

ARLENE BABST, ODETTE ALCANTARA CERES P. DOYO, JO-ANN Q. MAGLIPON, DOMINI TORREVILLAS-SUAREZ, LORNA KALAW-TIROL, CIELO BUENAVENTURA, SYLVIA MAYUGA, SHEILA S. CORONEL, ET AL., PET...

G.R. No. 62992. September 28, 1984

Ponente: PLANA, J.

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PLANA, J.:

This was originally a petition for prohibition with preliminary injunction which was superseded by the amended and supplemental petition for prohibition with preliminary injunction filed by petitioners on March 3, 1983, seeking to prohibit the respondents (a) from issuing subpoenas or letters of invitation to petitioners and interrogating them, and (b) from filing libel suits on matters that have been the subject of inquiry by respondent National Intelligence Board (NIB).

Petitioners are columnists, feature article writers and reporters of various local publications. At different dates since July, 1980, some of them have allegedly been summoned by military authorities who have subjected them to sustained interrogation on various aspects of their works, feelings, sentiments, beliefs, associations and even their private lives. Typical of the letters received by the petitioners from respondent NIB is that addressed to petitioner Arlene Babst, dated December 20, 1982, which reads:

"Madam:

"Pursuant to the authority vested in me by law, you are hereby requested to appear before this Special Committee at Philippine Army Officer's Clubhouse, Fort Bonifacio, Metro Manila (sketch attached), 9:00 A.M., December 22, 1982, to shed light on confidential matters being looked into by this Committee.

"Your failure to appear on the specified date and place shall be considered as a waiver on your part and this Committee will be constrained to proceed in accordance with law.

Very truly yours,

(SGD.) WILFREDO C. ESTRADA
Brig. General, AFP (Ret.)
Chairman"

Aside from the interrogations, a criminal complaint for libel was filed by Brig. Gen. Artemio Tadiar, Jr. on February 9, 1983 with the Office of the City Fiscal, Manila, against petitioners Domini Torrevillas-Suarez, editor of the Panorama, and Ma. Ceres Doyo based on an article written by Doyo and published in the March 28, 1982 issue of the Panorama, on which the author had been interrogated by respondents. The complaint included a staggering P10 million claim for damages. (An information for libel has since been filed with the Regional Trial Court of the National Capital Region against Suarez and Doyo.)

Petitioners maintain that the respondents have no jurisdiction over the proceedings which are violative of the constitutional guarantee on free expression since they have the effect of imposing restrictive guidelines and norms on mass media; that they are a punitive ordeal or subsequent punishment of petitioners for lawful publications; that they amount to a system of censorship, curtailing the "free flow of information and opinion," indispensable to the right of the people to know matters of public concern guaranteed in Section 6 of Article IV of the Constitution; and that they constitute intrusions into spheres of individual liberty. Regarding the libel charge against Suarez and Doyo, petitioners denounce the filing as instituted with intent to intimidate and based on illegally obtained evidence, referring to the matters inquired into by respondents in previously conducted, allegedly illegal interrogations.

In their comment, respondents counter that no issue of jurisdiction exists since they do not pretend to exercise jurisdiction over the petitioners; that what respondents have sent to petitioners were neither subpoenas nor summonses, but mere invitations to dialogues which were completely voluntary, without any compulsion employed on petitioners; that the dialogues themselves were designed simply to elicit information and exchange ideas; and that the expression of personal preferences and opinions by members of the respondent Board is not equivalent to the imposition of norms and guidelines to be followed by petitioners. Relative to the libel case, respondents contend that petitioners have no cause of action against respondent Board since respondent General Tadiar is not a member of respondent Board and has filed the libel case in his personal capacity; and the libel case is not pending before any of the respondents. Furthermore, respondents aver that this case has been rendered moot and academic because the proceedings before NIB Special Committee No. 2 (which conducted the interrogations) have already been ordered terminated by General Fabian C. Ver in his capacity as Director General and Chairman of the NIB, and said proceedings have in fact been terminated.

The petition is premised upon the alleged illegality and unconstitutionality of the issuance by respondent NIB to petitioners of letters of invitation, their subsequent interrogation, and the filing of the aforementioned libel suit.

Under the circumstances of the case, the petition cannot be granted.

The assailed proceedings have come to an end. The acts sought to be prohibited (i.e., the issuance of letters of invitation and subsequent interrogations) have therefore been abated, thereby rendering the petition moot and academic as regards the aforesaid matters.

Be that as it may, it is not idle to note that ordinarily, an invitation to attend a hearing and answer some questions, which the person invited may heed or refuse at his pleasure, is not illegal or constitutionally objectionable. Under certain circumstances, however, such an invitation can easily assume a different appearance. Thus, where the invitation comes from a powerful group composed predominantly of ranking military officers issued at a time when the country has just emerged from martial rule and when the suspension of the privilege of the writ of habeas corpus has not entirely been lifted, and the designated interrogation site is a military camp, the same can easily be taken, not as a strictly voluntary invitation which it purports to be, but as an authoritative command which one can only defy at his peril, especially where, as in the instant case, the invitation carries the ominous warning that "failure to appear...shall be considered as a waiver...and this Committee will be constrained to proceed in accordance with law." Fortunately, the NIB director general and chairman saw the wisdom of terminating the proceedings and the unwelcome interrogation.

Similarly, prohibition will not issue in respect of the libel charges now pending in court against two of the petitioners and similar suits that might be filed.

Firstly, the writ of prohibition is directed against a tribunal, board or person acting without or in excess of jurisdiction or with grave abuse of discretion vis-a-vis certain proceedings pending before it. The libel cases

adverted to are not pending before respondent NIB or any other respondent.

Secondly, the issue of validity of the libel charges by reason of their alleged collision with freedom of expression, is a matter that should be raised in the proper forum, i.e., before the court where the libel cases are pending or where they may be filed. The same rule applies to the issue of admissibility as evidence of matters that have been elicited in the course of an inquiry or interrogation conducted by respondent NIB, which petitioners claim to have been illegally obtained.

Finally, the right to seek redress when libeled is a personal and individual privilege of the aggrieved party, and no one among the respondent officials has the authority to restrain any of his subordinates who has been libeled from vindicating his right by instituting a libel suit. Brig. Gen. Tadiar has filed the libel case against petitioners Suarez and Doyo in his personal capacity. Moreover, he is not even a member of respondent NIB. And the NIB does not appear to have anything to do with Gen. Tadiar's private right to complain of libel.

WHEREFORE, the petition is dismissed.

SO ORDERED.

Melencio-Herrera, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Fernando, C.J., concurs and submits a separate opinion.

Teehankee, J., dissents in a separate opinion.

Makasiar and Aquino, JJ., in the result.

Concepcion, Jr., and Guerrero, JJ., on leave.

Abad Santos, J., see dissenting opinion.

CONCURRING WITH A SEPARATE OPINION

FERNANDO, C.J.:

The opinion of the Court penned by Justice Plana, written in his usual lucid style, is entitled to commendation. It is characterized by fealty to what has long been accepted as the task incumbent on the judiciary, namely, to resolve disputes. There is no departure from the practice very much in evidence in the United Kingdom and many Commonwealth countries. As pointed out by him: "The petition is premised upon the alleged illegality and unconstitutionality of the issuance by respondent NIB to petitioners of letters of invitation, their subsequent interrogation, and the filing of the aforementioned libel suit." [1] Why it cannot be granted is made clear in these words: "The assailed proceedings have come to an end. The acts sought to be prohibited (i.e., the issuance of letters of invitation and subsequent interrogations) have therefore been abated, thereby rendering the petition moot and academic as regards the aforesaid matters." [2] As he further stated in the latter portion of the opinion: "Fortunately, the NIB director general and chairman saw the wisdom of terminating the proceedings and the unwelcome interrogation." [3]

After pointing out the moot and academic character of the petition, Justice Plana, noted that "ordinarily an invitation to attend a hearing and answer sane questions, which the person invited may heed or refuse at his pleasure" is not per se illegal or unconstitutional and hence free from objection. Then he made the apt observation that under the circumstances at present obtaining, it can be viewed "as an authoritative command which one can only defy at his peril, especially where, as in the instant case, the invitation carries the ominous warning that

'failure to appear * * * shall be considered as a waiver * * * and this Committee will be constrained to proceed in accordance with law.'"[4] To this extent, there is conformity to that also has been traditional in this jurisdiction. This Court, whenever an occasion calls for it, has given expression to views indicative of its appraisal of how to avoid the at times thin line separating what is juridically impeccable from that which may give rise to well-founded doubts as to its legality or at the very least cast a reflection on the ways of the law. What this Court or a member thereof says then may be of persuasive character.

Why prohibition will not issue with respect to the libel charges pending in court against petitioners and suits of a similar character that could be filed, Justice Plana explained in this manner: "Firstly, the writ of prohibition is directed against a tribunal, board or person acting without or in excess of jurisdiction or with grave abuse of discretion vis-a-vis certain proceedings pending before it. The libel cases adverted to are not pending before respondent NIB or any other respondent. Secondly, the issue of validity of the libel charges by reason of their alleged collision with freedom of expression, is a matter that should be raised in the proper forum, i.e., before the court where the libel cases are pending or where they may be filed. Finally, the right to seek redress when libeled is a personal and individual privilege of the aggrieved party, and no one among the respondent officials has the authority to restrain any of his subordinates Who has been libeled from vindicating his right by instituting a libel suit."[5]

In terms of the tried and tested concepts of strict law, it thus becomes obvious why concurrence is unavoidable. This Tribunal, however, is likewise a court of equity. It is reliance on that aspect that distinguishes the separate opinions of Justices Teehankee and Abad Santos. True to the tradition that cases on freedom of expression furnish the opportunity for moving utterances, they stress in language both lofty and persuasive, the exacting responsibility of the judiciary in preserving unimpaired press freedom. They have done me the honor of citing or referring to excerpts from my opinions as well as my other writings. I am, of course, appreciative. Moreover, there has been no change of heart on my part. I stand by then. I am unable, however, to go 'as far as they would wish this Court to go. It is my considered opinion that it suffices that I follow what, as ponente, I did in *De la Camara v. Enage*,[6] namely to furnish guidelines for the lower courts, based on authoritative doctrines. Thus: "While under the circumstances a ruling on the merits of the petition for certiorari is not warranted, still, as set forth at the opening of this opinion, the fact that this case is moot and academic should not preclude this Tribunal from setting forth in language clear and unmistakable, the obligation of fidelity on the part of lower court judges to the unequivocal command of the Constitution that excessive bail shall not be required."[7]

1. Fortunately, there is a case that serves such a purpose. I refer to *Lopez v. Court of Appeals*. [8] It deals with a civil action for libel, but the principles therein enunciated apply as well to criminal prosecutions. As was set forth early in the opinion of the Court: "It is on the freedom of the press that petitioners would stake their case to demonstrate that no action for libel would lie arising from the publication of the picture of respondent Cruz identified as responsible for the hoax of the year, when such was not the case at all. It is easily understandable why. No liability would be incurred if it could be demonstrated that it canes within the well-nigh all-embracing scope of freedom of the press. Included therein is the widest latitude of choice as to what items should see the light of day so long as they are relevant to a matter of public interest, the insistence on the requirement as to its truth yielding at times to unavoidable inaccuracies attendant on newspapers and other publications being subject to the tyranny of deadlines. If no such showing could be plausibly made, however, it is difficult to resist the conclusion that there was in fact the commission of such quasi-delict."[9]

2. Further on the question of the decisive character of press freedom in the adjudication of libel suits, the *Lopez* opinion had this to say: "There is an impressive recognition in our decisions of the curtailment to which press freedom would be subjected if an action for libel were not rigorously scrutinized to remove doubts as to its being

utilized to penalize the exercise of that constitutional right. Thus, in the first leading case, *United States v. Bustos*, Justice Malcolm could correctly stress: 'The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to moment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation: the wound can be assuaged with the balm of a clear conscience. A public officer must not to be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as an individual is less than the State, so must expected criticism be born for the common good.' On this aspect of the question which, as answered by him, would require that a criminal suit for libel should not be utilized as a means for stifling press freedom, he categorically declared: 'Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege.'"[10]

3. So it is in the United States except for the fact that it was not until 1964, 36 years after *Bustos*, that its Supreme Court had occasion to rule likewise. To quote anew from the *Lopez* opinion: "In the leading case of *New York Times Co. v. Sullivan*, the nature of the question presented was set forth by Justice Brennan for the Court in the opening paragraph of his opinion: 'We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action brought by a public official against critics of his official conduct.' This is the Court's approach to such an issue: 'In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet "libel" than we have to other "mere labels" of state law. * * * Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulas for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment.' Continuing the same trend, the opinion stressed further: 'Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. * * * The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection.'"[11]

4. The test to be followed, according to the language of the *New York Times* decision, as reinforced by *Curtis Publishing Co. v. Butts*, was set forth thus in the *Lopez* opinion: "For liability to arise then without offending press freedom, there is this test to meet: 'The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' The United States Supreme Court went further in *Curtis Publishing Co. v. Butts*, where such humanity was held as covering statements concerning public figures regardless of whether or not they are government officials. Why there should be such an extension is understandable in the light of the broad scope enjoyed by press freedom which certainly allows a full and free discussion of public issues. What can be more logical and appropriate, then, than such an expansion of the principle. As noted by a commentator: 'Since discussion of public issues cannot be meaningful without reference to the men involved on both sides of such issues, and since such men will not necessarily be public officials, one cannot but agree that the Court was right in *Curtis* to extend the *Times* rule to all public figures.'"[12]

5. Accordingly, the *Lopez* opinion could rightfully stress: "The significance of the foregoing line of decisions impressive for their consistency is quite obvious. No inroads on press freedom should be allowed in the guise of punitive action visited on what otherwise could be characterized as libel whether in the form of printed words or a

defamatory imputation resulting from the publication of respondent's picture with the offensive caption as in the case here complained of. This is not to deny that the party responsible invites the institution either of a criminal prosecution or a civil suit. It must be admitted that what was done did invite such a dire consequence, considering the value the law justly places on a man's reputation. This is merely to underscore the primacy that freedom of the press enjoys. It ranks rather high in the hierarchy of legal values. If the cases mean anything at all then, to emphasize what has so clearly emerged, they call for the utmost care on the part of the judiciary to assure that in safeguarding the interest of the party allegedly offended, a realistic account of the obligation of a news media to disseminate information of a public character and to comment thereon as well as the conditions attendant on the business of publishing cannot be ignored."[13]

6. There is no ambiguity in the above authoritative doctrines. Press freedom is a preferred right.[14] It is entitled to the fullest protection that the law affords. A person who deems himself aggrieved by defamatory statements is of course entitled to seek redress in the courts. Nonetheless, in the felicitous language of the New York Times decisions, "libel can claim no talismatic immunity from constitutional limitations." While there is an undeniable public interest in assuring that a man's reputation be safeguarded from calumny and unjust accusation, on matters of public concern, he cannot be shielded from the scrutiny of the press and the expression thereafter of whatever failings it might uncover on matters of public concern. Care is to be taken, however, that in its publication there is avoidance of affirming what is not true or disregarding in a manner deemed reckless to take the necessary steps of ascertaining its truth or falsity. That is as it should be. Justice Holmes, in his classic dissent in *Abrams*, after stressing that the ultimate good desired is better reached by a free trade of ideas, and that there should be the competition in the open market, was insistent that truth is the only ground upon which man's wishes can be safely carried out.[15] Professor Emerson, at present the foremost scholar in the field, emphasized the value of freedom of expression as "an essential process for advancing knowledge and discovering truth." [16]

7. There is no more exacting duty on the part of the judiciary, therefore, than to heed the clear and unmistakable mandate of the Constitution in passing upon the conflicting claims of the parties in libel cases. To repeat, the law cannot ignore a man's inherent right to have his reputation remain free from unjustified and unwarranted imputations of wrongdoing. Nonetheless, because of the primacy enjoyed by the free speech and free press guarantees of the Constitution, even on the assumption that there has been injury to man's reputation, the damages to be assessed, if at all warranted, should not be lacking in the quality of realism. The same sense of realism should likewise be displayed by the plaintiff in a libel suit in estimating the amount due him for the injury inflicted on his good name. The times are difficult, even perilous. It is of the essence, therefore, that there be on the part of public officials and journalists alike an attitude of trust and confidence in the good faith that motivates them in the discharge of their responsibilities. Such an attitude may lessen the atmosphere of confrontation and dissipate the fear that press freedom has become a casualty under the circumstances. It is for the judiciary to be ever on the alert that such be not the case.

[1] Decision of the Court, 3.

[2] *Ibid*.

[3] *Ibid*, 4.

[4] *Ibid*.

[5] *Ibid*. As to the second reason, this sentence is included: "The same rule applies to the issue of admissibility as evidence of matters that have been elicited in the course of an inquiry or interrogation conducted by respondent NIB, which petitioners claim to have been illegally obtained." The opinion of the Court set forth the above

grounds in three separate paragraphs.

[6] 41 SCRA 1 (1971).

[7] Ibid, 6. This excerpt has been cited with approval by Justice Teehankee in his dissent, p. 5.

[8] 34 SCRA 116 (1970).

[9] Ibid, 119-120.

[10] Ibid, 123-124.

[11] Ibid, 125-126. New York Times Co. v. Sullivan is reported in 376 US 254.

[12] Ibid, 126-127. Curtis Publishing Co. v. Butts is reported in 388 US 130. It was decided in 1967. The rule thus announced was followed in the subsequent cases of: St. Amant v. Thompson, 390 US 727 (1968); Greenbelt Cooperative Publishing Asso. v. Brusler, 398 US 6 (1970); Ocala Star-Banner Co. v. Damron, 401 US 295 (1971); Rosenbloom v. Metromedia, Inc., 403 US 29 (1971); Pittsburgh Press Co. v. The Pittsburgh Commission on Human Relations, 413 US 376 (1973); The Miami Herald Publishing Co. v. Tornillo, Jr., 418 US 241 (1974); Old Dominion Branch No. 496, National Association of Letter Carriers v. Austin, 418 US 264 (1974); Cantrell v. Forest City Publishing Co., 419 US 245 (1974); and Time, Inc. v. Firestone, 424 US 448 (1976).

[13] Ibid, 127.

[14] Reyes v. Bagatsing, 125 SCRA 553, 570 (1983).

[15] Abrams v. US, 250 US 616, 630 (1919). The separate opinion of Justice Abad Santos quotes from such dissent extensively.

[16] Emerson, The System of Freedom of Expression 6 (1969).

SEPARATE DISSENTING OPINION

TEEHANKEE, J.:

I am constrained to dissent on the grounds, as hereinafter stated, that rather than dismiss as moot the petition at bar due to termination of respondent committee's interrogation proceedings, the Court should rule squarely or at least lay down the authoritative and controlling doctrines on the vital issues of profound public importance and interest that involve the upholding of the preferred freedoms of speech and press that are so vital for the survival of our democratic heritage and the proscribing of the questioned acts of harassing and intimidating journalists who expose and report on complaints of military abuses.

Petitioners, all in mass media as editors, columnists, reporters or feature article writers, filed on January 25, 1983 the verified petition for prohibition against respondent National Intelligence Board, Special Committee No. 2, and its Chairman and members, all composed of ranking military officers, save respondent NBI Assistant Director Ponciano Fernando. They complain that "some of them have received summonses, subpoenas or directives from military authorities who have subjected them to sustained interrogation, touching the most delicate aspects of their work, feelings, sentiments, beliefs, associations and even aspects of their private lives. From August to December of 1982, several such subpoenas were received by some of the petitioners, most of which came in the wake of the mass arrest, indictment and prosecution of the editor and staff of the publication 'We Forum', which could be read as a threat that petitioners might also be subjected to similar treatment," and that those "who have been subjected

to the aforesaid sustained interrogation found it an ordeal, creating a 'chilling effect' on their work."

Invoking the preferred freedom of the press which constitutionally protects them from prior restraint or censorship or subsequent punishment or liability unless there be a clear and present danger of substantive evil that may be rightfully prevented by law, and disregarding emphatic admonitions by their interrogators to keep silent concerning the interrogation and the risk of possible personal reprisal, they have petitioned of this Court to the writ of prohibition with injunction. Petitioners ask the Court to put a stop to such summonses, directives and interrogations by respondents and to declare them "unconstitutional unlawful." Petitioners further ask the Court to likewise put a stop to "further harassment" in the form of "scurrilous libel" suits to be filed by military commanders against the editor, some staff members and contributors of Philippine Panorama (Sunday magazine of Bulletin Today), as per official announcement of Camp Aguinaldo reported on January 30, 1983.[1] By Amended and Supplemental Petition of March 3, 1983, petitioners pinpoint criminal libel complaint "with a staggering for damages" (as against the modest P250.00 fee received by the writer) filed on February 9, 1983 with the City Fiscal of Manila by Brig. Gen. Artemio A. Tadiar, Jr. (as Commanding General of the Third Philippine Marine Brigade, AFP) against petitioners Domini Torrevillas Suarez and Ma. Ceres P. Doyo, editor and writer, respectively, for the alleged libelous article "Forty Years After the Fall, Bataan is Again Under Seige, " which was published a year before in the Philippine Panorama issue of March 28, 1982.[2] (The criminal information for libel, Crim. Case No. 83-16213 was filed with the Regional Trial Court of Manila on March 24, 1983 and sought P10-million "by way of actual, moral, exemplary and other damages" for the complainant Brig. Gen. Tadiar for having been "expos[ed] ... to public hatred, contempt, discredit, dishonor and ridicule." [3])

At the hearing on February 1, 1983, the Solicitor General on behalf of respondents submitted the memorandum dated January 19, 1983 of respondent General Fabian C. Ver as Director General and Chairman of the National Intelligence Board terminating the proceedings of respondent Committee No. 2 and stating that after reviewing the report of said Committee on "the series of dialogues [you] have conducted with selected members of the media," the Board "expressed satisfaction in the results of the dialogues and noted better mutual understanding of the respective roles of media and government."

The Court's majority resolution dismisses the petition as having become moot and academic with the termination of respondent Committee's proceedings and interrogations.

Petitioners on the other hand, invoke the imperatives of public interest in their petition and plead for a definite ruling thereon from the Court so that the violations of their constitutional rights of free press and speech and privacy may not be repeated.

Petitioners are entitled to such a definite ruling. In the words of the late Chief Justice Fred Ruiz Castro in *Aquino, Jr. vs. Enrile*[4], "the fact that a final determination of a question involved in an action is needed will be useful as a guide for the conduct of public officers or tribunals is a sufficient reason for retaining an action which would or should otherwise be dismissed. Likewise appeals may be retained if the questions involved are likely to arise frequently in the future unless they are settled by a court of last resort."

This was also my submittal in my dissents in the recent habeas corpus cases of *Renato Cañete*[5] and *Aristedes Sarmiento*[6]. In these cases, the military authorities had refused to release the detainees despite their acquittal by the trial courts on the ground that "only the President of the Philippines can order (their) release since (they are) being detained pursuant to a PCO." The charges against them were found to be bereft of basis and evidence. In *Cañete's* case, the trial court granted his motion to dismiss the case of illegal possession of subversive documents for insufficiency of the prosecution's evidence. In *Sarmiento's* case, the trial court dismissed the subversion charges for "utter worthlessness of evidence," so much so that Mr. Justice Felix V. Makasiar suggested that "(T)he

military establishment should inquire into whether the President was deceived into issuing the PCO and who initiated the arrest of the couple without supporting evidence." The detainees were released by the military only when, the PCO's were lifted after the lapse of several months since their acquittal and the Court's majority ordered the dismissal of the cases as having become moot. I maintained in line with a host of precedents that the basic issue of whether a judgment of acquittal prevails over the PCO should be squarely resolved rather than emasculated with the dismissal of the cases in order to avoid countless other Cañetes and Sarmientos.

In *De la Camara vs. Enage*[7] (where petitioner-accused had escaped from jail, apparently in desperation due to the excessive and exorbitant bail fixed by respondent judge of almost P2.5-million rejected by the now Chief Justice therein as "a sanctimonious avowal of respect for a mandate of the Constitution on a purely verbal level," when the Department of Justice had recommended P40,000 bail for the two offenses), the Court held that "the fact that this case is moot and academic should not preclude this Tribunal from setting forth in language clear and unmistakable for the guidance of lower court judges, the controlling and authoritative doctrines that should be observed" in according full respect to constitutional rights. While we dismissed the case as moot with petitioner's escape, the Court Nevertheless squarely ruled that the constitutional right to bail should not be rendered nugatory with the imposition of excessive bail and declared the challenged order as having "reduced the right to bail to a barren form of words ... absolutely bereft of support in law."

I hold then with Mr. Justice Vicente Abad Santos, and as intimated by the majority resolution when it noted that "fortunately, the NIB director general and chairman saw the wisdom of terminating the proceedings and the unwelcome interrogations,"[8] that the "invitations" and interrogations were violative of the freedoms of speech, press and privacy and proper objects of the petition at bar for prohibition with injunction. The Court should so rule, setting forth as in *De la Camara* for the guidance of lower court judges the controlling and authoritative doctrines that safeguard the preferred freedoms of press and speech and making of record the Solicitor General's assurance and "commitment" at the hearing that no further interrogations of journalists would take place and that "there will be no other committees that will be created for the same purpose."

The Chief Justice (then Associate Justice) had in the 1969 case of *Gonzales vs. Comelec*[9] collated precedents and jurisprudence and restated such controlling principles, as follows:

"x x x There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.

"The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guaranty. It represents a profound commitment to the principle that debate of public issues should be uninhibited, robust, and wide-open. It is not going too far, according to another American decision, to view the function of free speech as inviting dispute. 'It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'

"Freedom of speech and the press thus means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, to take refuge in the existing climate of opinion on any matter of public consequence. So atrophied, the right becomes meaningless. The right belongs as well, if not more, for those who question, who do not conform, who differ. To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us."

The special appeal made by revered Law Professor Gerardo Florendo at last year's hearing of February 1st is herein likewise reproduced for the record:

"x x x With your indulgence, most Honorable Supreme Court Justices, I am appearing here for the first time in view of the importance of the question here to be ventilated before the great and august Body, of the Supreme Court, for unless the petition is upheld by the Supreme Court, neither the freedom of the Supreme Court Justices nor of the defendant-attorneys can be protected, much less my freedom as a civilian and mere citizen of this great Republic of the Philippines. So, as I'm here, Your Honor, to add to my weak voice, at the advanced age of 87 years, so that before I pass out of this world into the great beyond, no one can say a voice no matter how big (sic). For indeed, reading the petition, the questions asked by the military are in themselves punishment far beyond the ken of prison walls. But harassing the individual concerned out of the rooms, in the privacy of their habitations, we wish the whole country could stand to say that what you, the Military, which is sworn to protect the freedom and liberty of the citizens of this country, could really exercise that to the benefit of each and every citizen, because when a citizen's freedom is jeopardized, endangered, that also affects you personally and your children, and your grandchildren. So that, Your Honor, I wish now to intervene here and say, Military, please change your proceedings, your actuaciones and exercise your duties as you are sworn to defend the freedom and liberty of your country and of the citizens of the land. Thank you." [10]

As to the prohibition suit against the criminal libel suit initiated by respondent Brig. Gen. Tadiar with a claim of P10-million damages, the majority resolution dismisses the petition on the grounds that (1) the libel case is not pending before respondent NIB; (2) the lack of cause of action or non-existence of a criminal offense should be raised in the proper forum, i.e. the court where the libel case is pending; and (3) respondent Brig. Gen. Tadiar has filed the libel case "in his personal capacity" in the exercise of "a personal and individual privilege of the aggrieved party."

The Resolution has thus adopted the conventional approach of requiring that the invalidity of the libel case be raised in the Regional Trial Court (which has not been impleaded, as the information had not yet been filed at the time of the filing of the Amended and Supplemental Petition) and first passed upon by said court.

But this Court has set aside procedural niceties in the past and cut the gordian knot and directly gave its final determination particularly when necessary as a guide for the conduct of public officers and tribunals and to forestall needless congestion of the court's dockets with the likelihood of numerous future similar cases being filed.

And this direct approach is required now. The Chief Justice himself in a lecture at the National Press Club last July, observed that about thirteen years ago (before martial law) fiscals automatically dismissed libel complaints against newsmen by merely invoking the preferred freedom of the press but that nowadays the prosecutors tend to file such libel cases against newsmen. It may be added that the prosecutors have cooperated in aggravating the pressure and intimidation by the new gimmick of including in the criminal information the complainant's claim for astronomical damages in tens and hundreds of millions of pesos, which the newsman could not possibly even begin to aspire to earn, even if he lived a hundred lifetimes. It is of common knowledge and practice that such claims for damages were never before set out in specific amounts in the information nor have the courts been known to have ever granted before awards for damages in such punitive and fantastic amounts, "the usual practice being more likely to reduce damages for libel than to increase them." [11]

Lawyer-columnist Apolonio Batalla comments that "(M)ost of the stories appearing in the periodicals are about government and many of them tend to offend government officials. If a newsman is fearful of being indicted for libel, he writes less freely and doctors the facts to make them inoffensive to certain government officials even if he thinks that it is not correct to do so. But he is afraid of risking exposure to a criminal case." He adds that "(I)f fiscals become fearful of dismissing complaints on valid grounds, the fear might spread to include not only

newsmen but the lower courts as well. There cannot be that desirable amount of freedom guaranteed by the Constitution if reliance is placed only on what the Supreme Court will rule in particular cases," and cautions that "(P)ress freedom is the concern of judges, fiscals, other government officials, writers, and the rest of society, including the possible complainants in libel suits. In the absence of the will on the part of such people to preserve press freedom, the Supreme Court will be of little utility." He cites the case of Isidoro Chammag, a Bulletin correspondent in the north: "After he wrote a story about Abra folk fleeing their homes on account of a military raid on suspected insurgents, he was sued for libel. He did not have the resources to post bail." [12] His colleagues started a fund campaign to raise bail for him.

In a recent editorial, the Times-Journal decries that "libel suits are being used to harass journalists." It recalls that "(D)uring the severest period of martial law the Philippine press was kept under tight watch. Not a few editors and reporters have experienced the quiet terror of an irate phone call from some ranking public official or a less-than-friendly summons from the military. And Filipino journalists are so dense as to misread such feedback as anything less than the intimidation it was meant to cause," and points out that "(W)hile the formal lifting of martial law has eased somewhat the daily pressure on media to rigidly tow the official line, memories of those less-than-shining moments of Philippine journalism are still vivid in the collective mind of media. Many editors and reporters, especially those of the mainstream press, still find themselves automatically censoring themselves, sacrificing full disclosure at the altar of compromise." The editorial concludes "(T)hat nuisance suits continue to be used in their place should be cause for serious worry not only among journalists but also for the public and policymakers. The lessons of the recent past only show that corruption and abuse of authority thrives best when the press is timid." [13]

The late Justice Hugo Black of the U.S. Supreme Court in the Pentagon Vietnam Papers cases (which turned down the U.S. Government's plea for injunction against the publication of the papers in the name of national security) had stressed that "(T)he press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. x x x." [14]

As already indicated, the Court should now set forth once again the controlling and authoritative doctrines that the Court, even ahead of the U.S. Supreme Court, had first enunciated in the 1918 landmark case of *U.S. vs. Bustos* [15] on the protected right of fair comment on the official acts of public officers thus: "The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation: the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as an individual is less than the State, so must expected criticism be born for the common good."

Given this approach, the first ground above cited of the majority resolution for not ruling now on the Tadiar libel suit may be easily remedied with the Court's considering as formally impleaded as party respondents the Regional Trial Court where the case is pending as well as the People (who is after all represented by the Solicitor General) which is the party plaintiff in all criminal cases.

The third above-cited ground that respondent Gen. Tadiar has filed the libel case "in his personal capacity" is not borne out by the record. The information filed recites that the libel was committed against "the character, honesty, integrity, virtue and reputation of Brigadier General Artemio A. Tadiar, Jr., Commanding General of the 3rd

Philippine Marine Brigades, Armed Forces of the Philippines, both as a man and as an officer in the Armed Forces of the Philippines," and that the article's "false, defamatory and libelous statements (which) impute to the officers and men of the 4th Marine Battalion, a unit of the Third Philippine Marine Brigade under the command of Brig. Gen. Artemio A. Tadiar, Jr., the commission of the crimes of murder, homicide, arbitrary detention, illegal arrests and searches, maltreatment and other acts of oppression, terrorism, abuse of authority and acts of misconduct unbecoming of military officers and members of the Armed Forces of the Philippines," although it claimed P10-million damages on Brig. Gen. Tadiar's behalf.

There is no question then that respondent Gen. Tadiar felt libelled because the article's narration of misdeeds reportedly committed by officers and men under his command in Bataan (false and defamatory statements, according to his complaint) reflected upon him as the commanding general. Petitioners complain then that if respondents AFP Chief of Staff and NIB had "expressed satisfaction in the results of the dialogues and noted better mutual understanding of the respective roles of media and government," respondent Tadiar could not take a stance opposite that of his superiors and that "conflict of interests arise and national policy considerations would thereby be ignored by General Tadiar's action. The assurance of the Solicitor General that petitioners would not be subjected to further interrogations would be meaningless. If that were allowed, it would appear that the Armed Forces of the Philippines, thru its Chief of Staff, terminated the interrogations of newspaperwomen with its left hand only to hit them with libel suits with its right hand. What one cannot do directly, he cannot do indirectly." [16] Petitioner Doyo's offending article is attached to the record and appears to bear out their contention that a principal element of libel is here absent: that of identification or identifiability. Thus, petitioners submit that "(A)n examination of the allegedly libelous article would disclose that respondent General Tadiar is not mentioned at all even inferentially, indirectly, parenthetically, tangentially, or peripherally in the allegedly libelous article; nor is it even suggested that he was in command of the troops." [17]

The Court has long adopted the criterion set forth in the U.S. benchmark case of *New York Times Co. vs. Sullivan* [18] that "libel can claim no talismanic immunity from constitutional limitations" that protect the preferred freedoms of speech and press. *Sullivan* laid down the test of actual malice, viz. "(T)he constitutional guaranty of freedom of speech and press prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice,' that is, with knowledge that it was false or with reckless disregard of whether it was false or not." Particularly applicable to respondent Tadiar's complaint is the declaration that there is no legal alchemy by which a State may create a cause of action for libel "by transmuting criticism of government, however impersonal it may seem on its face, into personal criticism and hence, potential libel, of the officials of whom the government is composed ... We hold that such a proposition may not constitutionally be utilized to establish that an otherwise impersonal attack on governmental operations was a libel of an official responsible for those operations."

Ultimately, the core issue is whether or not the article on Bataan is constitutionally protected as fair comment on matters of public interest involving military conduct and operations and therefore not actionable as libel, criminally or civilly. As former Chief Justice Ricardo Paras pointed out in *Quisumbing vs. Lopez* [19], so long as there is no personal ill will, self-seeking motive or actual malice or abuse of press freedom, "the newspapers should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy." The ground rules and limits of the Constitution are there and should be applied and respected by all concerned in all cases, and not on a case by case basis if the fundamental rights of free speech and press are to be upheld and enhanced and the courts not rendered "of little utility."

The ringing words of the late Justice Jose Abad Santos, hero and martyr of the Japanese invasion of the Philippines in World War II, in his dissenting opinion in *People vs. Rubio* [20] against the majority decision that to

his mind "set at naught constitutional principles" against the issuance of general search warrants give us, *mutatis mutandis*, a fitting admonition:

"The internal revenue agents concerned in this case have shown commendable zeal in their efforts to protect the revenues of the Government; but this same zeal, if allowed to override constitutional limitations would become 'obnoxious to fundamental principles of liberty.' And if we are to be saved from the sad experiences of some countries which have constitutions only in name, we must insist that governmental authority be exercised within constitutional limits; for, after all, what matters is not so much what the people write in their constitutions as the spirit in which they observe their provisions."

[1] Par. 20. 3, Amended and Supplemental Petition.

[2] Par. 29. 5, *idem*.

[3] Solicitor General's Manifestation filed on April 9, 1983 submitting copy of the Information as filed in Court.

[4] 59 SCRA 183 (1974).

[5] G.R. No. 63776, prom. August 16, 1984.

[6] G.R. No. 62119, prom. August 27, 1984.

[7] 41 SCRA 1, 6 and 10, per Fernando, J. (1971).

[8] At page 4, main resolution.

[9] 27 SCRA 835, 856-858.

[10] Transcript of hearing, pp. 33-34.

[11] *Lopez vs. Court of Appeals*, 34 SCRA 116, 129 (1970).

Under the Supreme Court's Resolution of Sept. 13, 1984 in Adm. Matter No. 83-6-389-0 providing for increased court filing fees effective OCTOBER 1, 1984, this gimmick of libel complainants of using the fiscal's office to include in the criminal information their claim for astronomical damages in multiple millions of pesos without paying any filing fees has been discouraged. The said Resolution provides that "(W)hen the offended party seeks to enforce civil liability against the accused by way of actual, moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in the Rules of Court and approved by the Court shall first be paid to the Clerk of Court of the court where the criminal action is filed. x x x" Beginning OCTOBER 1, 1984, a claimant for such damages of p10-million through the fiscal's office, like respondent Gen. Tadiar, will first have to pay, before his claim is accepted for filing, a total filing fee of P39,400.00 (P3,400.00 for the 1st million computed at a filing fee of P4.00 per P1,000.00 in excess of P150,000.00 and P36,000.00 for the next P9-million).

[12] A. Batalla Bulletin Today issue of July 29 1984.

[13] Times Journal Issue of September 14, 1984.

[14] *New York Times vs. U.S. and U.S. vs. Washington Post*, 403 U.S. 713 (1971).

[15] 37 Phil. 731.

[16] Amended and Supplemental Petition, par. 29. 1.

[17] *Idem*, par. 29. 3.

[18] 376 U.S. 254 (1964); see *Lopez vs. CA*, fn. 11.

[19] 96 Phil. 510 (1955).

[20] 57 Phil. 384 (1932).

DISSENTING OPINION

ABAD SANTOS, J.:

"Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas, -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." (Justice Holmes in *Abrams vs. United States*, 250 U.S. 616, 630; 63 U.S. S.C. Lawyers' Ed. 1173, 1180[1919].)

The above quotation has relevance to this case which is a petition for prohibition.

When the petition was filed on January 25, 1983, the petitioners were in the mass print media. Some were editors (e. g. Domini Torrevillas-Suarez of *PANORAMA* magazine), some were columnists (e.g. Arlene Babst of *BULLETIN TODAY*), some were feature writers (e.g. Jo-Ann Q. Maglipon), and some were reporters (e.g. Maritess Danguilan-Vitug). As this is written some of the petitioners have ceased to write regularly such as Ms. Babst and Letty Jimenez-Magsanoc.

The respondents are the members of Special Committee No. 2 of the National Intelligence Board composed of retired Brigadier General Wilfredo C. Estrada, Brigadier General Renato Ecarma, National Bureau of Investigation Assistant Director Ponciano Fernando, Colonel Balbino Diego, Colonel Galileo Kintanar, Colonel Eustaquio Peralta, Colonel Constantino Tigas, and Major Eleonor Bernardino.

Special Committee No. 2 of the National Intelligence Board summoned and interrogated on various dates the following petitioners:

1. Domini Torrevillas-Suarez
2. Lorna Kalaw-Tirol
3. Ma. Ceres P. Doyo
4. Jo-Ann Q. Maglipon
5. Arlene Babst
6. Ninez Cacho-Olivares

Some of the other petitioners were summoned but had not yet been interrogated when the petition was filed.

Typical of the summonses was the confidential letter sent to petitioner Babst which reads as follows:

"Republic of the Philippines

NATIONAL INTELLIGENCE BOARD

Special Committee No. 2

December 20, 1982

Ms. Arlene BABST

Recoletos St., cor Muralla St.

Intramuros, Metro Manila

M a d a m:

Pursuant to the authority vested in me by law, you are hereby requested to appear before this Special Committee at Philippine Army Officer's Clubhouse, Fort Bonifacion, Metro Manila, (sketch attached), 9:00 A. M., December 22, 1982, to shed light on con-fidential matters being looked into by this Committee.

Your failure to appear on the specified date and place shall be considered as a waiver on your part and this Committee will be constrained to proceed in accordance with law.

Very truly yours,

(SGD) WILFREDO C. ESTRADA

-Brig. General, AFP (Ret.)

Chairman"

(Annex A, Petition.)

In an affidavit which Ms. Babst executed on January 15, 1983, she said:

"1. I presently work for the Bulletin Publishing Corporation as Editorial Page columnist of the Bulletin Today;

2. In connection with my columns in said publi-cation, I was served on December 20, 1982 a written invitation marked 'Confidential' from Brig. Gen. Wilfredo C. Estrada to appear before the National Intelligence Board, Special Committee #2, on December 22, 1982, for the stated purpose: 'to shed light on confidential matters' with the warning that my failure to appear 'shall be considered as a waiver on your part and the Committee will be constrained to proceed in accord-ance with law;'

3. On December 22, 1982, I appeared before the Special Committee #2 of the National Intelligence Board composed of all military personnel who were, namely: Brig. Gen. Wilfredo Estrada, AFP (RET.); Balbino Diego, legal officer of the Presidential Security Command (PSC); Col Juanito Fernando of the National Bureau of Investigation (NBI), Col. Galileo Kintanar of the 15th MIG, ISAFP; Col. Peralta of the CIS; Col. Ecarma, Col. Constantino Tigas of the Ministry of Information; Maj. Eleonor Bernardino, and a number of other persons, including staff and personnel;

4. The 'interrogation' or interview termed by the Panel as a 'dialogue' lasted from 9:40 A.M. till about 1:15 P.M. or for a duration of more than three (3) hours;

5. Throughout the proceedings the perceptible objective of the Panel was to intimidate and instill fear in me (as well as all writers of the press) to the point that we will suppress the truth and not freely write or express my views on matters of public concern;

6. The proceedings that transpired are stated in a five page 'Information Sheet' which I personally exe-cuted

and is hereby attached and incorporated as an integral part of this affidavit and bears my authenticating signature on each and every page thereof;

7. I am executing this affidavit for all legal purposes it may serve." (Annex C, Petition.)

On the-interrogation, she wrote as follows:

"INFORMATION ON THE INTERROGATION:

1) The invitation was received on Monday evening at the Bulletin Today, Dec. 20, 1982. I later learned that two military men had gone to my parents' old house in Quezon City, looking for me, and causing much distress in my bewildered household. Copy of invitation with Atty. Joker P. Arroyo, who subsequently accompanied me to the interrogation.

The invitation was for: WEDNESDAY, DEC. 22, 1982, at 9 a.m., Fort Bonifacio

2) The-investigation panel was composed of the following:

- a. Brig. Gen. Wilfredo C. Estrada, AFP (Ret.) Chairman of the National Intelligence Board, Special Committee
- b. Col. Balbino Diego, Chief, Intel-ligence and Legal Office, Presidential Security Com.
- c. Col. Fernando, National Bureau of Investigation
- d. Col. Galileo Kintanar, 15th MIG, ISAFP, Bago Bantay
- e. Col. Peralta, CIS
- f. Col. Ecarma
- g. Col. Tigas, Ministry of Information
- h. Major Babette Bernardino

3) The investigation lasted from 9:40 a.m. till about 1:15 p.m., with a 10 minute coffee break at around 11:20. From 9 to 9:40, we talked informally. Col. Fernando read me Sec. 9 of Article 4 of the Bill of Rights, the section saying that no law shall be passed to abridge-freedom of speech, of the press, or of peaceful assembly BUT, Col. Fernando told me emphatically, this section was subordinate to that one (which he also showed me) saying that police power could overrule the first section when 'matters of national security' so decree.

QUESTIONS ASKED BY THE INTERROGATORS:

- 1. May we call you Arlene?
- 2. What is your marital status?
- 3. Would you care to tell us more about yourself? (I said no.)
- 4. Tell us about your trips abroad, who financed them, for what purpose, when, which countries have you visited or not visited, were these for journalistic purposes, who did you travel with?
- 5. What are the things you consider important to you? (I said, Zen, writing, friendships.)
- 6. Tell us about your educational background.
- 7. When did you start with the Bulletin and how did you get your post?
- 8. Tell us about your previous media positions.

9. They asked specifically about columns on:

-- Edgar Jopson, Wed., Sept. 29, 1982

-- What exactly is press freedom? Fri., Sept. 17, 1982

-- Fear eats away at the soul, Jan. 10, 1982

and several others in passing

They questioned mostly my 'attitude, style tone, point of view' in regard to these columns.

10. Don't you think that you should consider the effect of your cloumns on the mind and passions of your readers? Col. Diego asked: Why do you write to agitate the mind and arouse the passions?

Col. Kintanar was the one most concerned with 'the effect of your writings on the minds and passions of your readers.

11. After my lawyer, Mr. Arroyo, pointed out that out of some 450 columns, only a few seemed to be questioned by the board, Gen. Estrada said that even so, a plane cannot fly unless it is 100% in flying condition. I couldn't make out what he meant by that.

12. What subjects do you write about? (I listed a dozen various topics from feminism to art to philosophy to film to religion, etc.). Why do you choose them?

13. Who reads your columns at the Bulletin before they are published or not published?

14. What kind of mail/feedback do you get?

15. Do you mind if we ask about your brother's case? (This in connection with my columns criticizing anomalies in government and business.)

16. Were you really a nun? When? Where? Why? Why did you leave?

17. Tell us about your Zen, what is it, how do you practice it, where, etc.

18. Why did you leave the Catholic religion?

19. Why do you women writers make Fr. Agatep look like a hero? (I told them I've never even written about him.)

20. What were you doing in February, 1970, because we have on our files (and they showed me their thick dossier) a report that you disappeared for a month then and probably joined the underground.

21. Did We Forum ask you to write for them?

22. Are speaking engagements part of your duties as a journalist? Do you consider them hazardous? (I replied that these were a hazard of the trade, part of being a public figure.)

23. Would you care to write about the military? Would you like to visit Samar, Leyte, the PMA?

24. Did you know that Edgar Jopson was a radical? Why did he become a radical? (You tell me, I told them.)

25. Are you ever censored or edited?

26. Are you familiar with the problem of brainwashing?

27. Don't you think that you are being unwittingly used by those who try to subvert the government?

28. Would you are to join the Office of Media Affairs?
29. Do you have children?
30. On that column 'Diary of a political detainee', did you check whether the detainees were really fasting?
31. Are you hiding behind your literary devices? Are you evading my question? (this by Maj. Bernardino)
32. Don't you think your writings make heroes of the very people the military have such a hard time with?
33. Don't you feel that many groups would like to influence you? (I said, Of course and listed hotel PR groups, the military, etc.)
34. Who are the writers who have influenced you?
35. What is the name of your novel? What does it mean? How is it selling? Who published it?
36. Did you know that Fr. Agatep was a womanizer? (Who among Filipino men isn't, I replied, words to that effect.)
37. Tell us more about Buddhism and Zen and medi-tation. Is it true you face the wall two hours a day, sitting absolutely still?
38. When did you start writing? Why? How?
39. Your cousin Carmen Sabater said you disappeared in 1970. Why?
40. We have a report that you applied for a job at ISAFP in 1973. (They showed me an application form I was supposed to have filled out and signed; I did not recognize it at all.) What is ISAFP, I asked them, I don't even know what that is -- they explained it was the Intelligence Service of the Armed Forces of the Philippines. Why in god's name would I want to work for them, I said.
41. What is your definition of national security?
42. What is your definition of press freedom?
43. What are the guidelines for responsible journalism? Do you realize that some of your writings are only a hairline away from subversive writing?
44. What is subversive writing? (You tell me, I said again.)
45. Did you mind coming here today? (yes, very much) Thank you for coming. (I didn't thank them so Mr. Arroyo had to mind my manners for me.)
46. Would you like to come to Baguio or Samar or Leyte, they repeated, and offered me a job again with the OMA. Have you ever written anything favorable about the military? I pointed out the column 'The Human Side of the Military', written Jan. 30, 1981.

The interrogation was recorded by stenographers seated at the sides and, I suspect, by hidden recorders, why not indeed? Am I being too cynical? Sorry.

Col. Kintanar repeated about half a dozen times that I should be concerned about the effect my writing has on my readers and that I was 'on the borderline' between legitimate journalism and writing things that arouse the people. Arouse them to what, I asked? To think, I hope, I said.

My response to the invitation and the interrogation: I am helpless about being insulted but I do not have to smile

at the insults. I was indignant that I was 'invited' (with a threat) at all. By what legal authority was I brought there? If they really wanted a dialogue, they should have invited us as a group to lunch and served decent white wine. (I told them this.) They ruined my Christmas shopping which was a far more interesting activity for that morning, I firmly believe. They wished me a happy birthday and I told them I would indeed remember this charming gift the military of my country gave me practically on the eve of my birthday and Christmas, 1982." (Annex C-1, Petition.)

The original petition asks that the interrogations be declared unconstitutional and unlawful and that the respondents be prohibited permanently from engaging in such practices and similar acts.

An amended and supplemental petition was filed on March 3, 1984, naming Generals Fabian Ver and Artemio Tadiar, Jr. as additional respondents. Another prayer was added that the respondents be prohibited from filing libel suits on matters that have been inquired into by the National Intelligence Board.

The additional prayer was made because the petitioners were apprehensive that aside from the interrogations they would be subjected to other forms of harassment. The BULLETIN TODAY carried the following item in its issue of January 30, 1983:

"OFFICERS TO FILE LIBEL CHARGES

Camp Aguinaldo announced yesterday that charges of scurrilous libel will be filed by military officers against the editor and some staff members and contributors of Philippine Panorama, the Sunday magazine of Bulletin Today.

AFP spokesman Col. Reynaldo Wycoco said the charge stemmed from what the complainants considered as malicious writings of some staff members and contributors of Panorama on sensitive issues, that maligned them personally or cast aspersions on their integrity and dignity as military commanders.

Among the complainants are Brig. Gen. Victorino Asada of the First Constabulary regional command, Brig. Gen. Bienvenido Felix of Third PC regional command, Brig. Gen. Salvador Mison of the eastern command, Brig. Gen. Pedrito de Guzman, while commander of the Eleventh PC regional command in Davao, and other officers.

Solicitor General Estelito P. Mendoza, and other government prosecutors in charge of national security cases have been consulted on the legal actions to be taken against writers of other newspapers and magazines who have allegedly committed the same offense.

The spokesman said those to be charged are Domini Torrevillas-Suarez, Panorama editor, Jo Ann Maglipon, writer-contributor; Lorna Kalaw-Tirol, staff writer, Maria Ceres Doyo, writer-contributor, and Sheilah Coronel, staff-writer.

General De Guzman said Maglipon's article entitled 'Where the Men with Guns Tread, Nothing is Left But Charred Remains and the Skeleton of a Village' which appeared July 4, 1982, in Philippine Panorama, gravely discredited the soldiers in his command, with obvious malicious intent.

The article allegedly contained numerous imputations that government troopers intimidated, tortured, and massacred innocent civilians belonging to the Atas minority, whom they are sworn to protect, and that they rampaged through their villages in Davao del Norte, during 1978-1981.

Tirol wrote an article entitled 'In this Catholic Country, Is it Being Subversive to Live Out Christ's Gospel?' published last Nov. 21. The article blamed the military for acts of atrocities on the Church in the Samar provinces, the complainants said.

In Northern Samar, 'the people had been terrorized by two months of military operations, and that the head of one

dead man was displayed in the poblacion, 35 ears attached to it, dead people were brought to the centers tied to a pole and then dumped into a pit,' the article was quoted as saying.

'Mrs. Tirol, in complete contempt of the military authorities led by General Mison, said that the military 'dumps into the waste basket' the letter complaints about military abuses,' the complainants said.

Maria Ceres P. Doyo wrote an article entitled '40 Years After the 'Fall', Bataan is Again Under Siege,' which appeared in the March 28 issue. General Felix said this article is libelous because it casts aspersion on the marines and the PC and discredits his capability and integrity as a military commander.

He quoted the following from the article:

'In September 1981, military operations in Bataan were stepped up. For many this was the start of a nighmarish experience. Raid, tortures, arrests, killings. The PC and the marines were trying to flush out so-called subversive elements.'

General Azada, commanding general of Recom I charged that Doyo's article on Fr. Zacarias Agatep glamorized an acknowledged enemy of the government and put the military authorities in a bad light by casting aspersions and apprehensions on the circumstances surrounding the encounter between the PC and NPA where Agatep was killed.

Coronel, author of the article 'Who Killed Bobby de la Paz?' in the Panorama last Dec. 12, questioned the Eascom pronouncement that the New People's Army (NPA) was responsible for the murder of de la Paz.

The article said the Eascom 'never conducted any thorough investigation of the case' and that there were 'circumstantial evidence that point to the mili-tary's involvement in the slaying.'

General Mison charged that Coronel simply quoted from a leftish group publication, without veri-fying from the local military and police authorities on the progress of the actual investigation." (Annex F, Amended Petition.)

In fact respondent Tadiar executed a complaint affidavit dated February 9, 1983, which he filed with the City Fiscal of Manila. He accused petitioners Domini Torrevillas-Suarez and Ma. Ceres Doyo of libel because of the publication in PANORAMA of an article entitled "40 YEARS AFTER THE 'FALL', BATAAN IS AGAIN UNDER SIEGE." He claimed damages (other than exemplary damages) in the amount of ten million (P10,000,000.00) pesos which Justice Plana has des cribed as staggering. (Annex G-1, Amended Petition.)

It should be stated also that petitioner Letty Jimenez-Magsanoc once wrote a highly critical article published in PANORAMA for which she was threatened with libel suits by several highly placed govern-ment officials. Mrs. Jimenez-Magsanoc is not with PANORAMA anymore.

Recently a committee of the print media issued a

"STATEMENT OF CONCERN

We view with concern recent developments which threaten the freedom of journalists to report and com-ment on issues of public importance.

We are alarmed by the increasing number of libel suits filed against journalists by public officials and the military. This form of harassment through legal action threatens the citizens' constitutional right to be informed.

This month alone, two libel suits were filed against the Bulletin Publishing Corp., Panorama editor Doraini Torrevillas-Suarez, contributor Mauro Avena, and lawyer Lupino Lazaro for the publication of Lazaro's views on the Aquino assassination and the conduct of the Agrava Board Investigation.

Since the May 14 elections, Mr. & Ms. received two notices of libel in connection with articles on alleged election anomalies in Cebu and Leyte.

In 1982, the editor-publisher of We Forum was charged with libel for running a series of articles that questioned the authenticity of President Marcos' war decorations.

In 1983, five women journalists were threatened with libel suits for exposes on military abuses in Panorama magazine. One case, against freelance writer Ceres Doyo and editor Torrevillas-Suarez, has actually been filed.

In the same year, Bulletin correspondent Isidoro Chammag was charged with libel for his report on military abuses in Abra.

The provincial press and the foreign press in the Philippines are no less vulnerable to 'legalized' harassments. They have had their share of libel suits, many of which are still pending in the courts.

Suing for libel has traditionally been the defense of aggrieved citizens. Today, however, libel suits have become a convenient instrument of the state to cow and intimidate journalists through court action. A sad consequence of this is the blacklisting of journalists by publications wary of libel suits.

We view with alarm the ominous implication of President Marcos' statement in his July 23rd State-of-the-Nation address which now classifies libel with violence and subversion: 'Violence, subversion and libel are not acceptable weapons of dissent in a demo-cratic society.' Side by side with this is the grave threat posed by P.D. 1834 which makes 'unlawful use of publications' punishable by death or life imprisonment.

We strongly protest these continuing assaults on press freedom. We appeal to the authorities concerned to help restore the people's right to a free press. We affirm our commitment to fair and responsible journalism and our solidarity with our harassed colleagues."

In the comment submitted for the respondents on the original petition it is argued that the petition is totally devoid of merit. It contains a prayer for dismissal.

When the case was heard on February 1, 1983, on the issuance of a preliminary injunction, the Solicitor General submitted a copy of the memorandum of General Fabian C. Ver, Director General and Chairman of the National Intelligence Board, addressed to respondent Estrada, dated January 19, 1983, which reads as follows:

"The Board reviewed the Report of Special Committee No. 2 regarding the series of dialogues you have conducted with selected members of the media. It expressed satisfaction in the results of the dialogue and noted better mutual understanding of the respective roles of media and government. In view thereof, such proceedings of Committee No. 2 are hereby ordered terminated." (Rollo, p. 64.)

In the light of the memorandum, the Solicitor General said that there was no need for further proceedings on the matter. Mr. Joker Arroyo, one of the counsels for the petitioners, admitted that the plea for preliminary injunction was no longer viable. He nonetheless contended that the matter is such importance that the petitioners hope for a definite ruling on the principal question raised.

The ponencia of Justice Plana declares the petition moot and academic in respect of the interrogations because they have been abated. He adds a short and mild note of concern. I agree with Justice Teehankee that the Court should rule squarely on the matter.

The Constitution states that "No law shall be passed abridging the freedom of speech or of the press." (Art. IV, Sec. 9.) In the instant case the persons who compose Special Committee No. 2 of the National Intelligence Board have abridged the freedom to speak and the freedom to publish by intimidation and veiled threats addressed to

some members of the press who by their writings have been critical of the government. Their actions are the more odious and had chilling effects because they were cloaked by a mantle of pseudo legality.

The letter of respondent Estrada to Ms. Babst uses the word "law" twice - a law which vests authority in him and which also authorizes his committee to proceed if Ms. Babst should fail to appear. I have asked and searched but I have yet to discover the law respondent Estrada had in mind.

The letter uses the word "requested" but in context the request was a thinly veiled command to appear before the Special Committee for failure to do so is to be considered as a waiver (of what?) and the committee will have to proceed in accordance with law (again what law?).

The interrogations were not only offensive to the guarantees of free speech and free press, they also violated the right to privacy - the right to withhold information which are nobody's business. Note, for example, that Ms. Babst was asked if she was really a nun, if she practised Zen, why she left the Catholic religion, etc.

In the case of Ms. Babst it could be asked why she honored the "request" and discussed even impertinent and personally intrusive questions when she had the legal services of Atty. Joker Arroyo. It should be recalled that the interrogation took place on December 22, 1982, and on that date the WE FORUM case was just a few days old and it should be noted that not only were the staffers of that publication arrested on Presidential Commitment Orders but the equipment and other properties of the paper were also sequestered. Fear indeed can have a paralyzing effect.

For freedom to speak and to publish to be meaningful, "Not much reflection is needed to show that these freedoms would be nullified if a person were allowed to express his views only on the pain of being held accountable. That would be to stifle the expression of opinions which are repugnant or contrary to the current political, economic, or moral views. The right to dissent becomes non-existent. To expose the party availing himself of freedom of speech or of the press to run the risk of punishment is to make a mockery of our commitment to the free mind." (Fernando, *The Bill of Rights*, p. 131[1972].)

I also want to put on record what Professor Archibald Cox of Harvard Law School (formerly Solicitor General of the United States and as Watergate Special Prosecutor one of the victims of the Saturday night "massacre") said when he pleaded for forbearance to those who were disrupting a teach-in on Vietnam in March of 1971:

"My name is Archibald Cox. I beseech you to let me say a few words in the name of the President and Fellows of this University on behalf of freedom of speech. For if this meeting is disrupted - hateful as some of us may find it - then liberty will have died a little and those guilty of the disruption will have done inestimable damage to the causes of humanity and peace.

Men and women whose views aroused strong emotions - loved by some and hated by others - have always been allowed to speak at Harvard - Fidel Castro, the late Malcolm X, George Wallace, William Kuntzler, and others. Last year, in this very building, speeches were made for physical obstruction of University activities. Harvard gave a platform to all these speakers, even those calling for her destruction. No one in the community tried to silence them, despite intense opposition.

The reason is plain, and it applies here tonight. Freedom of speech is indivisible. You cannot deny it to one man and save it for others. Over and over again the test of our dedication to liberty is our willingness to allow the expression of ideas we hate." (33 Harvard Law School Bulletin, No. 1.)

It is now well-settled that prohibition can be issued in the sound discretion of the court in order to prevent oppressive enforcement of the criminal law. (*Dimayuga and Fajardo vs. Fernandez*, 43 Phil. 304 [1992] .) Upon

the other hand, the reasons advanced by Justice Plana why prohibition should not be issued are based on technical and ignore equitable grounds. He forgets that prohibition is a prerogative and an equitable writ.

In the light of the foregoing, I place on record my condemnation of the interrogations. They were violative of the freedoms of speech, press and privacy. They were the proper objects of prohibition or injunction. Similarly, any libel suit, whether civil or criminal, on matters inquired into in the interrogation can also be prohibited.

I close with this statement: The Armed Forces of the Philippines is an honorable and distinguished institution. Mt. Samat, Corregidor and the Libingan Ng Mga Bayani are monuments to the uncommon valor of its gallant, brave and patriotic members. Let not the shining image of the Armed Forces of the Philippines be tarnished by some of its members who by their excessive zeal subordinate the rights they are sworn to protect to the imagined demands of national security, to borrow a phrase from Senator Emmanuel Pelaez.

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