.[39] He was detained at the Senate premises and later on transferred to the Pasay City Jail on November 29, 2021.[40] Yang, meanwhile, evaded arrest. During the intervening period, petitioners were granted numerous chances to answer directly or provide the relevant information to the Court, but due to their continued evasion of the questions of the Senate Blue Ribbon Committee, their contempt citation remained.

At this juncture, it is important to emphasize that the contempt power of the Legislature is sui generis.[41] It is distinct from a criminal prosecution of an accused charged with false testimony or perjury because, again, a witness penalized for testifying falsely or evasively may still purge themselves of contempt once they are willing to comply with their obligation to provide truthful and accurate testimony. Ultimately, maintaining good order and obtaining accurate information is at the core of the inherent contempt power of Congress.

Surely, contumacy should not be confined to merely refusing to attend a legislative hearing, to produce required

documents, or to answer questions propounded during the inquiry. The witness may be present but if he or she provides circuitous or unresponsive answers to reasonable queries from the members of Congress, Congress should be able to resort to its coercive power by penalizing the witness for his or her uncooperative behavior. Willful refusal to provide information within the witness' knowledge, and in response to queries pertinent to the subject of the inquiry, is tantamount to a refusal to testify. Citing that witness in contempt is not any less coercive in nature, even when, as in this case, it was brought about by the exasperation of the members of the Senate Blue Ribbon Committee with the roundabout answers of the witnesses.

Hence, the due process requirement in a criminal proceeding, which the ponencia argues should apply in this case, may not necessarily be observed. In the final analysis, the citation of petitioners in contempt, and the Order for their arrest, were for purposes of compelling their attendance and testimony in the legislative inquiry. That this Order was issued to likewise penalize petitioners for testifying falsely or evasively does not make it any less coercive in nature.

Furthermore, as mentioned earlier, the Court, in *Balag*, recognized that it must balance the interests of the Legislature with the rights of persons found to be contumacious during its legislative inquiries. I submit, however, that the Court's balancing of interests does not authorize it to intervene in matters of policy — as to how and when Congress should cite witnesses in contempt. These are matters within the discretion of Congress, as its contempt power is attached to the "sovereign character of the legislature as one of the three independent and coordinate branches of government."^[42]

At any rate, the Court also held in *Balag* that "[t]he balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation."^[43] Here, it is apparent from the records that the due process rights of petitioners were observed, and the Senate Blue Ribbon Committee's inquiry as to the pandemic expenditures was adversely affected by their refusal to testify in a straightforward manner. Thus, to my mind, the Court is not in the position to confine Congress' exercise of its contempt power by reviewing whether the conduct is actually contumacious, and imposing the appropriate procedure for citing a witness in contempt.

In all, the ponencia substantially erodes the Senate's inherent contempt power by imposing the Court's own appreciation of the testimonies of petitioners. The members of the Senate Blue Ribbon Committee, and not the members of this Court, were the ones able to observe firsthand the deportment and demeanor of petitioners. The Senate Blue Ribbon Committee is therefore in a better position — better than the Court — to assess the forthrightness of the witnesses in answering the queries. Its finding of contempt should be accorded great weight and respect. The Court certainly cannot substitute its own judgment unless there is a clear showing of grave abuse of discretion, which is glaringly absent in this case.

III.

The review of the contempt power of Congress should be directed to its observation of the constitutional limits to its power of inquiry — that is, ensuring that the constitutional rights of the persons appearing before a legislative inquiry of the Senate are protected.^[44] In this regard, it is relevant to consider Ong's argument that the phrase "testifies falsely or evasively" is ambiguous, thus violating his right to due process. The ponencia found Ong's arguments unmeritorious and upheld the validity of the assailed Senate Rules of Procedure on Inquiries and the Rules of the Senate Blue Ribbon Committee.^[45]

I concur. The phrase "testifies falsely or evasively" has a straightforward meaning; it is neither vague nor ambiguous. I respectfully expound on the ponencia's disquisition on this matter, in order to emphasize the significance of the Legislature's contempt power.

A statute or regulation suffers from the vice of vagueness if it fails to provide "fair notice" of the prescribed or prohibited conduct. A vague statute or regulation is thus deemed primarily offensive to the right to due process because persons are not apprised of what conduct to avoid, and law enforcers are granted unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle.[46] The Court's ruling in *People v. Dela Piedra*[47] is enlightening in this regard:

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that "fails to give a person of ordinary intelligence fair notice that his[/her] contemplated conduct is forbidden by the statute," or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him[/her] on trial for an offense, the nature of which he[/she] is given no fair warning.[48] (Emphasis and underscoring supplied)

Aside from the recognition that the inherent contempt power of Congress is critical to its exercise of its legislative powers, the Court, in *Nazareno*, held that the contempt power of the Senate may be exercised only as against persons or witnesses whose testimonies are required for a matter over which it has jurisdiction to inquire. Further, the question that the witness is required to answer must be pertinent to the subject matter of the legislative inquiry:

Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, we think the investigating committee has the power to require a witness to answer any question pertinent to that inquiry, subject of course to his [or her] constitutional right against self-incrimination. The inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate, or to expel a Member; and every question which the investigator is empowered to coerce a witness to answer must be material or pertinent to the subject of the inquiry or investigation. So a witness may not be coerced to answer a question that obviously has no relation to the subject of the inquiry. But from this it does not follow that every question that may be propounded to a witness must be material to any proposed or possible legislation. In other words, the materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The reason is, that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question.[49] (Emphasis supplied)

Here' an examination of the assailed Senate Rules of Procedure on Inquiries and the Rules of the Senate Blue Ribbon Committee would reveal that both Rules refer to a "proper question" of the Senate Blue Ribbon Committee or its members, in relation to the contumacious refusal of a witness to answer. In order to be contumacious, the witness must refuse to testify or answer a proper question, or when testifying, must testify falsely or evasively. Such "proper question" thus circumscribes the discretion granted to the Senate or the Senate Blue Ribbon Committee as it may not compel witnesses under the pain of contempt to answer queries that are not relevant to, or outside the scope of the legislative inquiry.

In the same manner, the assailed Rules are not lacking in parameters on what constitutes a false or evasive testimony. As may be gleaned from the relevant provisions of the Senate Rules of Procedure on Inquiries and the Rules of the Senate Blue Ribbon Committee, the meaning of the phrase "testifies falsely or evasively" may be inferred from the other acts that constitute contempt, all of which illustrate a patent refusal or disobedience to the lawful processes of the Senate or the Senate Blue Ribbon Committee: (1) disobeying any order; (2) refusing to be sworn or to testify or to answer a proper question; and (3) unduly refusing to appear or bring before the Senate Blue Ribbon Committee certain documents or evidence notwithstanding the issuance of the appropriate subpoena

therefor. From these acts, it may be reasonably inferred that the phrase "testifies falsely or evasively" is meant to cover situations where a witness does not refuse outright to answer the question propounded by the Senate Blue Ribbon Committee or its members but provides a false answer or a non-answer that is tantamount to a refusal to testify. Such testimony, taking into consideration the purpose for the inherent contempt power of the Senate, must be of such character that is disruptive to the orderly administration of its legislative functions.

The falsity of the testimony or the evasiveness of the witness may also be inferred from the answers and demeanor of the witness sought to be punished with contempt. On this point, Nazareno is, again, enlightening:

"Testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable." (12 Am. Jur., sec. 15, Contempt, pp. 399-400.) In the case of *Mason vs. U. S.*, 61 L. ed., 1198, it appears that Mason was called to testify before a grand jury engaged in investigating a charge of gambling against six other men. After stating that he was sitting at a table with said men when they were arrested, he refused to answer two questions, claiming so to do might tend to incriminate him: (1) "Was there a game of cards being played on this particular evening at the table at which you were sitting?" (2) "Was there a game of cards being played at another table at this time?" The foreman of the grand jury reported the matter to the judge, who ruled "that each and all of said questions are proper and that the answers thereto would not tend to incriminate the witnesses." Mason was again called and he refused to answer the first question propounded to him, but, half yielding to frustration, he said in response to the second question: "I don't know." In affirming the conviction for contempt, the Supreme Court of the United States among other things said:

In the present case the witnesses certainly were not relieved from answering merely because they declared that so to do might incriminate them. The wisdom of the rule in this regard is well illustrated by the enforced answer, "I don't know," given by Mason to the second question, after he had refused to reply under a claim of constitutional privilege.[50] (Emphasis supplied)

Furthermore, the import of the phrase "testifying falsely or evasively" may be understood by referring to the general meaning and acceptance of the words false and evasive. A witness is testifying falsely if he or she knowingly provides incorrect or untrue statements with intent to deceive or mislead.

A witness called to attend legislative hearings and to testify as to matters of fact, is required to swear an oath or to give such testimony under affirmation to tell the truth.[51] The assailed provisions of the Rules further provide that "[s]uch witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt." [52] The foregoing language of the Rules therefore sufficiently warns the witnesses appearing in legislative hearings of the conduct expected from them, and the corresponding consequence for contumacy.

In the same manner, neither can it be argued that the language of the challenged Rules has a chilling effect on speech.[53] Being enjoined to be present when required, to produce the requested documents, and to give clear answers to questions — questions which should be pertinent to the subject of the inquiry — should not be equated to a chilling effect that censors certain forms or subject matters of expression. Again, the Court should bear in mind that the underlying principle behind the inherent contempt power of Congress is to effectuate its power of inquiry. Hence, the phrase "testifies falsely or evasively" only emphasizes the coercive nature of the contempt power in order to obtain accurate and truthful information from the witnesses appearing therein.

All told, the inherent power of contempt being assailed here is inextricably linked to the constitutional mandate of the legislature, which is to draft policies that have far-reaching implications to the public, and, in this particular case, the magnitude of the matter being investigated should not be lost on the Court — the billions of public funds spent on the pandemic response. This subject matter bears heavily on the government appropriations, the

preparation of which is solely vested in Congress. Thus, the Court should not hastily rule in a manner that erodes the authority of a co--equal branch; rather, it should exercise prudence in reviewing the exercise thereof by taking conscious consideration of the public interest involved.[54]

Based on these premises, I VOTE to DISMISS petitions.

[1] Ponencia, p. 4.

[2] Id.

[3] Id. at 5.

[4] Id.

[5] Id. at 5.

[6] Id. at 3, 6-7.

[7] Id. at 3.

[8] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION (August 21, 1995), as amended by Resolution No. 145-13 (adopted on February 6, 2013).

[9] Ponencia, pp. 9, 43-44.

[10] Id. at 14-17, 42-46.

[11] Id. at 41.

[12] Id. at 41-43.

[13] Lopez v. De los Reyes, 55 Phil. 170, 184 (1930); Arnault v. Nazareno, 87 Phil. 29, 45 (1950); Arnault v. Balagtas, 97 Phil. 358, 370-371 (1955); Balag v. Senate of the Philippines 835 Phil. 451 466-467 (2018).

[14] Id.

[15] Id. at 365-366.

[16] Id. at 365.

[17] Supra note 13.

[18] Id. at 470-471.

[19] 535 Phil. 687 (2006).

[20] Id. at 705, citing Senate of the Phils. v. Ermita, 522 Phil. 1 (2006).

[21] Id. at 704-705.

[22] Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete, 239 Phil. 403, 409-410 (1987). Citations omitted.

[23] Supra note 13.

[24] Id. This was reiterated in Balag v. Senate of the Philippines, supra note 13, at 470:

x x x A legislative body cannot legislate wisely or effectively in the absence of information respecting the

conditions which the legislations are intended to affect or change. Mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed through the power of contempt during legislative inquiry.

[25] *Arnault v. Balagtas*, supra note 13, at 370.

[26] CONSTITUTION, Art. VI, Sec. 21.

[27] Ponencia, pp. 43.

[28] *Id.* 41.

[29] Quoted in the ponencia, pp. 26-35.

[30] In brief, the pertinent portions of their testimony, as cited in the ponencia (pp. 26-30), are as follows:

SEN. LACSON. Iyon lang ang role niya, hindi na siya nakialam pagkatapos ka maipakilala sa mga suppliers?

MR. ONG. I am not privy what's their discussion, pero may ipinapakilala talaga siya. Kung ano iyong discussion nila, hindi ko alam.

SEN. LACSON. Hindi maliwanag, ano? Okay. Ang sabi ni Mr. Yang, ang role niya lang ipinakilala sa iyo iyong mga tao sa China na kakilala niya. Pagktapos, wala na siyang kinalaman, ikaw na lahat ang nakipag-deal doon sa mga suppliers. Is that true?

MR. ONG. Mr. Chair, nakikipag-usap talaga kami isa mga supplier na ipinakilala niya. Yes po.

SEN. LACSON. Hindi. Ang tinatanong ko, wala na ba siyang kinalaman? Umalis na siya, kayo na lang ang nagtuloy-tuloy na nagusap at hindi na nakialam si Mr. Yang?

MR. ONG. Hindi ko—well, paano itong hindi—

SEN. LACSON. Iyong diretsong sagot lang, Mr. Linconn.

MR. ONG. Sige po, Mr. Chairman. Ano po ulit iyong tanong ninyo para maintindihan ko nang maayos at masagot ko nang maayos?

SEN. LACSON. Ganito ang flow. Sabini Mr. Yang, ang papel lang niya, ipinakilala ka sa apat na suppliers from China ...

MR. ONG. Opo, opo.

SEN. LACSON at wala na siyang ginawang iba pa. Ikaw na lahat ang nagpatuloy kung papaano makipagtransaksyon, kung papaano tumanggap ng supplies at makipag-deal doon sa mga suppliers na sinasabi niyang pinakilala lamang sa iyo.

MR. ONG. In addition to that, Mr. Chair, he also guarantees for us. Nagga-guarantee sila para sa amin kasi totoo po iyong analysis ni Mr. Chairman na medyo challenging talaga pagdating sa financial.

x x x x

SEN. LACSON. So, hindi totoo na pinakiiala ka Jang at tapos na. Tuloy-tuloy ang kanyang participation by way of continuously guaranteeing sa mga suppliers na babayaran sila. Parang utang. Sabihin na natin na credit.

x x x x

SEN. LACSON. Do you have documents to show your proof of payment doon sa mga suppliers? "

MR. ONG. We have all those documents as long as it's--wala naman pong rights or - maba-violate sa amin, we are more than willing to cooperate.

SEN. LACSON. Okay. How much in total did you pay the four suppliers. Doon sa mga dumating, iyong na-procure ninyo and supplied to the PS-DBM, magkano iyong binayaran ninyo sa mga suppliers?

MR. ONG. Mr. Chairman, wala po kasi sa amin iyong mga -- sa akin, wala talaga sa akin ang record. I think I have to access our accounting records.

x x x x

SEN. LACSON. Mr. Linconn Ong x x x did you have any document...mayroon kayong parang joint venture agreement with Mr. Yang?

MR. ONG. We do have agreement po.

SEN. LACSON. Yes. Do you have a copy of that agreement?

MR. ONG. I don't have it with me, Mr. Chairman.

SEN. LACSON. What kind of agreement do you have with Mr. Yang?

MR. ONG. Hindi ko po talaga maalala noong, noong mga—specific content na iyan, Mr. Chairman, but sana po maintindihan ninyo na kami po, sa community naming minsan—totoo po iyan. Pagka-minsan may mga transaksyon kami na minsan verbal--verbal talaga negosyante lang po.

SEN. LACSON. No. But in this particular case, iyong supplies ng mga PPEs, sinabi mo, mayroon kayong pinirmahan na agreement with Mr. Yang. Ang tanong ko, anong klaseng agreement? Anong klase iyong pinirmahan ninyong dokumento? Anong form? Is it a joint venture agreement?

x x x x

MR. ONG. Mr. Chairman, I'm not really privy or hindi ko talaga ma-recall ngayon kung ano iyong content, but we have—we do have kasulatan po.

SEN. LACSON. A very important document, hindi mo matandaan kung anong form? Joint venture ba? Contract ba? Hindi mo man lang maalala kung ano iyon?

MR. ONG. Mayroon po talagang ganoon. (Emphasis supplied)

[31] Id. at 35-40.

[32] Id. at 40.

[33] Rollo (G.R. No. 257401), Vol. 1, pp. 415-418, Comment of the Senate Blue Ribbon Committee quoting Annex "19," TSN for the September 13, 2021 Hearing, rollo (G.R. No. 257401) Vol. 2, pp. 889-897.

[34] Rollo (G.R. No. 257401), Vol. 1, p. 432, Comment of the Senate Blue Ribbon Committee quoting Annex "20," TSN for the September 17, 2021 hearing, rollo (G.R. No. 257401) Vol. 2, pp. 957-959.

[35] Id. at 437-439, Comment of the Senate Blue Ribbon Committee quoting Annex "22," TSN for the September 24, 2021 hearing, rollo (G.R. No. 257401) Vol. 2, pp. 981-986.

[36] Rollo (G.R. No. 257916) Vol. 2, p. 511, Comment of the Senate Blue Ribbon Committee quoting Annex "16," TSN for the September 13, 2021 hearing, (id. at 923); See rollo (G.R. No. 257401) Vol. 2, p. 945, Annex "21," TSN for the September 21, 2021 hearing; and p. 967, Annex "22," TSN for the September 24, 2021 hearing.

[37] Ponencia, p. 8.

[38] Rollo (G.R. No. 257916), Vol. 2, pp. 514-515, Comment of the Senate Blue Ribbon Committee.

[39] Rollo (G.R. No. 257401), Vol. 1, p. 412. Annex "18," Post-Operation Report of the Office of the Sergeant-at-Arms dated September 21, 2023.

[40] Ponencia, p. 7.

[41] Negros Oriental II Electric Cooperative, Inc., *supra* note 22, at 412.

[42] *Standard Chartered Bank v. Senate Committee on Banks, Financial Institutions and Currencies*, 565 Phil. 744, 761 (2007).

[43] *Balag v. Senate of the Philippines*, *supra* note 13, at 471.

[44] CONSTITUTION, Art. VI, Sec. 21.

[45] Ponencia, pp. 45-46.

[46] Dissenting Opinion of Associate Justice Dante O. Tinga in *Spouses Romualdez v. COMELEC*, 576 Phil. 357, 430 (2008).

[47] 403 Phil. 31 (2001).

[48] Id. at 47-48.

[49] *Arnault v. Nazareno*, supra note 13, at 48.

[50] Id. at 65.

[51] SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, Sec. 12.

[52] Id. at Sec. 18(a); See also RULES OF THE SENATE BLUE RIBBON COMMITTEE, Sec 6.

[53] Separate Opinion of Senior Associate Justice Marvic M.V.F. Leonen.

[54] See *Balag v. Senate of the Philippines*, supra note 13, at 471:

Thus, the Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. The balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation. These interests usually consist in the exercise by an individual of his basic freedoms on the one hand and the government's promotion of fundamental public interest or policy objectives on the other. (Emphasis supplied)

CONCURRENCE and DISSENT

LAZARO-JAVIER, J.:

I agree with the ponencia that the Order dated September 10, 2021 of the Senate citing petitioners for contempt and ordering their arrest and detention should be nullified. Nonetheless, I dissent from the finding that Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations is constitutional.

I.

"Testifies falsely or evasively"
not a vague standard

The phrase "testifies falsely or evasively" as the gravamen of contempt is not vague.

To testify evasively simply means to respond to questions frequently obliquely and without giving straight answers, or to respond to questions with answers that change over time. An online law dictionary, US Legal, defines evasive:

Evasive means tending or seeking to evade; elusive; intentionally vague or ambiguous. The reason for evasiveness may be to avoid something unpleasant. When a pleading requiring response is evasive, the other party can ask the court to order for an unambiguous and definite pleading.

"A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired", [USCS Fed Rules Civ Proc R 12.][1]

Given this straightforward definition of evasive, and from this, of the derivative evasively, any person of ordinary reason would know what testifying evasively means.

The same is true with the gravamen of testifying falsely. We cannot claim that this phrase is vague because Articles 161 to 184 of The Revised Penal Code on Forgeries are based on the actus reus of falsities. If we accept

testifying falsely as vague, then we must also accept as vague the common actus reus of falsities in these criminal code articles - which of course we do not accept at all. Something is false or an individual testifies falsely when the thing or the testimony is not in accordance with the fact or truth. In a prosecution for any of the crimes in Articles 161 to 184, we ordinarily end up with either an acquittal or conviction depending on whether there was something false. We do not quiver on what is meant by false.

II.

The Senate's inherent power to cite
and punish for contempt in inquiries in aid
of legislation

Balag v. Senate[2] has settled that the Senate or any of its Committees has the power to cite and to punish for contempt its resource persons during inquiries in aid of legislation. The purpose of this power, according to Balag, is not essentially to punish but to make the inquiries potent and compelling. Thus:

Period of imprisonment for
contempt during inquiries in
aid of legislation

The contempt power of the legislature under our Constitution is sourced from the American system. A study of foreign jurisprudence reveals that the Congress' inherent power of contempt must have a limitation. In the 1821 landmark case of *Anderson v. Dunn*, the Supreme Court of the United States (SCOTUS) held that although the offense committed under the inherent power of contempt by Congress may be undefinable, it is justly contended that the punishment need not be indefinite. It held that as the legislative body ceases to exist from the moment of its adjournment or periodical dissolution, then it follows that imprisonment under the contempt power of Congress must terminate with adjournment.[3]

Subsequently, in *Jurney v. MacCracken*, the SCOTUS clarified that the power of either Houses of Congress to punish for contempt was not impaired by the enactment of the 1857 statute. The said law was enacted, not because the power of both Houses to punish for a past contempt was doubted, but because imprisonment limited to the duration of the session was not considered sufficiently drastic as a punishment for contumacious witnesses. The purpose of the statutory contempt was merely to supplement the inherent power of contempt by providing for additional punishment. On June 22, 1938, Section 102 of the Revised Statutes was codified in Section 192, Title II of the U.S. Code.[4]

xxxx

xxx The Court also discussed the nature of Congress' inherent power of contempt as follows:

xxx We have said that the power to find in contempt rests fundamentally on the power of self-preservation. That is true even of contempt of court where the power to punish is exercised on the preservative and not on the vindictive principle. Where more is desired, where punishment as such is to be imposed, a criminal prosecution must be brought, and in all fairness to the culprit, he must have thrown around him all the protections afforded by the Bill of Rights. Proceeding a step further, it is evident that, while the legislative power is perpetual, and while one of the bodies composing the legislative power disappears only every three years, yet the sessions of that body mark new beginnings and abrupt endings, which must be respected.[5](Emphasis in the original) xxxx

Later, in *Neri v. Senate* (*Neri*), the Court clarified the nature of the Senate as continuing body:

On the nature of the Senate as a "continuing body", this Court sees fit to issue a clarification. Certainly, there is no debate that the Senate as an institution is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the

Senate of each Congress acts separately and independently of the Senate of the Congress before it xxx[6]

xxxx

As discussed in *Lopez*, Congress' power of contempt rests solely upon the right of self-preservation and does not extend to the infliction of punishment as such. It is a means to an end and not the end itself. Even arguing that detention under the legislative's inherent power of contempt is not entirely punitive in character because it may be used by Congress only to secure information from a recalcitrant witness or to remove an obstruction, it is still a restriction to the liberty of the said witness. It is when the restrictions during detention are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose. An indefinite and unspecified period of detention will amount to excessive restriction and will certainly violate any person's right to liberty.[7]

Nevertheless, it is recognized that the Senate's inherent power of contempt is of utmost importance. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change. Mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed through the power of contempt during legislative inquiry. While there is a presumption of regularity that the Senate will not gravely abuse its power of contempt, there is still a lingering and unavoidable possibility of indefinite imprisonment of witnesses as long as there is no specific period of detention, which is certainly not contemplated and envisioned by the Constitution.[8] (Emphases supplied) xxxx

With due respect, the categorization of the contempt power as either compulsory or punitive in the context of the present case may not be relevant. For the issue here is Whether the contempt exercise and detention amounted to compulsion or punishment is unimportant. It was done to obtain what the Senators believed to be truthful and responsive testimonies that petitioners were allegedly hiding from them. While in reality and effect the goal could be both compulsory and punitive, this does not void the contempt power. It still arose from an inquiry in aid of legislation.

This obiter, with due respect, may only spawn needless litigation on whether the Senate is exercising its contempt power to compel truthful and reliable evidence or solely to punish its resource persons. Where the contempt power is invoked in the situation of an inquiry in aid of legislation, as in this case, this power is not ultra vires to the Senate or its committees, regardless of its punitive impact.

III.

Void Senate Order to cite and
punish for contempt for testifying
falsely or evasively during the
inquiry in aid of legislation

With due respect to the Senate or its Committees, while they are empowered to decide that a resource person is testifying falsely or evasively and punish the individual by virtue of their contempt power, they cannot do so through a legislative process.

Both Section 18 of the Senate Rules of Procedure Governing Inquiries in aid of Legislation and Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) allow the Committee's Chairperson, with the concurrence of a Committee member, to cite and punish a resource person for contempt. This method of exercising and imposing the contempt power applies invariably to all the grounds for citing and punishing for contempt:

- disobeying any order of the Committee or refusing to be sworn or to testify or to answer a proper question by the Committee or any of its members,
- testifying falsely or evasively,
- unduly refusing to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor

I will not discuss the first and third grounds. My reference is only to the second ground - testifying falsely or evasively.

The concurrence method of exercising and imposing the contempt power is unconstitutional. It violates the procedural due process right of an individual appearing before the Committee. The compliance and punitive measure arise solely from the determination of the Chairperson and the concurrence of a member. The individual is not heard. No reasons are necessary. It comes from a legislative fiat - at least in legislation there are three readings and hearings in between.

A hearing is especially necessary in determining the presence of the second ground because it is something that is not easily verifiable unlike the first and third grounds. This is the case not because evasiveness or falsity is vague or cannot be understood. Rather, testifying evasively or falsely is highly contextual. The testimony is false only because it is not in accord with the truth. It is evasive only because a direct answer was in fact available and known to the resource person. It is quite unlike the first and third grounds which are verifiable at once through sight and hearing.

The hearing is the proper forum where the Senate or its Committee is able to inform the resource person of the cause of the contempt charge. What false testimony was said? Why was the testimony vilified as evasive? At the hearing, the resource person is able to answer the charge. The result will be clarity as to why contempt is the proper remedy. The just punishment may also be sorted out in such proceeding.

This hearing does not have to be a trial-type hearing. It can take place through the exchange of written submissions. The Senate has the constitutional power to promulgate its rules of procedure^[9] in this regard. What is important is the provision of a fair procedure that hears before it condemns. The contents of this procedure are for the Senate to determine.

The procedure laid down in Section 18 of the Senate Rules of Procedure Governing Inquiries in aid of Legislation and Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) does not comply with procedural due process. These provisions grant unilateral power to the Committee Chairperson with the concurrence of a Member to cite and punish a resource person for contempt:

Section 18. Contempt. - (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee

Section 6. Contempt. - (a) The Chairman, with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee

There is absolutely no hearing afforded to the resource person. There is absolutely no procedure by which to inform the alleged contemner of the cause of the allegedly false or evasive testimony. There is absolutely nothing in the foregoing provisions by which to measure the fairness of the compulsory and punitive process. This procedure in Section 18 of the Senate Rules of Procedure Governing Inquiries in aid of Legislation and Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) is void for being contrary to the Constitution.

I agree that the Order dated September 10, 2021 of the Senate Blue Ribbon Committee should be set aside. I am

of the stand, however, that Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), granting to the Committee Chairperson (with the concurrence of one Member of the Committee) the power to cite and punish for contempt, is contrary to the Constitution.

[1] <https://definitions.uslegal.com/e/evasive/> (last accessed on September 21, 2022).

[2] See 835 Phil. 451 (2018) [Per J. Gesmundo, En Banc].

[3] Id. at 464.

[4] Id. at 465.

[5] Id. at 466.

[6] Id. at 468.

[7] Id. at 470.

[8] Id.

[9] Constitution, Article VI, Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

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