FREE PRESS AND INDEPENDENT JUDICIARY†

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WE are all interested in the guarantee and protection of our constitutional rights, as well as in the maintenance and strengthening of our democratic institutions. As most of you are, or have been editors and newsmen, ardently interested in the freedom of the press, and many of you are also lawyers or would-be judges, profoundly concerned with the administration of justice, I propose to discuss with you these two basic conditions of our constitutional democracy — the two enduring pillars in our national edifice, namely, a free press and an independent judiciary.

The Constitution provides that "No law shall be passed abridging the freedom of speech or of the press . . ."[1] The Constitution also provides that judicial power be vested in one Supreme Court and in such inferior courts as may be established by law.[2]

The public interest involved in the legitimate exercise of the freedom of the press and in the impartial administration of justice should be harmonized. On this vital problem, our Supreme Court has quoted with approval the appropriate statement of Justice Holmes to the effect that:

> The administration of justice and the freedom of the press though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction.[3]

To the same effect is the luminous statement of Justice Frankfurter that —

> . . . . A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom, may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press.[4]

† Address delivered by the Hon. Ambrosio Padilla, Solicitor General of the Philippines, as Guest Speaker of the College Editors' Guild of the Philippines, at its fourth convocation meeting held at the National University Gymnasium on Saturday, January 14, 1956 at 5 P.M.

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[1] PHIL. CONST. art. III § 1 (8).

[2] *Id.*, art. VIII § 1.

[3] U.S. v. Sullens, 36 F. 2d 230, 238-39 (1929), quoted in *In re* Lozano, 54 Phil. 801, 808 (1930); *In re* Sotto, 46 O.G. 2570, 2575 (1949).

The administration of justice partakes of the Divine, for justices and judges are entrusted with the extraordinary prerogative of passing judgment over their fellowmen, their rights, property, honor, and also their freedom and even their very lives. As observed by Justice Montemayor:

> Compared to other public functions and duties, the dispensing of justice, besides being extremely important, is both delicate and singular. To sit in judgment over your fellowmen, pass upon their controversies involving their rights and fortunes, and in criminal cases determine their innocence or guilt, which decision directly affects and involves their freedom, their honor, even their lives, is no ordinary chore or business. It is a serious task, weighty and fraught with grave responsibility and of far reaching effects, a task, earnest and solemn almost partaking of the divine.[5]

As the courts and their incumbents are called to discharge judicial functions, which are verily an attribute of the Divine, they must perforce enjoy independence of action and freedom of judgment. They must be possessed of adequate training and intelligence to direct their judicial action; and of honesty and integrity to assure their impartial judgment. They must also count with the full support of the citizenry who accords them due respect and abiding faith. By all means, the administration of justice should be fair, speedy and adequate. As announced by our Supreme Court:

> Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by publications 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.[6]

It has likewise been held that a member of the Bar, as an officer of the Court, "is in duty bound to uphold its dignity and authority and to defend its integrity," and in so doing —

> He neither creates nor promotes distrust in the administration of justice, and prevents anybody from harboring and encouraging discontent which, in many cases, is the source of disorder, thus undermining the foundation upon which rests that bulwark called judicial power to which those who are aggrieved turn for protection and relief.[7]

[4] Concurring opinion, Pennekamp v. Florida, 328 U.S. 354, 356 (1946).

[5] Concurring opinion, Ocampo v. Secretary of Justice, 51 O.G. 147, 181-82 (1955).

[6] *In re* Kelly, 35 Phil. 944, 951 (1916).

[7] Salcedo v. Hernandez, 61 Phil. 724, 728 (1935).

This duty, although peculiar to lawyers, must be shared by all the citizens, particularly by the gentlemen of the press. The dignity of the courts requires and demands due respect, for this "respect of the courts guarantees stability of their institution. Without such guarantee, said instiution would be resting on a very shaky foundation."[8]

The courts have been zealous in protecting and implementing the constitutional guarantee of the freedom of speech and of the press, for the legitimate exercise of said freedom cannot impair but rather help maintain and strengthen the independence of the judiciary. Hence, our Supreme Court correctly stated:

> The constitutional guaranty of freedom of speech and press must be protected in its fullest extent, but license or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense; that as important as is the maintenance of an unmuzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the judiciary.[9]

Truly, "the independence of the judiciary is no less a means to the end of a free society" and:

> A judiciary is not independent unless courts of justice are enabled to administer law by absence of pressure from without, whether exerted through the blandishments of reward or the menace of disfavor.[10]

Any newspaper publication which would tend necessarily to undermine the confidence of the people in the honesty and integrity of the members of the judiciary will only produce a feeling on the part of our citizenry incompatible with the faith that they can expect justice therefrom. They might, possessed of this inadequacy of faith, be "driven to take the law into their own hands, and disorder, and perhaps chaos, might be the result."[11] Hence, in the case of *In re Parazo*,[12] the administration of justice which involves the confidence of the whole country has been deemed included in the phrase "interest of the State."

On the other hand, freedom of speech and of the press, which embraces at the very least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint and without fear of subsequent punishment[13] deserves protection not only for the thought that agrees with us, but even more so, for the thought that we hate.[14]

Quoting Chief Justice Marshall in discussing the freedom of the press:

[8] *Id.* at 729. See also *In re* Sotto, 46 O.G. 2570 (1949).
[9] *In re* Abistado, 57 Phil. 668, 674 (1938); quoted in the case of *In re* Quirino, 76 Phil. 630, 637 (1946).
[10] See note 4 *supra*.
[11] *In re* Sotto, 46 O.G. 2570 (1949).
[12] 45 O.G. 4382 (1948).
[13] Justice Murphy in Thornhill v. Alabama, 310 U.S. 88 (1940).
[14] Justice Holmes in U.S. v. Schwimmer, 279 U.S. 644 (1929).

> The spirit of the constitution and the opinion of the people cannot be curbed by those who administer the Government. Among those principles which are held most sacred by the people of America, there is none more deeply rooted in the public mind than that of the liberty of the press.[15]

and Daniel Webster when he said:

> It is important to safeguard to the utmost the right to free speech and the free press. It is the ancient and constitutional right of our people to judge public matters and public men. It is such a self-evident right as the right to breathe the air and to walk on the surface of the earth. I will defend this high constitutional prerogative in time of war, in time of peace, and all the time. Dead or alive I shall maintain it.[16]

our Supreme Court held that:

> The freedom of the press consists in the right to publish the truth, with good motives and for justifiable ends, although said publication may be offensive to the Government, to the courts, or to individuals.[17]

Likewise, our Supreme Court has held that the guaranty of a free speech and a free press includes the right to criticize judicial conduct, for the administration of 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 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.
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> 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 necessary for free speech. '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.' (Howarth vs. Barlow, [1906], 113 App. Div. N.Y. 510).[18]

There is thus imperative need for the development of an enlightened public opinion which demands a full discussion of public affairs. As stated by Justice Malcolm:

> 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

[15] See U.S. v. Perfecto, 43 Phil. 58, 63 (1922).
[16] *Ibid.*
[17] *Id.* at 62-63.
[18] U.S. v. Bustos, 37 Phil. 731, 740-41 (1918).

and dignity of the individual be exalted. *Of course, criticism does not authorize defamation.* Nevertheless, as the individual is less than the State, so must expected criticism be borne 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.[19]

With full recognition of the entrenched constitutional principle that freedom of the press necessarily involves freedom from liability in the legitimate exercise of that constitutional right, the courts have not hesitated to vindicate editors who have been prosecuted for libel. Thus, the Supreme Court made it clear —

> The development of an informed public opinion in the Philippines can certainly not be brought about by the constant prosecution of those citizens who have the courage to denounce the maladministration of public affairs. The time of prosecuting officers could be better served, in bringing to stern account the many who profit by the vices of the country, than by prosecution which amounts to persecution of the few who are helping to make, what the country so much needs, an enlightened public opinion.[20]

Our penal laws contain provisions affording the mantle of protection to privileged communications if they be:

> A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.[21]

The press should not only be protected but even commended for publications which tend to develop an informed public opinion in the dissemination of useful information, to submit accurate reports of official actuations including judicial proceedings, and to comment fairly thru constructive criticism. Its freedom of expression covers divergence of views from rulings and decisions rendered by judicial tribunals if believed to be contrary to law or prejudicial to public interest. Actuations of our courts which are not founded on the facts and the evidence on record, or which ignore applicable legal principles should not be concealed from, but rather exposed to, public view, for verily, there can be no real freedom of the press if judicial officers and their official actuations are to be spared the vigilant reports of newsmen and the searching comments of editors for the information of the public, which contribute to the moulding of an enlightened public opinion.

The administration of justice must be preserved in its pristine purity to merit the continued faith and abiding confidence of the people. The dispen-

[19] *Ibid.*
[20] U.S. v. Perfecto, 43 Phil. 225, 232 (1922).
[21] Art. 354, par. 2, REVISED PENAL CODE.

sation of justice must be undertaken by competent men who would decide controversies in litigation in accordance with the evidence and the law as the light of reason and the warning of conscience would beckon a judge to decide, free from any extraneous influence or pressure "thru the blandishment of reward or the menace of disfavor." The dispensation of justice, which is an attribute of the Divine, should neither be whimsical nor arbitrary; it must be based on the immutable standards of truth and justice as far as human reason can determine, considering the peculiar facts and circumstances of every case in litigation. Only in that way can the courts deserve respect, maintain their dignity and uphold their integrity. Only in that way can true justice be extended to all alike — the rich and the poor, the learned and the unlettered, the influential and the common man. Only then could the people be prevailed upon and encouraged to resort to judicial proceedings and submit to the decision of our courts their controversies which may involve their fortunes, their liberties and even their lives. For, shake that popular confidence, foment distrust, or destroy integrity in our courts of justice, and you will have impaired, shaken and perchance destroyed the very foundation of judicial power, which admittedly, is the last bulwark of our constitutional rights in our free society. Here lies not only the right and the power, but more so, the duty and the responsibility of our courts of justice.

In the same manner that the administration of justice must be protected, so must be freedom of the press and of speech be safeguarded. And just as the courts of justice do not have only a right but even more so, a sacred responsibility towards our people in the enjoyment of their prerogatives in our democratic institutions, so the press likewise has not only a right but more so, the solemn responsibility of seeing to it that its liberties are exercised within constitutional limits, and its freedom never abused or allowed to lapse into license. Thus, in reporting to the public, crimes like kidnapping, murder, roberry with rape or suicide, the press should not resort to sensationalism, giving undue prominence to the perpetrators, which in effect glorify them as persons of celebrity, instead of stressing the repressive and deterrent effects of the principle that "crime never pays." Similarly, the scandal sheets, commonly known as "tabloids," serve no useful purpose when they choose and dare publish lurid and obscene stories of acts committed against public morals or when they expose inaccurate and sometimes false gossips against the good name and reputation of law-abiding citizens.

Among the recognized limitations of the freedom of the press is the security of the state, and therefore, the Penal Code penalizes inciting to rebellion[22] or to sedition.[23] Another established limitation is the right of individuals to their reputation and, hence, the Penal Code penalizes libel which causes

[22] Art. 138 *id.*
[23] Art. 142 *id.*

the dishonor, discredit or contempt of a person or to blacken the memory of one who is dead.[24] The third recognized limitation of the freedom of the press is the indispensable requisite of an independent judiciary, which demands the respect necessary for the maintenance of its integrity and the proper dispensation of justice. Hence, any publication which tends, directly or indirectly, to impede, obstruct or degrade the administration of justice is censurable and may be punished as contempt of court.[25] The judicial power to punish for contempt is inherent in every court of justice. As stated by the Supreme Court in the case of *Borromeo v. Mariano*.[26]

> The Judiciary is one of the coordinate branches of the Government (Forbes vs. Chuaco Tiaco, 16 Phil. 534; United States vs. Bull, 15 Phil. 7). Its preservation in its integrity and effectiveness is necessary to the present form of Government . . . . Therefore, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purposes for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of the Government. Courts have, therefore, inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice. This is clear; for, if the judiciary may be deprived of any one of its essential attributes, or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins.

Likewise, the Supreme Court stated in the case of *In re Parazo* that courts have the inherent power —

> . . . to adopt proper and adequate measures to preserve their integrity, and render possible and facilitate the exercise of their functions . . .[27]

The administration of justice, therefore, should be vigilantly protected by a free press in the same manner that the freedom of the press should be zealously guarded by an independent judiciary, for repeating the words of justice Frankfurter, pregnant with wisdom:

> The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press.[28]

Justice Moran expressed the same sentiment thus:

> Well-ordered liberty demands no less unrelaxing vigilance against abuse of the sacred guaranties of the Constitution than the fullest protection of their legitimate exercise. As important as is the maintenance of a free press and the free exercise of the rights of the citizens is the maintenance of a judiciary unhampered in its administration of justice and secure in its continuous enjoyment of public confidence.
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> . . . .
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> Democracy cannot long endure in a country where liberty is grossly misused any more than where liberty is illegitimately abridged.[29]

[24] Art. 353 *id.*
[25] RULE 64 § 3 (d).
[26] 41 Phil. 322, 331-32 (1921).
[27] 45 O.G. 4382, 4392 (1948).
[28] See note 4 *supra*.

Publications which may constitute criminal contempt punishable summarily by the courts may involve two kinds:

> In the first kind of contempt, what is sought to be shielded against the influence of newspaper comments is the all-important duty of the courts to administer justice in the decision of a pending case. In the second kind of contempt, the punitive hand of justice is extended to vindicate the courts from any act or conduct calculated to bring them into disfavor or to destroy public confidence in them. In the first, there is no contempt where there is no action pending, as there is no decision which might in any way be influenced by the newspaper publication. In the second, the contempt exists, with or without a pending case, as what is sought to be protected is the court itself and its dignity.[30]

Formerly, the view was that no comment or publication, however fair or constructive, could be made while a case is *sub judice*, because such publications would tend to influence the courts in administering justice in a pending suit or proceeding, but the rule is otherwise after the cause is ended.[31] It is therefore a source of gratification to note that our Supreme Court has liberalized this doctrine, when it held in the case of *In re Sotto*, that —

> Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; because if *well founded it may enlighten the court and contribute to the correctness of an error if committed;* but if it is not well taken and obviously erroneous, it should, in no way, influence the court in reversing or modifying its decision.[32]

I believe that the reasonable relaxation of the rule is in the right direction. An enforced total black-out on newspaper comments and publications in the exercise of free speech regarding matters which, though involved in a pending litigation, are of public interest, vitally affecting as they do the entire nation, would not in any way contribute to an alert, enlighted and informed public opinion.

As pointed out by Justice Black in reversing the ruling of the court below:

> . . . . It must be recognized that public interest is much more likely to be kindled by a controversial event of the day than by a generalization, however

[29] Dissenting opinion, People v. Alarcon, 69 Phil. 265, 275-76 (1939).
[30] *Id.* at 275. This view was adopted as the majority ruling in the case of *In re* Brilliantes, 42 O.G. 59 and subsequent cases.
[31] *In re* Lozano, 54 Phil. 801 (1930); *In re* Abistado, 57 Phil. 660 (1932). See People v. Alarcon, 69 Phil. 265 (1939); *In re* Quirino, 76 Phil. 630 (1946).
[32] Note 11 *supra* at 2573.

penetrating, of the historian or scientist. Since they punish utterances made during the pendency of a case, the judgments below produce their restrictive results at the precise time when the public interest in the matters discussed would naturally be at its height. Moreover, the ban is likely to fall not only at a crucial time but upon the most important topics of discussion.

No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression.[33]

Such matters of public interest, like the case before the Supreme Court involving the length of the terms of lease of public agricultural lands to aliens is a proper subject of press comments to stress either their contribution to our agricultural development or to implement the national policy of preserving for its citizens only the wealth of our natural resources. The various cases involving the power of supervision of the President over municipal officials still pending in the Supreme Court may be commented upon from the viewpoint of whether local autonomy should be strengthened or centralized power promoted, if the discussion is motivated by the best interest of public welfare. The expropriation proceedings for the expansion of military and naval bases may likewise be the subject of public discussion, despite their pendency in the Courts of First Instance, the press advocating either the security of the sovereign nation or the protection of private property rights. The suit of the Veterans Association for the declaration of nullity of the Romulo-Snyder Agreement over the unexpended balance of 70 million pesos, before its recent decision by the Court of First Instance of Manila, could have been attacked as violative of a binding international agreement of this Republic, or be defended as partaking of property rights vested by congressional appropriation of the United States Congress. Such and similar matters of public concern and their proper solution or resolution, are not the sole responsibility of the courts of justice; they are also, if not more so, the grave concern of the entire nation.

Unless the exercise of free press is deliberately directed and purposely designed to influence judges in the impartial determination of a judicial controversy by casting aspersions on their motives or their integrity or by other illegal means like veiled threats, implied favors or other extraneous considerations, judges should not now be considered as isolated in some ivory tower, detached from the people they are to judge and insensible to the pulse of enlightened public opinion. Upright judges do not have fragile backbones but are made of sterner stuff. They should not adopt a narrow outlook as to allow the clearness of their judicial view to be obscured by the free expression of a passing comment, complimentary or derogatory, and however persuasively presented one way or the other. We wish to look at our judges as men of fortitude, of sterling character, whose judgment can-

[33] Bridges v. California, 314 U.S. 252 (1941).

not be influenced by every political wind that blows, or by the viewpoints expressed by influential publishers thru their able editors.

I believe that we should continue the reasonable relaxation of the rule that would impose a total prohibition on newspaper publications affecting matters of public interest, even if some issues or aspects thereof may be involved in a pending suit. I also believe that whether the litigation is pending or has ended, the right of free speech and of free press should not be utilized as a means to assail the integrity of the courts and/or the incumbents thereof. For what should be protected is not so much the personal good name of a paricular judge, but rather, the institution of judicial power in a democracy, which cannot permit or cannot afford to suffer any detraction that would tend to degrade the administration of justice. Verily, all citizens in this our free Republic, more particularly the responsible members of the press, should by all means, uphold public confidence in the courts, for 'courts would lose their utility if public confidence in them is destroyed."[34]

In some isolated cases where a judicial officer has breached public trust and violated the law by yielding to outside pressure, through bribes, monetary or otherwise, or by committing any act of misconduct in office, the proper charges should be filed with the competent authorities, who are empowered to investigate, to convict, and to remove.

Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases but not otherwise, such charges should be encouraged and the person making them should be protected.[35]

A justified restriction on what otherwise would be within the legitimate scope of freedom of the press is that which penalizes for contempt any publication of inaccurate accounts of proceedings considered to be *confidential* in nature.[36] Likewise, because a premature disclosure of the outcome of a pending case might result in the financial advantage of litgiants as well as outsiders, it is proper for the judiciary to penalize as contempt such premature revelation.[37]

We must realize that free press and independent judiciary are both indispensable to a free society. They are both essential factors in a real democracy. It is our bounden duty, therefore, to maintain the freedom of the press by upholding an independent judiciary thru which that freedom may, if necessary, be vindicated. We must also uphold an independent judiciary which will dispense justice impartially and that objective can be achieved by maintaining a free press. Neither one is to be preferred against the other, for there is absolutely no conflict or incompatibility between these two pillars

[34] People v. Alarcon, 69 Phil. 275 (1939).
[35] Note 7 *supra* at 729.
[36] *In re* Lozano, 54 Phil. 801 (1930); *In re* Abistado, 57 Phil. 668 (1932).
[37] *In re* Subido, 46 O.G. (1s) 315 (1948).

of our constitutional democracy. Rather, they should complement each other and this can be secured not so much by unduly laying emphasis on the rights and prerogatives of each as against the other, but by stressing, for the ultimate welfare of all, their duties and responsibilities in our free society — a free press to help develop an enlightened public opinion, especially on vital questions of public interest, and an independent judiciary to dispense impartial and effective administration of justice. In that way, the courts of justice in the proper discharge of their duties, and the press, in informing our people of the actuations of our Government and of its courts, and in exposing, when necessary, its occasional excesses or incidental shortcomings, will both help maintain and strengthen the continued faith and abiding trust of our people in these two great institutions — a free press and an independent judiciary.

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