EN BANC

G.R. No. 257401 – LINCONN UY ONG, Petitioner, **v. THE SENATE OF THE PHILIPPINES, ET AL.,** Respondents;

G.R. No. 257916 – MICHAEL YANG HONG MING, Petitioner, **v. SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS,** Respondent.

Promulgated:

March 28, 2023

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

Respondent Senate of the Philippines, acting through the Senate Committee on Accountability of Public Officers and Investigations, otherwise known as the Senate Blue Ribbon Committee, has the inherent power to punish non-members for legislative contempt, pursuant to its power to conduct inquiry in aid of legislation. Being implied or incidental to its power of inquiry, the power of contempt should also be limited in the same manner: "in aid of legislation in accordance with its duly published rules of procedure[;]" and "the rights of persons appearing in or affected by such inquiries shall be respected."[1]

Under its Rules of Procedure Governing Inquiries in Aid of Legislation, the Senate may punish or cite in contempt any witness who testifies falsely or evasively before the proceedings. However, the term "evasively" is vague and should be struck down as unconstitutional "on its face" as it sends a chilling effect on the right to free speech. Also, for failure to accord due process to petitioners Linconn Uy Ong and Michael Yang Hong Ming, as the arrest orders were not in the Rules, the Orders citing petitioners in contempt and directing their arrests were issued by the Senate with grave abuse of discretion amounting to lack or excess of jurisdiction.

I

Concomitant with legislative power is the power of Congress to conduct inquiries in aid of legislation and the power to enforce it.[2] Although

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1 CONST., art. VI sec. 21.

2 *Arnault v. Nazareno*, 87 Phil. 29, 62 (1950) [Per J. Ozaeta, *En Banc*].

the 1973 Constitution[3] and 1987 Constitution[4] explicitly grant the legislative department with the power to conduct inquiries in aid of legislation, it does not expressly grant the power to enforce or punish non-members for legislative contempt.

Nevertheless, in the 1930 case of *Lopez v. De los Reyes*,[5] the Court recognized the inherent power of the Legislature to punish persons not members for contempt although no express power to punish for contempt was granted by the Organic Act. It held that the legislative power to punish for contempt "arises by implication, is justified only by the right of self-preservation, and is the least possible power adequate to the end proposed."[6]

Subsequently, in *Arnault v. Nazareno*,[7] a case decided by the Court under the 1935 Constitution, the Court defined the power to conduct inquiries and to punish a person not its member for contempt as "essential and appropriate auxiliary to the legislative function", to wit:

> Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not frequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. The fact that the Constitution expressly gives to congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person.
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> But no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire.[8] (Citations omitted)

Arnault was called upon by the Senate to testify on the questionable purchase of the Buenavista and Tambobong estates by the Rural Progress

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3 1973 CONST., art. VIII, sec. 12(2) provides:
"The Batasang Pambansa or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in. or affected by such inquiries shall be respected."

4 CONST., art. VI sec. 21 provides:
"The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected."

5 55 Phil. 170 (1930) [Per J. Malcolm, *En Banc*].

6 *Lopez v. De los Reyes,* 55 Phil. 170, 185 (1930) [Per J. Malcolm, *En Banc*].

7 87 Phil. 29 (1950) [Per J. Ozaeta, *En Banc*].

8 *Id.* at 45.

Administration. He was detained for contempt for his refusal to answer the questions by the senators.

In the subsequent case of *Arnault v. Balagtas*[9] arising from the same facts as *Arnault v. Nazareno*, this Court expounded on the power to punish for contempt as implied or incidental to the exercise of legislative power, or necessary to effectuate the power, and its exercise not being subject to judicial interference, absent manifest, and absolute disregard of discretion:

> The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power, or necessary to effectuate said power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of the other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with the affronts committed against its authority or dignity.
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> We must also and that provided the contempt is related to the exercise of the legislative power and is committed in the course of the legislative process, the legislature's authority to deal with the defiant and contumacious witness should be supreme, and unless there is a manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference.[10] (Citations omitted)

Contempt power is inherent in the same way that "courts wield an inherent power to 'enforce their authority, preserve their integrity, maintain their dignity, and ensure the effectiveness of the administration of justice.'"[11] Still, the contempt power of the Legislative must be distinguished from the contempt power of the Judiciary, as explained in the subsequent case of *Arnault v. Balagtas*:

> The process by which a contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authority must be distinguished from the judicial process by which offenders are brought to the courts of justice for the meting of the punishment which the criminal

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9 97 Phil. 358 (1955) [Per J. Labrador, First Division].

10 *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955) [Per J. Labrador, First Division].

11 *Negros Oriental II Electric Cooperative, Inc., v. Sangguniang Panlungsod of Dumaguete*, 239 Phil. 403, 409-410 (1987) [Per J. Cortes, *En Banc*].

> law imposes upon them. The former falls exclusively within the legislative authority, the latter within the domain of the courts; because the former is a necessary concomitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law.[12]

In *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*,[13] this Court is explicit that the contempt power of Congress is *sui generis* and independent of the Judiciary:

> The exercise by the legislature of the contempt power is a matter of self-preservation as that branch of the government vested with the legislative power, independently of the judicial branch, asserts its authority and punishes contempts thereof. The contempt power of the legislature is, therefore, *sui generis*, and local legislative bodies cannot correctly claim to possess it for the same reasons that the national legislature does. The power attaches not to the discharge of legislative functions per se but to the character of the legislature as one of the three independent and coordinate branches of government.[14]

Contempt power has been characterized as a "matter of self-preservation" as the branch of government vested with legislative power.[15] Thus, in *Standard Chartered Bank v. Senate Committee on Banks, Financial Institutions and Currencies*,[16] this Court found the contempt citation against petitioners reasonable and justified because petitioners' imputation that the investigation was "in aid of collection" was a direct challenge against the authority of the Senate Committee and ascribed ill motive to it.

The power to punish for contempt is grounded on necessity of information to legislate wisely and effectively, as stated in *Senate of the Philippines v. Ermita*:[17]

> As discussed in *Arnault,* the power of inquiry, "with process to enforce it," is grounded on the necessity of information in the legislative process. If the information possessed by executive officials on the operation of their offices is necessary for wise legislation on that subject, by parity of reasoning, Congress has the right to that information and the power to compel the disclosure thereof.[18]

In *In re Sabio v. Gordon*,[19] this Court held that it is the duty of the Presidential Commission on Good Government chairperson and its commissioners to cooperate with the Senate Committees in their efforts to obtain facts needed for intelligent legislative action. This Court underscored

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12 *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955) [Per J. Labrador, First Division].
13 239 Phil. 403 (1987) [Per J. Cortes, *En Banc*].
14 *Id.* at 412.
15 *Id.*
16 565 Phil. 744 (2007) [Per J. Nachura, *En Banc*].
17 522 Phil. 1 (2006) [Per J. Carpio Morales, *En Banc*].
18 *Senate of the Philippines v. Ermita,* 522 Phil. 1, 35 (2006) [Per J. Carpio Morales, *En Banc*].
19 535 Phil. 687 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

each citizen's obligation to respond "to *subpoenae*, to respect the dignity of the Congress and its Committees, and to testify fully with respect to matters within the realm of proper investigation."[20]

Thus, the contempt power of Congress is in aid of legislation, and not pursuant to adjudication. In *Oca v. Custodio*,[21] this Court found that petitioners ought to be cited in contempt for their willful disobedience of court orders under the Rules of Court. It went on to distinguish between civil and criminal contempt to determine the quantum of proof and punishment necessary for a finding of contempt against the court:

> Civil contempt is committed when a party fails to comply with an *order of a court or judge* "for the benefit of the other party." A criminal contempt is committed when a party acts *against the court's* authority and dignity or commits a forbidden act tending to disrespect the *court or judge*.
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> This stems from the two (2)-fold aspect of contempt which seeks: (i) to punish the party for disrespecting the court or its orders; and (ii) to compel the party to do an act or duty which it refuses to perform.
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> In *Halili v. Court of Industrial Relations*:
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> > Due to this twofold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal. *A civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein*; and a criminal contempt, is conduct directed against the authority and dignity of a court or of a judge, as in unlawfully assailing or discrediting the authority or dignity of the court or judge, or in doing a duly forbidden act. Where the punishment imposed, whether against a party to a suit or a stranger, is wholly or primarily to protect or vindicate the dignity and power of the court, either by fine payable to the government or by imprisonment, or both, it is deemed a judgment in a criminal case. Where the punishment is by fine directed to be paid to a party in the nature of damages for the wrong inflicted, or by imprisonment as a coercive measure to enforce the performance of some act for the benefit of the party or in aid of the final judgment or decree rendered in his behalf, the contempt judgment will, if made before final decree, be treated as in the nature of an interlocutory order, or, if made after final decree, as remedial in nature, and may be reviewed only on appeal from the final decree, or in such other mode as is appropriate to the review of judgments in civil cases. . . . The question of whether the contempt committed is civil or criminal, does not affect the jurisdiction or the power of a court to punish the same. . . .
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> The difference between civil contempt and criminal contempt was further elaborated in *People v. Godoy*:

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20 *In re Sabio v. Gordon*, 535 Phil. 687, 718 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

21 814 Phil. 641 (2017) [Per J. Leonen, Second Division].

It has been said that the real character of the proceedings is to be determined by the relief sought, or the dominant purpose, and the proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial.

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. *Their purpose is to preserve the power and vindicate the authority and dignity of the court,* and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rulesapplicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, *they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required.* As otherwise expressed, a proceeding for civil contempt is *one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant.* So a proceeding is one for civil contempt, regardless of its form, *if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience.* The *rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings* . . . .

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.

Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond

> reasonable doubt. In proceedings for civil contempt, there is no presumption, although the burden of proof is on the complainant, and *while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence. It has been said that the burden of proof in a civil contempt proceeding lies somewhere between the criminal "reasonable doubt" burden and the civil "fair preponderance" burden.*
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> Civil contempt proceedings seek to compel the contemnor *to obey a court* order, judgment, or decree which he or she refuses to do for the benefit of another party. It is for the enforcement and the preservation of a right of a private party, who is the real party in interest in the proceedings. The purpose of the contemnor's punishment is to compel obedience to the order. Thus, *civil contempt is not treated like a criminal proceeding and proof beyond reasonable doubt is not necessary to prove it.*[22] (Emphasis supplied, citations omitted)

Therefore, the distinction of civil and criminal contempt as discussed by the *ponente*,[23] citing *Oca*, should only apply to cases involving contempt of courts, and not cases involving the legislative's exercise of its contempt powers in aid of legislation, as in the present case. Thus, the characterization of legislative contempt as criminal or punitive[24] has no basis.

Despite the wide latitude granted to the legislative department to conduct inquiries in aid of legislation, such is not without limitation. These limitations also impliedly safeguard the power of Congress to cite in contempt. Article VI, Section 21 of the 1987 Constitution provides that:

> The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Pursuant to the provision, the investigation must be: (1) "in aid of legislation in accordance with its duly published rules of procedure;" and (2) "the rights of persons appearing in or affected by such inquiries shall be respected."[25] Congress must exercise its powers subject to the limitations of the Bill of Rights.[26] In *Calida v. Trillanes*:[27]

> [L]egislative inquiry must respect the individual rights of the persons invited to or affected by the legislative inquiry or investigation. Hence, the power of legislative inquiry must be carefully balanced with the private rights of those affected. A person's right against self-incrimination and to due process

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22 *Oca v. Custodio*, 814 Phil. 641, 678–680 (2017) [Per J. Leonen, Second Division].
23 *Ponencia*, pp. 41–42.
24 *Id.* at 42.
25 *Bengzon Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 841 (1991) [Per J. Padilla, *En Banc*].
26 *In re Sabio v. Gordon*, 535 Phil. 687, 715 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].
27 861 Phil. 656 (2019) [Per J. Leonen, *En Banc*].

> cannot be swept aside in favor of the purported public need of a legislative inquiry.
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> It must be stressed that persons invited to appear before a legislative inquiry do so as resource persons and not as accused in a criminal proceeding. Thus, they should be accorded respect and courtesy since they were under no compulsion to accept the invitation extended before them, yet they did so anyway. Their accommodation of a request should not in any way be repaid with insinuations.
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> The basic rules of decorum and decency must govern any undertaking done in one's official capacity as an agent of the State, in tacit recognition of one's role as a public servant. However, the deportment and decorum of the members of any constitutional organ, such as both Houses of Congress during a legislative inquiry, are beyond the judicial realm. All this Court can do is exercise its own power with care and wisdom, acting in a manner befitting its dignified status as public servant and never weaponizing shame under the guise of a public hearing.[28]

Nevertheless, the power of legislative inquiry, if patently abused, may be subjected to judicial review pursuant to the Court's *certiorari* powers under Article VIII, Section 1 of the Constitution.[29]

Here, both petitioners invoke the *certiorari* powers of this Court in claiming that the respondent committed grave abuse of discretion amounting to lack of or excess of jurisdiction in issuing the contempt and arrest orders against them. Petitioner Ong alleges that the Order citing him in contempt for falsely and evasively testifying during the September 10, 2021 hearing was unconstitutional, since the term "testifying falsely or evasively" in the Senate Rules of Procedure Governing Inquiries in Aid of Legislation is vague for having no clear standards.[30] He likewise contends that respondent has no power to order his arrest.[31] Petitioner Yang also questions the legal basis of the arrest orders issued against him.[32]

II

Pursuant to Article VI, Section 21 of the 1987 Constitution on its power to conduct inquiries and Article VI, Section 16(3)[33] of the same on its power to determine the rules of its own proceedings, respondent Senate adopted the Rules of Procedure Governing Inquiries in Aid of Legislation in 2010. These

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28 *Calida v. Trillanes*, 861 Phil. 656, 663–664 (2019) [Per J. Leonen, *En Banc*].

29 *Senate of the Philippines v. Ermita*, 522 Phil. 1, 35 (2006) [Per J. Carpio Morales, *En Banc*].

30 *Ponencia*, p. 9.

31 *Id.*

32 *Id.* at 10.

33 Art. VI, sec. 16(3) provides:
"Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days."

rules are presumed valid and constitutional based on the respect that the Judiciary accords to the Legislature as noted in *Estrada v. Sandiganbayan*:[34]

> Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.
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> If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.[35]

However, the validity of laws and rules may be constitutionally challenged either: (1) "as applied" upon considering the "actual facts affecting real litigants;" or (2) "on its face," or a "facial challenge" upon "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[36]

In an "as applied" challenge, the petitioner must allege and prove that there is an actual case or controversy through facts showing breach of rights or a demonstrable contrariety of legal rights.[37]

On the other hand, a facial challenge has been considered as a narrow exception to strike down a law despite lack of an actual case or controversy.[38] Thus, invalidation of the law "on its face" is specifically limited to the following circumstances:

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34 421 Phil. 290 (2001) [Per J. Bellosillo, *En Banc*].

35 *Estrada v. Sandiganbayan*, 421 Phil. 290, 342–343 (2001) [Per J. Bellosillo, *En Banc*].

36 *Falcis III v. Civil Registrar General*, 861 Phil. 388 (2019) [Per J. Leonen, *En Banc*].

37 *Universal Robina v. Department of Trade and Industry*, G.R. No. 203352, February 14, 2023 [Per J. Leonen, *En Banc*], *citing Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 481 (2008) [Per J. Carpio Morales, *En Banc*].

38 *Estrada v. Sandiganbayan*, 421 Phil. 290, 353 (2001) [Per J. Bellosillo, *En Banc*].

The first situation involves a statute that flagrantly violates the right to freedom of expression and its cognate rights. Freedom of expression is the cornerstone of a democratic government and occupies the highest rank in the hierarchy of civil liberties. Section 4 of the Constitution states, "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." Consequently, a facial challenge is permitted in cases involving freedom of expression and its concomitant rights to prevent prior restrictions on free speech or overly broad language that has a chilling effect on free speech.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, this Court explained:

> A facial invalidation of a statute is allowed only in free speech cases, wherein certain rules of constitutional litigation are rightly excepted.
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> The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "*in terrorem* effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights . . . .

The second scenario permits judicial review in the absence of actual facts when a violation of fundamental rights is so grievous or imminent that judicial restraint would lead to serious violations of fundamental rights. In these instances, the violation of rights must be so egregious and pervasive that almost any citizen could raise the issue. In *Parcon-Song v. Parcon*, this Court held:

> There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) *when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance*. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it. . .

The third instance in which judicial review is appropriate despite the absence of actual facts is when a Constitutional provision invokes emergency or urgent measures. By its very nature, emergency or urgent measures are temporary thus allowing it to avoid judicial review even if its

> capable of repetition. This contemplates situations in which waiting for an actual dispute or injury to occur may result in irreversible damage or harm to an individual. However, with the risk that the relevant measure would be repealed or rendered obsolete, the filing of a lawsuit or seeking judicial recourse would be futile. In such a situation, this Court may determine the applicable doctrine regarding the provision. This may be applied, but is not limited to, challenges regarding the suspension of habeas corpus, the declaration of martial law, and the exercise of emergency powers.[39]

In free speech cases, a facial challenge on a statute has been allowed. The primacy and high esteem accorded the right to free speech has been emphasized by this Court in *Chavez v. Gonzales*:[40]

> Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence. When atrophied, the right becomes meaningless. The right belongs as well — if not more — to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. *To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.*
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> The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. *The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period.* The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as *the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.*
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> *The constitutional protection is not limited to the exposition of ideas. The protection afforded free speech extends to speech or publications that are entertaining as well as instructive or informative.*[41] (Emphasis supplied)

An analytical tool to test statutes in free speech cases "on their faces" is the doctrine of vagueness, as explained in *People v. Nazario*:[42]

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39 *Executive Secretary v. Pilipinas Shell*, G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].
40 569 Phil. 155 (2008) [Per C.J. Puno, *En Banc*].
41 *Chavez v. Gonzales*, 569 Phil. 155, 197–198 (2008) [Per C.J. Puno, *En Banc*].
42 247-A Phil. 276 (1998) [Per J. Sarmiento, *En Banc*].

> As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[43]

Under the doctrine of vagueness, a statute can be facially challenged "if it is vague in all its possible applications" to prevent a chilling effect, which deters third persons not before the court from exercising their right to free speech, thus:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or prescribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a stature drawn with narrow specificity."
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> . . . .
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> *As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications.* "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."
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> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "*vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation*, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.[44] (Emphasis supplied, citations omitted)

As I noted in *Disini v. Secretary of Justice*,[45] the doctrine on "chilling effect" from the United States Supreme Court jurisprudence is advisory before us:

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[43] *People v. Nazario*, 247-A Phil. 276, 286 (1998) [Per J. Sarmiento, *En Banc*].
[44] *Estrada v. Sandiganbayan*, 421 Phil. 290, 353, 354–355 (2001) [Per J. Bellosillo, *En Banc*].
[45] 727 Phil. 28 (2014) [Per J. Abad, *En Banc*].

> The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. Marcus v. Search Warrant, 367 U.S. 717, 367 U.S. 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. *The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.*[46] (Emphasis in the original)

The "chilling effect," however, has been incorporated in our jurisprudence as in the case of *Chavez*. There, this Court held that the press statements of the Secretary of Justice and of the National Telecommunications Commission constituted impermissible forms of prior restraints on the right to free speech and press. This Court found enough evidence of chilling effect due to the complained acts on record, after considering the totality of the injurious effects of the violation to private and public interest:

> We rule that *not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. Our laws are of different kinds* and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, *by itself and without more*, cannot support suppression of free speech and free press. In fine, *violation of law is just a factor*, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom of speech and of the press. The *totality of the injurious effects* of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. In calling for a careful and calibrated measurement of the circumference of all these factors to determine compliance with the clear and present danger test, *the Court should not be misinterpreted as devaluing violations of law*. By all means, violations of law should be vigorously prosecuted by the State for they breed their own evil consequence. But to repeat, *the need to prevent their violation cannot per se trump the exercise of free speech and free press, a preferred right whose breach can lead to greater evils.*
>
> . . . .
>
> There is enough evidence of *chilling effect* of the complained acts on record. The *warnings* given to media *came from no less* the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media. They also came from the Secretary of Justice, the alter ego of the Executive, who wields the awesome power to prosecute those perceived to be violating the laws of the land. *After the warnings*, the KBP inexplicably joined the NTC in issuing an ambivalent Joint Press Statement. After the warnings, petitioner Chavez was left alone to fight this battle for freedom of speech and of the press. This silence on the sidelines on the part

[46] J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 360 (2014) [Per J. Abad, *En Banc*], *citing National Association for the Advancement of Colored People v. Button*, 371 U.S. 415, 431–433 (1963).

> of some media practitioners is too deafening to be the subject of misinterpretation.[47] (Emphasis in the original)

In *Calleja v. Executive Secretary*,[48] this Court permitted a facial challenge of the provisions in the Anti-Terrorism Act of 2020, which involved and raised chilling effects on freedom of expression and its cognate rights.

Here, petitioner Ong challenges the Senate Rules of Procedure Governing Inquiries in Aid of Legislation pertaining to contempt, specifically the term "testifies falsely or evasively," as applied to him.

I submit that the term "evasively" is vague and should be struck down "on its face" as sending a chilling effect on the right to free speech.

The pertinent provision of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation states that:

> Section 18. *Contempt*. – (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, *or* testifying, *testifies falsely or evasively*, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. A majority of all the members of the Committee may, however, reverse or modify the aforesaid order of contempt within seven (7) days. (Emphasis supplied)

Unlike an evasive testimony, a false testimony can easily be understood and discerned based on facts, as the term "false"[49] indicates.

Respondents Senate et al. cited petitioner Ong in contempt for allegedly testifying falsely and evasively during the September 10, 2021 hearing for not being able to answer respondents' questions, like "how much was the payment made to the suppliers, where did the payment came from, what kind of agreement they had with the suppliers," thus:

> SEN. LACSON: Do you have documents to show your proof of payment doon sa mga suppliers?
>
> MR. ONG: We have all those documents as long as it's--- wala naman pong rights or--- maba-violate sa amin, we are more than willing to cooperate.

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47 *Chavez v. Gonzales*, 569 Phil. 155, 219–221 (2008) [Per C.J. Puno, *En Banc*].

48 G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*].

49 MERRIAM-WEBSTER DICTIONARY, "false," *available at* https://www.merriam-webster.com/dictionary/falsely (last accessed on July 4, 2022)

SEN. LACSON: Okay. How much in total did you pay the four suppliers? Doon sa mga dumating, iyong na-procure ninyo and supplied to the PS-DBM, magkano iyong binayaran ninyo sa mga suppliers?

MR. ONG: Mr. Chairman, wala po kasi sa amin iyong mga --- sa akin, wala talaga sa akin ang record. I think I have to access our accounting records.

SEN LACSON: No. But ikaw ang nakikipag-usap sa mga suppliers, may idea ka kung magkano iyong presyo na binayaran mo doon, hindi ba?

MR. ONG: Mr. Chairman, kasi medyo ano po iyon, trade secret na iyon. Parang hindi po kami komportable na ibulgar na po sa publiko.

. . . .

THE CHAIRPERSON: Kaya nga, di sabihin mo na. Makikipagcooperate, tinatanong ka na, hindi mo naman sinasagot.

MR. ONG. Mr. Chair, I myself alone cannot answer that question kasi kumpanya po kami. Allow us to have a meeting on it, tapos pag-usapan namin and we need guidance with our accountants and lawyers. Definitely, pag kinakailangan naming makipag-cooperate sa COA, gagawin po namin iyon.

SEN. LACSON: Mr. Linconn Ong xxx did you have any document... mayroon kayong parang joint venture agreement with Mr. Yang?

MR. ONG: We do have agreement po.

SEN. LACSON: Yes. Do you have a copy of that agreement?

MR. ONG: I don't have it with me, Mr. Chairman.

SEN. LACSON: What kind of agreement do you have with Mr. Yang?

MR. ONG: Hindi ko po talaga maalala noong, noong mga --- specific content na iyan, Mr. Chairman, but sana po maintindihan ninyo na kami po, sa community naming minsan --- totoo po iyan. Pagka- minsan may mga transaksiyon kami na minsan verbal-verbal talaga- negosyante lang po.

SEN. LACSON: No. But in this particular case, iyong supplies ng mga PPEs, sinabi mo, mayroon kayong pinirmahan na agreement with Mr. Yang. Ang tanong ko, anong klaseng agreement? Anong klase iyong pinirmahan ninyong dokumento? Anong form? Is it a joint venture agreement?

MR. ONG. Mr. Chairman, I'm not really privy or hindi ko talaga ma-recall ngayon kung ano iyong content, but we have- we do have kasulatan po.

SEN. LACSON: A very important document, hindi mo matandaan kung anong form? Joint venture ba? Contract ba? Hindi mo man Jang maalala kung ano iyon?

MR. ONG: Mayroon po talagang ganoon.

SEN. LACSON: Anong klase nga?

MR. ONG. Mr. Chair, hindi ko po maka- hindi ako maka-ano, hindi maka-kasi baka po mali iyong masabi ko ngayon, tapos iyong iba naman iyong nakita ko.

SEN. LACSON: Can you produce that and submit it to this Committee?

MR. ONG: Hanapin ko po, sir. Yes po, yes po.[50] (Emphasis supplied)

Senator Drilon also pointed out that petitioner Ong was testifying falsely and evasively during the hearing:

SEN. LACSON: Six hundred twenty-five thousand pesos. Ang tanong ni Senator Drilon, [PHP] 625,000, tapos ang nire-remit ninyo, sabi mo, galing din sa corporation ninyo, sa Pharmally. Maliwanag iyan, hindi sa ibang corporation, hindi kayo nangutang at lahat. Saan nanggaling iyong perang nire-remit ninyo sa China. Sabihin na nating galing sa bangko rito -

MR. ONG: Opo, opo.

SEN. LACSON: Ang sagot ninyo po, galing sa corporation ninyo. Ang liit ng capital ng corporation ninyo, 625. That's the question. How do you reconcile that?

MR. ONG: Okay, Mr.Chairman, can I– pwede na po ba akong magpaliwanang?

SEN. LACSON: All right. Go ahead.

THE CHAIRPERSON: Kanina ka pa nagpapaliwanag, hindi naman kita pinipigilan.

MR. ONG: Thank you, Mr. Chairman. Thank you, Mr. Chairman, Marami po kasing series of transaction iyon. So, mayroon naman po kaming naiipon na pera. So, that's our pondo. And then at the same time, sa mga series of transactions, pagka medyo malaki na po iyong project, kinakailangan din po namin mangutang sa mga kaibigan. So, hindi ko po dine-deny na mayroon kaming mga utang sa labas.

THE CHAIRPERSON: Hindi naman iyon ang problema. Bilyon bilyon ang tina-transact ninyo, marami kayong kaibigan. Kailangan ring ipaliwanag kung saan rin kinuha noong mga kaibigan *ninyo iyang perang iyan. Magpapaliwanag kayo* sa Money Laundering Council.

. . . .

[50] *Ponencia*, pp. 29–31.

> SEN. DRILON: Yes. Just to go back to Mr. Lincoln Ong. *Here is a resource person who is clearly lying on the record because he says the funds were corporate funds, corporate funds of Pharmally. But the audited financial statement indicates that beginning of 2020, they had only 625,000 which is the paid-up capital. Clearly, the corporation had no capacity to pay the initial order of 54 million. So, it is not true at all and there is a deliberate effort to mislead the Committee by saying these are corporate funds. We asked him, "Who advanced this payment?" He said it was from bank accounts of Union Bank or something. "Who owns the bank accounts?" He is already evasive. This witness, Mr. Chairman, is clearly lying– is clearly lying.* And in the case of Arnault, which is a 1950 case, this Senate has the power to detain, as we have detained, people until they tell us the truth. *This witness is both evasive and refuses to answer or telling a lie. And, therefore, he has been declared in contempt earlier. We move that the contempt order be now executed and we send our sheriffs, our security people, to arrest Mr. Ong right now.*[51] (Emphasis supplied)

On the other hand, petitioner Yang was also cited in contempt for allegedly testifying evasively, although the records show that petitioner Yang's testimony was inconsistent:

> SEN. LACSON: Twenty-two years. Okay. My next question is, when, how and why did you become involved with Pharmally.
>
> MR. HUNG: [interpreting in Chinese for Mr. Yang]
>
> MR. YANG: [responding in Chinese]
>
> MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, *Mr. Yang said that he doesn't know and he has no relation to Pharmally.*
>
> SEN. LACSON: I would like to remind Mr. Yang that he is under oath, Mr. Interpreter.
>
> MR. HUNG: [interpreting in Chinese for Mr. Yang]
>
> MR. YANG: [responding in Chinese]
>
> MR. HUNG: [interpreting for Mr. Yang] Yes, Mr. Chairman. Mr. Yang is aware that he is under oath. *And it is only through the news that he found out about the existence of Pharmally Pharmaceutical.*
>
> SEN. LACSON: So, he maintains that he has nothing to do, nothing to do at all with Pharmally. Is that correct?
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> . . . .
>
> MR. HUNG: [interpreting in Chinese for Mr. Yang] MR. YANG.
>
> [responding in Chinese]

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[51] *Id.* at 33–35.

MR. HUNG: [interpreting for Mr. Yang] *Okay. Mr. Chairman, what Mr. Yang said is that, initially, he doesn't know of the existence or the whereabouts or anything about Pharmally Pharmaceutical. Later they did approach him for some assistance.*

SEN. LACSON: So, it is not true that he has nothing to do or he had nothing to do with Pharmally?

MR. HUNG: [interpreting in Chinese for Mr. Yang] MR. YANG:

[responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] *Mr. Chairman, your question pertains to the corporation or on the operations? We just like to clarify on that ...*

SEN. LACSON: First, the corporation, Pharmally Pharmaceuticals.

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Okay. Mr. Chairman, we'd like to clarify in terms of the registration or setup of Pharmally Pharmaceutical, Mr. Yang has nothing to do with it.

SEN. LACSON: That is correct. *But does he have anything to do with the operations of Pharmally Pharmaceuticals at any point?*

MR. HUNG: [interpreting for Mr. Yang] *Mr. Chairman, in terms of operations, Mr. Yang has not been involved or he has no idea.*

SEN. LACSON: Does he know Huang Tzu Yen, the chairman of Pharmally?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] During that 2017, he met Mr. Huang Tzu Yen, together with his father. And after that, they have no any communications.

SEN. LACSON: Does he know a certain Linconn Ong?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Yes. He knows Mr. Linconn Ong, Mr. Chairman.

. . . .

SEN. LACSON: *Did he have any business dealings with Mr. Linconn Ong whether in his personal capacity or in his capacity as one of the incorporators of Pharmally Pharmaceuticals?*

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] *Mr. Chairman, no.*

SEN. LACSON: No business dealings with Mr. Linconn Ong?

MR. HUNG: Mr. Chairman, can you just be more - sorry, can you just repeat the question?

SEN. LACSON: Did they have any business dealings with Linconn Ong, whether in his personal capacity or as a stockholder incorporator of Pharmally Pharmaceuticals?

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese].

MR. HUNG: [interpreting for Mr. Yang] Okay, Mr. Chairman, Mr. Yang would like to ask in terms of what specific period you were pertaining to?

SEN. LACSON: In the supply of PPEs, medical supplies like face masks, shields, et cetera in relation to the transaction.

SEN. LACSON: .... in relation to the transaction dealings of Pharmally with the PS-DBM, to be specific.

MR. HUNG: So, Mr. Chair. just to clarify. Your question is, if he has any dealing or anything to do with the transactions pertaining to PS-DBM and Pharmally Pharmaceuticals?

SEN. LACSON: Yes, PPEs - supply of PPEs. supply of surgical masks, face shields, face masks.

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang would like to say that when Pharmally did get their contracts, he has nothing to do with any of those contracts or awards.

MR. YANG: [speaking in Chinese]

MR. HUNG: *Then, eventually, Mr. Linconn did approach Mr. Yang and then he helped him-them -or Mr. Yang introduced friends to Linconn who could help them with their supplies.*

SEN. LACSON: That is correct. That is the point I was trying to point out, Mr. Chairman, that Mr. Michael Yang was the one who acted as a go-between or middleman between Linconn Ong or Pharmally Pharmaceuticals and the suppliers from China. Is that correct?

MR. HUNG: So, Mr. Chair. Your question, again, that Linconn and —

SEN. LACSON: No. Mr. Michael Yang acted as a middleman between Pharmally Pharmaceuticals through Mr. Linconn Ong and the Chinese suppliers of the medical supplies in relation to the procurement.

MR. HUNG: [interpreting Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] *Mr. Chairman, Mr. Yang said that he only introduced and let them discuss things on their own.*

SEN. LACSON: *So that was his only role? He introduced the suppliers to. Linconn Ong and then be had nothing do with the supplies anymore?*

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. YANG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] *So, Mr. Chairman, Mr. Yang said that he only introduced them and then they discussed things on their own.*

SEN. LACSON: And he stopped all his participation?

MR. HUNG: I'm sorry, come again, Mr. Chairman?

SEN. LACSON: And he stopped all his participation in the dealings between the Chinese suppliers of the medical supplies that mentioned and Mr. Linconn Ong? He just left them on their own?

MR. HUNG: [interpreting in Chinese for Mr. Yang] MR. YANG.

[responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] *Okay Mr. Chairman, Mr. Yang said that he only introduced as to where or who they close their dealings. He does not know who or where did he actually purchase those stocks.*

SEN. LACSON: *And he never guaranteed with his Chinese suppliers the credibility or the ability of Mr. Linconn Ong to pay them?*

MR. HUNG: [interpreting in Chinese for Mr. Yang]

MR. HUNG: [responding in Chinese]

MR. HUNG: [interpreting for Mr. Yang] *Okay. So, Mr. Yang only introduced and then they negotiated on their own. And then probably, he first initially introduced friends, introduced some other friends for them to negotiate all of their dealings.*[52]

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52 *Id.* at 36–40.

Whether a witness genuinely did not know or did not recall the answer or was evasive in answering a question is largely a matter of judgment or opinion. It requires an assessment of the totality of the evidence presented to determine whether a witness speaks truthfully or is merely trying to evade answering the question directly.

Here, petitioner Ong was immediately adjudged as testifying evasively based on the September 10, 2021 hearing alone. As for petitioner Yang, the *ponente* pointed out that "Sen. Lacson's series of repetitive questions as regards Yang's knowledge of Pharmally evoked different answers... While Yang initially tried to avoid giving any leading information as regards his connection with Pharmally, he was able to subsequently aver in the course of the proceeding that he introduced the suppliers of facemasks and PPEs to Ong."[53] Thus, even inconsistent answers were equated with testifying evasively. It appears then that respondents have an unbridled discretion in carrying out the term "evasively" and therefore became an "arbitrary flexing of the Government muscle." Furthermore, petitioners were not fairly notified of the conduct or testimony to avoid since the term "evasively" is not defined in the rules. Considering that being cited in contempt by testifying "evasively" affects substantive rights, technical rules of evidence applicable to judicial proceedings should have been observed.[54]

"Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act[.]"[55] However, here, not only is the term "evasively" not defined, but also the legislative will in using this term is not clear as can be gathered from the respondents' varying interpretation of the term.

By citing in contempt a witness on the ground of testifying "evasively," which is vague, respondent Senate sends a chilling effect on the right to free speech.

The scope of freedom of expression is as broad as the matters by which the Senate may inquire in aid of legislation:

> The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. *The protection covers*

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53 *Id.* at 41.

54 Rules of Procedure Governing Inquiries in Aid of Legislation, sec. 10.

55 *Estrada v. Sandiganbayan*, 421 Phil. 290, 347-348 (2001) [Per J. Bellosillo, *En Banc*].

> *myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period.* The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as *the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.*
>
> *The constitutional protection is not limited to the exposition of ideas. The protection afforded free speech extends to speech or publications that are entertaining as well as instructive or informative.*[56] (Emphasis supplied)

To immediately adjudge a testimony as "evasive" during an inquiry in aid of legislation would be to straitjacket the exercise of freedom of speech. The Senate may then fail to acquire the information necessary to legislate wisely or effectively, or it may limit its exercise of legislative power to conventional ideas. The ultimate purpose of its contempt powers—to obtain the necessary information to legislate wisely or effectively—will be defeated. Thus, unlike "falsely," the term "evasively" in Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation should be struck down as unconstitutional for being void for vagueness.

However, to pass constitutionality, the term "evasive" should be defined as failure to directly and satisfactorily respond to any relevant question, without any express and valid claim of right or privilege.

III

In its conduct of inquiries in aid of legislation, the Constitution clearly provides that the Senate or House of Representatives respects the rights of persons appearing in or are affected by such inquiries.[57] The rights of a person refers to the rights under the Bill of Rights, which includes the right to due process[58] and the right against unreasonable searches and seizures. Thus, Article III, Sections 1 and 2 of the 1987 Constitution specifically provides:

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the

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56 *Chavez v. Gonzales*, 569 Phil. 155, 198 (2008) [Per C.J. Puno, *En Banc*].

57 CONST., art. VI, sec. 21.

58 *Senate of the Philippines v. Ermita*, 522 Phil. 1 (2006) [Per J. Carpio Morales, *En Banc*]; *Bengzon Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829 (1991) [Per J. Padilla, *En Banc*].

> complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee do not provide for the power to order an arrest, but only the power to detain:

> Section 18. *Contempt.* — . . . A contempt of the Committee shall be deemed a contempt of the Senate. *Such witness may be ordered by the Committee to be detained in such place as it may designate* under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.
>
> (b) A report of the *detention* of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate. (Emphasis supplied)

The power to arrest must be differentiated from the power to detain:

> To detain means to hold or keep in custody. On the other hand, to arrest means to seize, capture or to take in custody by authority of law. Thus, the power to detain is the power to keep or maintain custody while the power to arrest is the power to take custody. The power to detain implies that the contumacious witness is in the premises (or custody) of the Senate and that he will be kept therein or in some other designated place. In contrast, the power to arrest presupposes that the subject thereof is not before the Senate or its committees but in some other place outside.
>
> The distinction is not simply a matter of semantics. It is substantial, not conceptual, for it affects the fundamental right to be free from unwarranted governmental restraint.
>
> Since the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee speak only of a power to order the detention of a contumacious witness, it cannot be expanded to include the power to issue an order of arrest. Otherwise, the constitutional intent to limit the exercise of legislative investigations to the procedure established and published by the Senate or its committees will be for naught.[59]

Furthermore, cognizant that the power to arrest deprives a person of one's cherished fundamental right to liberty, Article III, Section 2 of the 1987 Constitution and Rules 112 and 113 of the Revised Rules of Criminal Procedure specify the guidelines and procedure for the execution of arrest.

As the *ponente* admitted, unlike the power to detain, the power to arrest a witness is not provided in the Senate Rules of Procedure Governing Inquiries

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[59] J. Corona, Concurring Opinion in *Neri v. Senate Committee on Accountability*, 586 Phil. 135 (2008) [Per J. Leonardo-de Castro, *En Banc*].

in Aid of Legislation.[60] Since the power to arrest inevitably poses a potential derogation of individual rights to liberty and due process, the rules cannot be liberally construed to have impliedly granted such power. Thus:

> The arrest of a citizen is a deprivation of liberty. The Constitution prohibits deprivation of liberty without due process of law. The Senate or its investigating committees can exercise the implied power to arrest only in accordance with due process which requires publication of the Senate's Rules of Procedure. This Court has required judges to comply strictly with the due process requirements in exercising their express constitutional power to issue warrants of arrest. This Court has voided warrants of arrest issued by judges who failed to comply with due process. This Court can do no less for arrest orders issued by the Senate or its committees in violation of due process.[61]

As legislators, respondent Senate et al. are fully conscious of the significance and impact of words used in crafting laws and rules. It could have easily indicated in its own rules the power to arrest if they intended to do so. Thus, Senate et al. must strictly observe the rules they themselves created to govern their own proceeding. The Senate has another recourse to compel the attendance of petitioners. For refusal without legal excuse, the Senate can file a criminal case for violation of Article 150[62] of the Revised Penal Code, as amended, against such person, instead of ordering the arrest, which is not specifically provided for in its rules.

An action as critical and as important as an order of arrest must be done strictly in accordance with a specific provision in the duly published rules of procedure, for it to be constitutionally valid.[63] Since the power to arrest is not in its duly published rules of procedure, the Senate cannot issue the arrest orders against petitioners without violating the Constitutional limitations on the legislative's power to conduct inquiries which are "in accordance with [their] duly published rules of procedure." Ordering the arrest of petitioners, which is not provided for in the Senate's duly published rules of procedure, is consequently violative of petitioners' right to due process. Further, this clearly contravenes the Constitution on the limitations on inquiries in aid of legislation.

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60 *Ponencia*, p. 17.

61 J. Carpio, Dissenting and Concurring Opinion in *Neri v. Senate Committee on Accountability*, 586 Phil. 135 (2008) [Per J. Leonardo-de Castro, *En Banc*].

62 Article 150. *Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions.* - The penalty of *arresto mayor* or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official.

63 J. Corona, Concurring Opinion in *Neri v. Senate Committee on Accountability*, 586 Phil. 135 (2008) [Per J. Leonardo-de Castro, *En Banc*].

"There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment, as when the assailed order is bereft of any factual and legal justification."[64] For ordering the arrest of petitioners, the respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction.

ACCORDINGLY, I vote that the Petitions be **PARTLY GRANTED**. The Order dated September 10, 2021, citing petitioners Linconn Uy Ong and Michael Yang Hong Ming in contempt of the Senate Blue Ribbon Committee, and directing their arrest, should be **NULLIFIED** for having been issued with grave abuse of discretion.

MARVIC M.V.F. LEONEN
Senior Associate Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court
OCC-En Banc, Supreme Court

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[64] *The Senate Blue Ribbon Committee v. Majaducon*, 455 Phil. 61, 71 (2003) [Per J. Ynares-Santiago, *En Banc*].