

Observations on Philippine Media Law: Newsgathering and the Right to Information

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I. INTRODUCTION

In the Philippines, media plays a pivotal and pervasive role in daily life. To say that it is influential is an understatement; it can make or break persons and institutions, and even shape society. In this jurisdiction, media is more than just a means of communication and information; it is the fourth branch of government.¹ It sometimes is the end, the goal, and the benchmark.

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1. Interview with Atty. Dan Albert S. De Padua, GMA Vice President of Network Operations in Quezon City (Feb. 8, 2002) *cited in*, Danielle Francis C. Perez, *Is Television Going Too Far?* 58 (2002) (unpublished J.D. Thesis, Ateneo Law School) (on file with the Ateneo Professional Schools Library). It should be noted that the press is oftentimes referred to as the Fourth Estate, the other three branches of the government being the executive, the legislative, and the judiciary.

However, as with all human institutions, it is open to abuse and corruption. It is imperfect.

Media serves the public as a speedy vehicle for the dissemination of information. It is a significant tool in raising awareness to the ignorant, the innocent, and to the uninformed. The public can easily access news and information through various media: television, radio, newspaper, the internet, and short message services.

The power of media hinges on the constitutionally-enshrined freedoms of speech and of the press, as well as its duty to feed the public's right to information. This power is made most evident and is exercised through its agents—journalists and other media practitioners. The public views the news from the journalist's lens. It is through him or her that the story is told and the cast of characters judged.

II. HISTORY OF THE FREEDOM OF EXPRESSION IN PHILIPPINE LAW

Before 1900, freedom of expression was unknown in Philippine law.² Filipino patriots fought for this right, knowing its necessity as a prerequisite for bringing about other reforms.³ In the words of José Rizal, this freedom is “a reform so sacred to the people of these Islands, and won at so dear a cost, [which] should now be protected and carried forward as one would protect and preserve the covenant of liberty itself.”⁴

On 7 April 1900, the privilege “[t]hat no law shall be passed abridging the freedom of speech or of the press or of the right of the people to peaceably assemble and petition the government for a redress of grievances” was laid down in President McKinley's Instructions to the Second Philippine Commission.⁵ This guaranty was then immortalized in the Philippine Bill of 1 July 1902 and the Jones Law of 1916, and remained unaltered in the 1935, the 1973, and the 1987 Constitutions.

2. United States v. Bustos, 37 Phil. 731, 739 (1918).

3. *Id.* See José Rizal, *Filipinas Despues de Cien Años (The Philippines A Century Hence)* 62, in JOSE RIZAL: LIFE, WORKS, AND WRITINGS OF A GENIUS, WRITER, SCIENTIST AND NATIONAL HERO 365-93 (Charles E. Derbyshire trans., Gregorio Zaide & Sonia Zaide eds., 1984) (1889-1890), where Rizal described ‘the reforms *sine quibus non,*’ which the Filipinos insist upon, he said: ‘The minister... who wants his reforms to be reforms, must begin by declaring the press in the Philippines free and by instituting Filipinos delegates.’”

4. *Id.* at 740.

5. VICENTE V. MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION, DOCUMENTS ON PHILIPPINE CONSTITUTIONAL SYSTEM 71 (1978).

III. FREEDOM OF EXPRESSION

In 1948, the United Nations adopted the Universal Declaration of Human Rights, acknowledged the principle that “everyone has the right to freedom of opinion and expression”⁶ and “to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁷ The 1987 Constitution of the Philippines, in turn, enshrined the freedom of speech and expression,⁸ of the press,⁹ peaceable assembly,¹⁰ the right to information on matters of public concern,¹¹ and the right to form unions and associations.¹² These rights are protected because they are essential in a democracy. They are 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.”¹³

Although all the protections in the Bill of Rights are important, free speech is a preferred freedom. “This qualitative significance of freedom of expression arises from the fact that it is the matrix, the indispensable condition of nearly every other freedom.”¹⁴ This liberty includes all forms of expression whether written, oral, tape or disc-recorded, or symbolic. Motion pictures,¹⁵ symbolic speech,¹⁶ and peaceful picketing¹⁷ are a few examples of protected expressions.

Some of the reasons behind the constitutional protection accorded to the freedom of expression are:

1. The principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic

6. Universal Declaration on Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., art. 19, U.N. Doc. A/RES/3/217 (1948).

7. *Id.*

8. PHIL. CONST. art. III, § 4.

9. PHIL. CONST. art. III, § 4.

10. PHIL. CONST. art. III, § 4.

11. PHIL. CONST. art. III, § 7.

12. PHIL. CONST. art. III, § 8.

13. *Laxaman v. Borlaza*, 47 SCRA 29, 42 (1972) (Fernando, J., concurring opinion) (citing EMERSON, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT 3 (1966)).

14. *Adiong v. Commission on Elections*, 207 SCRA 712, 716 (1992).

15. *Gonzales v. Kalaw Katigbak*, 137 SCRA 717, 723 (1985).

16. *Adiong*, 207 SCRA, at 719 (1992).

17. PHIL. CONST. art. III, § 4.

and sometimes unpleasantly sharp attacks on government and public officials;¹⁸

2. Dissemination of information to make more meaningful the vital right of suffrage;¹⁹
3. Criticism is permitted to penetrate even to the foundations of government. Criticism, no matter how severe, on the Executive, the Legislative, and the Judiciary, is within the range of liberty of speech, unless the intention and effect be seditious;²⁰
4. Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion;²¹
5. Press freedom may be identified with the liberty to discuss publicly and truthfully any matters of public concern without censorship or punishment;²²
6. Freedom of expression is essential in the search for truth;²³ and
7. 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.²⁴

IV. FREEDOM OF SPEECH AND THE PRESS

The freedom of the press is the right to publish without government interference or fear of punishment.²⁵ It is applied to all types of printed and electronic media, such as books, newspapers, magazines, pamphlets, radio, television, and the internet.

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18. *Babst v. National Intelligence Board* 132 SCRA 316, 328 (1984) (Fernando, J., concurring opinion).
 19. *Mutuc v. Commission on Elections*, 36 SCRA 228, 233-34 (1970).
 20. *People v. Perez*, 45 Phil. 599, 604-05 (1923).
 21. *People v. Castelo*, 4 SCRA 946, 955-56 (1962) (citing *U.S. v. Bustos*, 37 Phil. 731, 742 (1918)).
 22. *Reyes v. Bagatsing*, 125 SCRA 553, 560 (1983).
 23. JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 223 (2003 ed.).
 24. *Babst v. National Intelligence Board* 132 SCRA 316, 328 (1984) (Fernando, J., concurring opinion).
 25. Paul Fisher, *Freedom of the Press*, 22 *Encyclopedia Americana* 570 (1983).

The Philippine press is generally regarded as one of the most free,²⁶ given Section 4, Article III of the 1987 Constitution which provides that:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

As such, any form of infringement on press freedom such as prior restraint or subsequent punishment is strictly construed against the State.²⁷

Prior restraint means official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.²⁸ It can take the form of a licensing systems administered by the Executive, license taxes or fees imposed by the Legislative, or injunctions issued by the courts. Any system of prior restraint carries a presumption of unconstitutionality, except when the nation is at war and when regulating obscene speech.²⁹

Subsequent punishment makes a mockery of the freedom of expression by initially allowing free speech and then sanctioning it afterwards. It should be distinguished from contempt of court and conviction for libel, obscenity, and seditious speech, which are valid and should not be construed as subsequent punishment. Other means by which the press is controlled includes the imposition of business restrictions, the enactment of subsidy laws, laws establishing councils with power to censor or punish, laws on copyright, consumer protection, protection of crime victims, prevention of inaccurate reporting, and prevention of exploitation of crime for the perpetrator's financial gain.

The press, as a watchdog of democracy, is duty-bound to serve the public by providing it with information. Section 7, Article III of the 1987 Philippine Constitution states:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen subject to such limitations as may be provided by law.

The right to information relates to matters of public concern. Although there is no exact definition of what constitutes matters of public concern,³⁰ it

26. Christopher Chiu, *The Media and Press of the Philippines*, cited in, Danielle Francis C. Perez, *Is Television Going Too Far?* 58 (2002) (unpublished J.D. Thesis, Ateneo Law School) (on file with the Ateneo Professional Schools Library).

27. *New York Times v. United States*, 403 U.S. 713, 714 (1971).

28. BERNAS, *supra* note 20, at 225 (2003).

29. *Near v. Minnesota*, 283 U.S. 697, 716 (1931).

30. *Legaspi v. Civil Service Commission*, 150 SCRA 530, 541 (1987).

is easily inferred that defamatory matters are of no moment to the public as no end is served by falsity and unfairness.

The freedom of speech and expression is not absolute.³¹ It “does not comprehend the right to speak whenever, however, and wherever one pleases. The manner, and place or time of public discussion can be constitutionally controlled... [E]very right or freedom carries with it the correlative duty to exercise it responsibly and with due regard for the rights and freedoms of others... [F]reedom is not freedom from responsibility but *with* responsibility.”³²

The validity of government-imposed restrictions which result in content-based media regulation is determined through the application of any of the following tests: *clear and present danger*, *dangerous tendency*, and *balancing of interests*.

The *clear and present danger* rule was first enunciated in *Schenck v. United States*.³³ The case involved the 1917 Espionage Act and its 1918 amendment for seditious libel, which were then wartime measures. Chief Justice Oliver Wendell Holmes held that, “the question in every case is whether the words are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”³⁴ Thus, according to jurisprudence, there must be a causal connection between the speech and the imminence of danger, measured in terms of proximity and degree.

According to the *dangerous tendency test*, “speech may be curtailed or punished when it creates a dangerous tendency which the State has the right to prevent.”³⁵ Under this test, there must be a reasonable connection between the speech and the evil sought to be apprehended.³⁶

Both the *dangerous tendency* and the *clear and present danger* tests have “evolved in the context of prosecutions for crimes involving the overthrow of the government”³⁷ such as sedition and those affecting public order.

31. See *Trohwerk v. United States*, 249 U.S. 204, 206 (1919). Justice Holmes wrote that the constitutional protection “obviously was not intended to give immunity for every possible use of language.”

32. *National Press Club v. COMELEC*, 207 SCRA 1, 17 (1992) (Davide, J. concurring opinion) (emphasis from the original).

33. *Schenck v. United States*, 249 U.S. 47 (1919).

34. *Id.* at 52.

35. BERNAS, *supra* note 20, at 241 (citing *People v. Perez*, 45 Phil. 599 (1923)).

36. *People v. Perez*, 45 Phil. 599, 605 (1923).

37. BERNAS, *supra* note 20, at 242.

The *balancing of interests test* introduced the weighing of values in determining the validity of any government-imposed restrictions on the freedom of expression. It was adopted in *Gonzales v. Commission on Elections*³⁸ where Justice Fernando noted the relevant factors, such as the relative seriousness of the danger, the value of the occasion for speech or political activity, the availability of more moderate controls than those the state has imposed, and the intent behind the speech.³⁹ As Justice Castro noted in his dissenting opinion:

[I]t is the Court's function in the case before it when it finds public interests served by legislation on the one hand, and First Amendment freedoms affected by it on the other, to balance the one against the other and to arrive at a judgment where the greater weight shall be placed.⁴⁰

This is based on the principle that the freedom of speech is not absolute, and may be abridged to serve public interests.⁴¹

V. NEWSGATHERING: FREEDOM OF THE PRESS V. RIGHT TO PRIVACY

Investigative reporters... are the guard dogs of society, but the trouble with guard dogs is that they sometimes attack with equal fervor the midnight burglar and the midday mailman.

-Michael Arlen⁴²

A. Investigative Journalism

A form of journalism called "Investigative Journalism" has a tendency of being a dangerous source of arbitrary power for a journalist. It is a branch of journalism that concentrates on a specific topic that is usually controversial or scandalous which requires a lot of research to yield results. Recently, there has been a proliferation of investigative journalism programs on Philippine television. Their format usually begins with a host reporting a complaint of a private individual against another private individual. What follows is a scene shot by the crew using technology and methods such as recorded phone conversations, entrapment, hidden cameras, and microphones. The host/journalist, who is sometimes accompanied by policemen, is then seen

38. *Gonzales v. Commission on Elections*, 27 SCRA 835 (1969).

39. *Id.*

40. *Id.* at 899 (citing KAUPER, CIVIL LIBERTIES AND THE CONSTITUTION 113 (1966)).

41. *Id.*

42. Michael Arlen, *The Camera Age: Essays on Television* 172 (1981), cited in Kerwin Tan, *Unwelcomed 15 Minutes of Fame: Right to Privacy in Today's Intrusive Media* 5 (2004) (unpublished J.D. Thesis, Ateneo Law School) (on file with the Ateneo Professional Schools Library).

confronting and threatening the person who was caught committing the act complained of. The public oftentimes see the offender in the background looking really angry or extremely embarrassed. The irate subject reacts as such due to the unwarranted ambush entrapment, with television cameras to boot. The offender is thus projected to the public as a guilty individual because of his irate reaction to the invasion of his privacy. Even before this individual is brought to court, he is already found guilty after his trial by publicity.

Although it is conceded that the public has the right to know matters of public concern, such as offenses committed, this right can oftentimes infringe on the rights of another, such as: the right to privacy, presumption of innocence, and due process. The reputation of a person may be damaged beyond repair even before he is adjudged guilty by a court of law. In those instances, journalists wield great power and control over potential subjects of an investigative show. This makes the reporter susceptible to corrupt practices such as threats, obstruction of justice and blackmail—all in the name of journalism.

The Television Code upholds a “vision of serving [the public] the best that all of TV could give.”⁴³ But what is the best that television can give? Does it include in its scope private grievances aired and followed through on national airwaves in violation of another’s rights? Especially when “broadcasting possesses a uniquely immediate and lasting impact on the public, which demands a high sense of responsibility, and discerning judgment of morality, fairness and honesty at all times.”⁴⁴

B. Right to Privacy

The other interest to be weighed is that of privacy as a general social value, which is threatened by the expanded protection of press freedom and the latter’s encroachment on individuals’ privacy through the use of electronic devices. Privacy, as a general social value, enhances the ideals of democracy by allowing an individual to live his life with dignity to better contribute to the free marketplace of ideas. The author subscribes to the view that the right to privacy from media should be legally protected, an idea traced back from an article penned by Louis D. Brandeis and Samuel D. Warren published in 1890:

The press is overstepping in every direction the obvious bounds of propriety and of decency... When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the

43. Kapisanan ng mga Brodkaster ng Pilipinas, Revised Edition of the Television Code, Foreword.

44. Kapisanan ng mga Brodkaster ng Pilipinas, Revised Edition of the Television Code, Preamble.

community, what wonder that the ignorant and thoughtless mistake its relative importance. Easy of comprehension, appealing to that weak side of human nature which is never wholly cast down by the misfortunes and frailties of our neighbors, no one can be surprised that it usurps the place of interest in brains capable of other things. Triviality destroys at once robustness of thought and delicacy of feelings. No enthusiasm can flourish; no generous impulse can survive its blighting influence.⁴⁵

A few commentators have enumerated the branches of invasion of privacy as: (1) putting the plaintiff in a false light, (2) the intrusion on plaintiff's physical solitude, and (3) the publication of embarrassing private facts.⁴⁶

Publication or the process of communicating information to a third person or persons through whatever medium of falsity may be simply false and harmful. If it is simply false, in that it portrays the plaintiff differently from what he is in real life, then the media practitioner can be held liable only for negligence provided that the plaintiff show actual malice indicating that the falsity was for purposes of trade and not for public enlightenment.⁴⁷ The defenses of truth, qualified privilege, and fair comment are available to the defendant.⁴⁸ Newsworthiness and consent, however, are unavailing. "Erroneous information is not newsworthy—there is not public good to be served in its dissemination. A plaintiff would be unlikely to have formally consented to being portrayed in a false light..."⁴⁹

The second branch of intrusion is intrusion of a plaintiff's physical solitude, which is oftentimes committed in the course of newsgathering rather than in publication.⁵⁰ Obviously, consent is a valid defense but what raises ethical concerns is when consent has been obtained through some form of misrepresentation. "Since reporters often investigate alleged misdeeds they are unlikely to get consent to do interviews, go to certain places or record interviews if they identify themselves as reporters."⁵¹

The right to privacy is a constitutionally guaranteed right.⁵² This sphere is encroached upon by intrusive newsgathering methods due to the

45. Louis D. Brandeis & Samuel D. Warren, *The Right to Privacy*, 4 HARV.L.REV. 193 (1890).

46. T. BARTON CARTER, ET AL., *THE FIRST AMENDMENT AND THE FOURTH ESTATE: THE LAW OF MASS MEDIA* 133 (1985).

47. *New York Times v. Sullivan*, 376 U.S. 254, 288 (1964).

48. CARTER, *supra* note 45, at 136.

49. *Id.* at 137.

50. *Id.*

51. *Id.* at 148.

52. PHIL. CONST. art. III, § 2.

competitive nature of the media marketplace,⁵³ which is ever so concerned about ratings and profits. Consent can be a defense in an action for this kind of intrusion but newsworthiness is unavailing. Aside from tort liability and damages for defamatory reporting and unethical newsgathering, the intruding media practitioner may also be held liable criminally for offenses such as tumults and disturbance of public order,⁵⁴ using fictitious names to cause damage,⁵⁵ trespass and theft,⁵⁶ malicious mischief,⁵⁷ incriminating innocent persons,⁵⁸ or intriguing against honor.⁵⁹

The third branch of intrusion on privacy is done through the publication of embarrassing private facts such as sexual matters, commission of crimes, poverty, and idiosyncrasies.⁶⁰ For this kind of suit to prosper, the plaintiff must show that the information made public was in fact private and that the disclosure would be highly offensive to a reasonable person.⁶¹

C. Defining Intrusive Newsgathering

Defamation is made up of the twin torts of libel and slander.⁶² In general, the two can be distinguished in that the former is written and the latter is oral. Defamation is an invasion of the interest in reputation and good name.⁶³ The defamatory meaning conveyed is the touchstone of a successful defamation suit, and can always be negated by good faith, truth, or the fact that ordinary use or the words as whole warrant an innocent interpretation under the circumstances.

53. C. THOMAS DIENES, ET AL., *NEWSGATHERING AND THE LAW* 593 (1997).

54. An Act Revising the Penal Code and Other Penal Statutes [REVISED PENAL CODE] art. 153 (1980).

55. *Id.* art. 178.

56. *Id.* art. 308.

57. *Id.* art. 327.

58. *Id.* art. 363.

59. *Id.* art. 364.

60. CARTER, *supra* note 45, at 166. ("It may be important at this point to distinguish a successful defamation suit from an invasion of privacy suit. In the former, monetary damages are awarded to the plaintiff to compensate him for his besmirched reputation. Intrusion of privacy, on the other hand, is not remedied by monetary compensation, and neither counterattack nor counter speeches are useful to undo the harm.") (T. Barton Carter, et al., *supra* note 45, at 166.).

61. CARTER, *supra* note 45, at 154.

62. WILLIAM L. PROSSER, *LAW ON TORTS* 737 (1971).

63. *Id.*

Libel is defined as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.⁶⁴ The actual malice standard as adopted in this jurisdiction pertains to false defamatory statements made about a public officer or public figures. The persons responsible for communicating the statement (including the writers, publishers, and broadcasters) can be held liable only if there exists clear and convincing evidence that they acted with knowledge of the statement's falsity or with reckless disregard of whether the statement was false or not.⁶⁵

Given the present newsgathering methods of investigative journalism programs which are akin to entrapment, the subsequent broadcast of information taken under such arrangement may be said to contain traces of slander—there may be defamatory meaning, intrusion to privacy, unethical methods in the use of such technology. Obviously, where the journalist or the show's host airs footage where he berates or scolds a person for doing an act or engaging in conduct complained of by another private individual, then such act on the part of the journalist is defamatory and in excess of his role as a journalist. Ratings and profits occupy no greater position than civil liberties in a democratic society's hierarchy of values.

D. Assertion of the Bill of Rights

It should be noted that the restrictions in the Bill of Rights are directed against the State, and do not govern relations between private persons.⁶⁶ Thus, the question arises as to whether a private citizen aggrieved by his or her shameful exposure in investigative journalism television programs may claim a violation of their right to privacy and due process against such media practitioners. The Court held in *People v. Marti*⁶⁷ that the constitutionally enshrined freedoms cannot to be invoked by a private citizen against another.⁶⁸ These guarantees are intended⁶⁹ to protect citizens against the

64. REVISED PENAL CODE, art. 353.

65. *New York Times v. Sullivan*, 376 U.S. 254, 279-88 (1964).

66. BERNAS, *supra* note 20, at 106.

67. *People v. Marti*, 193 SCRA 57 (1991).

68. *Id.* at 64.

69. Sponsorship Speech of Commissioner Bernas, I Record of the Constitutional Commission 674 (1986) provides:

The protection of fundamental liberties is the essence of constitutional democracy. Protection against whom? Protection against the State. The Bill of Rights governs the relationship between the individual and the State. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does

State because government in itself is powerful, and when unlimited, it becomes tyrannical. The Bill of Rights is a guarantee that there are certain areas of a person's life, liberty and property which *governmental* power may not touch.⁷⁰

It may be argued, however, that aggrieved citizens have recourse under the Civil Code provisions governing human relations where individuals are given protection from the haphazard trampling of their constitutional rights by fellow citizens.⁷¹ Just as the Bill of Rights cannot be invoked by a citizen against another, neither can press freedom be validly invoked against private citizens. Media practitioners cannot trivialize individuals' rights for the sake of getting their news story published in the name of public interest. There is no public interest to be served in publishing false and unfair stories.

E. Journalists' Code of Ethics

In the Philippines, a Journalist's Code of Ethics⁷² was unanimously adopted during the founding congress of the National Union of Journalists of the Philippines on 30 July 1988. Some of the salient features of this Code provide that journalists:

[S]hall scrupulously report ... the news, taking care not to suppress essential facts nor to distort the truth by omission or *improper emphasis*...⁷³

[S]hall resort only to *fair and honest methods* in my effort to obtain news, photographs and/or documents, and *shall properly identify myself as a representative of the press* when obtaining any personal interview intended for publication.⁷⁴

[S]hall refrain from writing reports that will adversely affect a private reputation unless the public interest justifies it. At the same time, I shall fight vigorously for public access to information.⁷⁵

x x x

[S]hall *presume persons accused of crime of being innocent until proven otherwise*. I shall exercise caution in publishing names of minors and women involved

is to declare some forbidden zones in the private sphere inaccessible to any power holder.

70. *Id.*

71. *See generally* An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386, [CIVIL CODE] (1949) arts. 19-21, 32.

72. Journalist's Code of Ethics, *available at* http://www.nujp.org/?page_id=7 (last accessed Oct. 20, 2005).

73. *Id.* art. I. (emphasis supplied).

74. *Id.* art. III (emphasis supplied).

75. *Id.* art. IV (emphasis supplied).

in criminal cases so that they may not unjustly lose their standing in society.⁷⁶

[S]hall accept only such tasks as are compatible with the integrity and dignity of my profession, *invoking the “conscience clause”* when duties imposed on me conflict with the voice of my conscience.⁷⁷

[S]hall conduct myself in public or while performing my duties as journalist in such manner as to maintain the dignity of my profession. *When in doubt, decency should be my watchword.*⁷⁸

F. Tort

Given that the restrictions in the Bill of Rights are directed against the State and do not govern relations between private persons,⁷⁹ citizens affected and aggrieved by unfair investigative reporting cannot anchor their cause of action against media practitioners on a violation of their fundamental freedoms. Yet, as previously suggested, the State may intervene on their behalf by regulating media practice through the exercise of police powers. However, as between an offensive reporter and an offended subject, the Civil Code provisions on human relations under Articles 19 to 21⁸⁰ and under Article 32⁸¹ govern. The offended party can hold irresponsible

76. *Id.* art. VIII (emphasis supplied).

77. *Id.* art. X (emphasis supplied).

78. *Id.* art. XI, (emphasis supplied).

79. BERNAS, *supra* note 20, at 106.

80. The Civil Code provides thus:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently *causes damage* to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully *causes loss or injury to another in a manner that is contrary to morals, good customs or public policy* shall compensate the latter for the damage. (emphasis supplied).

81. Art. 32. Any public officer or employee, or *any private individual*, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- (1) Freedom of religion;
- (2) Freedom of speech;
- (3) Freedom to write for the press or to maintain a periodical publication;
- (4) Freedom from arbitrary or illegal detention;

journalists liable for causing injury, loss or damage to his person which prejudice his constitutional rights. In the same vein that the restrictions of the Bill of Rights cannot be invoked as between two private citizens, the

- (5) Freedom of suffrage;
- (6) The right against deprivation of property without due process of law;
- (7) The right to a just compensation when private property is taken for public use;
- (8) The right to the equal protection of the laws;
- (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
- (10) The liberty of abode and of changing the same;
- (11) The privacy of communication and correspondence;
- (12) The right to become a member of associations or societies for purposes not contrary to law;
- (13) The right to take part in a peaceable assembly to petition the government for redress of grievances;
- (14) The right to be free from involuntary servitude in any form;
- (15) The right of the accused against excessive bail;
- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
- (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
- (19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute. (emphasis supplied).

media also cannot invoke its shield of press freedom against private individuals, such that press freedom is logically unavailing to justify invasion or disregard of another's civil rights for the sake of publishing a news story. Although the press is vital in any democracy, privacy as a general social value enhances this ideal by allowing the individual to live his life with dignity to better contribute to the free marketplace of ideas.

G. Government Interest

The State has an interest in regulating press freedom through police power and the equally important consideration of the rights of private individuals. These individuals affected by investigative journalism programs such as *Imbestigador*, *Isumbong mo kay Tulfo*, *Insider*, *Magandang Gabi Bayan*, and *Bitag*, are brought to the bar of public opinion so to speak in seeming entrapment cases, causing the publicity of their humility. The State should, thus, have the power to supervise, and if necessary, restrict and regulate such programs.

It is first proposed that investigative journalism programs be regulated to prevent reporters from wielding too much power over targeted private individuals to protect both the right of these individuals to privacy and the right of the public to information. In the event of noncompliance by the media and the journalist, a penalty for any violation may be imposed in the exercise of the State's police power. Secondly, and in the alternative, a clarification of media ethics should be formulated and strictly adhered to by media practitioners. Lastly, and if all else fails, irresponsible broadcast journalists should be held liable for torts committed against the unwitting victims of their television shows.

The proposal is justified by showing that the power of media through journalists may have adverse effects on both the private individual, with respect to his right to privacy, and the journalist who may use such power in an abusive way. If left unregulated, this power could potentially result in an extra-constitutional establishment of the fourth estate irresponsibly invading an individual's rights in the name of journalism.

It is not suggested that investigative journalism shows be wiped out from broadcast media altogether. What the author points out is that such programs should always be fairly reported, well researched, and responsibly made in good taste. Media is society's watchdog, but local broadcast media tend to provide viewers with entertainment at the expense of an individual's privacy. This should not be the case as media is not envisioned to unfairly and unlawfully make or break citizens for the sake of ratings and profits. The author believes that only if investigative journalism is responsibly carried out can it bring about reforms and act as a catalyst for societal change. Otherwise, it would allow corrupt persons or institutions to run a circus wherein individuals are exhibited in jeopardy—all apparently in the name of public interest.

VI. ON THE RIGHT TO INFORMATION

The public scored a victory when the Supreme Court declared unconstitutional Executive Order No. 464,⁸² which prevented officials of the Executive Department from attending investigations conducted in aid of legislation without the Executive's consent.⁸³

In this case of *Senate of the Philippines, et al. v. Eduardo Ermita, et al.*, the Senate invited various officials of the Executive Department to speak in a public hearing on the alleged overpricing of the North Luzon Railway Project, as well as officials of the Armed Forces of the Philippines (AFP) to speak on the Fertilizer scam, wiretapping activities, the Gloriagate scandal, and the said North Luzon contract. Except for two AFP officials, the rest did not attend the hearings because no approval has been granted by the President in accordance with E.O. 464. Petitions were filed in the Supreme Court challenging the constitutionality of this executive order.

It was held that parts of E.O. 464⁸⁴ were invalid insofar as these provisions frustrated the power of the legislative to conduct investigations in

82. Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and for other Purposes, Executive Order No. 464 [E.O. 464] (2005).

83. *Senate of the Philippines, et al. v. Eduardo Ermita, et al.*, G.R. No. 169777, Apr. 20, 2006.

84. E.O. 464, § 2(b) and § 3:

Section 2. *Nature, Scope and Coverage of Executive Privilege.* –

(a) Nature and Scope. – The rule of confidentiality based on executive privilege is fundamental to the operation of government and rooted in the separation of powers under the Constitution (*Almonte vs. Vasquez*, G.R. No. 95367, 23 May 1995). Further, Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that Public Officials and Employees shall not use or divulge confidential or classified information officially known to them by reason of their office and not made available to the public to prejudice the public interest.

Executive privilege covers all confidential or classified information between the President and the public officers covered by this executive order, including:

- i. Conversations and correspondence between the President and the public official covered by this executive order (*Almonte v. Vasquez* G.R. No. 95367, 23 May 1995; *Chavez v. Public Estates Authority*, G.R. No. 133250, 9 July 2002);
- ii. Military, diplomatic and other national security matters which in the interest of national security should not be divulged (*Almonte v. Vasquez*, G.R. No. 95367, 23 May 1995; *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, 9 Dec. 1998).

aid of legislation⁸⁵ and deprived the people of information derived from such investigations of matters of public concern. Said the Court,

The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress—opinions which they can then communicate to their representatives and other government officials through various legal means allowed by their freedom of expression... It is the interest of the State that the channels for free practical discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently.

Indeed, “what Republican theory did accomplish was to reverse the old presumption in favor of secrecy... and replace it with a presumption in favor of publicity.”⁸⁶

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- iii. Information between inter-government agencies prior to the conclusion of treaties and executive agreements (*Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, 9 Dec. 1998).
 - iv. Discussion in close-door Cabinet meetings (*Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, 9 Dec. 1998);
 - v. Matters affecting national security and public order (*Chavez v. Public Estates Authority*, G.R. No. 133250, 9 July 2002).
- (b) Who are covered. – The following are covered by this executive order:
- i. Senior officials of executive departments *who in the judgment of the department heads* are covered by the executive privilege;
 - ii. Generals and flag officers of the Armed Forces of the Philippines and such other officers *who in the judgment of the Chief of Staff* are covered by the executive privilege;
 - iii. Philippine National Police (PNP) officers with rank of chief superintendent or higher and such other officers *who in the judgment of the Chief of the PNP* are covered by the executive privilege;
 - iv. Senior national security officials *who in the judgment of the National Security Adviser* are covered by the executive privilege; and
 - v. Such other officers *as may be determined by the President*.

Section 3. Appearance of Other Public Officials Before Congress. – All public officials enumerated in Section 2 (b) hereof shall secure prior consent of the President prior to appearing before either House of Congress to ensure the observance of the principle of separation of powers, adherence to the rule on executive privilege and respect for the rights of public officials appearing in inquiries in aid of legislation. (Emphasis and underscoring supplied).

85. PHIL. CONST. art. VI, § 21.

86. Senate of the Philippines, et al. v. Eduardo Ermita, et al., G.R. No. 169777, April 20, 2006 (citing HOFFMAN, GOVERNMENTAL SECRECY AND THE FOUNDING FATHERS: A STUDY IN CONSTITUTIONAL CONTROLS 13 (1981)).

VII. CONCLUSION

As the fourth estate, the press plays an important and vital role in our country—that of public service. Media hinges its power on the constitutionally enshrined freedoms of speech and of the press, as well as its duty to respond to and supply the public's right to information. Recently, there has been a proliferation of investigative journalism programs on national television which utilize methods and technology in such a way as to raise ethical considerations as well as violations of the Bill of Rights. Thus, the balance between press freedom in newsgathering and the individual's right to privacy is not easily struck; neither is the balance between the duty of the press to serve public interest by upholding the public's right to information as opposed to the greater public interest of holding inviolate every citizen's sanctity through a media practitioner's obeisance to ethics. Obviously, media practitioners cannot trivialize individuals' rights for the sake of getting their news story published in the name of public interest. There is no public interest to be served in publishing false and unfair stories.

Although it is conceded that the public has the right to know matters of public concern, this argument cannot be used arbitrarily to the detriment of another's rights to privacy, presumption of innocence, and due process. The State's interest in regulating press freedom through police power and the code of ethics which bind journalists can be utilized effectively to promote fair, responsible and truthful reporting therefore hindering sensationalism, coercion, and falsity. The rights involved are constitutionally enshrined, and the remedies are found under the law on torts, crimes, and human relations.

Constitutionally-enshrined freedoms are not absolute. With freedom comes responsibility, and the latter is neither without basis nor guidelines in conscience and in law. The countervailing right to press freedom and rights of an individual are not envisioned as favoring trial by publicity, wherein the featured subjects are immediately convicted by the bar of public opinion, with nothing for the judge or jury that is the Philippine audience to rely on except the journalist's report. Rather, the protected freedoms are there to guarantee the values of a democracy, namely, truth, justice, freedom, love, equality and peace.⁸⁷

87. PHIL. CONST. Preamble.