RECENT DECISIONS OF THE SUPREME COURT RELEVANT TO MEDIA FREEDOM

compiled by **Victor C. Avecilla**

This is a critique of recent Supreme Court decisions that have a bearing on media freedom. Both the compilation and critique are offered to further the understanding of media law by students of communication.

CONTEMPT/POST-LITIGATION PRESS COMMENTARY

People of the Philippines v. Godoy
G.R. Nos. 115908 and 115909, March 29, 1995, 243 SCRA 64
Resolution *En Banc* / Justice Florenz D. Regalado

FACTS

An article criticizing Judge Eustaquio Gacott, Jr. of the Regional Trial Court in Palawan written by Mauricio Reynoso, Jr. appeared in the July 20, 1994 issue of the ***Palawan Times***. The judge sued for indirect contempt and the proceedings reached the Supreme Court.

RULING

In case of a post-litigation newspaper publication, fair criticism of the court, its proceedings and its members, is allowed. However, there may be contempt of court, even though the case has been terminated, if the publication is attended by either of these circumstances, *i.e.*, where it tends to bring the court into disrespect or, in other words, to scandalize the court, or where there is a clear and present danger that the administration of justice will be impeded.

Where the alleged contemptuous statement is also claimed to be libelous, may the judge concerned sue separately for libel? No. To sue is personal conduct (as opposed to official conduct) and the court is and must be impersonal. After all, the outrage is not directed against the judge as a private individual but to the judge as such or to the court as an

organ of the administration of justice. The same reasons of public policy which exempt a judge from civil liability in the exercise of his judicial functions, most fundamental of which is to confine his time exclusively to the discharge of his public duties, applies here with equal, if not superior, force.

STATE REGULATION OF TELEVISION PROGRAMS

Iglesia Ni Cristo v. Court of Appeals
G.R. No. 119673, July 26, 1996, 259 SCRA 529
Decision *En Banc* / Justice Reynato S. Puno

FACTS

The Iglesia Ni Cristo (INC), a religious sect registered as a corporation sole under Philippine law, is the producer of ***Ang Iglesia Ni Cristo***, a religious television program which used to go on the air *via* ABS-CBN Channel 2 and IBC Channel 13. As required under Presidential Decree No. 1986 or the charter of the Movie and Television Review and Classification Board (MTRCB), the INC always submitted tapes of its programs to the MTRCB for review and approval prior to telecast.

Sometime in September, October and November 1992, the INC submitted to the MTRCB (erroneously referred to as the Board of Review for Motion Pictures and Television or BRMPT in the ruling of the Supreme Court) tapes of, among others, four (4) episodes of ***Ang Iglesia Ni Cristo***, namely, episodes nos. 115, 119, 121 and 128. After a review thereof, the MTRCB disallowed the broadcast of these episodes on the ground that they "offend and constitute an attack against other religions which is expressly prohibited by law."

On November 28, 1992, the INC appealed the ruling regarding Episode No. 128 to the Office of the President of the Philippines pursuant to the procedure specified in P.D. NO. 1986. Less than a month later, on December 18, 1992, the Office of the President reversed the ruling of the MTRCB and allowed the broadcast of Episode No. 128.

Four (4) days earlier, the INC filed a civil case against the MTRCB before the Regional Trial Court in Quezon City, alleging that the MTRCB acted without jurisdiction or with grave abuse of discretion when it

required the INC to submit tapes of the episodes of ***Ang Iglesia Ni Cristo*** prior to telecast, and in disallowing the broadcast of Episode No. 128. In support of its case, the INC invoked its constitutional right to religious freedom.

In its defense, the MTRCB pointed that it acted in accordance with its power under its charter.

The trial court ruled in favor of the INC and ordered the MTRCB to issue permits for all the episodes of the ***Ang Iglesia Ni Cristo*** series and directed the INC to refrain from offending and attacking other existing religions in the episodes of its television program. Acting on a motion for reconsideration filed by the INC, the trial court deleted the part of its decision prohibiting the INC from offending and attacking other existing religions in its television programs.

Dissatisfied therewith, the MTRCB appealed to the Court of Appeals. After due proceedings, the appellate court reversed the judgment of the trial court and ruled that the MTRCB has jurisdiction over and the power to review the television programs of the INC; and there was no grave abuse of discretion on the part of the trial court because the disputed materials constitute an attack against another religion.

The INC brought its case to the Supreme Court, again invoking religious freedom and adding that religious programs are not within the power of the MTRCB to review. Once again in its defense, the MTRCB contended that what it did was allowed under its charter. In addition, the MTRCB argued that its charter authorizes it to prohibit telecasts which are "contrary to law" and Article 201 of the Revised Penal Code, which is a law, prohibits and penalizes any public exhibition which "offends any religion."

RULING

Under its charter, the MTRCB has the power to review television programs including the religious television programs produced by the INC. Although religious freedom enjoys a preferred status in the hierarchy of civil rights and liberties in the Philippines, state regulation of television programming is not a violation of religious freedom. State regulation of television programming, said the Court, is allowed under the clear and present danger test. Religion is and continues to be a volatile area of concern in the country today, and when religion divides and its exercise

destroys, the State should not stand still. The same notwithstanding, the Court reminded all concerned that any act that restrains speech, including religious speech, carries with it a presumption of invalidity.

As far as the Court is concerned, there is no basis for disallowing any of the disputed episodes of ***Ang Iglesia Ni Cristo***. The Court noted that the disputed episodes are mere instances of criticism of some of deeply held dogma and tenets of other religions, and under the constitutional system obtaining in the Philippines, it is not the task of the State to favor any religion by protecting it against an attack by another religion. Moreover, the Court said, there is nothing in the charter of the MTRCB which allows it to prohibit the telecast of a religious program which constitutes an attack against another religion. This ground is not found in the law; it is a mere addition to the implementing rules of P.D. NO. 1986 promulgated by the MTRCB. Since the MTRCB has no legislative power to modify the provisions of its charter by assuming a power not vested in it by the said charter, banning a religious television program on the ground that it constitutes an attack against another religion is unconstitutional.

The Court also held that the phrase "*offend* any race or religion" found in Article 201 of the Revised Penal Code is not synonymous to "attack." Moreover, Article 201 is a penal provision and, therefore, amounts to subsequent punishment prohibited under the press freedom clause of the 1987 Constitution. As such, Article 201 of the Revised Penal Code may not be cited by the MTRCB to justify its acts.

In conclusion, the Court said that the MTRCB failed to apply the clear and present danger test in evaluating the disputed episodes of ***Ang Iglesia Ni Cristo***.

DISSENTING OPINION

Dissenting from the majority view, Justice Jose Vitug took the position that the MTRCB correctly invoked Article 201 of the Revised Penal Code. After all, Justice Vitug observed, religious violence is a reality in the world. In a sense, he said that no religious sect should be given the right to insult other religions in the name of religious freedom. To him, allowing a religious sect to make such insulting remarks as an exercise of religious freedom may set a dangerous precedent.

CRITIQUE

The ruling of the Supreme Court has a number of conflicting points. For one, although the Court declared that the clear and present danger test is applicable to the dispute before it, the Court still decided against the use of the clear and present danger test because content, *and not* time, place *or* manner, *was at issue here. This, in effect, leads to confusion on what test should be used in lieu of the clear and present danger test. Fortunately, several decisions of the Supreme Court involving the exercise of constitutional rights with a preferred status over other rights — e.g., free speech, press freedom, free assembly (**Reyes v. Bagatsing** and **Ruiz v. Gordon**) — indicate that the applicable test in controversies involving fundamental freedoms is the clear and present danger test.*

Secondly, the Court seems to have overlooked that P.D. NO. 1986 calls for the application of the dangerous tendency test and not the clear and present danger test. This raises a problem because the Court appears to emphasize the actual provisions of P.D. NO. 1986 when it comes to what telecasts the MTRCB may prohibit but completely disregards the provisions of the same decree when it comes to the appropriate test to be applied.

Article 201 of the Revised Penal Code explicitly prohibits and penalizes public exhibitions which "offend any race or religion" and the said provision is broad enough to include television programs of a religious nature. Thus, a television program which "offends any religion" is a television program the broadcast of which is prohibited by law. Following the same line of reasoning, it is also a television program the broadcast of which may be prohibited by the MTRCB pursuant to the provision of its charter authorizing it to disapprove the broadcast of any television program that is "contrary to law." Accordingly, there seems to be no legal infirmity attending the action taken by the MTRCB in this regard.

The Court appears to have gone around this point by stating that there is a difference between offending *a religion and* attacking *it. In terms of consequences, however, there appears to be no real difference between the two. After all, it is very unlikely that material which is designed to* attack *a religion will not* offend *the members of that religion. It must be emphasized that religion is all about faith, i.e., something that cannot be proved unlike, for example, the qualities of a certain product or the track record of a certain school.*

Article 201 of the Revised Penal Code is, by no means, a conclusive standard. Since it is a provision of the Revised Penal Code, the motive of the offender must be taken into consideration. Accordingly, if the material offends a religion but it is clearly shown that its author did not intend such consequence or produced the material

with good intentions, then there is no violation of the law. It logically follows then that a television program which offends a religion but whose producer had no intention of doing so may not be prohibited by the MTRCB.

At any rate, the standard "offend any race or religion" as used in Article 201 of the Revised Penal Code should be subjected to the clear and present danger test inasmuch as constitutional tradition in the Philippines frowns on absolute prohibitions against the exercise of freedom of expression.

It is worth mentioning as well that for all intents and purposes, the Court was not ready to say that it is unconstitutional for Congress to grant an administrative body like the MTRCB the quasi-judicial power to preview and classify television programs and enforce its decision subject to judicial review. The Court did cite instances when an administrative agency was allowed to exercise quasi-judicial powers subject to judicial review, particularly its ruling in ***Sotto v. Ruiz*** *(where the postmaster general was allowed by the Court to make an administrative determination of what may and may not be mailed). This statement was made by Justice Puno, as* ponente *(the writer of the decision of the Court), in response to the remark made by Justice Kapunan in a separate opinion to the effect that a system of prior restraint may only be validly administered by judges and the same should not be left to administrative agencies like the MTRCB.*

LIBEL / PRIVILEGED COMMUNICATION

Borjal v. Court of Appeals
G.R. No. 126466, January 14, 1999, 301 SCRA 1
Second Division Decision / Justice Josue N. Bellosillo

FACTS

A series of articles critical of a certain conference on transportation crisis organized under the auspices of a sub-committee of the House of Representatives of the Congress of the Philippines written by Arturo Borjal, a columnist of ***The Philippine Star***, appeared in the May to July issues of the said newspaper. The articles do not mention the name of the organizer. Nonetheless, a certain Francisco Wenceslao wrote the officials of ***The Philippine Star*** and told them that he was the organizer of the conference. Withal, Wenceslao filed libel charges against Borjal and Maximo Soliven, the publisher and chairman

of the editorial board of the newspaper. The case reached the Supreme Court.

RULING

Identification is one of the four (4) elements of the crime of libel as defined under Article 353 of the Revised Penal Code. Without identification, there is no libel. There is nothing in the article in question which indicates or leads the public to believe that Wenceslao is the organizer of the conference. Wenceslao was the one who identified himself. If he did not do so, the public would not have been aware of his identity. Since the element of identification is not present, there is no libel.

The rule on privileged communication has its genesis not from the penal code but from the Bill of Rights. Thus, the enumeration of instances of privileged communication under Article 354 of the Revised Penal Code is not exclusive. Fair commentaries on matters of public interest are likewise privileged (***United States v. Cañete***). Public policy, public welfare and the orderly administration of the government demand protection of public opinion (***United States v. Bustos***).

Under the doctrine of fair comment, a discreditable imputation directed against a public person in his public capacity is not necessarily actionable. To 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 and based on established facts, then it is immaterial that the opinion happens to be mistaken as long as it may be reasonably inferred from the facts.

A private individual may be considered a public figure for purposes of press commentaries as long as he is involved in a public issue. The public's interest is in the event, not in the prior anonymity of the private individual (***Rosenbloom v. Metromedia***).

Actual malice as understood in ***New York Times v. Sullivan*** is a "reckless disregard of what is false or not." Manifestations of a "reckless disregard of what is false or not" include situations where the defendant entertains serious doubt as to the truth of the publication (***St. Amant v. Thompson***) or where the defendant possesses a high degree of awareness of the probable falsity of the publication (***Garrison v. Louisiana***).

Mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy.

American jurisprudence reminds everyone that the press is the servant, not the master of the citizenry, and press freedom does not carry with it an unrestricted hunting license to prey on the ordinary citizen.

CRITIQUE

The Supreme Court cited ***Rosenbloom v. Metromedia****, a decision of the United States Supreme Court in 1971. This ruling was case law until 1974 when the United States Supreme Court came out with its decision in* ***Gertz v. Welch, Inc.*** *The ruling in* ***Gertz*** *abandoned the doctrine announced in* ***Rosenbloom.*** *Apparently, when the Supreme Court of the Philippines came out with its pronouncement in* ***Borjal v. Court of Appeals,*** *it was unaware of the ruling in* ***Gertz.*** *Thus,* ***Borjal v. Court of Appeals*** *must be appreciated in the light of* ***Gertz.***

EXIT POLLS

ABS-CBN Broadcasting Corporation v. Commission on Elections
G.R. No. 133486, January 28, 2000, 323 SCRA 811
Decision *En Banc* / Justice Artemio V. Panganiban

FACTS

As mandated by the 1987 Constitution, the Commission on Elections (Comelec) announced that the national and local elections for 1998 will be held on May 11, 1998. Thereafter, the ABS-CBN Broadcasting Corporation (ABS-CBN) announced its plan to conduct exit polls on election day.

Exit polls are surveys conducted right outside polling precincts. Under this scheme, voters who have cast their ballots and have just stepped out of the polling area are chosen at random and asked how they voted. More often than not, they are asked who they voted for from among the contenders for the presidency, the vice presidency, and the Senate. Data obtained under this arrangement are processed and analyzed and statistical inferences are made and announced to the public by the organizer of the polls even before the final results of the actual election are out.

Acting on information supplied by "a reliable source" that ABS-CBN and some public relations groups were preparing exit polls, the Comelec issued a resolution dated April 21, 1998 restraining ABS-CBN and other groups from conducting exit surveys on the ground that the exit polls may conflict with the official Comelec count and the quick count of the Namfrel, the public interest group accredited by the Comelec for the purpose.

ABS-CBN received a copy of the Comelec resolution only on May 4, 1998. Thereafter, it challenged the validity of the same before the Supreme Court. On May 9, 1998, the Court issued a temporary restraining order enjoining the Comelec from enforcing the questioned resolution. On election day, ABS-CBN proceeded with its exit polls.

Arguing the merits of the case, ABS-CBN contended there is nothing illegal about exit polls and the nationwide reporting of the results thereof. They all amount to an exercise of the constitutional rights of free speech and press freedom.

For its part, the Comelec contended that the questioned resolution was issued pursuant to its constitutional and statutory powers to promote a clean, honest, orderly and credible election, and to protect and maintain the secrecy and sanctity of the ballot. Exit polls, the Comelec said, will unduly confuse and influence voters because the polls are designed to condition the minds of the people as to who won and who lost the elections, and this may lead to violence and anarchy.

Considering that no law bans exit polls, may the Comelec totally ban exit polls?

RULING

Since the May 11, 1998 election has come and gone, this case has become moot and academic. Nonetheless, the Supreme Court went on

to make some pronouncements in view of the public interest involved and ruled in favor of ABS-CBN.

Freedom of expression is a preferred right and, therefore, stands on a higher level than substantive economic or other liberties. Freedom of thought and speech is the indispensable condition of nearly every other form of freedom. To justify a restriction, the promotion of a substantial government interest must be clearly shown. Even if the government purpose is legitimate, the same may not be pursued by means that broadly stifle fundamental personal liberties. The freedoms of speech and of the press should all the more be upheld when what is sought to be curtailed is the dissemination of information meant to add meaning to the equally vital right of suffrage.

Exit polls generate important research data. An absolute ban will be unreasonably restrictive because the same prevents the use of exit poll data not only for election day projections but also for long-term research. The exit polls are random and representative, and not meant to replace the official Comelec count. It considers merely the opinion of the electorate.

Credibility and integrity of the elections are not at stake here. The outcome of one can only be indicative of the other. Besides, there is no showing that the exit polls will disrupt the elections. At any rate, there are other means for the Comelec to achieve its objective, *e.g.*, regulated polling.

There appears to be no violation of the secrecy of ballots. ABS-CBN does not seek access to the ballots. Official ballots are not exposed. Voters may also choose not to reveal whom they voted for.

CRITIQUE

The right of press freedom must be appreciated in the light of what the Supreme Court referred to as "the equally vital right of suffrage." The possibility of abusing exit polls and the use thereof as instruments to subvert the popular will cannot be ignored. This does not mean, however, that the possibility of abuse is, by itself, a valid reason for restricting exit polls. Still, the situation presented involves two (2) sacrosanct constitutional institutions — press freedom and suffrage. Being so, a delicate balance between both institutions should be effected. Regulated exit polls in lieu of unbridled ones may be the key. Thus, polling agents like ABS-CBN must be required to explain to their audiences, simultaneously with the presentation of their

data and the conclusions derived therefrom, how they arrived at their conclusions and how statistically reliable their inferences are. In view of the foregoing, the plenary language of the decision of the Court may be considered constitutionally assailable.

STUDENT PUBLICATIONS

Miriam College Foundation, Inc. v. Court of Appeals
G.R. No. 127930, December 15, 2000, 348 SCRA 265
First Division Decision / Justice Santiago M. Kapunan

FACTS

The members of the editorial board of ***Chi Rho*** and ***Ang Magasing Pampanitikan ng Chi-Rho***, the school paper and literary magazine of Miriam College, respectively, found themselves under fire for the contents of the September-October 1994 issue of the said periodicals. On the basis of a complaint of some members of the school community and a Grade 5 student of Ateneo de Manila, a nearby school, the student disciplinary committee of Miriam College summoned the said members of the editorial board, all of them students of the college, to an investigation. According to the complaint, the students committed a violation of the school regulations stated in the student handbook of Miriam College by publishing obscene materials in the said periodicals.

Invoking Section 7 of Republic Act No. 7079, otherwise known as The Campus Journalism Act, the students refused to appear before the committee or to answer the charges against them. According to Section 7 thereof, "(a) student shall not be expelled or suspended solely on the basis of articles he or she has written, or on the basis of the performance of his or her duties in the student publication"

Miriam College eventually ordered the expulsion, suspension, and/or dismissal of the students concerned, depending on the extent of their participation in the objectionable publications. Thereafter, the students brought their case first to the Regional Trial Court in Quezon City and eventually to the Supreme Court.

RULING

The power of a school to investigate is an adjunct of its power to suspend or expel students. This is part of its academic freedom as an institution of higher learning.

Section 7 of The Campus Journalism Act means that the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such articles materially disrupt class work or involve substantial disorder or invasion of the rights of others.

CRITIQUE

Despite the ruling in ***Miriam College Foundation, Inc. v. Court of Appeals****, a number of related issues were not addressed by the Supreme Court.*

According to the Court, Section 7 of The Campus Journalism Act means that "the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such articles materially disrupt class work or involve substantial disorder or invasion of the rights of others." What is the import of the phrase "invasion of the rights of others" when interpreted in a particular school environment? To what extent is the school allowed to interpret this phrase? Does it make a difference if the university is religious or secular? Suppose a litigation ensues with the proceedings taking up a number of years and the student is up for graduation. May he be allowed to graduate pending the final disposition of his case? In the meantime, may he continue publishing subsequent issues of the controversial periodical? Suppose there is a judicial finding that there is nothing legally objectionable to the disputed publication. Will the complainant be liable for damages? ***Miriam College Foundation, Inc. v. Court of Appeals*** *does not provide any answer to any of these questions.*

NEWSPAPER ARTICLES AS EVIDENCE

Estrada v. Desierto
G.R. Nos. 146710 to 146715, March 2, 2001, 353 SCRA 452
Decision *En Banc* / Justice Reynato Puno

Estrada v. Desierto
G.R. Nos. 146710 to 146715, April 3, 2001, 356 SCRA 108
Resolution *En Banc* / Justice Reynato Puno

FACTS

Edgardo J. Angara, Executive Secretary of President Joseph Estrada wrote a diary which included some entries about the final hours of the president in Malacañang Palace. Excerpts of this diary were published in the February 4, 5 and 6, 2001 issues of the ***Philippine Daily Inquirer*** under the title *Erap's Final Hours Told*. This served as one of the bases for the Supreme Court to rule that President Estrada had resigned the presidency in 2001.

President Estrada questioned the admissibility of the Angara diary on the ground that it is well-settled in Philippine jurisprudence that newspaper articles are hearsay evidence

RULING

The Supreme Court said the diary is an exception to the hearsay rule because it contained direct statements of Estrada which may be categorized as admissions made by a party. In addition, the Court said that President Estrada is estopped or disallowed from questioning the admissibility of the diary because he did not object to its use, particularly during the oral arguments of the opposing party.

CRITIQUE

*Philippine jurisprudence reveals that the Supreme Court has categorically ruled that newspaper articles are hearsay evidence, twice removed (**State Prosecutors v. Muro**), have no probative or evidentiary value (**Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Commissioner***

of Internal Revenue) *whether the same is objected to or not (**State Prosecutors v. Muro**) unless offered for a purpose other than proving the truth of the matter asserted (**Feria v. Court of Appeals**). It appears that in **Estrada v. Desierto**, the Court conveniently overlooked the foregoing jurisprudence.*

Indeed, the rule is that sworn statements made by an individual on previous occasions are admissible in evidence against that person in subsequent cases. However, the diary in question is not a sworn statement. Moreover, it must be emphasized that it is not the diary of President Estrada but the diary of Secretary Angara. If the Court thought the diary important enough to consider, it should have summoned Secretary Angara and make him attest under oath to the truth of the contents of the published excerpts of his diary.

*Whether or not President Estrada objected to the use of the diary in the oral arguments is of no legal consequence. The ruling of the Court in **State Prosecutors v. Muro** is very clear, i.e., a newspaper article is inadmissible in evidence "whether objected to or not." Besides, it appears from the text of the decision of the Court that President Estrada repeatedly questioned in his court pleadings the admissibility of the said newspaper articles.*

Under the res inter alios acta *rule of evidence, a party cannot be made liable for the acts of other individuals. By allowing the Angara diary to be used against another person, in this case President Estrada, the Court may have unwittingly countenanced a violation of the said rule.*

It is also legally doubtful if the use of the newspaper articles in question has any evidentiary value. The newspapers articles are, admittedly, mere excerpts of the Angara diary. If the diary is important enough to be used as a basis for the decision of the Court, prudence dictates that the entirety of the diary, and not just portions thereof, must be taken into account. In the law on libel, a newspaper article alleged to be libelous should be evaluated as a whole. If the application of this holistic rule is required in an ordinary criminal prosecution for libel, it should apply all the more when the issue before the Court is very important like whether or not the President of the Philippines has actually resigned the public office to which he was elected by the sovereign Filipino people.

*The legal consequence of **Estrada v. Desierto** is that newspaper articles may now be used in evidence.*

PREJUDICIAL PUBLICITY

In Re Radio TV Coverage of Sandiganbayan Trial of Former President Estrada

Perez, et al. v. Estrada, et al.
A.M. No. 01-4-03-SC, June 29, 2001, 360 SCRA 248
Decision *En Banc* / Justice Jose C. Vitug

FACTS

On October 23, 1991, the Supreme Court promulgated a resolution prohibiting the actual television coverage of court proceedings. This ruling was made in the light of the libel case which then President Corazon Aquino instituted against a newspaper columnist, and the ensuing trial thereof.

After his controversial ouster from the presidency, President Estrada found himself facing criminal raps for plunder before the Sandiganbayan, the anti-graft court created under the Constitution.

Then Secretary of Justice Hernando Perez, the Kapisanan ng mga Brodkaster ng Pilipinas, and several other individuals including Cesar Sarino, Renato Cayetano and Ricardo Romulo petitioned the Supreme Court to allow the radio and television coverage of the Estrada trial "to assure the public of full transparency in the proceedings of an unprecedented case in our history." In particular, they alleged that the trial involves public concern and interest; that citizens have the right to know, be informed and made aware of the case; and that such coverage will erase any possible impression that the criminal case will be railroaded against President Estrada. In fine, they likewise sought a re-examination of the previous resolution of the Supreme Court prohibiting actual television coverage of court proceedings.

President Estrada opposed the petition. The Integrated Bar of the Philippines (IBP) joined him in his opposition, adding that the live television coverage of trials negates the rule on exclusion of witnesses — i.e., the rule in court proceedings which prohibits a subsequent witness from listening to the testimony of a previous witness. This rule ensures that the testimony of a subsequent witness will not be influenced by the testimony of a previous one.

RULING

The issues to be resolved in these cases are freedom of the press and the public right to information, the constitutional rights of the accused, and the power of a court to control its proceedings for the purpose of ensuring a fair and impartial trial. It has been held in both Philippine jurisprudence (***People v. Alarcon***) and in American case law (***Estes v. Texas*** and ***Sheppard v. Maxwell***) that the right of the accused must be preferred over other conflicting rights.

In view of the possibility of losing not only the precious liberty but also the very life of an accused, it behooves all to make absolutely certain that an accused receives a decision solely on the basis of a just and dispassionate judgment brought about by credible evidence testified to by unbiased witnesses unswayed by any kind of pressure in proceedings devoid of histrionics. That is what the constitutional right to a speedy, public and impartial trial is all about.

Television can work profound changes in the behavior of the people it focuses on. It may result in the psychological intimidation of witnesses. A public trial is not synonymous to a publicized trial. A public trial only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process.

As pointed out by the IBP, live television coverage of trials negates the rule on exclusion of witnesses, and it will allow the "hooting throng" outside the courtroom to arrogate unto themselves the task of judging the guilt of the accused. At the end of the day, the ruling of the court will be acceptable only if it is popular. Moreover, live television coverage will only pander to the desire for publicity of a few grandstanding lawyers.

Unlike other government offices, courts do not express the popular will of the people. A trial is not a free trade of ideas. A competing market of thoughts is not the known test of truth in a courtroom. The United States Supreme Court and American federal courts do not allow live radio and television coverage of court proceedings.

"The Court is not all that unmindful of recent technological and scientific advances but to chance forthwith the life or liberty of any person in a hasty bid to use and apply them, even before ample safety nets are

provided and the concerns heretofore expressed are aptly addressed, is a price too high to pay."

DISSENTING OPINION

Mr. Justice Reynato Puno disagreed with the majority view. For him, the dangers of television coverage can be avoided by appropriate rules governing televised trials, including one which respects the refusal of a witness to have his testimony televised. Live radio and television coverage may not be demanded as a matter of right but its absolute denial is also constitutionally suspect. The matter should be addressed to the sound discretion of the trial judge.

CRITIQUE

The majority view seems to express the better perspective of the situation. American jurisprudence correctly points out that radio and television coverage of court proceedings will tend to create a carnival atmosphere in the courtroom. The idea that a camera is recording the proceedings may have serious effects on a witness who may not be comfortable testifying in court in the first place. To make that witness testify in front of a television camera will definitely aggravate his discomfort. It may force him to abbreviate his testimony just to end his anxiety. For the same reason, the anxiety he suffers in front of a television camera may make him look like he is lying. In the end, the administration of justice may be the losing party.

If radio and television coverage of court proceedings is allowed, it does not mean that all cases will be covered by the broadcast media. There will be cases which cannot be covered by the broadcast media because of inherent limitations on its part, no matter how important those cases may be — e.g., out of town cases, etc. In turn, this may result in selective broadcast media coverage of court proceedings, a situation which may unduly encourage prejudicial publicity as understood in Philippine and American jurisprudence.

Anybody who wishes to see the trial for himself will just have to avail of two options — either he attends the trial personally and he is entitled to do so because the proceedings are open to the public, or he can read about it in the print media.

It must be emphasized that the broadcast media were not completely forbidden from covering a trial per se. *Radio and television networks can send their reporters to a trial to simply observe the proceedings in the same way reporters from the print media conduct themselves in court. After the trial, the reporters of the broadcast media can go on the air at their convenience to report on what happened in court.*

PREJUDICIAL PUBLICITY / PRIVACY

In Re *Radio TV Coverage of Sandiganbayan Trial of Former President Estrada*

Perez, et al. v. Estrada, et al.
A.M. No. 01-4-03-SC, September 13, 2001, 365 SCRA 62
Decision *En Banc* / Justice Vicente V. Mendoza

FACTS

The petitioners in this case sought a reconsideration of the ruling of the Supreme Court disallowing live radio and television coverage of the trial of President Joseph Estrada. As expected, the Estrada camp objected to the reconsideration sought, adding that broadcast media coverage of the trial violates the right to privacy of President Estrada

RULING

By a vote of nine to six, the Court denied the motion for reconsideration of the petitioners. Live or real time radio and television broadcast of the trial is not allowed.

Voting eight to seven, however, audio-visual recording of the trial for documentary purposes will be allowed and the custody of the recorded material will be with the National Museum. The recorded material will be publicly available only when the proceedings are over. Cameras will be inconspicuously installed in the courtroom and the movement of television crew will be regulated. The Sandiganbayan may restrict coverage of certain parts of the proceeding, e.g., exclusion of the public when the evidence is offensive to decency or public morals. No commentaries will be allowed to accompany the recorded material.

Explaining its ruling, the Court said that the hearing is of historic significance; the case involves matters of vital concern to the people who have a fundamental right to know how the government works; the recording is essential for the education and civic training of the people; and the recording may be used when a review of the proceedings in the Sandiganbayan by the appellate courts becomes necessary.

The Court said that the ruling does not amount to a violation of the right to privacy. Citing ***Ayer Productions, Pty. Ltd. v. Hon. Capulong***, a limited intrusion into a person's privacy has long been regarded as permissible when 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.

DISSENTING OPINION

Mr. Justice Jose Vitug concurred in the denial of the reconsideration sought by the petitioners but dissented from the ruling of the majority allowing recording of the court proceedings in the Estrada trial. He stressed that the right of the public to information is not being sacrificed. The right can be achieved through other media coverage. For him, no empirical data has been shown to suggest that the presence of cameras inside the courtroom will have no untoward impact on the court proceedings. Cameras have intimidating effects on witnesses because this is not within normal experience. The more serious concern is not privacy; it is the erosion of reality that cameras tend to cast.

He pointed out that the only issue before the Supreme Court concerns the live radio and television broadcast of the trial of President Estrada. The recording thereof for posterity, as the majority has allowed, is not an issue.. If it must be considered and allowed, it must be by way of a rule of general application and promulgated only after a thorough study and deliberation.

CRITIQUE

The ruling of the Supreme Court on the recording of the Estrada trial for posterity suffers from legal infirmity. Although the trial is of "historic significance and the case involves matters of vital concern to the people who have a fundamental right to know how the government works," all that, by themselves, is not enough to warrant the video recording of the trial, even for posterity. If the demands of posterity alone are enough reason to warrant a reversal of established legal norms, then the State should be ready to announce that video documentation of the execution of notorious criminals may also be done in the name of posterity.

It seems that the Court is of the view that live television coverage of a trial is different from a video recording thereof for posterity or for future use. The supposed distinction is more apparent than real. A camera which records a trial for a live television audience is really no different from one which records the proceedings for future viewing. Regardless of its purpose, the camera will have to be present in the courtroom and its mere presence can be intimidating to witnesses.

Placing the camera in an inconspicuous area of the courtroom and regulating the movement of the crew, as the Court suggests, will not cure the situation. How can the television camera be installed in the courtroom and cover the trial without anybody noticing its presence? People inside a public place like a courtroom are entitled to know that there is a camera recording the proceedings. Using a camera in the courtroom without letting the people present thereat know about its presence is plain and simple voyeurism. Moreover, ethical considerations governing judges, lawyers and media personnel simply do not warrant it.

It is inconceivable how and why the documentation of the trial of President Estrada is essential for "the education and civic training of the people" as stated by the Court. The trial is useful only for individuals interested in knowing what a courtroom environment is like. Such knowledge can be acquired more effectively from an actual visit to a courtroom rather than from a recorded videoclip of a trial.

In the same light, it is also inconceivable how and why the recording of the trial of President Estrada may be used when a review of the proceedings in the Sandiganbayan "by the appellate courts becomes necessary" as stated by the Court.

In the first place, the Court of Appeals is the only appellate court in the Philippines. The Supreme Court is not a mere appellate court.

*Secondly, the Court of Appeals has no appellate jurisdiction over the Sandiganbayan. Only the Supreme Court may review the decisions of the Sandiganbayan (**Nuñez v. Sandiganbayan**).*

*Third, the ruling allows special treatment of the case of President Estrada. The cases of ordinary litigants resolved by the Sandiganbayan are reviewed by the Supreme Court without reference to any video recording of their trial. On the other hand, the case of President Estrada has the privilege of a review that may refer to a video recording of his trial. The equal protection clause of the Constitution mandates that people similarly situated should be treated similarly (**People v. Vera**). If that is so, why is this special treatment accorded to President Estrada denied other party litigants whose cases were also resolved by the Sandiganbayan?*

The dissenting opinion of Mr. Justice Vitug appears to be the better view. It is well-settled in Philippine constitutional law that the Supreme Court may pass judgment only on issues squarely raised before it. The video recording of the Estrada trial for posterity was not and is not an issue raised in Court. Its ruling is in the nature of an obiter dictum, *i.e., a court ruling made even if one is not necessary or sought.*

LIBEL

Brillante v. Court of Appeals
G.R. Nos. 118757 and 121571, October 19, 2004, 440 SCRA 541
Second Division Decision / Justice Dante O. Tinga

FACTS

On January 7, 1988, journalist Roberto Brillante, a candidate for a seat in the city council of Makati held a press conference at the Makati Sports Club. There, he revealed the existence of a plot to assassinate Augusto Syjuco, a candidate for city mayor of Makati. He said that incumbent Makati City Mayor Jejomar Binay, Polytechnic University of the Philippines President Nemesio Prudente and one Francisco Baloloy were among those responsible for the planned assassination.

Brillante distributed copies of an open letter he wrote to then President Corazon Aquino discussing details of the assassination plot. It appears that the open letter was published on an earlier occasion in four periodicals, namely, the ***People's Journal***, ***Balita***, ***Malaya*** and the ***Philippine Daily Inquirer***.

Binay and Baloloy filed libel charges against Brillante before the office of the city prosecutor of Makati. Five counts of libel were alleged against him. Prudente brought charges of libel against Brillante before the office of the city prosecutor in Manila. He alleged four counts of libel against Brillante.

In due time, the prosecution offices in Makati and Manila filed criminal charges against Brillante with the Regional Trial Courts (RTC) in Makati and in Manila, respectively.

After due proceedings, the RTC in Manila convicted Brillante on four counts of libel, sentenced him to suffer imprisonment ranging from four months to two years and ordered him to pay moral damages to Prudente. The RTC in Makati convicted Brillante on five counts of libel, sentenced him to suffer imprisonment for the same period, and ordered him to pay moral damages to Binay and Baloloy.

Thereafter, Brillante took his cases to the Court of Appeals but his conviction by both trial courts was affirmed.

Brillante eventually brought his cases to the Supreme Court. Arguing that the cause of action for libel had proscribed (or filed beyond

the period allowed for filing it) because the cases were filed after the one-year period allowed for libel suits under the Revised Penal Code; the statements in the open letter are qualified privileged communication made out of a legal, moral and social duty on his part to safeguard the sanctity of elections and to avoid unnecessary loss of life; Mayor Binay is a public figure and the remarks in the open letter amount to constitutionally protected speech and commentary; and, at worst, the said remarks constitute mere political libel made in the heat of a political campaign and is, therefore, constitutionally protected speech.

He also stressed that the open letter, if libelous, gave rise to only one count of libel, even if it had been published in four separate periodicals.

RULING

The Supreme Court ruled against Brillante on the ground that all the elements of libel under Article 353 of the Revised Penal Code are present.

It was held that the filing of the complaint for libel with the prosecution office suspends the running of the one-year proscriptive period therefor (***People v. Olarte*** and ***Francisco v. Court of Appeals***).

Likewise, the Court held that the open letter may not be considered qualified privileged communication under Article 354 of the Revised Penal Code because Brillante himself admitted in the trial that his statements were based on unconfirmed intelligence reports. As a journalist and as a candidate, he should have verified the truth or the reliability of the said intelligence reports. His hasty publication of the so-called intelligence reports negates any claim of good faith and justifiable motives on his part. Moreover, the open letter is not a private communication because it was a published letter.

On the claim that the open letter constitutes what Brillante branded as "political libel," the Court pointed out that although a wide latitude is given to defamatory utterances against public officials in connection with their performance of official duties, such defamatory utterances do not automatically fall within the ambit of constitutionally protected speech. If the utterances are false, malicious or unrelated to a public officer's performance of his duties, the same may give rise to criminal and civil liability on the part of the author.

The Court also ruled that the multiple publication rule in libel law applies in the Philippines (***Soriano v. Intermediate Appellate Court***). Under this rule, a single defamatory statement, if published several times, gives rise to as many offenses as there are publications.

REGULATION OF TELEVISION PROGRAMS

Movie and Television Review and Classification Board v. ABS-CBN Broadcasting Corporation
G.R. No. 155282, January 17, 2005, 448 SCRA 575
Third Division Decision / Justice Angelina S. Gutierrez

FACTS

Loren Legarda was host of the ***The Inside Story***, a weekly television program broadcast over ABS-CBN Channel 2. Its October 15, 1991 episode entitled *Prosti-tuition* featured students from the Philippine Womens' University (PWU) in Manila supposedly engaged in prostitution as a means of paying for their tuition fees.

Thereafter, the PWU administration and some PWU students and their parents protested the said episode before the Movie and Television Review and Classification Board (MTRCB). An investigation was conducted by the MTRCB and it was learned that the episode in question was not submitted to it for review prior to actual broadcast. According to the MTRCB, this is a violation of Section 7 of its charter, Presidential Decree No. 1986. Thus, the MTRCB threatened to impose sanctions on both the ABS-CBN Broadcasting Corporation (ABS-CBN) and Legarda.

For their part, ABS-CBN and Legarda argued that ***The Inside Story*** is a public affairs program, a news documentary, and a socio-political editorial. Its broadcast, they stressed, is protected under the free expression and free press clauses of the 1987 Constitution. For this reason, they argued, the MTRCB has no power to impose prior restraint on the program.

The foregoing arguments notwithstanding, the review committee of the MTRCB imposed a fine of P20,000 on both ABS-CBN and Legarda and ordered that all programs of ABS-CBN falling under the

same category as ***The Inside Story*** must be submitted to the MTRCB for review prior to broadcast.

ABS-CBN and Legarda appealed to MTRCB Chairman Henrietta Mendez but the ruling of the MTRCB on the committee level was affirmed. This prompted ABS-CBN and Legarda to file a special civil action for *certiorari* with the Regional Trial Court in Quezon City praying therein that the trial court declare certain sections of Presidential Decree No. 1986 and the rules of the MTRCB unconstitutional. By way of alternative, they asked the trial court to exempt episodes of ***The Inside Story*** from review by MTRCB and declare the ruling of the MTRCB as prior restraint and, therefore, unconstitutional. In doing so, they contended that ***The Inside Story*** falls under the category of "public affairs program, news documentary, or socio-civic editorial" governed by standards similar to those governing newspapers. They also contended that each episode of ***The Inside Story*** is a newsreel exempted from review pursuant to the charter of the MTRCB.

The RTC ruled in favor of ABS-CBN and Legarda. Thus, the MTRCB brought the case to the Supreme Court.

RULING

As held in ***Iglesia Ni Cristo v. Court of Appeals***, the MTRCB has the power to review *all television programs* in the Philippines. Since ***The Inside Story*** is a television program, it is within the jurisdiction of the MTRCB to review.

In ***Iglesia Ni Cristo v. Court of Appeals***, it was held that freedom of religion has a preferred status conferred on it by the Constitution. Despite that preferred status, the Court did not exempt the said religious programs from review by the MTRCB. The Court went on to say that freedom of expression and freedom of the press have no preferred status in the hierarchy of constitutional rights in the Philippines. Thus, each episode of ***The Inside Story*** is not a newsreel. It is more of a variety of news-related commentaries, analyses and/or exchange of opinions well within the jurisdiction of the MTRCB to review.

The Court said that since the MTRCB did not ban the show, there is no need to resolve the issue on the constitutionality of certain provisions in Presidential Decree No. 1986 and the rules of the MTRCB.

CRITIQUE

The statement of the Court to the effect that freedom of expression and freedom of the press have no preferred status in the hierarchy of constitutional rights in the Philippines is constitutionally unsound. In a long line of decisions including the recent pronouncements of the Court in ***Ayer Productions, Pty. Ltd. v. Hon. Capulong*** *and* ***ABS-CBN Broadcasting Corporation v. Commission on Elections****, it was emphasized that freedom of expression and freedom of the press enjoy a preferred status in the hierarchy of constitutional rights obtaining in the country. In fact, in* ***ABS-CBN Broadcasting Corporation v. Commission on Elections****, the Court categorically stated that freedom of expression is a preferred right and, therefore, stands on a higher level than substantive economic or other liberties, and that freedom of thought and speech is the indispensable condition of nearly every other form of freedom. It is worth pointing out that the ABS-CBN Broadcasting Corporation is a party in both* ***ABS-CBN Broadcasting Corporation v. Commission on Elections*** *and this case,* ***Movie and Television Review and Classification Board v. ABS-CBN Broadcasting Corporation.***

Does the ruling in ***Movie and Television Review and Classification Board v. ABS-CBN Broadcasting Corporation*** *amount to an abandonment of the doctrine established in* ***Ayer Productions, Pty. Ltd. v. Hon. Capulong*** *and* ***ABS-CBN Broadcasting Corporation v. Commission on Elections****? It does not seem so. If the Court intended to abandon the said doctrine, it would have explicitly said so. From the text of the decision in* ***Movie and Television Review and Classification Board v. ABS-CBN Broadcasting Corporation****, it looks like the controversial remark of the Court was made without the benefit of judicial retrospect.*