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This collection contains thirty eight (38) cases summarized in this format by:
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**Facts:** In the latter part of 1915, numerous citizens of the Province of Pampanga assembled, the prepared and signed a petition to the Executive Secretary through the law office of Crossfield & O’Brien, and 5 individuals signed affidavits, charging Roman Punsalan, justice of the peace of Macabebe and Masantol, Pampanga, with malfeasance in office and asking for his removal. Crossfield & O’Brien submitted this petition and these affidavits with a complaint to the Executive Secretary. The petition transmitted by these attorneys was signed by 34 citizens. The Executive Secretary referred the papers to the judge of first instance for the Seventh Judicial District requesting investigation, proper action and report. The Honorable Percy M. Moir, recommended to the Governor-General that Punzalan be removed from his position as justice of the peace of Macabebe and Masantol, Province of Pampanga, and ordered that the proceedings had in the case be transmitted to the Executive Secretary. Later the justice of the peace filed a motion for a new trial; the judge of first instance granted the motion and reopened the hearing; documents were introduced, including a letter sent by the municipal president and counselors of Masantol, Pampanga, asserting that the justice of the peace was the victim of prosecution, and that Agustin Jaime, the auxiliary justice of the peace, had instituted the charges for personal reasons; and the judge of first instance ordered a suppression of the charges against Punsalan and acquitted him of the same. Attorneys for complainants thereupon appealed to the Governor-General. On 12 October 1916, Felipe Bustos, et. al. (the petitioners against Punzalan) were charged for libel. The Honorable Percy M. Moir found all the defendants, with the exception of Felix Fernandez, Juan S. Alfonso, Restituto Garcia, and Manuel Mallari, guilty and sentenced each of them to pay a fine of P10 and $1/32 of the costs, or to suffer subsidiary imprisonment in case of insolvency. New attorneys for the defense, coming into the case, after the handing down of the decision, filed on 16 December 1916, a motion for a new trial, the principal purpose of which was to retire the objection interposed by then counsel for the defendants to the admission of the document consisting of the entire administrative proceedings. The trial court denied the motion. All the defendants, except Melecio S. Sabado and Fortunato Macalino appealed.

**Issue:** Whether the intemperate allegations set forth in the information against the public official may be the basis of a libel case against the petitioning citizens.

**Held:** "No law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances." These paragraphs found in the Philippine Bill of Rights are not threadbare verbiage. The language carries with it all the applicable jurisprudence of great English and American Constitutional cases. 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 authorized defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official, or set of officials, to the Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy. The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment. If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official. On the contrary, it is a duty which every one owes to society or to the State to assist in the investigation of any alleged misconduct. It is further the duty of all know of any official dereliction on the part of a magistrate or
the wrongful act of any public officer to bring the facts to the notice of those whose duty it is to inquire into and punish them. In the words of Mr. Justice Gayner, who contributed so largely to the law of libel. "The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism." The right to assemble and petition is the necessary consequence of republican institutions and the complement of the right of free speech. Assembly means a right on the part of citizens to meet peaceably for consultation in respect to public affairs. Petition means that any person or group of persons can apply, without fear of penalty, to the appropriate branch or office of the government for a redress of grievances. The persons assembling and petitioning must, of course, assume responsibility for the charges made. 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. Privilege is classified as either absolute or qualified. With the first, we are not concerned. As to qualified privilege, it is as the words suggest a prima facie privilege which may be lost by proof of malice. A pertinent illustration of the application of qualified privilege is a complaint made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having some interest or duty in the matter. Even when the statements are found to be false, if there is probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistake of the individual. But the statements must be made under an honest sense of duty; a self-seeking motive is destructive. Personal injury is not necessary. All persons have an interest in the pure and efficient administration of justice and of public affairs. The duty under which a party is privileged is sufficient if it is social or moral in its nature and this person in good faith believe he is acting in pursuance thereof although in fact he is mistaken. The privilege is not defeated by the mere fact that the communication is made in intemperate terms. A further element of the law of privilege concerns the person to whom the complaint should be made. The rule is that if a party applies to the wrong person through some natural and honest mistake as to the respective functions of various officials such unintentional error will not take the case out of the privilege. Hence, the Court find the defendants entitled to the protection of the rules concerning qualified privilege, growing out of constitutional guaranties in our bill of rights.

407 Burgos v. Chief of Staff, AFP [GR 64261, 26 December 1984]  
En Banc, Escolin (J): 10 concur, 1 took no part

Facts: On 7 December 1982, Judge Ernani Cruz-Paño, Executive Judge of the then CFI Rizal [Quezon City], issued 2 search warrants where the premises at 19, Road 3, Project 6, Quezon City, and 784 Units C & D, RMS Building, Quezon Avenue, Quezon City, business addresses of the "Metropolitan Mail" and "We Forum" newspapers, respectively, were searched, and office and printing machines, equipment, paraphernalia, motor vehicles and other articles used in the printing, publication and distribution of the said newspapers, as well as numerous papers, documents, books and other written literature alleged to be in the possession and control of Jose Burgos, Jr. publisher-editor of the "We Forum" newspaper, were seized. A petition for certiorari, prohibition and mandamus with preliminary mandatory and prohibitory injunction was filed after 6 months following the raid to question the validity of said search warrants, and to enjoin the Judge Advocate General of the AFP, the city fiscal of Quezon City, et.al. from using the articles seized as evidence in Criminal Case Q-022782 of the RTC Quezon City (People v. Burgos). The prayer of preliminary prohibitory injunction was rendered moot and academic when, on 7 July 1983, the Solicitor General manifested that said articles would not be used until final resolution of the legality of the seizure of said articles.

Issue: Whether the continued sealing of the printing machines in the offices of “Metropolitan Mail” and “We Forum” is anathematic to the democratic framework.

Held: The premises searched were the business and printing offices of the "Metropolitan Mail" and the "We Forum newspapers. As a consequence of the search and seizure, these premises of the Metropolitan Mail and We Forum were padlocked and sealed, with the further result that the printing and publication of said newspapers were discontinued. Such closure is in the nature of previous restraint or censorship abhorrent to
the freedom of the press guaranteed under the fundamental law, and constitutes a virtual denial of Burgos, et. al.'s freedom to express themselves in print. Thus state of being is patently anathematic to a democratic framework where a free, alert and even militant press is essential for the political enlightenment and growth of the citizenry. Although the public officers would justify the continued sealing of the printing machines on the ground that they have been sequestered under Section 8 of PD 885, as amended, which authorizes "the sequestration of the property of any person, natural or artificial, engaged in subversive activities against the government and its duly constituted authorities in accordance with implementing rules and regulations as may be issued by the Secretary of National Defense." It is doubtful, however, if sequestration could validly be effected in view of the absence of any implementing rules and regulations promulgated by the Minister of National Defense.


Brennan (J)

Facts: L. B. Sullivan is one of the three elected Commissioners of the City of Montgomery, Alabama. He was "Commissioner of Public Affairs and the duties are supervision of the Police Department, Fire Department, Department of Cemetery and Department of Scales." He brought the civil libel action against the four individual petitioners, who are Negroes and Alabama clergymen, and against the New York Times Company, a New York corporation which publishes the New York Times, a daily newspaper. Sullivan's complaint alleged that he had been libeled by statements in a full-page advertisement that was carried in the New York Times on 29 March 1960. Entitled "Heed Their Rising Voices," the advertisement began by stating that "As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U.S. Constitution and the Bill of Rights." It went on to charge that "in their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom." Succeeding paragraphs purported to illustrate the "wave of terror" by describing certain alleged events. The text concluded with an appeal for funds for three purposes: support of the student movement, "the struggle for the right-to-vote," and the legal defense of Dr. Martin Luther King, Jr., leader of the movement, against a perjury indictment then pending in Montgomery. The text appeared over the names of 64 persons, many widely known for their activities in public affairs, religion, trade unions, and the performing arts. Below these names, and under a line reading "We in the south who are struggling daily for dignity and freedom warmly endorse this appeal," appeared the names of the four individual petitioners and of 16 other persons, all but two of whom were identified as clergymen in various Southern cities. The advertisement was signed at the bottom of the page by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South," and the officers of the Committee were listed. Of the 10 paragraphs of text in the advertisement, the third and a portion of the sixth were the basis of Sullivan's claim of libel. Third paragraph read as "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," while the sixth paragraph reads "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times - for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury' - a felony under which they could imprison him for ten years." A jury in the Circuit Court of Montgomery County awarded him damages of $500,000, the full amount claimed, against all the petitioners, and the Supreme Court of Alabama affirmed.

Background on Alabama laws on the matter: Under Alabama law, a publication is "libelous per se" if the words "tend to injure a person in his reputation" or to "bring [him] into public contempt"; the trial court stated that the standard was met if the words are such as to "injure him in his public office, or impute misconduct to
him in his office, or want of official integrity, or want of fidelity to a public trust." The jury must find that the 
words were published "of and concerning" the plaintiff, but where the plaintiff is a public official his place in 
the governmental hierarchy is sufficient evidence to support a finding that his reputation has been affected by 
statements that reflect upon the agency of which he is in charge. Once "libel per se" has been established, the 
defendant has no defense as to stated facts unless he can persuade the jury that they were true in all their 
particulars. His privilege of "fair comment" for expressions of opinion depends on the truth of the facts upon 
which the comment is based. Unless he can discharge the burden of proving truth, general damages are 
presumed, and may be awarded without proof of pecuniary injury. A showing of actual malice is apparently a 
prerequisite to recovery of punitive damages, and the defendant may in any event forestall a punitive award 
by a retraction meeting the statutory requirements. Good motives and belief in truth do not negate an 
inference of malice, but are relevant only in mitigation of punitive damages if the jury chooses to accord them 
weight. Further, Alabama law denies a public officer recovery of punitive damages in a libel action brought 
on account of a publication concerning his official conduct unless he first makes a written demand for a 
public retraction and the defendant fails or refuses to comply.

**Issue:** Whether printed allegations or criticism against official conduct should be supported by actual facts, to 
free persons from liabilities attendant to libel.

**Held:** The general proposition that freedom of expression upon public questions is secured by the First 
Amendment has long been settled by the Court's decisions. The constitutional safeguard was fashioned to 
assure unfettered interchange of ideas for the bringing about of political and social changes desired by the 
people. The maintenance of the opportunity for free political discussion to the end that government may be 
responsive to the will of the people and that changes may be obtained by lawful means, an opportunity 
essential to the security of the Republic, is a fundamental principle of our constitutional system. It is a prized 
American privilege to speak one's mind, although not always with perfect good taste, on all public 
institutions, and this opportunity is to be afforded for "vigorous advocacy" no less than "abstract discussion." The First Amendment presupposes that right conclusions are more likely to be gathered out of a multitude of 
tongues, than through any kind of authoritative selection. 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. Authoritative 
interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any 
test of truth - whether administered by judges, juries, or administrative officials - and especially one that puts 
the burden of proving truth on the speaker. The constitutional protection does not turn upon "the truth, 
popularity, or social utility of the ideas and beliefs which are offered." Some degree of abuse is inseparable 
from the proper use of every thing; and in no instance is this more true than in that of the press. That 
erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are 
to have the "breathing space" that they "need to survive." Injury to official reputation affords no more warrant 
for repressing speech that would otherwise be free than does factual error. Where judicial officers are 
involved, the Court has held that concern for the dignity and reputation of the courts does not justify the 
punishment as criminal contempt of criticism of the judge or his decision. This is true even though the 
utterance contains "half-truths" and "misinformation." Such repression can be justified, if at all, only by a 
clear and present danger of the obstruction of justice. If judges are to be treated as "men of fortitude, able to 
thrive in a hardy climate," surely the same must be true of other government officials, such as elected city 
commissioners. Criticism of their official conduct does not lose its constitutional protection merely because it is 
effective criticism and hence diminishes their official reputations. A rule compelling the critic of official 
conduct to guarantee the truth of all his factual assertions - and to do so on pain of libel judgments virtually 
unlimited in amount - leads to a comparable "self-censorship." Allowance of the defense of truth, with the 
burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts 
accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that
the alleged libel was true in all its factual particulars. Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone." The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

409 In RE: Declaratory Relief RE Constitutionality of RA 4880. Gonzales vs. Commission on Elections
[GR L-27833, 18 April 1969]
En Banc, Fernando (J): 4 concur in result, 3 filed own separate opinions

Facts: Two new sections were included in the Revised Election Code, under Republic Act 4880, which was approved and took effect on 17 June 1967, prohibiting the too early nomination of candidates and limiting the period of election campaign or partisan political activity. On 22 July 1967, Arsenio Gonzales and Felicisimo R. Cabigao filed an action entitled "Declaratory Relief with Preliminary Injunction," a proceeding that should have been started in the Court of First Instance, but treated by the Supreme Court as one of prohibition in view of the seriousness and the urgency of the constitutional issue raised. Gonzales and Cabigao alleged that the enforcement of said RA 4880 would prejudice their basic rights, such as their freedom of speech, their freedom of assembly and their right to form associations or societies for purposes not contrary to law, guaranteed under the Philippine Constitution," and that therefore said act is unconstitutional. Cabigao was, at the time of the filing of the petition, an incumbent councilor in the 4th District of Manila and the Nacionalista Party official candidate for Vice-Mayor of Manila to which he was subsequently elected on 11 November 1967; while Gonzales is a private individual, a registered voter in the City of Manila and a political leader of his co-petitioner.

Issue: Whether the freedom of expression may be limited.

Held: The primacy, the high estate accorded freedom of expression is of course a fundamental postulate of our constitutional system. No law shall he passed abridging the freedom of speech or of the press. It embraces, at the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship or punishment. 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 issue should be uninhibited, robust, and wide-open. It is not going too far 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 of 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. From the language of the specific constitutional provision, it would appear that the right is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude however a literal interpretation. Freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances it should remain unfettered and unrestrained. There are other societal values that press for recognition. Two tests that may supply an acceptable criterion for permissible restriction. These are the "clear and present danger" rule and the
"dangerous tendency" rule. The Court is of the view that no unconstitutional infringement exists insofar as the formation of organizations, associations, clubs, committees, or other groups of persons for the purpose of soliciting votes or undertaking any campaign or propaganda or both for or against a candidate or party is restricted and that the prohibition against giving, soliciting, or receiving contribution for election purposes, either directly or indirectly, is equally free from constitutional infirmity. The restriction on freedom of assembly as confined to holding political conventions, caucuses, conferences, meetings, rallies, parades or other similar assemblies for the purpose of soliciting votes or undertaking any campaign or propaganda or both for or against a candidate or party, leaving untouched all other legitimate exercise of such poses a more difficult question. Nevertheless, after a thorough consideration, it should not be annulled. The other acts, likewise deemed included in "election campaign" or "partisan political activity" tax to the utmost the judicial predisposition to view with sympathy legislative efforts to regulate election practices deemed inimical, because of their collision with the preferred right of freedom of expression. The scope of the curtailment to which freedom of expression may be subjected is not foreclosed by the recognition of the existence of a clear and present danger of a substantive evil, the debasement of the electoral process. The majority of the Court is of the belief that the ban on the solicitation or undertaking of any campaign or propaganda, whether directly or indirectly, by an individual, the making of speeches, announcements or commentaries or holding interview for or against the election for any party or candidate for public office, or the publication or distribution of campaign literature or materials, suffers from the corrosion of invalidity. It lacks however one more affirmative vote to call for a declaration of unconstitutionality. The necessary 2/3 vote, however, not being obtained, there is no occasion for the power to annul statutes to come into play. Such being the case, it is the judgment of the Court that RA 4880 cannot be declared unconstitutional.

410 Social Weather Stations Inc. vs. Commission on Elections [GR 147571, 5 May 2001]
Second Division, Mendoza (J): 3 concur

Facts: The Social Weather Stations, Inc. (SWS), is a private non-stock, non-profit social research institution conducting surveys in various fields, including economics, politics, demography, and social development, and thereafter processing, analyzing, and publicly reporting the results thereof. On the other hand, Kamahalan Publishing Corporation publishes the Manila Standard, a newspaper of general circulation, which features news-worthy items of information including election surveys. SWS and Kamahalan Publishing brought the action for prohibition with the Supreme Court to enjoin the Commission on Elections from enforcing §5.4 of RA 9006 (Fair Election Act), which provides that "Surveys affecting national candidates shall not be published fifteen (15) days before an election and surveys affecting local candidates shall not be published seven (7) days be- fore an election." SWS states that it wishes to conduct an election survey throughout the period of the elections both at the national and local levels and release to the media the results thereof. They argue that the restriction on the publication of election survey results constitutes a prior restraint on the exercise of freedom of speech without any clear and present danger to justify such restraint. They claim that SWS and other pollsters conducted and published the results of surveys prior to the 1992, 1995, and 1998 elections up to as close as two days before the election day without causing confusion among the voters and that there is neither empirical nor historical evidence to support the conclusion that there is an immediate and inevitable danger to tile voting process posed by election surveys. They point out that no similar restriction is imposed on politicians from explaining their opinion or on newspapers or broadcast media from writing and publishing articles concerning political issues up to the day of the election. Consequently, they contend that there is no reason for ordinary voters to be denied access to the results of election surveys, which are relatively objective.

Issue: Whether §5.4 of RA 9006 constitutes an unconstitutional abridgment of freedom of speech, expression, and the press.

Held: §5.4 of RA 9006 constitutes an unconstitutional abridgment of freedom of speech, expression, and the
press. §5.4 lays a prior restraint on freedom of speech, expression, and the press prohibiting the publication of election survey results affecting candidates within the prescribed periods of 15 days immediately preceding a national election and 7 days before a local election. Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity. Indeed, any system of prior restraints of expression comes to the Supreme Court bearing a heavy presumption against its constitutional validity. The Government thus carries a heavy burden of showing justification for in enforcement of such restraint. There, thus a reversal of the normal presumption of validity that inheres in every legislation. Sec. 5.4 fails to meet criterion [3] of the O'Brien test because the causal connection of expression to the asserted governmental interest makes such interest "not related to the suppression of free expression." By prohibiting the publication of election survey results because of the possibility that such publication might undermine the integrity of the election, §5.4 actually suppresses a whole class of expression, while allowing the expression of opinion concerning the same subject matter by newspaper columnists, radio and TV commentators, armchair theorists, and other opinion takers. In effect, §5.4 shows a bias for a particular subject matter, if not viewpoint, by referring personal opinion to statistical results. The constitutional guarantee of freedom of expression means that "the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." The prohibition imposed by §5.4 cannot be justified on the ground that it is only for a limited period and is only incidental. The prohibition may be for a limited time, but the curtailment of the right of expression is direct, absolute, and substantial. It constitutes a total suppression of a category of speech and is not made less so because it is only for a period of 15 days immediately before a national election and 7 days immediately before a local election. In fine, §5.4 is invalid because (1) it imposes a prior restraint on the freedom of expression, (2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than suppression of freedom of expression.

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Zaldivar vs. Sandiganbayan [GR 79690-707, 1 February 1989]; also Zaldivar vs. Gonzales [GR 80578]
Resolution En Banc, Per Curiam: 15 concur

Facts: [Acquired from 27 April 1988 decision] Enrique A. Zaldivar, governor of the province of Antique, sought, through a petition for Certiorari, Prohibition, and Mandamus, to restrain the Sandiganbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan and Tanodbayan Raul Gonzalez from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163-12177 on the ground that said cases were filed by said Tanodbayan Gonzalez. Enrique A. Zaldivar, on substantially the same ground as the first petition, prays that Tanodbayan Gonzalez be restrained from conducting preliminary investigations and filing similar cases with the Sandiganbayan. The Supreme Court granted the consolidated petitions filed by Zaldivar and nullified the criminal informations filed against him in the Sandiganbayan; and ordered Raul Gonzalez to cease and desist from conducting investigations and filing criminal cases with the Sandiganbayan or otherwise exercising the powers and functions of the Ombudsman.

[Present case] Tanodbayan Gonzales allegedly made contumacious acts or statements in a pleading filed before the Court and in statements given to the media. In its Resolution dated 2 May 1988, the Supreme Court required Tanodbayan Gonzales to explain "why he should not be punished for contempt of court and/or subjected to administrative sanctions" and in respect of which, Gonzales was heard and given the most ample opportunity to present all defenses, arguments and evidence that he wanted to present for the consideration of this Court. The Court did not summarily impose punishment upon Gonzales which it could have done under Section 1 of Rule 71 of the Revised Rules of Court had it chosen to consider Gonzales' acts as constituting "direct contempt." In the per curiam resolution dated 7 October 1988, the Court found Tanodbayan Gonzalez to be "guilty both of contempt of court in facie curiae and of gross misconduct as an officer of the court and
member of the bar." Gonzales filed a motion for reconsideration.

**Issue:** Whether the statements made by Tanodbayan Gonzales transcended the permissible limits of free speech.

**Held:** The "clear and present danger" doctrine is not a magic incantation which dissolves all problems and dispenses with analysis and judgment in the testing of the legitimacy of claims to free speech, and which compels a court to exonerate a defendant the moment the doctrine is invoked, absent proof of impending apocalypse. The "clear and present danger" doctrine has been an accepted method for marking out the appropriate limits of freedom of speech and of assembly in certain contexts. It is not, however, the only test which has been recognized and applied by courts. Although the prevailing doctrine is that the clear and present danger rule is such a limitation; another criterion for permissible limitation on freedom of speech and of the press, which includes such vehicles of the mass media as radio, television and the movies, is the "balancing-of interests test." The principle requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation' Still, under either the "clear and present danger" test or the "balancing-of-interest test" the Court believes that the statements made by Gonzalez are of such a nature and were made in such a manner and under such circumstances, as to transcend the permissible limits of free speech. This conclusion was implicit in the per curiam Resolution of October 7, 1988. It is important to point out that the "substantive evil" which the Supreme Court has a right and a duty to prevent does not, in the present case, relate to threats of physical disorder or overt violence or similar disruptions of public order. What is here at stake is the authority of the Supreme Court to confront and prevent a "substantive evil" consisting not only of the obstruction of a free and fair hearing of a particular case but also the avoidance of the broader evil of the degradation of the judicial system of a country and the destruction of the standards of professional conduct required from members of the bar and officers of the courts. The "substantive evil" here involved, in other words, is not as palpable as a threat of public disorder or rioting but is certainly no less deleterious and more far reaching in its implications for society.

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**Sanidad vs. Commission on Elections [GR 90878, 29 January 1990]**

*En Banc, Medialdea (J): 14 concur*

**Facts:** On 23 October 1989, Republic Act 6766, entitled "An Act Providing for an Organic Act for the Cordillera Autonomous Region" was enacted into law. Pursuant to said law, the City of Baguio and the Cordilleras which consist of the provinces of Benguet, Mountain Province, Ifugao, Abra and Kalinga-Apayao, all comprising the Cordillera Autonomous Region, shall take part in a plebiscite for the ratification of said Organic Act originally scheduled last 27 December 1989 which was, however, reset to 30 January 1990 by virtue of Comelec Resolution 2226 dated 27 December 1989. The Commission on Elections (COMELEC), by virtue of the power vested by the 1987 Constitution, the Omnibus Election Code (BP 881), said RA 6766 and other pertinent election laws, promulgated Resolution 2167, to govern the conduct of the plebiscite on the said Organic Act for the Cordillera Autonomous Region. In a petition for certiorari dated 20 November 1989, Pablo V. Sanidad, who claims to be a newspaper columnist of the "Overview" for the Baguio Midland Courier, a weekly newspaper circulated in the City of Baguio and the Cordilleras, assailed the constitutionality of Section 19 of Comelec Resolution 2167, which provides that "During the plebiscite campaign period, on the day before and on plebiscite day, no mass media columnist, commentator, announcer or personality shall use his column or radio or television time to campaign for or against the plebiscite issues." Sanidad alleged that said provision is void and unconstitutional because it violates the constitutional guarantees of the freedom of expression and of the press enshrined in the Constitution.

**Issue:** Whether the COMELEC, through Section 19 of Comelec Resolution 2167, restricts Sanidad’s freedom of expression for no justifiable reason.

**Held:** It is clear from Article IX-C of the 1987 Constitution that what was granted to the COMELEC was the
power to supervise and regulate the use and enjoyment of franchises, permits or other grants issued for the 
operation of transportation or other public utilities, media of communication or information to the end that 
equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public 
information campaigns and forums among candidates are ensured. The evil sought to be prevented by this 
provision is the possibility that a franchise holder may favor or give any undue advantage to a candidate in 
terms of advertising space or radio or television time. This is also the reason why a "columnist, commentator, 
announcer or personality, who is a candidate for any elective office is required to take a leave of absence from 
his work during the campaign period. It cannot be gainsaid that a columnist or commentator who is also a 
candidate would be more exposed to the voters to the prejudice of other candidates unless required to take a 
leave of absence. However, neither Article IX-C of the Constitution nor Section 11(b), 2nd paragraph of RA 
6646 can be construed to mean that the Comelec has also been granted the right to supervise and regulate the 
exercise by media practitioners themselves of their right to expression during plebiscite periods. Media 
practitioners exercising their freedom of expression during plebiscite periods are neither the franchise holders 
nor the candidates. In fact, there are no candidates involved in a plebiscite. Therefore, Section 19 of Comelec 
Resolution 2167 has no statutory basis. Plebiscite issues are matters of public concern and importance. The 
people's right to be informed and to be able to freely and intelligently make a decision would be better served 
by access to an unabridged discussion of the issues, including the forum. The people affected by the issues 
presented in a plebiscite should not be unduly burdened by restrictions on the forum where the right to 
expression may be exercised. Comelec spaces and Comelec radio time may provide a forum for expression 
but they do not guarantee full dissemination of information to the public concerned because they are limited 
to either specific portions in newspapers or to specific radio or television times. While the limitation in 
Section 19 of Comelec Resolution 2167 does not absolutely bar Sanidad's freedom of expression, it is still a 
restriction on his choice of the forum where he may express his view. No reason was advanced by the 
COMELEC to justify such abridgement. This form of regulation, thus, is tantamount to a restriction of 
Sanidad's freedom of expression for no justifiable reason.

413 Janet Reno vs. Americal Civil Liberties Union [521 US 884,26 June 1997]

Facts: Two provisions of the Communications Decency Act of 1996 (CDA or Act) seek to protect minors 
from harmful material on the Internet, an international network of interconnected computers that enables 
millions of people to communicate with one another in "cyberspace" and to access vast amounts of 
information from around the world. Title 47 U. S. C. A. §223(a)(1)(B)(ii) (Supp. 1997) criminalizes the 
"knowing" transmission of "obscene or indecent" messages to any recipient under 18 years of age. Section 
223(d) prohibits the "knowin[g]" sending or displaying to a person under 18 of any message "that, in context, 
depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual 
or excretory activities or organs." Affirmative defenses are provided for those who take "good faith, . . . 
effective . . . actions" to restrict access by minors to the prohibited communications, §223(e)(5)(A), and those 
who restrict such access by requiring certain designated forms of age proof, such as a verified credit card or 
an adult identification number, §223(e)(5)(B). A number of plaintiffs filed suit challenging the 
constitutionality of §§223(a)(1) and 223(d). After making extensive findings of fact, a three judge District 
Court convened pursuant to the Act entered a preliminary injunction against enforcement of both challenged 
provisions. The court's judgment enjoins the Government from enforcing §223(a)(1)(B)'s prohibitions insofar 
as they relate to "indecent" communications, but expressly preserves the Government's right to investigate 
and prosecute the obscenity or child pornography activities prohibited therein. The injunction against 
enforcement of §223(d) is unqualified because that section contains no separate reference to obscenity or child 
pornography. The Government appealed to the Supreme Court under the Act's special review provisions, 
arguing that the District Court erred in holding that the CDA violated both the First Amendment because it is 
overbroad and the Fifth Amendment because it is vague.

Issue: Whether the Communications Decency Act of 1996 places an unacceptably heavy burden on protected
Narratives (Berne Guerrero)

**Held:** Regardless of whether the Communications Decency Act of 1996 (CDA) is so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for purposes of the First Amendment. For instance, each of the two parts of the CDA uses a different linguistic form. The first uses the word "indecent," while the second speaks of material that "in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs." Given the absence of a definition of either term, this difference in language will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean. This uncertainty undermines the likelihood that the CDA has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials. The vagueness of the CDA is a matter of special concern for two reasons. First, the CDA is a content based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech. Second, the CDA is a criminal statute. In addition to the opprobrium and stigma of a criminal conviction, the CDA threatens violators with penalties including up to two years in prison for each act of violation. The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images. The CDA regulates speech on the basis of its content. A "time, place, and manner" analysis is therefore inapplicable. It is thus immaterial whether such speech would be feasible on the Web (which, as the Government's own expert acknowledged, would cost up to $10,000 if the speaker's interests were not accommodated by an existing Web site, not including costs for database management and age verification). The Government's position is equivalent to arguing that a statute could ban leaflets on certain subjects as long as individuals are free to publish books. In invalidating a number of laws that banned leafletting on the streets regardless of their content -- the Court explained that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Also, most Internet fora -- including chat rooms, newsgroups, mail exploders, and the Web -- are open to all comers. Even the strongest reading of the "specific person" requirement of §223(d) cannot save the statute. It would confer broad powers of censorship, in the form of a "heckler's veto," upon any opponent of indecent speech who might simply log on and inform the would be discoursers that his 17 year old child -- a "specific person under 18 years of age," -- would be present. Finally, there is no textual support for the Government's submission that material having scientific, educational, or other redeeming social value will necessarily fall outside the CDA's "patently offensive" and "indecent" prohibitions. Thus, the CDA places an unacceptably heavy burden on protected speech, and that the defenses do not constitute the sort of "narrow tailoring" that will save an otherwise patently invalid unconstitutional provision. The CDA, casting a far darker shadow over free speech, threatens to torch a large segment of the Internet community. The ruling of the district court was sustained.

414 Miriam College Foundation Inc. vs. Court of Appeals [GR 127930, 15 December 2000]

*First Division, Kapunan (J): 3 concur, 1 took no part*

**Facts:** Following the publication of the September-October 1994 issue (Vol. 41, No. 14) of Miriam College's school paper (Chi-Rho), and magazine (Ang Magasing Pampantikang ng Chi-Rho), the members of the editorial board, and Relly Carpio, author of Libog, all students of Miriam College, received a letter signed by Dr. Aleli Sevilla, Chair of the Miriam College Discipline Committee. The Letter dated 4 November 1994 informed them that letters of complaint were "filed against you by members of the Miriam Community and a concerned Ateneo grade five student have been forwarded to the Discipline Committee for inquiry and investigation. Please find enclosed complaints. As expressed in their complaints you have violated regulations in the student handbook specifically Section 2 letters B and R, pages 30 and 32, Section 4 (Major offenses) letter j, page 36 letters m, n, and p, page 37 and no. 2 (minor offenses) letter a, page 37. You are required to submit a written statement in answer to the charge/s on or before the initial date of hearing to be held on November 15, 1994, Tuesday, 1:00 in the afternoon at the DSA Conference Room." None of the students submitted their respective answers. They instead requested Dr. Sevilla to transfer the case to the Regional Constitutional Law II, 2005 (10)
Office of the Department of Education, Culture and Sports (DECS) which under Rule XII of DECS Order 94, Series of 1992, supposedly had jurisdiction over the case. In a Letter dated 21 November 1994, Dr. Sevilla again required the students to file their written answers. In response, Atty. Ricardo Valmonte, lawyer for the students, submitted a letter to the Discipline Committee reiterating his clients' position that said Committee had no jurisdiction over them. According to Atty. Valmonte, the Committee was "trying to impose discipline on his clients on account of their having written articles and poems in their capacity as campus journalists." Hence, he argued that "what applies is Republic Act No. 7079 The Campus Journalism Act and its implementing rules and regulations." He also questioned the partiality of the members of said Committee who allegedly "had already articulated their position" against his clients. The Discipline Committee proceeded with its investigation ex parte. Thereafter, the Discipline Board, after a review of the Discipline Committee's report, imposed disciplinary sanctions upon the students, to wit: (1) Jasper Briones [Editor-in-Chief of Chi-Rho, 4th year student]: Expulsion; (2) Daphne Cowper: Suspension up to (summer) March 1995; (3) Imelda Hilario: suspension for 2 weeks to expire on 2 February 1995; (4) Deborah Ligon [4th year student and could graduate as summa cum laude]: suspension up to May 1995; (5) Elizabeth Valdezco: suspension up to (summer) March 1995; (6) Camille Portuga [Octoberian]: graduation privileges withheld, including diploma; (7) Joel Tan: suspension for 2 weeks to expire on 2 February 1995; (8) Gerald Gary Renacido [2nd year student]: Expelled and given transfer credentials; (9) Relly Carpio [3rd year student]: Dismissed and given transfer credentials; (10) Jerome Gomez [3rd year student]: Dismissed and given transfer credentials; and (11) Jose Mari Ramos [Art editor of Chi-Rho, 2nd year student]: Expelled and given transfer papers. Said students thus filed a petition for prohibition and certiorari with preliminary injunction/restraining order before the Regional Trial Court of Quezon City questioning the jurisdiction of the Discipline Board of Miriam College over them. On 17 January 1995, the Regional Trial Court, Branch CIII, presided by Judge Jaime N. Salazar, Jr., issued an order denying the students' prayer for a Temporary Restraining Order. The students thereafter filed a "Supplemental Petition and Motion for Reconsideration." Subsequently, the RTC issued an Order dated 10 February 1995 granting the writ of preliminary injunction. Both parties moved for a reconsideration of the above order. In an Order dated 22 February 1995, the RTC dismissed the petition. The students, excluding Deborah Ligon, Imelda Hilario and Daphne Cowper, sought relief in the Supreme Court through a petition for certiorari and prohibition of preliminary injunction/restraining order questioning the Orders of the RTC dated 10 and 24 February 1995. On 15 March 1995, the Court resolved to refer the case to the Court of Appeals (CA) for disposition. In its Decision dated 26 September 1996, the appellate court granted the students' petition. The CA declared the RTC Order dated 22 February 1995, as well as the students' suspension and dismissal, void. Miriam College filed the present petition.

Issue: Whether Section 7 of the Campus Journalism Act precludes the school’s right to discipline its students.

Held: In several cases, the Supreme Court has upheld the right of the students to free speech in school premises. The right of the students to free speech in school premises, however, is not absolute. The right to free speech must always be applied in light of the special characteristics of the school environment. Thus, while the Court upheld the right of the students to free expression in the cases of Malabanan vs. Ramento, Villar vs. Technological Institute of the Philippines, Arreza vs. Gregorio Araneta University Foundation, and Non vs. Dames II, the Court did not rule out disciplinary action by the school for "conduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior - which materially disrupts classwork or involves substantial disorder or invasion of the rights of others." Provisions of law (such as Section 7 of the Campus Journalism Act) should be construed in harmony with those of the Constitution; acts of the legislature should be construed, wherever possible, in a manner that would avoid their conflicting with the fundamental law. A statute should not be given a broad construction if its validity can be saved by a narrower one. Thus, Section 7 should be read in a manner as not to infringe upon the school's right to discipline its students. At the same time, however, said provision should not be construed as to unduly restrict the right of the students to free speech. Consistent with jurisprudence, Section 7 of the Campus Journalism Act is read to mean that the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such article materially disrupt class work or involve
substantial disorder or invasion of the rights of others. Further, the power of the school to investigate is an
adjunct of its power to suspend or expel. It is a necessary corollary to the enforcement of rules and regulations
and the maintenance of a safe and orderly educational environment conducive to learning. That power, like
the power to suspend or expel, is an inherent part of the academic freedom of institutions of higher learning
guaranteed by the Constitution. The Court therefore rule that Miriam College has the authority to hear and
decide the cases filed against the students.

415 Babst vs. National Intelligence Board [GR L-62992, 28 September 1984]

Resolution En Banc, Plana (J): 6 concur, 2 concur in result, 2 on leave, 1 concur in separate opinion, 2
dissent in separate opinions

Facts: 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. 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. Aside
from the interrogations, a criminal complaint for libel was filed by Brig. Gen. Artemio Tidier, Jr. on 9
February 1983 with the Office of the City Fiscal, Manila, against Domini Torrevillas-Suarez, editor of the
Panorama, and Ma. Ceres Doyo based on an article written by Doyo and published in the 28 March 1982
issue of the Panorama, on which the author had been interrogated by Brig. Gen. Wilfredo Estrada (Ret.), Col.
Renato Ecarna, NBI Asst. Director Ponciano Fernando, Col. Balbino Diego, Col. Galileo Kintanar, Col.
Eustaquio Peralta, et. al. The complaint included an 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.) On 3 March 1983, Babst, et. al. filed a petition for prohibition with preliminary injunction,
which was superseded by the amended and supplemental petition for prohibition with preliminary injunction,
seeking to prohibit the respondents (a) from issuing subpoenas or letters of invitation to Babst, et. al. and
interrogating them, and (b) from filing libel suits on matters that have been the subject of inquiry by the
National Intelligence Board (NIB).

Issue: Whether the issuance by the NIB of letters of invitation to Babst, et.al., their subsequent interrogation,
and the filing of libel suits against Suarez and Doyo, are illegal and unconstitutional as they are violative of
the constitutional guarantee on free expression since they have the effect of imposing restrictive guidelines
and norms on mass media.

Held: Prohibition will not issue in respect of the libel charges now pending in court against Suarez and Doyo
similar suits that might be filed. 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 the NIB or any other respondent. Further,
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 the NIB, which Babst, et. al. 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 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 Suarez and Doyo in his personal capacity. Moreover, he is not even a member of
the NIB. And the NIB does not appear to have anything to do with Gen. Tadiar’s private right to complain of
libel.

416 Espuelas vs. People [GR L-2990, 17 December 1951]

En Banc, Bengzon (J): 4 concur, 1 concurs in result, 1 concurs in separate opinion

Constitutional Law II, 2005 (12)
Facts: Between June 9 and June 24, 1947, in the town of Tagbilaran, Bohol, Oscar Espuelas y Mendoza had his picture taken, making it to appear as if he were hanging lifeless at the end of a piece of rope suspended from the limb of a tree, when in truth and in fact, he was merely standing on a barrel. After securing copies of his photograph, Espuelas sent copies of same to several newspapers and weeklies of general circulation, not only in the Province of Bohol but also throughout the Philippines and abroad, for their publication with a suicide note or letter, wherein he made to appear that it was written by a fictitious suicide, Alberto Reveniera and addressed to the latter's supposed wife, stating therein in part that “if someone asks you why I committed suicide, tell them I did it because I was not pleased with the administration of Roxas. Tell the whole world about this. And if they ask why I did not like the administration of Roxas, point out to them the situation in Central Luzon, the Hukbalahaps. Tell them about Julio Guillen and the banditry of Leyte. Dear wife, write to President Truman and Churchill. Tell them that here in the Philippines our government is infested with many Hitlers and Mussolinis. Teach our children to burn pictures of Roxas if and when they come across one. I committed suicide because I am ashamed of our government under Roxas. I cannot hold high my brows to the world with this dirty government. I committed suicide because I have no power to put under Juez de Cuchillo all the Roxas people now in power. So, I sacrificed my own self.” Espuelas was charged for violating Article 142 of the Revised Penal Code, which punishes those who shall write, publish or circulate scurrilous libels against the Government of the Philippines or any of the duly constituted authorities thereof or which suggest or incite rebellious conspiracies or riots or which tend to stir up the people against the lawful authorities or to disturb the peace of the community. Espuelas admitted the fact that he wrote the note or letter and caused its publication in the Free Press, the Evening News, the Bisaya, Lamdang and other local periodicals and that he had impersonated one Alberto Reveniera by signing said pseudonymous name in said note or letter and posed himself as Alberto Reveniera in a picture taken wherein he was shown hanging by the end of a rope tied to a limb of a tree. Espuelas was, after trial, convicted in the Court of First Instance of Bohol of a violation of the above article. The conviction was affirmed by the Court of Appeals. Espuelas appealed.

Issue: Whether sedition laws unnecessarily curtail the citizen’s freedom of expression.

Held: The freedom of speech secured by the Constitution "does not confer an absolute right to speak or publish without responsibility whatever one may choose." It is not "unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom." So statutes against sedition have always been considered not violative of such fundamental guaranty, although they should not be interpreted so as to unnecessarily curtail the citizen's freedom of expression to agitate for institutional changes. Not to be restrained is the privilege of any citizen to criticize his government and government officials and to submit his criticism to the "free trade of ideas" and to plead for its acceptance in "the competition of the market." However, let such criticism be specific and therefore constructive, reasoned or tempered, and not a contemptuous condemnation of the entire government set-up. Such wholesale attack is nothing less than an invitation to disloyalty to the government. Herein, no particular objectionable actuation of the government was made in the article. It is called dirty, it is called a dictatorship, it is called shameful, but no particular omissions or commissions are set forth. Instead the article drips with male-violence and hate towards the constituted authorities. It tries to arouse animosity towards all public servants headed by President Roxas whose pictures Espuelas would burn and would teach the younger generation to destroy. Analyzed for meaning and weighed in its consequences the article cannot fail to impress thinking persons that it seeks to sow the seeds of sedition and strife. The infuriating language is not a sincere effort to persuade, what with the writer's simulated suicide and false claim to martyrdom and what with its failure to particularize. When the use of irritating language centers not on persuading the readers but on creating disturbance, the reasonable of free speech can not apply and the speaker or writer is removed from the protection of the constitutional guaranty. Although it be argued that the article does not discredit the entire governmental structure but only President Roxas and his men; still, article 142 punishes not only all libels against the Government but also "libels against any of the duly constituted authorities thereof." The "Roxas people" in the Government obviously refer at least to the President, his Cabinet and the majority of legislators to whom the adjectives
dirty, Hitlers and Mussolinis were naturally directed. On this score alone the conviction could be upheld. To
top it all, Espuelas proclaimed to his readers that he committed suicide because he had "no power to put under
juez de cuchillo all the Roxas people now in power." Knowing, that the expression Juez de Cuchillo means to
the ordinary layman as the Law of the Knife, a "summary and arbitrary execution by the knife", the idea
intended by Espuelas to be conveyed was no other than bloody, violent and unpeaceful methods to free the
government from the administration of Roxas and his men. The meaning, intent and effect of the article
involves maybe a question of fact, making the findings of the court of appeals conclusive upon the Supreme
Court.

417  Elizalde vs. CFI 116 SCRA 93 (1982)

418  Lopez vs. Court of Appeals [GR L-26549, 31 July 1970]

Facts: In the early part of January 1956, there appeared on the front page of The Manila Chronicle, of which
Eugenio Lopez was the publisher, as well as on other dailies, a news story of a sanitary inspector assigned to
the Babuyan Islands, Fidel Cruz by name, sending a distress signal to a passing United States Airforce plane
which in turn relayed the message to Manila. He was not ignored, an American Army plane dropping on the
beach of an island an emergency-sustenance kit containing, among other things, a two-way radio set. He
utilized it to inform authorities in Manila that the people in the place were living in terror, due to a series of
killings committed since Christmas of 1995. Losing no time, the Philippines defense establishment rushed to
the island a platoon of scout rangers led by Major Wilfredo Encarnacion. Upon arriving at the reported killer-
menaced Babuyan Claro, however, Major Encarnacion and his men found, instead of the alleged killers, a
man, the same Fidel Cruz, who merely wanted transportation home to Manila. In view of this finding, Major
Wilfredo Encarnacion branded as a "hoax," to use his own descriptive word, the report of Fidel Cruz. That
was the term employed by the other newspapers when referring to the incident. This Week Magazine of the
Manila Chronicle, then edited by Juan T. Gatbonton, devoted a pictorial article to it in its issue of 15 January
1956. Mention was made that while Fidel Cruz story turned out to he false, if brought to light the misery of
the people living in that place, with almost everybody sick, only two individuals able to read and write, food
and clothing being scarce. Then in the 29 January 1956 issue of This Week Magazine, the "January News
Quiz" included an item on the central figure in what was known as the Calayan Hoax, who nevertheless did
the country a good turn by calling the government's attention to that forsaken and desolate corner of the
Republic. Earlier in its Special Year End Quiz appearing in its issue of 18 January 1956, reference was made
to a health inspector who suddenly felt "lonely" in his isolated post, cooked up a story about a murderer
running loose on the island of Calayan so that he could be ferried back to civilization. He was given the
appellation of "Hoax of the Year." The magazine on both occasions carried photographs of the person
purporting to be Fidel Cruz. Unfortunately, the pictures that were published on both occasions were that of
Fidel G. Cruz, a businessman-contractor from Santa Maria, Bulacan. It turned out that the photographs of
Cruz and that of Fidel Cruz, sanitary inspector, were on file, in the library of the Manila Chronicle in
accordance with the standard procedure observed in other newspaper offices, but when the news quiz format
was prepared, the two photographs were inadvertently switched. As soon, however, as the inadvertent error
was brought to the attention of Lopez and Gatbonton, the following correction was immediately published in
This Week Magazine on January 27, 1957: "While we were rushing to meet the deadline for January 13th
issue of This Week, we inadvertently published the picture of former Mayor Fidel G. Cruz of Sta. Maria,
Bulacan, businessman and contractor, in 'Our Own Who's Who feature in the Year End Quiz' of This Week in
lieu of the health inspector Fidel Cruz, who was connected with a story about a murderer running loose on
Calayan Island. We here express our profound regrets that; such an error occurred." Together with the
foregoing correction, Lopez and Gatbonton published the picture of Fidel Cruz; the photographs and the
correction moreover were enclosed by four lines, the type used was bolder than ordinary, and the item was
placed in a conspicuous place in order to call the attention of the readers to such amends being made. The
businessman Fidel G. Cruz sued Lopez and Gatbonton in the Court of First Instance of Manila for the
recovery of damages alleging the defamatory character of the above publication of his picture. After trial duly had, he was awarded P5,000 as actual damages, another P5,000 as moral damages, and P1,000 for attorney's fees. That judgment was affirmed on appeal to the appellate Court. Lopez and Gatbonton filed the petition for certiorari.

**Issue:** Whether the claim of freedom of the press negates Lopez’ and Gatbonton’s liability arising from libel.

**Held:** A libel was defined as a "malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive, and thereby expose him to public hatred, contempt, or ridicule." There was an express provision in such legislation for a tort or a quasi-delict action arising from libel. There is reinforcement to such a view in the new Civil Code providing for the recovery of moral damages for libel, slander or any other form of defamation. According to the standard treatise of Newell on Slander and Libel: "Publication of a person's photograph in connection with an article libelous of a third person, is a libel on the person whose picture is published, where the acts set out in the article are imputed to such person." Why libel law has both a criminal and a civil aspect is explained by Hale in his Law of the Press thus: "On the one hand, libeling a person results in depriving him of his good reputation. Since reputation is a thing; of value, truly rather to be chosen than great riches, an impairment of it is a personal wrong. To redress this personal wrong money damages are awarded to the injured person. On the other hand, the publication of defamatory statements tends strongly to induce breach of the peace by the person defamed, and hence is of peculiar moment to the state as the guardian of the public peace. Viewed from this angle, libel is a crime, and as such subjects the offender to a fine or imprisonment." No inroads on press freedom should be allowed in the guise of punitive action visited in what otherwise could be characterized as libel whether in the form of printed words or a defamatory imputation resulting from the publication of Cruz's picture with the offensive caption as in 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. However, the correction promptly made by Lopez and Gatbonton would thus call for a reduction in the damages awarded. It should be noted that there was no proof of any actual pecuniary loss arising from the above publication. It is worthwhile to recall what Justice Malcolm referred to as the tolerant attitude on the part of appellate courts on this score, the usual practice being "more likely to reduce damages for libel than to increase them."

**419 Quisumbing vs. Lopez [GR L-6465, 31 January 1955]**

*En Banc, Paras (CJ): 10 concur*

**Facts:** Eugenio Lopez, Ernesto del Rosario and Roberto Villanueva are the publisher, editor-in-chief, and general manager respectively of The Manila Chronicle, a daily newspaper published and circulated in English in the City of Manila. On 15 July 1949, Norberto Quisumbing filed a complaint against Lopez, et. al. in the Court of First Instance of Manila for the recovery of damages in the sum of P50,000 as a result of the alleged libelous publication in The Manila Chronicle of 7 November 1947, entitled "NBI men raid offices of 3 city usurers," stating therein that "Raided were the offices of Norberto Quisumbing, a businessman and broker, at the Trade and Commerce, and Ngo Seng and Go Pin. at 530 Elcano Street, Binondo." After answer and trial the Court of First Instance of Manila rendered a judgment dismissing the complaint from which Quisumbing appealed to the Court of Appeals. The latter Court, in its decision promulgated on 19 January 1953, affirmed the judgment of the Court of origin. Quisumbing filed a petition for review on certiorari before the Supreme Court.
Issue: Whether the newspaper is liable for libel arising from an article entitled "NBI men raid offices of 3 city usurers."

Held: Basing an action for libel on the headline, oftentimes it is the only part of the article which is read, makes Quisumbing's position untenable as reading merely the headline herein, nobody would even suspect that Quisumbing was referred to. Libel cannot be committed except against somebody and that somebody must be properly identified. The identity of Quisumbing is revealed in the body of the news item, but nowhere in the context is the petitioner portrayed as one charged with or convicted of the crime of usury. The Court believes that nobody reading the whole news item would come to the conclusion that Norberto Quisumbing had been accused or convicted of usury. The headline complained of may fairly be said to contain a correct description of the news story. The fact that the raid was conducted by anti-usury agents following receipt of a complaint against Quisumbing and two others, coupled with the announcement by the Chief of the NBI Anti-Usury Division that criminal action would be filed in the city fiscal's office, naturally would lead one to think that the persons involved were usurers. Nothing in the headline or the context of the article suggested the idea that Quisumbing was already charged with or convicted of the crime of usury. The word "usurer" simply means one who practices usury or even a mere money lender, but certainly not a usury convict. There is no evidence in the record to prove that the publication of the news item under consideration was prompted by personal ill will or spite, or that there was intention to do harm, and that on the other hand there was "an honest and high sense of duty to serve the best interests of the public, without self-seeking motive and with malice towards none." Every citizen of course has the right to enjoy a good name and reputation, but the Court does not consider that Lopez, et. al., under the circumstances, had violated said right or abused the freedom of the press. The newspapers should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy. In the preparation of stories, press reporters and edition usually have to race with their deadlines; and consistently with good faith and reasonable care, they should not be held to account, to a point of suppression, for honest mistakes or imperfection in the choice of words.


En Banc, Feliciano (J): 13 concur, 1 took no part

Facts: On 3 July 1986, 21 persons (Atty. Dimatimpos Mindalano, Atty. Mangorsi A. Mindalano, Shiek Edres Mindalano, Sultan Guinar Mindalano, Farouk Calipa Mindalano, Sultan Mahadi Mindalano, Sultan Khalid Mindalano, Sultan Ma-Amor Mindalano, Dr. Taher Mindalano, Datu Maguidala Mindalano, Sobaida Magumpara Vda. De Mindalano, Raisha Mindalano Mandangan, Atty. Kimal M. Salacop, Datu Kamar M. Mindalano, Mayor Raslan Mindalano, Vice-Mayor Alidadi A. Mindalano, Eng. Rashdi A. Mindalano, Mrs. Paisha Mindalano Aguam, Datu Azis Mindalano Aguam, Mrs. Moomina Mindalano Omar, Datu Aminola Mindalano Omar), claiming to be the nearest relatives of the late Amir Mindalano, suing on their own behalf and on behalf of the entire Mindalano clan of Mindanao, filed a Complaint for damages (Civil Case 81-86) before Branch 8 of the Regional Trial Court of Marawi City charging the Bulletin Publishing Corp. represented by its President, Martin Isidro and its Publisher, Apolonio batalla, Ben F. Rodriguez, Fred J. Reyes, Jamil Maidan Flores, et. al. with libel. The Mindalanos' action was anchored on a feature article written by Flores entitled "A Changing of the Guard," which appeared in the 22 June 1986 issue of Philippine Panorama, a publication of Bulletin Publishing Corporation. In particular, exception was taken to the following excerpt: "The division of Lanao into Sur and Norte in 1959 only emphasized the feudal nature of Maranaw politics. Talk of Lanao politics and you find yourself confined to a small circle of the Alonto, Dimaporo, Dimakuta, Dianalan, Lucman families and a few more. These are big, royal families. If you are a Maranaw with aspirations for political leadership, you better be a certified bona fide member of one or several of these clans. xxx About the only time that one who was not of any royal house became a leader of consequence in the province was during the American era when the late Amir Mindalano held some sway.
That was because Mindalano had the advantage of having lived with an American family and was therefore fluent and literate in English. But as soon as the datus woke up to the blessings of the transplanted American public school system, as soon as they could speak and read in English, political leadership again became virtually their exclusive domain. There must be some irony in that.” They alleged that, contrary to the article, the Mindalanos “belong to no less than 4 of the 16 Royal Houses of Lanao del Sur,” that the statement that the late Amir Mindalano, grand patriarch of the Mindalano clan, had lived with an American family, a statement which, they alleged, apart from being absolutely false, “has a distinct repugnant connotation in Maranao society.” Contending finally that Bulletin, et. al. had with malice inflicted “so much damage upon the social standing of the plaintiffs” as to “ irreparably injure” the Mindalano name and reputation, and thus interposed a claim for the award of moral and exemplary damages, attorney's fees, and litigation expenses, all in the aggregate amount of P2,350,000.00. Reacting to the complaint, Bulletin, et. al. filed on 6 August 1986 a Motion to Dismiss urging that (a) venue had been improperly laid, (b) the complaint failed to state a cause of action, and (c) the complainants lacked the capacity to bring the suit. In an Order dated 30 October 1986, however, Judge Edilberto Noel (Presiding Judge of Branch VIII of the Regional Trial Court, 12th Judicial Region with station in Marawi City) denied the Motion to Dismiss and directed Bulletin, et. al. to file their answer to the complaint. Bulletin, et. al. filed the petition for certiorari and prohibition with the Supreme Court.

**Issue:** Whether the Bulletin's article, which did not include the late Amir Mindalano as a member of a royal clan, be considered defamatory.

**Held:** It is axiomatic in actions for damages for libel that the published work alleged to contain libelous material must be examined and viewed as a whole. In its entirety, the subject article "A Changing of the Guard" is in essence a popular essay on the general nature and character of Mindanao politics and the recent emergence of a new political leader in the province of Lanao del Sur. The essay is not focused on the late Amir Mindalano nor his family. Save in the excerpts complained about, the name of the Mindalano family or clan is not mentioned or alluded to in the essay. The identification of Amir Mindalano is thus merely illustrative or incidental in the course of the development of the theme of the article. The language utilized by the article in general and the above excerpts in particular appears simply declaratory or expository in character, matter-of-fact and unemotional in tone and tenor. No derogatory or derisive implications or nuances appear detectable at all, however closely one may scrutinize the above excerpts. There is no evidence of malevolent intent either on the part of the author or the publisher of the article in the quoted excerpts. Further, although the Court takes judicial notice of the fact that titles of royalty or nobility have been maintained and appear to be accorded some value among some members of certain cultural groups in our society, such titles of royalty or nobility are not generally recognized or acknowledged socially in the national community. No legal rights or privileges are contingent upon grant or possession of a title of nobility or royalty and the Constitution expressly forbids the enactment of any law conferring such a title. Thus, the status of a commoner carries with it no legal disability. Assuming for present purposes only the falsity (in the sense of being inaccurate or non-factual) of the description in the Panorama article of Amir Mindalano as not belonging to a royal house, the Court believes that such a description cannot in this day and age be regarded as defamatory, as an imputation of “a vice or defect,” or as tending to cause “dishonor, discredit or contempt,” or to “blacken the memory of one who is dead” in the eyes of an average person in our community. The above excerpts complained of do not disparage or deprecate Maranao titles of royalty or nobility, neither do they hold up to scorn and disrespect those who, Maranao or not, are commoners. There is no visible effort on the part of Bulletin, et. al. to cast contempt and ridicule upon an institution or tradition of members of a cultural or ethnic minority group, an “indigenous cultural community” in the language of the Constitution, whose traditions and institutions the State is required to respect and protect. What the Mindalanos assert is defamatory is the simple failure to ascribe to the late Amir membership in a Maranao royal house, the ascription, in other words, to him of a factual condition shared by the overwhelming majority of the population of this country, both Maranao and non-Maranao, Muslim and non-Muslim. In a community like ours which is by constitutional principle both republican in character and egalitarian in inspiration, such an
Narratives (Berne Guerrero)

Ascription, whether correct or not, cannot be defamatory. Furthermore, personal hurt or embarrassment or offense, even if real, is not, however, automatically equivalent to defamation. The law against defamation protects one's interest in acquiring, retaining and enjoying a reputation "as good as one's character and conduct warrant" in the community and it is to community standards — not personal or family standards — that a court must refer in evaluating a publication claimed to be defamatory. Hence, the article "A Changing of the Guard" is clearly one of legitimate public interest. The newspaper in the exercise of freedom of speech and of the press have kept well within the generally accepted moral and civil standards of the community as to what may be characterized as defamatory. The complaint in the court below failed to state a cause of action and should have been dismissed by the Judge.

421 Texas vs. Johnson [491 US 397, 21 June 1989]

Brennan (J)

Facts: While the Republican National Convention was taking place in Dallas in 1984, Gregory Lee Johnson participated in a political demonstration dubbed the "Republican War Chest Tour." As explained in literature distributed by the demonstrators and in speeches made by them, the purpose of this event was to protest the policies of the Reagan administration and of certain Dallas-based corporations. The demonstrators marched through the Dallas streets, chanting political slogans and stopping at several corporate locations to stage "die-ins" intended to dramatize the consequences of nuclear war. On several occasions they spray-painted the walls of buildings and overturned potted plants, but Johnson himself took no part in such activities. He did, however, accept an American flag handed to him by a fellow protestor who had taken it from a flagpole outside one of the targeted buildings. The demonstration ended in front of Dallas City Hall, where Johnson unfurled the American flag, doused it with kerosene, and set it on fire. While the flag burned, the protestors chanted: "America, the red, white, and blue, we spit on you." After the demonstrators dispersed, a witness to the flag burning collected the flag's remains and buried them in his backyard. No one was physically injured or threatened with injury, though several witnesses testified that they had been seriously offended by the flag burning. Of the approximately 100 demonstrators, Johnson alone was charged with a crime. The only criminal offense with which he was charged was the desecration of a venerated object in violation of Tex. Penal Code Ann. 42.09(a)(3) (1989). After a trial, he was convicted, sentenced to one year in prison, and fined $2,000. The Court of Appeals for the Fifth District of Texas at Dallas affirmed Johnson's conviction but the Texas Court of Criminal Appeals reversed holding that the State could not, consistent with the First Amendment, punish Johnson for burning the flag in these circumstances.

Issue: Whether publicly burning an American flag as a means of political protest is a part of the constitutional guarantee of freedom of expression.

Held: The First Amendment literally forbids the abridgment only of "speech," but the Court has long recognized that its protection does not end at the spoken or written word. While the Court has rejected "the view that an apparently limitless variety of conduct can be labeled `speech' whenever the person engaging in the conduct intends thereby to express an idea," it has acknowledged that conduct may be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments." In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, the Court has asked whether "an intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it." Especially pertinent to the case are the Court's decisions recognizing the communicative nature of conduct relating to flags. Attaching a peace sign to the flag, refusing to salute the flag, Barnette, and displaying a red flag, the Court has held, all may find shelter under the First Amendment. Pregnant with expressive content, the flag as readily signifies this Nation as does the combination of letters found in "America." The Court has not automatically concluded, however, that any action taken with respect to the flag is expressive. Instead, in characterizing such action for First Amendment purposes, the Court has considered the context in which it occurred. Herein, Johnson burned an American flag as part - indeed, as the culmination - of a political
demonstration that coincided with the convening of the Republican Party and its renomination of Ronald Reagan for President. The expressive, overtly political nature of this conduct was both intentional and overwhelmingly apparent. At his trial, Johnson explained his reasons for burning the flag as follows: "The American Flag was burned as Ronald Reagan was being renominated as President. And a more powerful statement of symbolic speech, whether you agree with it or not, couldn't have been made at that time. It's quite a just position [juxtaposition]. We had new patriotism and no patriotism." In these circumstances, Johnson's burning of the flag was conduct "sufficiently imbued with elements of communication," to implicate the First Amendment. Where "speech" and "nonspeech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms, the applicability of O'Brien's relatively lenient standard is limited to those cases in which "the governmental interest is unrelated to the suppression of free expression." In stating, moreover, that O'Brien's test "in the last analysis is little, if any, different from the standard applied to time, place, or manner restrictions," the Court has highlighted the requirement that the governmental interest in question be unconnected to expression in order to come under O'Brien's less demanding rule. The State offers two separate interests to justify this conviction: preventing breaches of the peace and preserving the flag as a symbol of nationhood and national unity. The Court hold that the first interest is not implicated on this record and that the second is related to the suppression of expression. A principal "function of free speech under our system of government is to invite 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." It would be odd indeed to conclude both that "if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection," and that the government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence. Thus, the Court not permitted the government to assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression, asking whether the expression "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Johnson's expressive conduct does not fall within that small class of "fighting words" that are "likely to provoke the average person to retaliation, and thereby cause a breach of the peace." No reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the policies of the Federal Government as a direct personal insult or an invitation to exchange fisticuffs. Forbidding criminal punishment for conduct such as Johnson's will not endanger the special role played by our flag or the feelings it inspires. Nobody can suppose that this one gesture of an unknown man will change our Nation's attitude towards its flag. Indeed, Texas' argument that the burning of an American flag "is an act having a high likelihood to cause a breach of the peace," and its statute's implicit assumption that physical mistreatment of the flag will lead to "serious offense," tend to confirm that the flag's special role is not in danger; if it were, no one would riot or take offense because a flag had been burned. The flag's deservedly cherished place in our community will be strengthened, not weakened, by the Court's holding today. The decision is a reaffirmation of the principles of freedom and inclusiveness that the flag best reflects, and of the conviction that our toleration of criticism such as Johnson's is a sign and source of our strength. Indeed, one of the proudest images of our flag, the one immortalized in our own national anthem, is of the bombardment it survived at Fort McHenry. It is the Nation's resilience, not its rigidity, that Texas sees reflected in the flag - and it is that resilience that the Court reasserts today.

422  Borjal vs. Court of Appeals [GR 126466, 14 January 1999]

Second Division, Bellosillo (J): 3 concur, 1 concurs in result

Facts: Arturo Borjal and Maximo Soliven are among the incorporators of Philippines Today, Inc. (PTI), now PhilSTAR Daily, Inc., owner of The Philippine Star, a daily newspaper. At the time the complaint was filed, Borjal was its President while Soliven was (and still is) Publisher and Chairman of its Editorial Board. Among the regular writers of The Philippine Star is Borjal who runs the column Jaywalker. Francisco Wenceslao, on the other hand, is a civil engineer, businessman, business consultant and journalist by profession. In 1988 he
served as a technical adviser of Congressman Fabian Sison, then Chairman of the House of Representatives Sub-Committee on Industrial Policy. During the congressional hearings on the transport crisis sometime in September 1988 undertaken by the House Sub-Committee on Industrial Policy, those who attended agreed to organize the First National Conference on Land Transportation (FNCLT) to be participated in by the private sector in the transport industry and government agencies concerned in order to find ways and means to solve the transportation crisis. More importantly, the objective of the FNCLT was to draft an omnibus bill that would embody a long-term land transportation policy for presentation to Congress. The conference which, according to Wenceslao, was estimated to cost around P1,815,000.00 would be funded through solicitations from various sponsors such as government agencies, private organizations, transport firms, and individual delegates or participants. On 28 February 1989, at the organizational meeting of the FNCLT, Wenceslao was elected Executive Director. As such, he wrote numerous solicitation letters to the business community for the support of the conference. Between May and July 1989 a series of articles written by Borjal was published on different dates in his column Jaywalker. The articles dealt with the alleged anomalous activities of an "organizer of a conference" without naming or identifying Wenceslao. Neither did it refer to the FNCLT as the conference therein mentioned. Wenceslao reacted to the articles. He sent a letter to The Philippine Star insisting that he was the "organizer" alluded to in Borjal's columns. In a subsequent letter to The Philippine Star, Wenceslao refuted the matters contained in Borjal's columns and openly challenged the latter by saying that he was prepared to relinquish his position in case it is found that he has misappropriated even one peso of FNCLT money, and, on the other hand, if he will be able to prove that Borjal has used his column as a "hammer" to get clients for his PR Firm, AA Borjal Associates, he should resign from the STAR and never again write a column. Thereafter, Wenceslao filed a complaint with the National Press Club (NPC) against Borjal for unethical conduct. He accused Borjal of using his column as a form of leverage to obtain contracts for his public relations firm, AA Borjal Associates. In turn, Borjal published a rejoinder to the challenge of Wenceslao not only to protect his name and honor but also to refute the claim that he was using his column for character assassination. Apparently not satisfied with his complaint with the NPC, Wenceslao filed a criminal case for libel against Borjal and Soliven, among others. However, in a Resolution dated 7 August 1990, the Assistant Prosecutor handling the case dismissed the complaint for insufficiency of evidence. The dismissal was sustained by the Department of Justice and later by the Office of the President. On 31 October 1990, Wenceslao instituted against Borjal and Soliven a civil action for damages based on libel. After due consideration, the trial court decided in favor of Wenceslao and ordered Borjal and Soliven to indemnify Wenceslao P1,000,000.00 for actual and compensatory damages, in addition to P200,000.00 for moral damages, P100,000.00 for exemplary damages, P200,000.00 for attorney's fees, and to pay the costs of suit. The Court of Appeals affirmed the decision of the court a quo but reduced the amount of the monetary award to P110,000.00 actual damages, P200,000.00 moral damages and P75,000.00 attorney's fees plus costs. Borjal and Soliven filed a motion for reconsideration but the Court of Appeals denied the motion in its Resolution of 12 September 1996. Hence, the petition for review.

**Issue:** Whether Borja's intemperate or deprecatory utterances appear removes such speech from the protection of free speech, and opens him to liability for libel.

**Held:** In order to maintain a libel suit, it is essential that the victim be identifiable although it is not necessary that he be named. It is also not sufficient that the offended party recognized himself as the person attacked or defamed, but it must be shown that at least a third person could identify him as the object of the libelous publication. Regrettably, these requisites have not been complied with in the present case. The questioned articles written by Borjal do not identify Wenceslao as the organizer of the conference. The first of the Jaywalker articles which appeared in the 31 May 1989 issue of The Philippine Star yielded nothing to indicate that Wenceslao was the person referred to therein. Surely, there were millions of "heroes" of the EDSA Revolution and anyone of them could be "self-proclaimed" or an "organizer of seminars and conferences." As a matter of fact, in his 9 June 1989 column Borjal wrote about the "so-called First National Conference on Land Transportation whose principal organizers are not specified." Neither did the FNCLT letterheads disclose the identity of the conference organizer since these contained only an enumeration of names where
Wenceslao was described as Executive Director and Spokesman and not as a conference organizer. The printout and tentative program of the conference were devoid of any indication of Wenceslao as organizer. The printout which contained an article entitled "Who Organized the NCLT ?" did not even mention Wenceslao's name, while the tentative program only denominated Wenceslao as "Vice Chairman and Executive Director," and not as organizer. No less than Wenceslao himself admitted that the FNCLT had several organizers and that he was only a part of the organization. Significantly, Wenceslao himself entertained doubt that he was the person spoken of in Borjal's columns. The former even called up columnist Borjal to inquire if he (Wenceslao) was the one referred to in the subject articles. His letter to the editor published in the 4 June 1989 issue of The Philippine Star showed Wenceslao's uncertainty. Identification is grossly inadequate when even the alleged offended party is himself unsure that he was the object of the verbal attack. It is well to note that the revelation of the identity of the person alluded to came not from Borjal but from Wenceslao himself when he supplied the information through his 4 June 1989 letter to the editor. Had Wenceslao not revealed that he was the "organizer" of the FNCLT referred to in the Borjal articles, the public would have remained in blissful ignorance of his identity. It is therefore clear that on the element of identifiability alone the case falls. Further, indisputably, Borjal's questioned writings are not within the exceptions of Article 354 of The Revised Penal Code for they are neither private communications nor fair and true report without any comments or remarks. However this does not necessarily mean that they are not privileged. To be sure, the enumeration under Article 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. Publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels. The concept of privileged communications is implicit in the freedom of the press. Public policy, the welfare of society, and the orderly administration of government have demanded protection of public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege. Fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts. There is no denying that the questioned articles dealt with matters of public interest. A reading of the imputations of Borjal against Wenceslao shows that all these necessarily bore upon the latter's official conduct and his moral and mental fitness as Executive Director of the FNCLT. The nature and functions of his position which included solicitation of funds, dissemination of information about the FNCLT in order to generate interest in the conference, and the management and coordination of the various activities of the conference demanded from him utmost honesty, integrity and competence. These are matters about which the public has the right to be informed, taking into account the very public character of the conference itself. Concededly, Borjal may have gone overboard in the language employed describing the "organizer of the conference." One is tempted to wonder if it was by some mischievous gambit that he would also dare test the limits of the "wild blue yonder" of free speech in this jurisdiction. But no matter how intemperate or deprecatory the utterances appear to be, the privilege is not to be defeated nor rendered inutile for. 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 the government and public officials. Furthermore, while, generally, malice can be presumed from defamatory words, the privileged character of a communication destroys the presumption of malice. The onus of proving actual malice then lies on Wenceslao. He must bring home to Borjal the existence of malice as the true motive of his conduct. Wenceslao failed to substantiate by preponderent evidence that Borjal was animated by a desire to inflict unjustifiable harm on his reputation, or that the
articles were written and published without good motives or justifiable ends. On the other hand, Borjal acted in good faith. Moved by a sense of civic duty and prodded by his responsibility as a newspaperman, he proceeded to expose and denounce what he perceived to be a public deception. Every citizen has the right to enjoy a good name and reputation, but Borjal has not violated that right nor abused his press freedom.

423  Bartnicki vs. Vopper [532 US 514, 21 May 2001]

Stevens (J)

Facts: During 1992 and most of 1993, the Pennsylvania State Education Association, a union representing the teachers at the Wyoming Valley West High School, engaged in collective-bargaining negotiations with the school board. The negotiations were "contentious" and received "a lot of media attention," according to Anthony F. Kane Jr., then the president of the local union. In May 1993, Gloria Bartnicki, who was acting as the union's "chief negotiator," used the cellular phone in her car to call Kane and engage in a lengthy conversation about the status of the negotiations. An unidentified person intercepted and recorded that call. In their conversation, Kane and Bartnicki discussed the timing of a proposed strike, difficulties created by public comment on the negotiations, and the need for a dramatic response to the board's intransigence. At one point, Kane said: "If they're not gonna move for three percent, we're gonna have to go to their, their homes. To blow off their front porches, we'll have to do some work on some of those guys. (PAUSES). Really, uh, really and truthfully because this is, you know, this is bad news. (UNDECIPHERABLE)." In the early fall of 1993, the parties accepted a non-binding arbitration proposal that was generally favorable to the teachers. In connection with news reports about the settlement, Frederick W. Vopper (@ Frederick Williams), a radio commentator who had been critical of the union in the past, played a tape of the intercepted conversation on his public affairs talk show. Another station also broadcast the tape, and local newspapers published its contents. After filing suit against Vopper and other representatives of the media, Bartnicki and Kane learned through discovery that Vopper had obtained the tape from Jack Yocum, the head of a local taxpayers' organization that had opposed the union's demands throughout the negotiations. Yocum, who was added as a defendant, testified that he had found the tape in his mailbox shortly after the interception and recognized the voices of Bartnicki and Kane. Yocum played the tape for some members of the school board, and later delivered the tape itself to Vopper. After the parties completed their discovery, they filed cross-motions for summary judgment. Vopper, et. al. contended that they had not violated the statute because (a) they had nothing to do with the interception, and (b) in any event, their actions were not unlawful since the conversation might have been intercepted inadvertently. Moreover, even if they had violated the statute by disclosing the intercepted conversation, Vopper, et. al. argued, those disclosures were protected by the First Amendment. The District Court rejected the first statutory argument because, under the plain statutory language, an individual violates the federal Act by intentionally disclosing the contents of an electronic communication when he or she "knows or has reason to know that the information was obtained" through an illegal interception. With respect to the second statutory argument, the District Court agreed that Bartnicki, et. al. had to prove that the interception in question was intentional, but concluded that the text of the interception raised a genuine issue of material fact with respect to intent. That issue of fact was also the basis for the District Court's denial of Bartnicki, et. al.'s motion. Finally, the District Court rejected Vopper, et. al.' First Amendment defense because the statutes were content-neutral laws of general applicability that contained "no indicia of prior restraint or the chilling of free speech." Thereafter, the District Court granted a motion for an interlocutory appeal, pursuant to 28 U. S. C. §1292(b). The Court of Appeals accepted the appeal, and the United States intervened pursuant to 28 U. S. C. §2403 in order to defend the constitutionality of the federal statute. All three members of the panel agreed with petitioners and the Government that the federal and Pennsylvania wiretapping statutes are "content neutral" and therefore subject to "intermediate scrutiny." Applying that standard, the majority concluded that the statutes were invalid because they deterred significantly more speech than necessary to protect the privacy interests at stake. The court remanded the case with instructions to enter summary judgment for Vopper, et. al.

Issue: Whether the government may punish the ensuing publication of that information, obtained in a manner
lawful in itself but from a source who has obtained it unlawfully.

**Held:** §2511(1)(c), as well as its Pennsylvania analog, is in fact a content-neutral law of general applicability. "Deciding whether a particular regulation is content based or content neutral is not always a simple task. As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based." In determining whether a regulation is content based or content neutral, the Court looks to the purpose behind the regulation; typically, "government regulation of expressive activity is content neutral so long as it is "justified without reference to the content of the regulated speech.'" Herein, the basic purpose of the statute at issue is to "protect the privacy of wire, electronic, and oral communications." The statute does not distinguish based on the content of the intercepted conversations, nor is it justified by reference to the content of those conversations. Rather, the communications are singled out by virtue of the fact that they were illegally intercepted--by virtue of the source, rather than the subject matter. On the other hand, the naked prohibition against disclosures is fairly characterized as a regulation of pure speech. Unlike the prohibition against the "use" of the contents of an illegal interception in §2511(1)(d), subsection (c) is not a regulation of conduct. It is true that the delivery of a tape recording might be regarded as conduct, but given that the purpose of such a delivery is to provide the recipient with the text of recorded statements, it is like the delivery of a handbill or a pamphlet, and as such, it is the kind of "speech" that the First Amendment protects. As the majority below put it, "if the acts of 'disclosing' and 'publishing' information do not constitute speech, it is hard to imagine what does fall within that category, as distinct from the category of expressive conduct." As a general matter, "state action to punish the publication of truthful information seldom can satisfy constitutional standards." More specifically, the Court has repeatedly held that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need of the highest order." Accordingly, in New York Times Co. v. United States (403 U. S. 713 [1971]), the Court upheld the right of the press to publish information of great public concern obtained from documents stolen by a third party. In so doing, that decision resolved a conflict between the basic rule against prior restraints on publication and the interest in preserving the secrecy of information that, if disclosed, might seriously impair the security of the Nation. Privacy concerns give way when balanced against the interest in publishing matters of public importance. The right of privacy does not prohibit any publication of matter which is of public or general interest. One of the costs associated with participation in public affairs is an attendant loss of privacy. Hence, a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern. The months of negotiations over the proper level of compensation for teachers at the Wyoming Valley West High School were unquestionably a matter of public concern, and respondents were clearly engaged in debate about that concern. That debate may be more mundane than the Communist rhetoric that inspired Justice Brandeis' classic opinion in Whitney v. California (274 US at 372), but it is no less worthy of constitutional protection.

424 Cabansag vs. Fernandez [GR L-8974, 18 October 1957]

First Division, Bautista Angelo (J): 9 concur

**Facts:** Apolonio Cabansag filed on 13 January 1947 in the Court of First Instance of Pangasinan a complaint seeking the ejectment of Germiniana Fernandez, et al. from a parcel of land. The case was set for hearing on 30 July 1947. The hearing was postponed to 8 August 1947. On that day only one witness testified and the case was postponed to 25 August 1947. Thereafter, three incidents developed, namely: (1) a claim for damages, (2) issuance of a writ of preliminary injunction which was set for hearing on 23 March 1948, and (3) alleged contempt for violation of an agreement of the parties approved by the court. Pleadings were filed by the parties on these incidents. Partial hearings were held on various dates. On 9 December 1952 when the court, Judge Pasicolan presiding, issued an order suggesting to the parties to arrange with the stenographers who took down the notes to transcribe their respective notes and stating that the case would be set for hearing after the submission of the transcript. From 9 December 1952 to 12 August 1954, no further step was taken either by the court or by any of the contending parties in the case. On 30 December 1953, when President
Magsaysay assumed office, he issued Executive Order 1 creating the Presidential Complaints and Action Commission (PCAC), which was later superseded by Executive Order 19 promulgated on 17 March 1954. And on 12 August 1954, Apolonio Cabansag, apparently irked and disappointed by the delay in the disposition of his case, wrote the PCAC a letter copy of which he furnished the Secretary of Justice and the Executive Judge of the Court of First Instance of Pangasinan. Upon receipt of the letter, the Secretary of Justice indorsed it to the Clerk of Court, Court of First Instance of Pangasinan, instructing him to require the stenographers concerned to transcribe their notes in Civil Case 9564. The clerk of court, upon receipt of this instruction on 27 August 1954, referred the matter to Judge Jesus P. Morfe before whom the case was then pending informing him that the two stenographers concerned, Miss Illuminada Abelo and Juan Gaspar, have already been assigned elsewhere. On the same date, Judge Morfe wrote the Secretary of Justice informing him that under the provisions of Act 2383 and Section 12 of Rule 41 of the Rules of Court, said stenographers are not obliged to transcribe their notes except in cases of appeal and that since the parties are not poor litigants, they are not entitled to transcription free of charge, aside from the fact that said stenographers were no longer under his jurisdiction. Meanwhile, on 1 September 1954, Atty. Manuel Fernandez filed a motion before Judge Morfe praying that Cabansag be declared in contempt of court for an alleged scurrilous remark he made in his letter to the PCAC to the effect that he, Cabansag, has long been deprived of his land "thru the careful maneuvers of a tactical lawyer", to which counsel for Cabansag replied with a counter-charge praying that Atty. Fernandez be in turn declared in contempt because of certain contemptuous remarks made by him in his pleading. Acting on these charges and counter-charges, on 14 September 1954, Judge Morfe dismissed both charges but ordered Cabansag to show cause in writing within 10 days why he should not be held liable for contempt for sending the above letter to the PCAC which tended to degrade the court in the eyes of the President and the people. Cabansag filed his answer stating that he did not have the slightest idea to besmirch the dignity or belittle the respect due the court nor was he actuated with malice when he addressed the letter to the PCAC; that there is not a single contemptuous word in said letter nor was it intended to give the Chief Executive a wrong impression or opinion of the court; and that if there was any inefficiency in the disposal of his case, the same was committed by the judges who previously intervened in the case. Appearing that the lawyers of Cabansag, Roberto V. Merrera and Rufino V. Merrera, had a hand in the writing and remittance of the letter to the PCAC, Judge Morfe, on 29 September 1954, issued another order requiring also said attorneys to show cause why they should not likewise be held for contempt for having committed acts which tend to impede, obstruct or degrade the administration of justice. After due hearing, the court rendered decision finding Cabansag and the Merreras guilty of contempt and sentencing them to pay a fine as stated in the early part of this decision. Cabansag, et. al. appealed.

Issue: Whether Cabansag should be cited for contempt due to the letter he sent to the Office of the President, the language of which may undermine the reputation and independence of the Courts.

Held: Courts have the power to preserve their integrity and maintain their dignity without which their administration of justice is bound to falter or fail. This is the preservative power to punish for contempt. This power is inherent in all courts and essential to their right of self-preservation. In order that it may conduct its business unhampered by publications which tend to impair the impartiality of its decisions or otherwise obstruct the administration of justice, the court will not hesitate to exercise it regardless of who is affected. For, "as important as is the maintenance of an unmuzzled press and the free exercise of the rights of the citizens is the maintenance of the independence of the judiciary." The reason for this is that respect of the courts guarantees the stability of their institution. Without such guaranty, said institution would be resting on a very shaky foundation. However, the freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. The vehemence of the language concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. Even if we make a careful analysis of the letter sent by Cabansag to the PCAC which has given rise to the
present contempt proceedings, it was far from his mind to put the court in ridicule and much less to belittle or degrade it in the eyes of those to whom the letter was addressed for, undoubtedly, he was compelled to act the way he did simply because he saw no other way of obtaining the early termination of his case. This is clearly inferable from its context wherein, in respectful and courteous language, Cabansag gave vent to his feeling when he said that he "has long since been deprived of his land thru the careful maneuvers of a tactical lawyer"; that the case which had long been pending "could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenographic notes"; and that the "new Judges could not proceed to hear the case before the transcription of the said notes." Analyzing said utterances, one would see that if they ever criticize, the criticism refers, not to the court, but to opposing counsel whose "tactical maneuvers" has allegedly caused the undue delay of the case. The grievance or complaint, if any, is addressed to the stenographers for their apparent indifference in transcribing their notes. The only disturbing effect of the letter which perhaps has been the motivating factor of the lodging of the contempt charge by the trial judge is the fact that the letter was sent to the Office of the President asking for help because of the precarious predicament of Cabansag. While the course of action he had taken may not be a wise one for it would have been proper had he addressed his letter to the Secretary of Justice or to the Supreme Court, such act alone would not be contumacious. To be so the danger must cause a serious imminent threat to the administration of justice. Nor can we infer that such act has "a dangerous tendency" to belittle the court or undermine the administration of justice for the writer merely exercised his constitutional right to petition the government for redress of a legitimate grievance. On the other hand, while the conduct of Cabansag may be justified considering that, being a layman, he is unaware of the technical rules of law and procedure which may place him under the protective mantle of our constitution, such does not obtain with regard to his co-appellants. Being learned in the law and officers of the court, they should have acted with more care and circumspection in advising their client to avoid undue embarrassment to the court or unnecessary interference with the normal course of its proceedings. Their duty as lawyers is always to observe utmost respect to the court and defend it against unjust criticism and clamor. Had they observed a more judicious behavior, they would have avoided the unpleasant incident that had arisen. However, the record is bereft of any proof showing improper motive on their part, much less bad faith in their actuation. But they should be warned that a commission of a similar misstep in the future would render them amenable to a more severe disciplinary action.

425 People vs. Castelo [GR L-11816, 23 April 1962]

En Banc, Bautista Angelo (J): 8 concur

Facts: In the issue of 19 March 1955 of the Manila Daily Bulletin an English daily published in the City of Manila while the Monroy murder case was pending decision, a news story entitled “Foil Extortion Try on Castelo” was published. In summary, the story states that “Philippine constabulary agents investigated two society matrons in their attempt to extort P100,000.00 from Oscar Castelo allegedly to secure his acquittal. The investigators questioned the matrons and took tape recordings and pictures while they were negotiating the money. Castelo confirmed the extortion attempt. The plan was broached to Miss Adelaida Reyes, a friend of Castelo, who upon being informed thereof reported the matter to the military intelligence service of the constabulary (G-2). The negotiations took place in San Juan de Dios coffee shop on Dewey boulevard. There Miss Reyes was told by one of the matrons that she saw the decision sentencing Castelo but that they could secure its change to acquittal if Miss Reyes could raise P100,000.00. The negotiations did not go through because Miss Reyes could not raise the amount. When Miss Reyes informed Castelo of the plan he reportedly got mad.” The news story came to the knowledge of Judge Emilio Rilloraza who was trying the Monroy murder case on 19 December 1955 and so he issued on that date an order citing Hernando Abaya, who admittedly was the news editor who wrote the story, to show cause why he should not be punished for indirect contempt in connection with the publication. A motion to dismiss the contempt citation having been denied, Abaya filed his reply to the citation. Thereafter, the contempt proceeding was set for hearing, after which the court rendered decision finding Abaya guilty of indirect contempt and ordering him to pay a fine of P50.00 payable within 15 days from notice of the decision or to suffer subsidiary imprisonment in case of insolvency.
Dissatisfied with this decision, Abaya took the present appeal.

**Issue:** Whether Abaya's act, in publishing the news story, be considered indirect contempt.

**Held:** There is nothing in the story which may even in a slight degree indicate that Abaya's ultimate purpose in publishing it was to impede, obstruct or degrade the administration of justice in connection with the Castelo case. The publication can be searched in vain for any word that would in any way degrade it. The alleged extortion try merely concerns a news story which is entirely different, distinct and separate from the Monroy murder case. Though mention was made indirectly of the decision then pending in that case, the same was made in connection with the extortion try as a mere attempt to secure the acquittal of Castelo. But the narration was merely a factual appraisal of the negotiation and no comment whatsoever was made thereon one way or the other coming from Abaya. Indeed, according to the trial judge himself, said publication did not in any way impede or obstruct his decision promulgated on 31 March 1955. For a publication to be considered as contempt of court there must be a showing not only that the article was written while a case is pending but that it must really appear that such publication does impede, interfere with and embarrass the administration of justice. Here, there is no such clear showing. The very decision of the court shows the contrary. Still, even if it may have that effect, the publication comes well within the framework of the constitutional guaranty of the freedom of the press. At least it may be said that it is a fair and true report of an official investigation that comes well within the principle of a privileged communication, so that even if the same is defamatory or contemptuous, the publisher need not be prosecuted upon the theory that he has done it to serve public interest or promote public good. Thus, under our law, it is postulated that "a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in such proceedings, or of any other act performed by public officers in the exercise of their functions", is deemed privileged and not punishable (Article 354, paragraph 2, Revised Penal Code). While the present case involves an incident of contempt the same is akin to a case of libel for both constitute limitations upon freedom of the press or freedom of expression guaranteed by our Constitution. So what is considered a privilege in one may likewise be considered in the other. The same safeguard should be extended to one whether anchored in freedom of the press or freedom of expression. Therefore, this principle regarding privileged communications can also be invoked in favor of Abaya.

426 People vs. Alarcon [GR 46551, 12 December 1939]

*En Banc, Laurel (J): 5 concur*

**Facts:** As an aftermath of the decision rendered by the Court of First Instance of Pampanga in criminal case 5733 (People s vs. Salvador Alarcon, et al.), convicting the accused therein except one — of the crime of robbery committed in band, a denunciatory letter, signed by one Luis M. Taruc, was addressed to His Excellency, the President of the Philippines. A copy of said letter found its way to Federico Mangahas who, as columnist of the Tribune, a newspaper of general circulation in the Philippines, quoted the letter in an article published by him in the issue of that paper of 23 September 1937. The article provides, in part, that “Fifty-two (52) tenants in Floridablanca, Pampanga, have been charged and convicted on a trumped up charge of robbery in band because they took each a few cavans of palay for which they issued the corresponding receipts, from the bodega in the hacienda where they are working. These tenants contend that they have the right to take the palay for their food as the hacienda owner has the obligation to give them rations of palay for their main tenance and their families to be paid later with their share of their crop. But this is not all. When the convicted tenants appealed the case and were released on bail pending their appeal, court and public officials exerted pressure upon one of their bondsmen, as this bondsman informed the tenants, to withdraw his bail for them, and the fifty two tenants were arrested again and put in jail." On 29 September 1937, the provincial fiscal of Pampanga filed with the Court of First Instance of that province to cite Federico Mangahas for contempt. On the same date, the lower court ordered Mangahas to appear and show cause. Mangahas appeared and filed an answer, alleging, among others, that “the publication of the letter in question is in line with the constitutional
guarantee of freedom of the press.” On 29 November 1937, the lower court entered an order, imposing upon Mangahas the nominal fine of P25, or in case of insolvency, 5 days in prison; this without prejudice to the action for libel that the public prosecutor believes to be advisable to file against Luis M. Taruc. Mañgahas appealed from this order to the Court of Appeals — which later certified the case to the Supreme Court as involving only a question of law.

**Issue:** Whether the trial court properly cited Mangahas for contempt inasmuch as the robbery-in-band case is still pending appeal.

**Held:** Newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitutes criminal contempt which is summarily punishable by the courts. The rule is otherwise after the cause is ended. It must, however, clearly appear that such publications do impede, interfere with, and embarrass the administration of justice before the author of the publications should be held for contempt. What is thus sought to be shielded against the influence of newspaper comments is the all-important duty of the court to administer justice in the decision of a pending case. There is no pending case to speak of when and once the court has come upon a decision and has lost control either to reconsider or amend it. That is the present case, for here the letter complained of was published after the Court of First Instance of Pampanga had decided the criminal case for robbery in band, and after that decision had been appealed to the Court of Appeals. The fact that a motion to reconsider its order confiscating the bond of the accused therein was subsequently filed may be admitted; but, the important consideration is that it was then without power to reopen or modify the decision which it had rendered upon the merits of the case, and could not have been influenced by the questioned publication. If it be contended, however, that the publication of the questioned letter constitutes contempt of the Court of Appeals where the appeal in the criminal case was then pending, the interrelation of the different courts forming our integrated judicial system, one court is not an agent or representative of another and may not, for this reason, punish contempts in vindication of the authority and de corum which are not its own. The appeal transfers the proceedings to the appellate court, and this last court be comes thereby charged with the authority to deal with contempts committed after the perfection of the appeal.

427  In Re Ramon Tulfo, AM 90-4-1545-0, April 17, 1990

428  Nestle Philippines vs. Sanchez [GR 75209, 30 September 1987]; Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Olalia [GR 78791]

*En Banc, Per Curiam: 13 concur, 1 on leave*

**Facts:** During the period July 8-10, 1987, Union of Filipro Employees, and Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Olalia, intensified the intermittent pickets they had been conducting since 17 June 1981 in front of the Padre Faura gate of the Supreme Court building. They set up pickets' quarters on the pavement in front of the Supreme Court building, at times obstructing access to and egress from the Court's premises and offices of justices, officials and employees. They constructed provisional shelters along the sidewalks, set up a kitchen and littered the place with food containers and trash in utter disregard of proper hygiene and sanitation. They waved their red streamers and placards with slogans, and took turns haranguing the court all day long with the use of loudspeakers. These acts were done even after their leaders had been received by Justices Pedro L. Yap and Marcelo B. Fernan as Chairmen of the Divisions where their cases are pending, and Atty. Jose C. Espinas, counsel of the Union of Filipro Employees, had been called in order that the pickets might be informed that the demonstration must cease immediately for the same constitutes direct contempt of court and that the Court would not entertain their petitions for as long as the pickets were maintained. Thus, on 10 July 1987, the Court en banc issued a resolution giving the said unions the opportunity to withdraw graciously and requiring Messrs. Tony Avelino, Lito Payabyab, Eugene San Pedro, Dante Escasura, Emil Sayao and Nelson Centeno, union leaders of Union of Filipro Employees in the Nestle case and their counsel of record, Atty. Jose C. Espinas; and Messrs. Ernesto Facundo, Fausto Gapuz, Jr.
Narratives (Berne Guerrero)

and Antonio Gonzales, union leaders of Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Olalia in the Kimberly case to appear before the Court on 14 July 1987 at 10:30 a.m. and then and there to show cause why they should not be held in contempt of court. Atty. Jose C. Espinas was further required to show cause why he should not be administratively dealt with. On the appointed date and time, the individuals appeared before the Court, represented by Atty. Jose C. Espinas, in the absence of Atty. Potenciano Flores, who was still recuperating from an operation. Atty. Espinas, for himself and in behalf of the union leaders concerned, apologized to the Court for the acts, together with an assurance that they will not be repeated. He likewise manifested to the Court that he had explained to the picketers why their actions were wrong and that the cited persons were willing to suffer such penalty as may be warranted under the circumstances. He, however, prayed for the Court's leniency considering that the picket was actually spearheaded by the leaders of the "Pagkakaisa ng Manggagawa sa Timog Katagalogan" (PAMANTIK), an unregistered loose alliance of about 75 unions in the Southern Tagalog area, and not by either the Union of Filipro Employees or the Kimberly Independent Labor Union. To confirm for the record that the person cited for contempt fully understood the reason for the citation and that they will abide by their promise that said incident will not be repeated, the Court required the respondents to submit a written manifestation to this effect, which respondents complied with on 17 July 1987.

**Issue:** Whether the respondents should be cited for contempt for their continued picketing at the Supreme Court's premises.

**Held:** The right of petition is conceded to be an inherent right of the citizen under all free governments. However, such right, natural and inherent though it may be, has never been invoked to shatter the standards of propriety entertained for the conduct of courts. For "it is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies." Moreover, "parties have a constitutional right to have their causes tried fairly in court by an impartial tribunal, uninfluenced by publication or public clamor. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law free from outside coercion or interference." The acts of the respondents are therefore not only an affront to the dignity of the Court, but equally a violation of the right of the adverse parties and the citizenry at large. Still, the individuals cited, who are non-lawyers, are not knowledgeable in the intricacies of substantive and adjective laws. They are not aware that even as the rights of free speech and of assembly are protected by the Constitution, any attempt to pressure or influence courts of justice through the exercise of either right amounts to an abuse thereof, is no longer within the ambit of constitutional protection, nor did they realize that any such efforts to influence the course of justice constitutes contempt of court. The duty and responsibility of advising them, therefore, rest primarily and heavily upon the shoulders of their counsel of record. Atty. Jose C. Espinas, when his attention was called by this Court, did his best to demonstrate to the pickets the untenability of their acts and posture. The incident should therefore serve as a reminder to all members of the legal profession that it is their duty as officers of the court to properly apprise their clients on matters of decorum and proper attitude toward courts of justice, and to labor leaders of the importance of a continuing educational program for their members.

429 In Re Atty. Emil Jurado AM 90-5-2373 July 12, 1990

430 Primicias vs. Fugoso [GR L-1800, 27 January 1948]

Resolution En Banc, Feria (J): 5 concur

**Facts:** The Philippine Legislature has delegated the exercise of the police power to the Municipal Board of the City of Manila, which according to section 2439 of the Administrative Code is the legislative body of the City. Section 2444 of the same Code grants the Municipal Board, among others, the following legislative

Constitutional Law II, 2005 (28)
powers, to wit: "(p) to provide for the prohibition and suppression of riots, affrays, disturbances and disorderly assemblies, (u) to regulate the use of streets, avenues, parks, cemeteries and other public places" and "for the abatement of nuisances in the same," and "(ee) to enact all ordinances it may deem necessary and proper for sanitation and safety, the furtherance of prosperity and the promotion of morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants." Under the above delegated power, the Municipal Board of the City of Manila, enacted sections 844 and 1119. Section 844 of the Revised Ordinances of 1927 prohibits as an offense against public peace, and section 1262 of the same Revised Ordinance penalizes as a misdemeanor, "any act, in any public place, meeting, or procession, tending to disturb the peace or excite a riot; or collect with other persons in a body or crowd for any unlawful purpose; or disturb or disquiet any congregation engaged in any lawful assembly." And section 1119 provides that "The streets and public places of the city shall be kept free and clear for the use of the public, and the sidewalks and crossings for the pedestrians, and the same shall only be used or occupied for other purposes as provided by ordinance or regulation: Provided, That the holding of athletic games, sports, or exercises during the celebration of national holidays in any streets or public places of the city and on the patron saint day of any district in question, may be permitted by means of a permit issued by the Mayor, who shall determine the streets or public places, or portions thereof, where such athletic games, sports, or exercises may be held: And provided, further, That the holding of any parade or procession in any streets or public places is prohibited unless a permit therefor is first secured from the Mayor, who shall, on every such occasion, determine or specify the streets or public places for the formation, route, and dismissal of such parade or procession: And provided, finally, That all applications to hold a parade or procession shall be submitted to the Mayor not less than twenty-four hours prior to the holding of such parade or procession." An action of mandamus was instituted by Cipriano Primicias, a campaign manager of the Coalesced Minority Parties against Valeriano Fugoso, as Mayor of the City of Manila, to compel the latter to issue a permit for the holding of a public meeting at Plaza Miranda on Sunday afternoon, 16 November 1947, for the purpose of petitioning the government for redress to grievances on the ground that Fugoso refused to grant such permit. Due to the urgency of the case, the Court, after mature deliberation, issued a writ of mandamus, as prayed for in the petition on 15 November 1947, without prejudice to writing later an extended and reasoned decision.

Issue: Whether the Mayor of Manila may be compelled to issue a permit to use Plaza Miranda to hold a public meeting.

Held: The right to freedom of speech, and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils to enact ordinances for the purpose. Herein, as there is no express and separate provision in the Revised Ordinance of the City regulating the holding of public meeting or assembly at any street or public places, the provisions of said section 1119 regarding the holding of any parade or procession in any street or public places may be applied by analogy to meeting and assembly in any street or public places. The provisions of the said ordinance are construed to mean that it does not confer upon the Mayor the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held. The Court cannot adopt the other alternative construction or construe the ordinance under consideration as conferring upon the Mayor power to grant or refuse to grant the permit, which would be tantamount to authorizing him to prohibit the use of the streets and other public places for holding of meetings, parades or
processions, because such a construction would make the ordinance invalid and void or violative of the constitutional limitations. As the Municipal Board is empowered only to regulate the use of streets, parks, and other public places, and the word "regulate," as used in section 2444 of the Revised Administrative Code, means and includes the power to control, to govern, and to restrain, but can not be construed as synonymous with "suppress" or "prohibit.,” the Municipal Board can not grant the Mayor a power which it does not have. In view of all the foregoing, the petition for mandamus was granted and, there appearing no reasonable objection to the use of the Plaza Miranda, Quiapo, for the meeting applied for, the mayor was ordered to issue the corresponding permit, as requested.

431 Navarro vs. Villegas [GR L-31687, 26 February 1970]

Resolution: 1 concur in separate opinion, 2 dissented

Facts: Navarro requested for a permit to hold a meeting at Plaza Miranda in the afternoon of 26 February 1970. The Mayor of Manila, Villegas, instead offered the Sunken Gardens, as an alternative to Plaza Miranda, as the site of the demonstration. Mayor Villegas has not denied nor absolutely refused the permit sought by Navarro. Navarro filed the petition for mandamus. The Court, after considering the pleadings and arguments of the parties, issued a Resolution without prejudice to a more extended opinion.

Issue: Whether the Mayor possesses discretion to determine the public places to be used for assembly, i.e. the Sunken Garden, instead of Plaza Miranda.

Held: As stated in Primicias v. Fugoso (80 Phil. 75), the Mayor possesses reasonable discretion to determine or specify the streets or public places to be used for the assembly in order to secure convenient use thereof by others and provide adequate and proper policing to minimize the risks of disorder and maintain public safety and order. The Mayor has expressly stated his willingness to grant permits for peaceful assemblies at Plaza Miranda during Saturdays, Sundays and holidays when they would not cause unnecessarily great disruption of the normal activities of the community and has further offered Sunken Gardens as an alternative to Plaza Miranda as the site of the demonstration sought to be held in the afternoon of 26 February 1970. Experiences in connection with present assemblies and demonstrations do not warrant the Court's disbelieving the Mayor's appraisal that a public rally at Plaza Miranda, as compared to one at the Sunken Gardens as he suggested, poses a clearer and more imminent danger of public disorders, breaches of the peace, criminal acts, and even bloodshed as an aftermath of such assemblies, and petitioner has manifested that it has no means of preventing such disorders. Consequently, every time that such assemblies are announced, the community is placed in such a state of fear and tension that offices are closed early and employees dismissed, storefronts boarded up, classes suspended, and transportation disrupted, to the general detriment of the public. Civil rights and liberties can exist and be preserved only in an ordered society. Navarro has failed to show a clear specific legal duty on the part of Mayor to grant their application for permit unconditionally.

432 Ignacio vs. Ela [GR L-6858, 31 May 1956]

En Banc, Bautista Angelo (J): 6 concur, 1 dissents in separate opinion

Facts: Fernando Ignacio and Simeon de la Cruz, in their behalf and for the benefit of other Jehovah's Witnesses in the province of Zambales, filed the petition for mandamus to compel Mayor Norberto Ela of Sta. Cruz to grant a permit to hold a public meeting at the public plaza of Sta. Cruz, Zambales, together with the kiosk, on such date and time as may be applied for by them. Mayor Ela, in his answer, stated that he had not refused Ignacio, et. al.'s request to hold a religious meeting at the public plaza as in fact he grave them permission to use the northwestern part of the plaza on 27 July 1952, but they declined to avail of it.

Issue: Whether the power exercised by Mayor Ela is capricious or arbitrary when he prohibited the use of the kiosk in the public plaza.
Held: The right to freedom of speech and to peacefully assemble, though guaranteed by our Constitution, is not absolute, for it may be regulated in order that it may not be "injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society", and this power may be exercised under the "police power" of the state, which is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of the people. It is true that there is no law nor ordinance which expressly confers upon respondents the power to regulate the use of the public plaza, together with its kiosk, for the purposes for which it was established, but such power may be exercised under his broad powers as chief executive in connection with his specific duty "to issue orders relating to the police or to public safety" within the municipality (section 2194, paragraph c, Revised Administrative Code). And it may even be said that the above regulation has been adopted as an implementation of the constitutional provision which prohibits any public property to be used, directly or indirectly, by any religious denomination (paragraph 3, section 23, Article VI of the Constitution). Herein, the power exercised by Mayor Ela cannot be considered as capricious or arbitrary considering the peculiar circumstances. It appears that the public plaza, particularly the kiosk, is located at a short distance from the Roman Catholic Church. The proximity of said church to the kiosk has caused some concern on the part of the authorities that to avoid disturbance of peace and order, or the happening of untoward incidents, they deemed it necessary to prohibit the use of that kiosk by any religious denomination as a place of meeting of its members. This was the policy adopted by Mayor Ela for sometime previous to the request made by Ignacio, et. al.. Mayor Ela never denied such request but merely tried to enforce his policy by assigning them the northwestern part of the public plaza. It cannot therefore be said that Ignacio, et. al. were denied their constitutional right to assemble for, as was said, such right is subject to regulation to maintain public order and public safety. This is especially so considering that the tenets of Ignacio, et. al.'s congregation are derogatory to those of the Roman Catholic Church, a factor which Mayor Ela must have considered in denying their request.

Facts: Retired Justice J.B.L. Reyes, on behalf of the Anti-Bases Coalition, sought a permit from the City of Manila to hold a peaceful march and rally on 26 October 1983 from 2:00 to 5:00 p.m., starting from the Luneta, a public park, to the gates of the United States Embassy, hardly two blocks away. Once there, and in an open space of public property, a short program would be held. After the planned delivery of two brief speeches, a petition based on the resolution adopted on the last day by the International Conference for General Disarmament, World Peace and the Removal of All Foreign Military Bases held in Manila, would be presented to a representative of the Embassy or any of its personnel who may be there so that it may be delivered to the United States Ambassador. The march would be attended by the local and foreign participants of such conference. An assurance was made to observe all the necessary steps "to ensure a peaceful march and rally." Since Reyes had not been informed of any action taken on his request on behalf of the organization to hold a rally, on 20 October 1983, he filed a suit for mandamus with alternative prayer for writ of preliminary mandatory injunction. The oral argument was heard on 25 October 1983, the very same day the answer was filed. The Court then deliberated on the matter. That same afternoon, a minute resolution was issued by the Court granting the mandatory injunction prayed for on the ground that there was no showing of the existence of a clear and present danger of a substantive evil that could justify the denial of a permit. The last sentence of such minute resolution reads: "This resolution is without prejudice to a more extended opinion." Hence the detailed exposition of the Court's stand on the matter.

Issue: Whether Reyes, et. al. can exercise their freedom of speech, press, or to assemble in front of the US embassy.

Held: The Constitution is quite explicit: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."
Free speech, like free press, may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment. 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 a substantive evil that [the State] has a right to prevent." Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent. The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest. There can be no legal objection, absent the existence of a clear and present danger of a substantive evil, on the choice of Luneta as the place where the peace rally would start. Neither can there be any valid objection to the use of the streets to the gates of the US Embassy, hardly two blocks away at the Roxas Boulevard. The novel aspect of the case is that there would be a short program upon reaching the public space between the two gates of the United States Embassy at Roxas Boulevard. Related to this, the second paragraph of its Article 22 of the Vienna Convention on Diplomatic Relations (to which the Philippines is a signatory) reads: "2. The receiving State is under a special duty to take appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity." That being the case, if there were a clear and present danger of any intrusion or damage, or disturbance of the peace of the mission, or impairment of its dignity, there would be a justification for the denial of the permit insofar as the terminal point would be the Embassy. Moreover, Ordinance 7295 of the City of Manila prohibits the holding or staging of rallies or demonstrations within a radius of 500 feet from any foreign mission or chancery; and for other purposes. Even then, if the ordinance is nullified, or declared ultra vires, its invocation as a defense is understandable but not decisive, in view of the primacy accorded the constitutional rights of free speech and peaceable assembly. There was no showing, however, that the distance between the chancery and the embassy gate is less than 500 feet. Even if it could be shown that such a condition is satisfied, it does not follow that the Mayor could legally act the way he did. The validity of his denial of the permit sought could still be challenged. It could be argued that a case of unconstitutional application of such ordinance to the exercise of the right of peaceable assembly presents itself. As in this case there was no proof that the distance is less than 500 feet, the need to pass on that issue was obviated. The high estate accorded the rights to free speech and peaceable assembly demands nothing less.

Ruiz vs. Gordon [GR L-65695, 19 December 1983]

En Banc, Fernando (J): 10 concur

Facts: On 21 November 1983, Hector S. Ruiz, as coordinator of the Olongapo Citizen's Alliance for National Reconciliation, and in behalf of the Olongapo Citizen's Alliance for National Reconciliation, Justice for Aquino Justice for All (JAJA), Concern Citizen for Justice and Peace (CCJP), Damdamin Bayan na Nagkakaisa (DAMBANA), United Nationalist Democratic Organization (UNIDO), personally delivered to Richard Gordon, as City Mayor of Olongapo City, a letter-application dated 19 November 1983, requesting for a permit to hold a prayer-rally at the Rizal Triangle, Olongapo City on 4 December 1983 from 1:00 P.M. until it will be finished in the early evening. It was also requested that the organizations to be allowed to hold a parade/march from Gordon Avenue to the Rizal Triangle starting at 1:00 P.M. The permit was issued on 23 November 1983, granting Ruiz's request for a permit to hold a prayer rally at the Rizal Triangle, Olongapo City and a parade/march from Gordon Avenue at 1:00 p.m. of 4 December 1983, provided that (1) The parade/march and rally will be peaceful and orderly; (2) Your organization will be responsible for any loss or damage to government property and for the cleanliness of the Rizal Triangle; (3) The parade/march shall proceed from the corner of Gordon Ave., and Magsaysay Drive, through Magsaysay Drive, to Rizal Ave., thence to the Rizal Triangle. Ruiz filed a petition for mandamus on 25 November 1983 against Gordon. On November 27, the Court resolved to grant Gordon's plea for dismissal. Ruiz, on 1 December 1983, filed a
motion dated November 29 to withdraw petition on the ground that the permit being sought in the prayer-rally to be held on 4 December 1983 from 1:00 to 6:00 PM has been granted by Gordon.

**Issue:** Whether the permit applicant should be the active party to determine if a permit has been issued to it before a petition for mandamus is filed in court.

**Held:** The action for mandamus could have been obviated if only petitioner took the trouble of verifying on November 23 whether or not a permit had been issued. A party desirous of exercising the right to peaceable assembly should be the one most interested in ascertaining the action taken on a request for a permit. Necessarily, after a reasonable time or, if the day and time was designated for the decision on the request, such party or his representative should be at the office of the public official concerned. If he fails to do so, a copy of the decision reached, whether adverse or favorable, should be sent to the address of petitioner. In that way, there need not be waste of time and effort not only of the litigants but likewise of a court from which redress is sought in case of a denial or modification of a request for a permit. Lately, several petitions of this character have been filed with the Supreme Court. It could be due to the lack of knowledge of the guidelines set forth in the extended opinion. Steps have been taken to send the Regional Trial judges copies thereof. In the future, therefore, without precluding the filing of petitions directly with the Supreme Court, the interest of justice and of public convenience would be better served if litigation starts on the trial court level.

**Facts:** Crispin Malabanan, Evilio Jalos, Ben Luther Lucas, Sotero Leonero and June Lee were officers of the Supreme Student Council of the Gregorio Araneta University Foundation. They sought and were granted by the school authorities a permit to hold a meeting from 8:00 A.M. to 12:00 P.M. on 27 August 1982. Pursuant to such permit, along with other students, they held a general assembly at the Veterinary Medicine and Animal Science basketball court (VMAS), the place indicated in such permit, not in the basketball court as therein stated but at the second floor lobby. At such gathering they manifested in vehement and vigorous language their opposition to the proposed merger of the Institute of Animal Science with the Institute of Agriculture. At 10:30 A.M., the same day, they marched toward the Life Science Building and continued their rally. It was outside the area covered by their permit. They continued their demonstration, giving utterance to language severely critical of the University authorities and using megaphones in the process. There was, as a result, disturbance of the classes being held. Also, the non-academic employees, within hearing distance, stopped their work because of the noise created. They were asked to explain on the same day why they should not be held liable for holding an illegal assembly. Then on 9 September 1982, they were informed through a memorandum that they were under preventive suspension for their failure to explain the holding of an illegal assembly. On 20 October 1982, Anastacio D. Ramento, as Director of the National Capital Region, found Malabanan, et. al. guilty of the charge of having violated paragraph 146(c) of the Manual for Private Schools more specifically their holding of an illegal assembly which was characterized by the violation of the permit granted resulting in the disturbance of classes and oral defamation. The penalty was suspension for one academic year. Hence, the petition for certiorari, prohibition and mandamus.

**Issue:** Whether the students were properly meted out a year suspension due to the disruption of classes in GAUF attended by the students’ concerted activity.

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**435 Malabanan vs. Ramento [GR 62270, 21 May 1984]**

*En Banc, Fernando (CJ): 10 concur, 3 took no part*

**Facts:** Crispin Malabanan, Evilio Jalos, Ben Luther Lucas, Sotero Leonero and June Lee were officers of the Supreme Student Council of the Gregorio Araneta University Foundation. They sought and were granted by the school authorities a permit to hold a meeting from 8:00 A.M. to 12:00 P.M. on 27 August 1982. Pursuant to such permit, along with other students, they held a general assembly at the Veterinary Medicine and Animal Science basketball court (VMAS), the place indicated in such permit, not in the basketball court as therein stated but at the second floor lobby. At such gathering they manifested in vehement and vigorous language their opposition to the proposed merger of the Institute of Animal Science with the Institute of Agriculture. At 10:30 A.M., the same day, they marched toward the Life Science Building and continued their rally. It was outside the area covered by their permit. They continued their demonstration, giving utterance to language severely critical of the University authorities and using megaphones in the process. There was, as a result, disturbance of the classes being held. Also, the non-academic employees, within hearing distance, stopped their work because of the noise created. They were asked to explain on the same day why they should not be held liable for holding an illegal assembly. Then on 9 September 1982, they were informed through a memorandum that they were under preventive suspension for their failure to explain the holding of an illegal assembly in front of the Life Science Building. The validity thereof was challenged by Malabanan, et. al. both before the Court of First Instance of Rizal in a petition for mandamus with damages against Cesar Mijares, in his capacity as the President of GAUF, Gonzalo del Rosario, in his capacity as the Director for Academic Affairs of GAUF; Tomas B. Mesina, in his capacity as the Dean of Student Affairs of GAUF; Atty. Leonardo Padilla, in his capacity as Chief Legal Counsel & Security Supervisor of GAUF; Atty. Fablita Ammay, Rosendo Galvante and Eugenia Tayao, in their capacities as members of the Ad Hoc Committee of GAUF and before the Ministry of Education, Culture, and Sports. On 20 October 1982, Anastacio D. Ramento, as Director of the National Capital Region, found Malabanan, et. al. guilty of the charge of having violated paragraph 146(c) of the Manual for Private Schools more specifically their holding of an illegal assembly which was characterized by the violation of the permit granted resulting in the disturbance of classes and oral defamation. The penalty was suspension for one academic year. Hence, the petition for certiorari, prohibition and mandamus.

**Issue:** Whether the students were properly meted out a year suspension due to the disruption of classes in GAUF attended by the students’ concerted activity.
Held: Malabanan, et.al. are entitled to their rights to peaceable assembly and free speech. They enjoy like the rest of the citizens the freedom to express their views and communicate their thoughts to those disposed to listen in gatherings. They do not, to borrow from the opinion of Justice Fortas in Tinker v. Des Moines Community School District, "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." While, therefore, the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards. On a more specific level, there is persuasive force to this formulation in the Fortas opinion: "The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without 'materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others. But conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." It does not follow, however, that Malabanan, et. al. can be totally absolved for the events that transpired. Admittedly, there was a violation of the terms of the permit. The rally was held at a place other than that specified, in the second floor lobby, rather than the basketball court, of the VMAS building of the University. Moreover, it was continued longer than the period allowed. The "concerted activity went on until 5:30 p.m." The University could thus, take disciplinary action. On those facts, however, an admonition, even a censure — certainly not a suspension — could be the appropriate penalty. A one-year period of suspension is much too severe. While the discretion of both the University and Director Ramento is recognized, the rule of reason, the dictate of fairness calls for a much lesser penalty. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of arbitrariness intrudes. That would give rise to a due process question. To avoid this constitutional objection, it is the holding of the Court that a one-week suspension would be punishment enough.

436 Arreza vs. Gregorio Araneta University Foundation [GR L-62297, 19 June 1985]  
En Banc, Fernando (J): 12 concur, 1 took no part

Facts: Carmelo A. Arreza, Lonesto G. Oidem, Jacob F. Meimban, and Edgardo S. Fernando were either leaders or participants in what the Gregorio Araneta University Foundation referred to as a rally/demonstration held on 28 September 1982, in front of the Life Science Building of the University, and are officers and members of the Supreme Student Council of said university. The demonstration's purpose was to register the opposition of the students to the abolition of the school's Institute of Animal Science, as those taking courses therein would not be able to graduate. Other rallies were held on September 8, 27 and 29, 1982, for the purpose of sympathizing with the suspension of 5 student leaders who conducted an illegal assembly on 27 August 1982, causing additional disturbance on the campus, not only by the disorderly conduct observed but also by the resulting boycott of classes. Such exercise of the right to peaceable assembly was visited by the University with a refusal to let Arreza, et. al. enroll after an investigation of their alleged violation of school rules and regulations. Arreza, et. al. filed a petition for mandamus with a prayer for a preliminary mandatory injunction to allow them to enroll.

Issue: Whether the students may be denied re-enrollment due to the improper conduct attributed to them in the exercise of their free speech and peaceable assembly.

Held: If in the course of such demonstration, with an enthusiastic audience goading them on, utterances, extremely critical, at times even vitriolic, were let loose, that is quite understandable. Student leaders are
Narratives (Berne Guerrero)

hardly the timid diffident types. They are likely to be assertive and dogmatic. They would be ineffective if during a rally they speak in the guarded and judicious language of the academe. At any rate, even a sympathetic audience is not disposed to accord full credence to their fiery exhortations. They take into account the excitement of the occasion, the propensity of speakers to exaggerate, the exuberance of youth. They may give the speakers the benefit of their applause, but with the activity taking place in the school premises and during the daytime, no clear and present danger of public disorder is discernible. This is without prejudice to the taking of disciplinary action for conduct, which, to borrow from Tinker, “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” Herein, the infractions of University rules or regulations by the students justify the filing of appropriate charges. What cannot be justified is the infliction of the highly-disproportionate penalty of denial of enrollment and the consequent failure of senior students to graduate, if in the exercise of the cognate rights of free speech and peaceable assembly, improper conduct could be attributed to them.

437  German vs. Barangan [GR 68828, 27 March 1985]

En Banc, Escolin (J): 4 concur, 1 concurs in result, 1 took no part, 1 filed separate opinion, 1 concurs in separate opinion, 5 dissent in separate opinion

Facts: At about 5:00 p.m. of 2 October 1984, Reli German, Ramon Pedrosa, Tirso Santillan, Jr., Ma. Luisa Andal, Nieva Malinis, Ricardo Laviña, Cesar Cortes, Danilo Reyes, Jose Reyes, Josefina Mate, Lourdes Calma, Mildred Juan, Olive Guanzon, Fernando Cochico, Sherman Cid, Nazareno Bentulan, Roslina Donaire, Mario Martinez, Beatriz Teylan, Angelina Lapid, Rosemarie Flores, Daniel Van Soto, Edgardo Mercader, Nelly Agustín, Marily Magcalas, David Chan, Arsenio Salansang, Nelson De Guzman, Marciano Araneta, Cesar Meneses, Dionisio Rellosa, Mario Santiago, Severino Santos, Leonora Santos, Nimfa Doronilla, Florence Quinto, Rosalina Manansala, Percival Ostonal, Tommy Macaranas, Roger Nicandro, composed of about 50 businessmen, students and office employees converged at J.P. Laurel Street, Manila, for the ostensible purpose of hearing Mass at the St. Jude Chapel which adjoins the Malacañang grounds locate in the same street. Wearing the now familiar inscribed yellow T-shirts, they started to march down said street with raised clenched fists and shouts of anti-government invectives. Along the way, however, they were barred by Major Isabelo Lariosa, upon orders of his superior Gen. Santiago Barangan, from proceeding any further, on the ground that St. Jude Chapel was located within the Malacañang security area. When German, et. al.’s protestations and pleas to allow them to get inside the church proved unavailing, they decided to leave. However, because of the alleged warning given them by Major Lariosa that any similar attempt by German, et. al. to enter the church in the future would likewise be prevented, they filed a petition for mandamus to compel Barangan, et. al. to allow them to enter and pray inside St. Jude Chapel located at J.P. Laurel Street, Manila; and for a writ of injunction to enjoin Barangan, et. al. from preventing them from getting into and praying in said church.

Issue: Whether the acts of Gen. Barangan, et. al. violates the rights of German, et. al. to freedom of religion and locomotion.

Held: Gen. Barangan and Maj. Lariosa assured German, et. al. and the Court that they have never restricted, and will never restrict, any person or persons from entering and worshiping at said church, but maintained, however, that the latter's intention was not really to perform an act of religious worship, but to conduct an anti-government demonstration at a place close to the very residence and offices of the President of the Republic. The yellow T-shirts worn by some of the marchers, their raised clenched fists, and chants of anti-government slogans strongly tend to substantiate the militarymen's allegation. There are serious doubts on the sincerity and good faith of German, et. al. in invoking the constitutional guarantee of freedom of religious worship and of locomotion. While it is beyond debate that every citizen has the undeniable and inviolable right to religious freedom, the exercise thereof, and of all fundamental rights for that matter, must be done in good faith. As Article 19 of the Civil Code admonishes: “Every person must in the exercise of his rights and in the performance of his duties observe honesty and good faith.” Even assuming that German, et. al.’s claim
to the free exercise of religion is genuine and valid, still Barangan, et. al.’s reaction to the 2 October 1984 mass action may not be characterized as violative of the freedom of religious worship. Since 1972, when mobs of demonstrators crashed through the Malacañang gates and scaled its perimeter fence, the use by the public of J P. Laurel Street and the streets approaching it have been restricted. While travel to and from the affected thoroughfares has not been absolutely prohibited, passers-by have been subjected to courteous, unobtrusive security checks. The reasonableness of this restriction is readily perceived and appreciated if it is considered that the same is designed to protect the lives of the President and his family, as well as other government officials, diplomats and foreign guests transacting business with Malacañang. The need to secure the safety of heads of state and other government officials cannot be overemphasized. The threat to their lives and safety is constant, real and felt throughout the world. Vivid illustrations of this grave and serious problem are the gruesome assassinations, kidnapings and other acts of violence and terrorism that have been perpetrated against heads of state and other public officers of foreign nations. Said restriction is moreover intended to secure the several executive offices within the Malacañang grounds from possible external attacks and disturbances. These offices include communications facilities that link the central government to all places in the land. Unquestionably, the restriction imposed is necessary to maintain the smooth functioning of the executive branch of the government, which petitioners’ mass action would certainly disrupt. In fine, the restriction imposed on the use of J.P. Laurel Street is allowed under the fundamental law, the same having been established in the interest of national security.

438  
Acosta vs. Court of Appeals [GR 132088, 28 June 2000]  
Second Division, De Leon Jr. (J): 3 concur, 1 took no part  

**Facts:**  
Department of Education, Culture and Sports (DECS), Acosta, et. al. were administratively charged with such offenses as grave misconduct, gross neglect of duty, gross violation of civil service law, rules and regulations and reasonable office regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interest of the service and absence without official leave. Acosta, et. al. failed to answer these charges. Following the investigations conducted by the DECS Investigating Committees, Secretary Cariño found Acosta, et. al. guilty as charged and ordered their immediate dismissal from the service. Acosta, et. al. appealed the orders of Secretary Cariño to the Merit Systems Protection Board (MSPB) and later to the CSC. In 1995, the CSC modified the said orders of Secretary Cariño by finding Acosta guilty of Conduct Prejudicial to the Best Interest of the Service, adn was meted out the penalty of 6 months suspension without pay; but considering the period of time she was out of service, she was automatically reinstated to her former position. Following the denial of their motion for reconsideration, Acosta, et. al. questioned the matter before the Court of Appeals. The appellate court denied their petition for certiorari (29 August 1997) and subsequent motion for reconsideration (7 January 1998). Hence, the petition for review on certiorari.

**Issue:** Whether the participation of the public school teachers in the mass actions was an exercise of their constitutional rights to peaceably assemble and petition the government for redress of grievances.

**Held:** The character and legality of the mass actions which they participated in have been passed upon by the Court as early as 1990 in Manila Public School Teachers' Association (MPSTA) v. Laguio, Jr. wherein it ruled that "these 'mass actions' were to all intents and purposes a strike; they constituted a concerted and unauthorized stoppage of, or absence from, work which it was the teachers' sworn duty to perform, undertaken for essentially economic reasons." In Bangalisan v. Court of Appeals, it added that "it is an undisputed fact that there was a work stoppage and that petitioners' purpose was to realize their demands by withholding their services. The fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling. The ability to strike is not essential to the right of association. In the absence of statute, public employees do not have the right to engage in concerted work stoppages for any purpose." It is not the exercise by Acosta, et. al. of their constitutional right to peaceably assemble that was punished, but the manner in which they exercised such right which resulted in the temporary stoppage or disruption of public service and classes in various public schools in Metro Manila. For, indeed, there are efficient and non-disruptive avenues, other than the mass actions in question, whereby Acosta, et. al. could petition the government for redress of grievances. It bears stressing that suspension of public services, however temporary, will inevitably derail services to the public, which is one of the reasons why the right to strike is denied government employees. It may be conceded that Acosta, et. al. had valid grievances and noble intentions in staging the "mass actions," but that will not justify their absences to the prejudice of innocent school children. Their righteous indignation does not legalize an illegal work stoppage.

439 Gonzales vs. Kalaw-Katigbak [GR L-69500, 22 July 1985]

*En Banc, Fernando (J): 10 concur, 1 concur in result, 1 took no part, 1 on official leave*

**Facts:** Jose Antonio U. Gonzalez is the President of the Malaya Films, a movie production outfit duly registered as a single proprietorship with the Bureau of Domestic Trade; while Maria Kalaw Katigbak and Brig. Gen. Wilfredo C. Estrada are the Chairman and Vice-Chairman, respectively of the Board of Review for Motion Pictures and Television. In a resolution of a sub-committee of the Board of 23 October 1984, a permit to exhibit the film "Kapit sa Patalim" under the classification "For Adults Only," with certain changes and deletions enumerated was granted. The film in issue was given an adult classification to serve as a warning to theater operators and viewers that some contents of Kapit are not fit for the young. Some of the scenes in the picture were taken in a theater-club and a good portion of the film shots concentrated on some women erotically dancing naked, or at least nearly naked, on the theater stage. Another scene on that stage depicted the women kissing and caressing as lesbians. And toward the end of the picture, there exists scenes of excessive violence attending the battle between a group of robbers and the police. The vulnerable and
imitative in the young audience will misunderstand these scenes. The Board gave Malaya films an option to have the film reclassified to For-General-Patronage if it would agree to remove the obscene scenes and pare down the violence in the film. A motion for reconsideration was filed by Gonzales, in behalf of Malaya Films, Lino Brocka, Jose F. Lacaba, and Dulce Q. Saguisag, stating that the classification of the film "For Adults Only" was without basis. Then on 12 November 1984, the Board released its decision: "Acting on the applicant's Motion for Reconsideration dated 29 October 1984, the Board, after a review of the resolution of the sub-committee and an examination of the film, Resolves to affirm in toto the ruling of the sub-committee. Considering, however, certain vital deficiencies in the application, the Board further Resolves to direct the Chairman of the Board to Withhold the issuance of the Permit to exhibit until these deficiencies are supplied." On 10 January 1985, Gonzales, et. al. filed the petition for certiorari with the Supreme Court.

**Issue:** Whether the Board of Review for Motion Pictures and Television have the power to classify the movie “Kapit sa Patalim” under the classification “For Adults Only” and impose conditions to edit the material to allow it a “General patronage” rating.

**Held:** Motion pictures are important both as a medium for the communication of ideas and the expression of the artistic impulse. Their effects on the perception by our people of issues and public officials or public figures as well as the prevailing cultural traits is considerable. The “importance of motion pictures as an organ of public opinion lessened by the fact that they are designed to entertain as well as to inform.” There is no clear dividing line between what involves knowledge and what affords pleasure. If such a distinction were sustained, there is a diminution of the basic right to free expression. Press freedom "may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment." This is not to say that such freedom, as is the freedom of speech, absolute. It can be limited if "there be a 'clear and present danger of a substantive evil that [the State] has a right to prevent.'" Censorship or previous restraint certainly is not all there is to free speech or free press. If it were so, then such basic rights are emasculated. It is, however, except in exceptional circumstances a sine qua non for the meaningful exercise of such right. This is not to deny that equally basic is the other important aspect of freedom from liability. To avoid an unconstitutional taint on its creation, the power of the Board is limited to the classification of films. It can, to safeguard other constitutional objections, determine what motion pictures are for general patronage and what may require either parental guidance or be limited to adults only. That is to abide by the principle that freedom of expression is the rule and restrictions the exemption. The power to exercise prior restraint is not to be presumed, rather the presumption is against its validity. The test, to repeat, to determine whether freedom of expression may be limited is the clear and present danger of an evil of a substantive character that the State has a right to prevent. Such danger must not only be clear but also present. There should be no doubt that what is feared may be traced to the expression complained of. The causal connection must be evident. Also, there must be reasonable apprehension about its imminence. The time element cannot be ignored. Nor does it suffice if such danger be only probable. There is the requirement of its being well-nigh inevitable. The basic postulate, therefore, is that where the movies, theatrical productions, radio scripts, television programs, and other such media of expression are concerned — included as they are in freedom of expression — censorship, especially so if an entire production is banned, is allowable only under the clearest proof of a clear and present danger of a substantive evil to public safety, public morals, public health or any other legitimate public interest. There is merit to the observation of Justice Douglas that "every writer, actor, or producer, no matter what medium of expression he may use, should be freed from the censor." The law, however, frowns on obscenity. All ideas having even the slightest redeeming social importance - unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion - have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. There was an abuse of discretion by the Board in the light of the difficulty and travail undergone by Gonzales, et. al. before “Kapit sa Patalim” was classified as "For Adults Only," without any deletion or cut. Moreover the Board’s perception of what constitutes obscenity appears to be unduly restrictive. The Court concludes thus that there was an abuse of discretion. Nonetheless, there are not enough votes to maintain that
such an abuse can be considered grave. Accordingly, certiorari does not lie.

440 Lagunzad vs. Soto Vda. de Gonzales [GR L-32066, 6 August 1979]

First Division, Melencio-Herrera (J): 4 concur, 1 concurs in result

Facts: Sometime in August 1961, Manuel Lagunzad, a newspaperman, began the production of a movie entitled "The Moises Padilla Story" under the name of his own business outfit, the "MML Productions." It was based mainly on the copyrighted but unpublished book of Atty. Ernesto Rodriguez, Jr., entitled "The Long Dark Night in Negros" subtitled "The Moises Padilla Story," the rights to which Lagunzad had purchased from Atty. Rodriguez in the amount of P2,000.00. The book narrates the events which culminated in the murder of Moises Padilla sometime between November 11 and November 17, 1951. Padilla was then a mayoralty candidate of the Nacionalista Party (then the minority party) for the Municipality of Magallon, Negros Occidental, during the November 1951 elections. Governor Rafael Lacson, a member of the Liberal Party then in power and his men were tried and convicted for that murder in People vs. Lacson, et al. In the book, Moises Padilla is portrayed as "a martyr in contemporary political history." Although the emphasis of the movie was on the public life of Moises Padilla, there were portions which dealt with his private and family life including the portrayal in some scenes, of his mother, Maria Soto Vda. de Gonzales, and of one "Auring" as his girl friend. The movie was scheduled for a premiere showing on 16 October 1961, or at the very latest, before the November 1961 elections. On 3 October 1961, Lagunzad received a telephone call from one Mrs. Nelly Amante, half-sister of Moises Padilla, objecting to the filming of the movie and the "exploitation" of his life. Shown the early "rushes" of the picture, Mrs. Amante and her sister, Mrs. Gavieres, objected to many portions thereof notwithstanding Lagunzad's explanation that the movie had been supervised by Ernesto Rodriguez, Jr., based on his book "The Long Dark Night in Negros." On 5 October 1961, Mrs. Amante, for and in behalf of her mother, demanded in writing for certain changes, corrections and deletions in the movie. Lagunzad contends that he acceded to the demands because he had already invested heavily in the picture to the extent of mortgaging his properties, in addition to the fact that he had to meet the scheduled target date of the premiere showing. On the same date, 5 October 1961, after some bargaining as to the amount to be paid, which was P50,000.00 at first, then reduced to P20,000.00, Lagunzad and Soto vda. de Gonzales, executed a "Licensing Agreement." Lagunzad takes the position that he was pressured into signing the Agreement because of Soto vda. de Gonzales' demand, through Mrs. Amante, for payment for the "exploitation" of the life story of Moises Padilla, otherwise, she would "call a press conference declaring the whole picture as a fake, fraud and a hoax and would denounce the whole thing in the press, radio, television and that they were going to Court to stop the picture." On 10 October 1961, Lagunzad paid Soto vda. de Gonzales the amount of P5,000.00 but contends that he did so not pursuant to their Agreement but just to placate the latter. On 14 October 1961, the filming of the movie was completed. On 16 October 1961, a premiere showing was held at the Hollywood Theatre, Manila, with the Moises Padilla Society as its sponsor. Subsequently, the movie was shown in different theaters all over the country. Because Lagunzad refused to pay any additional amounts pursuant to the Agreement, on 22 December 1961, Soto vda. de Gonzales instituted the suit against him praying for judgment in her favor ordering Lagunzad (1) to pay her the amount of P15,000.00, with legal interest from the filing of the Complaint; (2) to render an accounting of the proceeds from the picture and to pay the corresponding 2-1/2% royalty therefrom; (3) to pay attorney's fees equivalent to 20% of the amounts claimed; and (4) to pay the costs. By way of counterclaim, Lagunzad demanded that the Licensing Agreement be declared null and void for being without any valid cause; that Soto vda. de Gonzales be ordered to return to him the amount of P5,000.00; and that he be paid P50,000.00 by way of moral damages, and P7,500.00 as attorney's fees. On 30 June 1964, the trial Court rendered a Decision in favor of Soto vda. de Gonzales. On appeal to the Court of Appeals, the latter Court affirmed the judgment. Reconsideration having been denied by the Court, Lagunzad filed the Petition for Review on Certiorari. Initially, or on 16 June 1970, the Supreme Court denied the Petition for lack of merit, but resolved subsequently to give it due course after Lagunzad moved for reconsideration on the additional argument that the movie production was in exercise of the constitutional right of freedom of expression, and that the
Licensing Agreement is a form of restraint on the freedom of speech and of the press.

**Issue:** Whether the Licensing Agreement infringes on the constitutional right of freedom of speech and of the press, in that, as a citizen and as a newspaperman, Lagunzad had the right to express his thoughts in film on the public life of Moises Padilla without prior restraint.

**Held:** The right of freedom of expression occupies a preferred position in the "hierarchy of civil liberties." It is not, however, without limitations. As held in Gonzales vs. Commission on Elections (27 SCRA 835, 858 [1969]), "From the language of the specific constitutional provision, it would appear that the right is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude however, a literal interpretation. Freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances it should remain unfettered and unrestrained. There are other societal values that press for recognition. The prevailing doctrine is that the clear and present danger rule is such a limitation. Another criterion for permissible limitation on freedom of speech and of the press, which includes such vehicles of the mass media as radio, television and the movies, is the "balancing-of-interests test." The principle "requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation." Herein, the interests observable are the right to privacy asserted by Soto vda. de Gonzales and the right of freedom of expression invoked by Lagunzad. Taking into account the interplay of those interests, the Court holds that under the particular circumstances presented, and considering the obligations assumed in the Licensing Agreement entered into by Lagunzad, the validity of such agreement will have to be upheld particularly because the limits of freedom of expression are reached when expression touches upon matters of essentially private concern. The court denied the petition for review.

441 Ayer Production Pty. Ltd. vs. Capulong [GR L-82380, 29 April 1988]; also McElroy vs. Capulong [GR L-82398]

*En Banc, Feliciano (J): 13 concur*

**Facts:** Hal McElroy, an Australian film maker, and his movie production company, Ayer Productions Pty. Ltd., envisioned, sometime in 1987, the filming for commercial viewing and for Philippine and international release, the historic peaceful struggle of the Filipinos at EDSA (Epifanio de los Santos Avenue). McElroy discussed this project with local movie producer Lope V. Juban, who advised that they consult with the appropriate government agencies and also with General Fidel V. Ramos and Senator Juan Ponce Enrile, who had played major roles in the events proposed to be filmed. The proposed motion picture entitled "The Four Day Revolution" was endorsed by the Movie Television Review and Classification Board as well as the other government agencies consulted. General Fidel Ramos also signified his approval of the intended film production. In a letter dated 16 December 1987, McElroy, informed Juan Ponce Enrile about the projected motion picture enclosing a synopsis of it. On 21 December 1987, Enrile replied that "he would not and will not approve of the use, appropriation, reproduction and/or exhibition of his name, or picture, or that of any member of his family in any cinema or television production, film or other medium for advertising or commercial exploitation" and further advised McElroy that "in the production, airing, showing, distribution or exhibition of said or similar film, no reference whatsoever (whether written, verbal or visual) should not be made to him or any member of his family, much less to any matter purely personal to them." It appears that McElroy acceded to this demand and the name of Enrile was deleted from the movie script, and McElroy proceeded to film the projected motion picture. On 23 February 1988, Enrile filed a Complaint with application for Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court of Makati (Civil Case 88-151; Branch 134), seeking to enjoin McElroy, et. al. from producing the movie "The Four Day Revolution." The complaint alleged that McElroy, et. al.'s production of the mini-series without Enrile's consent and over his objection, constitutes an obvious violation of his right of privacy. On 24 February 1988, the trial court issued ex-parte a Temporary Restraining Order and set for hearing the application for preliminary injunction. On 9 March 1988, McElroy filed a Motion to Dismiss with Opposition.
to the Petition for Preliminary Injunction contending that the mini-series film would not involve the private life of Juan Ponce Enrile nor that of his family and that a preliminary injunction would amount to a prior restraint on their right of free expression. Ayer Productions also filed its own Motion to Dismiss alleging lack of cause of action as the mini-series had not yet been completed. In an Order dated 16 March 1988, the trial court issued a writ of Preliminary Injunction against the McElroy, et. al. On 22 March 1988, Ayer Productions filed a Petition for Certiorari dated 21 March 1988 with an urgent prayer for Preliminary Injunction or Restraining Order with the Supreme Court (GR L-82380). A day later, or on 23 March 1988, McElroy also filed a separate Petition for Certiorari with Urgent Prayer for a Restraining Order or Preliminary Injunction, dated 22 March 1988 (GR L-82398). By a Resolution dated 24 March 1988, the petitions were consolidated.

**Issue:** Whether depiction of Enrile, as part of the events in the 1986 People Power Revolution and not as to his personal life nor his family, in the film “The Four Day Revolution” requires his prior consent.

**Held:** The freedom of speech and of expression includes the freedom to film and produce motion pictures and to exhibit such motion pictures in theaters or to diffuse them through television. In our day and age, motion pictures are a universally utilized vehicle of communication and medium of expression. Along with the press, radio and television, motion pictures constitute a principal medium of mass communication for information, education and entertainment. This freedom is available in our country both to locally-owned and to foreign-owned motion picture companies. Furthermore, the circumstance that the production of motion picture films is a commercial activity expected to yield monetary profit, is not a disqualification for availing of freedom of speech and of expression. In our community, as in many other countries, media facilities are owned either by the government or the private sector but the private sector-owned media facilities commonly require to be sustained by being devoted in whole or in part to revenue producing activities. Indeed, commercial media constitute the bulk of such facilities available in our country and hence to exclude commercially owned and operated media from the exercise of constitutionally protected freedom of speech and of expression can only result in the drastic contraction of such constitutional liberties in our country. The counter-balancing claim of Enrile is to a right of privacy. Our law, constitutional and statutory, does include a right of privacy. It is left to case law, however, to mark out the precise scope and content of this right in differing types of particular situations. The right of privacy or "the right to be let alone," like the right of free expression, is not an absolute right. A limited intrusion into a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitute matters of a public character. Succinctly put, the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest. The interest sought to be protected by the right of privacy is the right to be free from "unwarranted publicity, from the wrongful publicizing of the private affairs and activities of an individual which are outside the realm of legitimate public concern.” Herein, there is a prior and direct restraint on the part of the respondent Judge upon the exercise of speech and of expression by McElroy, et. al. The Judge has restrained them from filming and producing the entire proposed motion picture. The Judge should have stayed his hand, instead of issuing an ex-parte Temporary Restraining Order one day after filing of a complaint by Enrile and issuing a Preliminary Injunction 20 days later; for the projected motion picture was as yet uncompleted and hence not exhibited to any audience. Neither Enrile nor the trial Judge knew what the completed film would precisely look like. There was, in other words, no "clear and present danger" of any violation of any right to privacy that Enrile could lawfully assert. The subject matter of "The Four Day Revolution" relates to the non-bloody change of government that took place at Epifanio de los Santos Avenue in February 1986, and the train of events which led up to that denouement. Clearly, such subject matter is one of public interest and concern, and also of international interest. The subject relates to a highly critical stage in the history of this country and as such, must be regarded as having passed into the public domain and as an appropriate subject for speech and expression and coverage by any form of mass media. The subject matter does not relate to the individual life and certainly not to the private life of Ponce Enrile. "The Four Day Revolution" is not principally about, nor is it focused upon, the man Juan Ponce Enrile; but it is compelled, if it is to be historical, to refer to the role played by Juan Ponce Enrile in the precipitating and the constituent events of the change of government in February 1986. The extent of the
intrusion upon the life of Juan Ponce Enrile that would be entailed by the production and exhibition of "The Four Day Revolution" would, therefore, be limited in character. The extent of that intrusion may be generally described as such intrusion as is reasonably necessary to keep that film a truthful historical account. Enrile does not claim that McElroy, et. al. threatened to depict in "The Four Day Revolution" any part of the private life of Enrile or that of any member of his family. The line of equilibrium in the specific context of the present case between the constitutional freedom of speech and of expression and the right of privacy, may be marked out in terms of a requirement that the proposed motion picture must be fairly truthful and historical in its presentation of events. There must, in other words, be no knowing or reckless disregard of truth in depicting the participation of private respondent in the EDSA Revolution. There must, further, be no presentation of the private life of the unwilling individual (Enrile) and certainly no revelation of intimate or embarrassing personal facts. The proposed motion picture should not enter into a "matters of essentially private concern." To the extent that "The Four Day Revolution" limits itself in portraying the participation of Enrile in the EDSA Revolution to those events which are directly and reasonably related to the public facts of the EDSA Revolution, the intrusion into Enrile's privacy cannot be regarded as unreasonable and actionable. Such portrayal may be carried out even without a license from Enrile.

442  People vs. Kottinger [GR 20569, 29 October 1923]

Second Division, Malcolm (J): 5 concur, 1 dissented in separate opinion to which 1 joined

Facts: On 24 November 1922, detective Juan Tolentino raided the premises known as Camera Supply Co. at 110 Escolta, Manila. He found and confiscated the post-cards which subsequently were used as evidenced against J. J. Kottinger, the manager of the company. The information filed in court charged him with living kept for sale in the store of the Camera Supply Co., obscene and indecent pictures, in violation of section 12 of Act 277. To this information, Kottinger interposed a demurrer based upon the ground that the facts alleged therein did not constitute an offense and were not contrary to law; but the trial court overruled the demurrer. Following the presentation of evidence by the Government and the defense, judgment was rendered finding Kottinger guilty of the offenses charged and sentencing him to pay a fine of P50 with subsidiary imprisonment in case of insolvency, and the costs. Kottinger appealed.

Issue: Whether pictures portraying the inhabitants of the country in native dress and as they appear and can be seen in the regions in which they live, are obscene or indecent.

Held: The pictures which it is argued offend against the law on account of being obscene and indecent, disclose six different postures of non-Christian inhabitants of the Philippines ("Philippines, Bontoc Woman"); a picture of five young boys and carries the legend "Greetings from the Philippines"; "Iligao Belle, Philippines. Greetings from the Philippines"; "Igorrot Girl, Rice Field Costume"; "Kalinga Girls, Philippines"; and "Moros, Philippines") None of the pictures represented posses which he had not observed on various occasions, and that the costumes worn by the people in the pictures are the true costumes regularly worn by them, according to Dr. H. Otley Beyer, Professor in the University of the Philippines. Although the Federal statutes prohibits the importation of shipment into the Philippine Islands of the following: "Articles, books, pamphlets, printed matter, manuscripts, typewritten matter, paintings, illustrations, or objects of obscene or indecent character or subversive of public order"; there are, in the record, copies of reputable magazines which circulate freely thru-out the United States and other countries, and which are admitted into the Philippines without question, containing illustrations into the Philippines without question, containing illustrations identical in nature to those in the present case. Publications of the Philippine Government have also been offered in evidence such as Barton's "Ifugao Law," the "Philippine Journal of Science" for October, 1906, and the Reports of the Philippine Commission for 1903, 1912, and 1913, in which are found illustrations either exactly the same or nearly akin to those which are now impugned. Tested by the standard set up by the Congress of the United States, it would be extremely doubtful if the pictures here challenged would be held obscene or indecent by any state of Federal court. It would be particularly unwise to sanction a different type of censorship in the Philippine than in the United States, or for that matter in the rest of the

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world. The pictures in question merely depict persons as they actually live, without attempted presentation of persons in unusual postures or dress. The aggregate judgment of the Philippine community, the moral sense of all the people in the Philippines, would not be shocked by photographs of this type. The court is convinced that the post-card pictures in the present case cannot be characterized as offensive to chastity, or foul, or filthy.

443 People vs. Go Pin [GR L-7491, 8 August 1955]
En Banc, Montemayor (J): 8 concur

Facts: Go Pin, an alien and a Chinese citizen, was charged with a violation of Article 201 of the Revised Penal Code for having exhibited in the City of Manila at the Globe Arcade, a recreation center, a large number of one-real 16-millimeter films about 100 feet in length each, which are allegedly indecent and/or immoral. At first, he pleaded not guilty of the information but later was allowed by the court to change his plea to that of guilty which he did. Not content with the plea of guilty the trial court had the films in question projected and were viewed by it in order to evaluate the same from the standpoint of decency and morality. Thereafter, and considering the plea of guilty entered by the accused, and the fact that after viewing the films the trial court noted only a slight degree of obscenity, indecency and immorality in them, it sentenced Go Pin to 6 months and 1 day of prision correccional and to pay a fine of P300, with subsidiary imprisonment in case of insolvency, and to pay the costs. Go Pin appealed.

Issue: Whether paintings and pictures of women in the nude are obscene and offensive.

Held: Paintings and pictures of women in the nude, including sculptures of that kind are not offensive because they are made and presented for the sake of art. If such pictures, sculptures and paintings are shown in art exhibits and art galleries for the cause of art, to be viewed and appreciated by people interested in art, there would be no offense committed. However, the pictures here were used not exactly for art's sake but rather for commercial purposes. In other words, the supposed artistic qualities of said pictures were being commercialized so that the cause of art was of secondary or minor importance. Gain and profit would appear to have been the main, if not the exclusive consideration in their exhibition; and it would not be surprising if the persons who went to see those pictures and paid entrance fees for the privilege of doing so, were not exactly artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes, but rather people desirous of satisfying their morbid curiosity and taste, and lust, and for love for excitement, including the youth who because of their immaturity are not in a position to resist and shield themselves from the ill and perverting effects of these pictures.

444 People vs. Padaan, 98 Phil. 749 (1957)

445 Janet Reno vs. Americal Civil Liberties Union [521 US 884, 26 June 1997]
Stevens (J): 6 concur, 1 filed separate opinion to which 1 joined

Facts: Two provisions of the Communications Decency Act of 1996 (CDA or Act) seek to protect minors from harmful material on the Internet, an international network of interconnected computers that enables millions of people to communicate with one another in "cyberspace" and to access vast amounts of information from around the world. Title 47 U. S. C. A. §223(a)(1)(B)(ii) (Supp. 1997) criminalizes the "knowing" transmission of "obscene or indecent" messages to any recipient under 18 years of age. Section 223(d) prohibits the "knowing" sending or displaying to a person under 18 of any message "that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs." Affirmative defenses are provided for those who take "good faith, . . . effective . . . actions" to restrict access by minors to the prohibited communications, §223(e)(5)(A), and those who restrict such access by requiring certain designated forms of age proof, such as a verified credit card or an adult identification number, §223(e)(5)(B). A number of plaintiffs filed suit challenging the constitutionality of §§223(a)(1) and 223(d). After making extensive findings of fact, a three judge District
Court convened pursuant to the Act entered a preliminary injunction against enforcement of both challenged provisions. The court's judgment enjoins the Government from enforcing §223(a)(1)(B)'s prohibitions insofar as they relate to "indecent" communications, but expressly preserves the Government's right to investigate and prosecute the obscenity or child pornography activities prohibited therein. The injunction against enforcement of §223(d) is unqualified because that section contains no separate reference to obscenity or child pornography. The Government appealed to the Supreme Court under the Act's special review provisions, arguing that the District Court erred in holding that the CDA violated both the First Amendment because it is overbroad and the Fifth Amendment because it is vague.

**Issue:** Whether the Communications Decency Act of 1996 places an unacceptably heavy burden on protected speech.

**Held:** Regardless of whether the Communications Decency Act of 1996 (CDA) is so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for purposes of the First Amendment. For instance, each of the two parts of the CDA uses a different linguistic form. The first uses the word "indecent," while the second speaks of material that "in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs." Given the absence of a definition of either term, this difference in language will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean. This uncertainty undermines the likelihood that the CDA has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials. The vagueness of the CDA is a matter of special concern for two reasons. First, the CDA is a content based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech. Second, the CDA is a criminal statute. In addition to the opprobrium and stigma of a criminal conviction, the CDA threatens violators with penalties including up to two years in prison for each act of violation. The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images. The CDA regulates speech on the basis of its content. A "time, place, and manner" analysis is therefore inapplicable. It is thus immaterial whether such speech would be feasible on the Web (which, as the Government's own expert acknowledged, would cost up to $10,000 if the speaker's interests were not accommodated by an existing Web site, not including costs for database management and age verification). The Government's position is equivalent to arguing that a statute could ban leaflets on certain subjects as long as individuals are free to publish books. In invalidating a number of laws that banned leafletting on the streets regardless of their content-- the Court explained that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Also, most Internet fora -- including chat rooms, newsgroups, mail exploders, and the Web -- are open to all comers. Even the strongest reading of the "specific person" requirement of §223(d) cannot save the statute. It would confer broad powers of censorship, in the form of a "heckler's veto," upon any opponent of indecent speech who might simply log on and inform the would be discoursers that his 17 year old child -- a "specific person under 18 years of age," -- would be present. Finally, there is no textual support for the Government's submission that material having scientific, educational, or other redeeming social value will necessarily fall outside the CDA's "patently offensive" and "indecent" prohibitions. Thus, the CDA places an unacceptably heavy burden on protected speech, and that the defenses do not constitute the sort of "narrow tailoring" that will save an otherwise patently invalid unconstitutional provision. The CDA, casting a far darker shadow over free speech, threatens to torch a large segment of the Internet community. The ruling of the district court was sustained.

446  Miller vs. California [413 US 15, 21 June 1973]

* Burger (J) *

**Facts:** Miller conducted a mass mailing campaign to advertise the sale of illustrated books, euphemistically called "adult" material. Five unsolicited advertising brochures were sent through the mail in an envelope
Narratives (Berne Guerrero)

addressed to a restaurant in Newport Beach, California. The brochures advertise four books entitled "Intercourse," "Man-Woman," "Sex Orgies Illustrated," and "An Illustrated History of Pornography," and a film entitled "Marital Intercourse." While the brochures contain some descriptive printed material, primarily they consist of pictures and drawings very explicitly depicting men and women in groups of two or more engaging in a variety of sexual activities, with genitals often prominently displayed. The envelope was opened by the manager of the restaurant and his mother. They had not requested the brochures; they complained to the police. After a jury trial, he was convicted of violating California Penal Code 311.2 (a), a misdemeanor, by knowingly distributing obscene matter, and the Appellate Department, Superior Court of California, County of Orange, summarily affirmed the judgment without opinion.

Issue: Whether the determination of “obscene” materials are to be determined through the national or community standard.

Held: Sex and nudity may not be exploited without limit by films or pictures exhibited or sold in places of public accommodation any more than live sex and nudity can be exhibited or sold without limit in such public places. At a minimum, prurient, patently offensive depiction or description of sexual conduct must have serious literary, artistic, political, or scientific value to merit First Amendment protection. The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state law that regulates obscene material is thus limited, as written or construed, the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary. Thus, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive "hard core" sexual conduct specifically defined by the regulating state law, as written or construed. These specific prerequisites will provide fair notice to a dealer in such materials that his public and commercial activities may bring prosecution. The inability to define regulated materials with ultimate, god-like precision altogether removes the power of the States or the Congress to regulate, then "hard core" pornography may be exposed without limit to the juvenile, the passerby, and the consenting adult alike. Under a National Constitution, fundamental First Amendment limitations on the powers of the States do not vary from community to community, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the "prurient interest" or is "patently offensive." These are essentially questions of fact, and our Nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 States in a single formulation, even assuming the prerequisite consensus exists. When triers of fact are asked to decide whether "the average person, applying contemporary community standards" would consider certain materials "prurient," it would be unrealistic to require that the answer be based on some abstract formulation. The adversary system, with lay jurors as the usual ultimate factfinders in criminal prosecutions, has historically permitted triers of fact to draw on the standards of their community, guided always by limiting instructions on the law. To require a State to structure obscenity proceedings around evidence of a national "community standard" would be an exercise in futility. Thus the Court herein (a) reaffirm the Roth holding that obscene material is not protected by the First Amendment; (b) hold that such material can be regulated by the States, subject to the specific safeguards enunciated above, without a showing that the material is "utterly without redeeming social value"; and (c) hold that obscenity is to be determined by applying "contemporary community standards," not "national standards."

447 Eastern Broadcasting Corporation vs. Dans [GR L-59329, 19 July 1985]

Resolution En Banc, Gutierrez Jr. (J): 6 concur, 1 concurs and submits brief statement, 1 concurs in separate opinion, 1 concurs in dispositive portion, 1 took no part, 2 voted for dismissal.
Narratives (Berne Guerrero)

Facts: Radio Station DYRE was closed on the ground that the radio station was used to incite people to sedition. A petition was filed by Eastern Broadcasting to compel the Minister of Transportation and Communications, Ceferino S. Carreon (Commissioner, National Telecommunications Commission), et. al. to allow the reopening of Radio Station DYRE which had been summarily closed on grounds of national security; alleging denial of due process and violation of its right of freedom of speech. On 25 March 1985, before the Court could promulgate a decision squarely passing upon all the issues raised, Eastern Broadcasting through its president, Mr. Rene G. Espina suddenly filed a motion to withdraw or dismiss the petition. Eastern Broadcasting alleged that (1) it has already sold its radio broadcasting station in favor of Manuel B. Pastrana as well as its rights and interest in the radio station DYRE in Cebu including its right to operate and its equipment; (2) the National Telecommunications Commission has expressed its willingness to grant to the said new owner Manuel B. Pastrana the requisite license and franchise to operate the said radio station and to approve the sale of the radio transmitter of said station DYRE; (3) in view of the foregoing, Eastern Broadcasting has no longer any interest in said case, and the new owner, Manuel B. Pastrana is likewise not interested in pursuing the case any further.

Issue: Whether radio broadcasting enjoys a more limited form

Held: The case has become moot and academic. However, for the guidance of inferior courts and administrative tribunals exercising quasi-judicial functions, the Court issues the following guidelines: (1) The cardinal primary requirements in administrative proceedings laid down by the Court in Ang Tibay v. Court of Industrial Relations (69 Phil. 635) should be followed before a broadcast station may be closed or its operations curtailed; (2) it is necessary to reiterate that while there is no controlling and precise definition of due process, it furnishes an unavoidable standard to which government action must conform in order that any deprivation of life, liberty, or property, in each appropriate case, may be valid (Ermita-Malate Hotel and Motel Operators Association v. City Mayor, 20 SCRA 849); (3) All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the clear and present danger rule - that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent; (4) the clear and present danger test, however, does not lend itself to a simplistic and all embracing interpretation applicable to all utterances in all forums. Broadcasting has to be licensed. Airwave frequencies have to be allocated among qualified users; (5) The clear and present danger test must take the particular circumstances of broadcast media into account. The supervision of radio stations — whether by government or through self-regulation by the industry itself calls for thoughtful, intelligent and sophisticated handling; (6) the freedom to comment on public affairs is essential to the vitality of a representative democracy; and (7) Broadcast stations deserve the special protection given to all forms of media by the due process and freedom of expression clauses of the Constitution.

A broadcast corporation cannot simply appropriate a certain frequency without regard for government regulation or for the rights of others. All forms of communication are entitled to the broad protection of the freedom of expression clause. Necessarily, however, the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media. Radio broadcasting, more than other forms of communications, receives the most limited protection from the free expression clause, because: First, broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizen, not only in public, but in the privacy of his home. Second, broadcasting is uniquely accessible to children. Bookstores and motion picture theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or television, where the listener or viewer is constantly tuning in and out. Similar considerations apply in the area of national security. The broadcast media have also established a uniquely pervasive presence in the lives of all Filipinos. Newspapers and current books are found only in metropolitan areas and in the poblaciones of municipalities accessible to fast and regular transportation. Even here, there are low income masses who find

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the cost of books, newspapers, and magazines beyond their humble means. Basic needs like food and shelter perforce enjoy high priorities. On the other hand, the transistor radio is found everywhere. The television set is also becoming universal. Their message may be simultaneously received by a national or regional audience of listeners including the indifferent or unwilling who happen to be within reach of a blaring radio or television set. The materials broadcast over the airwaves reach every person of every age, persons of varying susceptibilities to persuasion, persons of different I.Q.s and mental capabilities, persons whose reactions to inflammatory or offensive speech would be difficult to monitor or predict. The impact of the vibrant speech is forceful and immediate. Unlike readers of the printed work, the radio audience has lesser opportunity to cogitate, analyze, and reject the utterance. Still, the government has a right to be protected against broadcasts which incite the listeners to violently overthrow it. Radio and television may not be used to organize a rebellion or to signal the start of widespread uprising. At the same time, the people have a right to be informed. Radio and television would have little reason for existence if broadcasts are limited to bland, obsequious, or pleasantly entertaining utterances. Since they are the most convenient and popular means of disseminating varying views on public issues, they also deserve special protection.