Republic of the Philippines
Supreme Court
Manila

EN BANC

RE: STATEMENTS MADE BY LORRAINE MARIE T. BADOY ALLEGEDLY THREATENING JUDGE MARLO A. MAGDOZA-MALAGAR.	**A.M. No. 22-09-16-SC**
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ATTY. RICO V. DOMINGO, DEAN ANTONIO GABRIEL M. LA VIÑA, DEAN MA. SOLEDAD DERIQUITO-MAWIS, DEAN ANNA MARIA D. ABAD, DEAN RODEL A. TATON, ATTY. ARTEMIO P. CALUMPONG, ATTY. CHRISTIANNE GRACE F. SALONGA, ATTY. RAY PAOLO J. SANTIAGO, AND ATTY. AYN RUTH Z. TOLENTINO-AZARCON, Petitioners, -versus- **LORRAINE MARIE T. BADOY-PARTOSA,** Respondent.	**G.R. No. 263384** Present: GESMUNDO, *Chief Justice,* LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH,* *JJ.* **Promulgated:** August 15, 2023
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DECISION

* On official leave.

LEONEN, *J.*:

As a fundamental principle of every democratic government,[1] the public's freedom of expression should be respected and protected to the fullest extent possible.[2] However, these rights must never threaten other equally important public interests, such as the maintenance of the courts' integrity and the orderly administration of justice.[3] Unwarranted attacks on the dignity of the courts are not constitutionally protected speech and may constitute contempt of court.

This Court resolves the consolidated cases pertaining to the contempt charges against Lorraine Marie T. Badoy-Partosa (Badoy-Partosa) for the statements she made on Facebook against Judge Marlo A. Magdoza-Malagar (Judge Magdoza-Malagar).

The controversy arose after Judge Magdoza-Malagar of the Regional Trial Court of Manila, Branch 19, had issued a Resolution on September 21, 2022, dismissing the Department of Justice's petition to proscribe the Communist Party of the Philippines-New People's Army as a terrorist group under the Human Security Act.[4]

On September 23, 2022, Badoy-Partosa uploaded a public post on her Facebook page[5] titled, "A Judgment Straight from the Bowels of Communist Hell," where she launched multiple insults against the judge. She claimed that the judge weaponized the court of law to rule in favor of her alleged friends, the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF). Badoy-Partosa then threatened to kill Judge Magdoza-Malagar. The post reads:

> A Judgment Straight From the Bowels of Communist Hell
>
> In the proscription case against them, the CPP NPA NDF did not make an appearance nor send any evidence to refute all charges against them by the National Task Force to End Local Communist Armed Conflict- NOT ONE [sic].
>
> Turns out, they didn't need to. Judge Marlo Malagar, in about 135 pages passionately lawyered for them.
>
> She consistently used the Constitution of the CPP NPA NDF, this terrorist organization, to back up her shameless decision, going as far as saying that 'An NPA member engages in violence and employs force, not for

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1 *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560, 586 (2019) [Per J. Reyes, Jr., *En Banc*].
2 *Roque, Jr. v. Catapang*, 805 Phil. 921, 945–946 (2017) [Per J. Leonen, Second Division].
3 *Garcia, Jr. v. Manrique*, 697 Phil. 157, 169 (2012) [Per J. Reyes, First Division].
4 *Rollo* (G.R. No. 263384), p. 7.
5 Badoy-Partosa maintains a verified Facebook account accessible by the public through https://www.facebook.com/lorraine.badoy. This account currently has at least 166,000 followers.

violence's sake, but in pursuit of the higher ideals contained in the Constitution of the CPP.'

Meaning, the cold blooded murder of Kieth Absalon where he was shot point-blank between his eyes as he begged for his life, the massacre of 39 members of the Bagobo Tagabawa tribe – MORE THAN HALF OF THEM CHILDREN who were hacked to pieces and decapitated, the recruitment of our children into violent extremism where countless numbers of them have died as TERRORISTS, the murders of thousands upon thousands of tribal chiefs, rape, child slavery, human trafficking, kidnapping, the burning of government equipment, blowing up to pieces of cell towers, the economic sabotage – all these are not acts of terrorism according to Judge Malagar because they were done in pursuit of the higher idea[l]s of the CPP NPA NDF.

What higher ideals is this *unprincipled judge* talking about? The CPP NPA NDF has one goal and one goal alone: the seizure of political power THROUGH VIOLENT MEANS.

There is nothing lofty about the murder of our citizens – who are seen as collateral damage to their stupid war – that is deeply ingrained in the core of the CPP NPA NDF.

This Judge also said that the CPP NPA NDF was not organized for the purpose of engaging in terrorism but that this "armed struggle is only a means to achieve the CPP's purpose".

Huh?

What she's saying is we must excuse the violence of the CPP NPA NDF, *kayo naman*. Don't focus on the killings. So Vilma Absalon, mother of Kieth, must not focus on the inhumane and brutal death of her son but must instead, tell herself that his death was a small price to pay for the CPP to achieve its purpose.

What she's telling us is this: Philippines, *ano ba kayo? Hindi terorista ang* CPP NPA NDF. *Wag nyo masyadong pansinin ang pagpapatay,* torture, *pagpapasabog ng mga sundalo at kapulisan natin or pag ang anak mo ang pinatay, isipin mo ganito ha: PARA SA MATAAS NA LAYUNIN NG* CPP NPA NDF *YAN.*

In other words, this *idiot judge* is telling us that we're so sensitive weeping over the dead bodies of our children. *Ano ba, mga nanay. Namatay na bayani ang mga anak nyo. O diba?* [sic] Sounds familiar? CPP *na* CPP *ang linya ni* Judge.

She also claims that the incidents of terrorism that government presented did not cause "widespread and extraordinary fear and panic" among Filipinos. Those excesses were merely "pocket and sporadic occurrences" that occurred in limited and scattered areas in the country.

That we were consistently on the top 10 list of the Global Terrorism Index because of the CPP NPA NDF before NTF ELCAC came along is not something this Judge worries her pretty head over.

Then in her airconditioned office in Manila, she has not seen the wide-eyed panic and fear of our indigenous peoples who were targeted by this

terrorist organization from its very inception. She has not heard the screams of terror and grief of mothers, fathers, siblings, at the murder of their loved ones right before their eyes. She has not seen our mothers claw the earth for the bodies of their children and she has not heard their [sic] wails of grief of a mother cradling the dead body of her child.

No, *this judge who is obviously a friend of the CPP NPA NDF has a helmet as thick as the helmet of the urban operatives of the CPP NPA NDF that she can step over the dead bodies of our children and pen this shameless decision to lend powerful support and cover to these terrorists who have stolen our children from us.*

Judge Malagar asks that all those acts of terrorism of the CPP NPA NDF should be considered as "political crimes and therefore be treated with leniency."

So if I kill this judge and I do so out of my political belief that all allies of the CPP NPA NDF must be killed because there is no difference [in my mind] between a member of the CPP NPA NDF and their friends, then please be lenient with me.

Like the true ally that she is of this terrorist organization, Judge Malagar spoke about an issue that wasn't even part of this case and that is a weapon badly needed by the CPP NPA NDF to continue recruitment of our children, their fund-raising/extortion activities and propaganda against government: red-tagging.

In other words, *siningit ni Judge ang isang issue na hindi naman parte ng kaso na ito. Pinilit nyang maisingit ang mahalagang* oxygen *na ito ng terroristang* CPP NPA NDF.

And of course this Judge ruled contrary to the ruling of the Supreme Court when the highest court of the land wrote, in *Zarate vs. Aquino*, that there is no danger to life, liberty and security when one is identified as a member of the CPP NPA NDF.

No urban operative of the CPP NPA NDF – not Teddy Casiño, Neri Colmenares, Sol Taule, Cristina Palabay, Raoul Manuel, Arlene Brosas, France Castro, Carlos Zarate, Carol Araullo, Sonny Africa, Renato Reyes – has foisted a more impassioned nor a more punctilious defense of the CPP NPA NDF than Judge Marlo Malagar did.

Nor [sic] *more blatantly shameless and brazen display of abuse of power by weaponizing a court of law* to further inflict harm on a people that have long suffered the excesses and inhumanities of this terrorist organization for over 5 decades.

The silver lining to this is that it gives the Filipino people a clear picture and a deeper understanding of why this terrorist organization has lasted over half a century and who the traitors are.

It is *not only because of the CPP NPA NDF but its friends in high places: in the judiciary*, Senate, Congress, business leaders, university presidents, university chancellors etc.

It is as the former rebels have told us: they are everywhere.

> There is something though that the CPP NPA NDF doesn't have and it is THE FILIPINO PEOPLE who are now AWAKE and now know who the enemy is.
>
> This is a mere hiccup in our fight to finally rid our country of communist terrorist vermin.
>
> This Judge gave the CPP NPA NDF – a terrorist organization that is down on its knees and begging for its mother – what they think is a gift: propaganda material.
>
> But the Filipino people are the angels of acrid necessity that have come to tell these terrorists that it's all over.
>
> By our Unity and by our Strength, we will deliver that message each and every time they open their stupid mouths and use Judge Malagar's good housekeeping seal of 'WE ARE NOT TERRORISTS, *SABI NG AMIGA NAMIN, BEH BEH BEH BEH BEH.*'
>
> NO, *YOU ARE TERRORISTS.*
>
> Judges like this Judge Malagar are a dime a dozen and she doesn't get to define the parameters of this war we are waging.
>
> We do. We get to call it.
>
> The CPP NPA NDF is a terrorist organization and that is written in the heart and soul of every Filipino. We will never forgive. We will never forget. And we will no longer allow this terrorist organization to go one step further with us.
>
> We are a people rising and we have driven our sword into the heart of that beast, the TERRORIST ORGANIZATION CPP NPA NDF.[6] (Emphasis supplied)

That same day, Badoy-Partosa uploaded a second post titled, "The Judge Marlo Malagar Horror Series,"[7] where she not only alleged that Judge Magdoza-Malagar did not base her decision on the Constitution, but she even threatened to bomb the offices of judges whom she deemed as "friends of terrorists[.]"[8] The relevant excerpts state:

> The Judge, in other words, based her decision on the Constitution of this terrorist organization, the CPP NPA NDF and not on the laws and the Constitution of the Republic of the Philippines.[9]
>
> . . . .
>
> I *really reallllly* [sic] *want to build an organization with the noble ideal of establishing a Justice system that is free from the infiltration of the*

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6 *Rollo* (G.R. No. 263384), pp. 8–11.

7 As of September 25, 2022, this Facebook post gained at least 1,300 reactions, 576 comments, and 642 shares.

8 *Rollo* (G.R. No. 263384), p. 13.

9 *Id.* at 12.

> *terrorist vermin – the CPP NPA NDF – then members of my organization will start bombing the offices of these corrupt judges who are friends of terrorists-* [sic] *even if they kneel before us and beg for their lives* – the very same way Kieth Absalon begged for his life – then, going by your Marco Valbuena/Teddy Casiño/Neri Colmenares/Joma Sison logic, my organization won't be a terrorist organization, right?
>
> *O ano*, Judge, game? Are you willing to go through what the Filipino people have gone through and continue to go through for the past 53 years?[10] (Emphasis supplied)

The following day, Badoy-Partosa uploaded another Facebook post[11] describing Judge Magdoza-Malagar as "unprincipled and rotten" and claiming that her husband was a member of the CPP. In this post, Badoy-Partosa wrote:

> Questions we need to ask Judge Marlo Malagar.
>
> 1. Is it true that your husband, Atty Leo Malagar, who is currently the 2nd UP Cebu Chancellor was a cadre of the CPP NPA NDF in the Youth Sector?
>
> 2. Is he still active with the CPP NPA NDF?
>
> 3. How true is it that the ones who helped you craft your malodorous decision regarding the terrorist organization CPP NPA NDF were Edre Olalia, Sol Taule and Rachel Pastores?
>
> . . . .
>
> So all these [sic] time, according to our asset, that Judge Malagar was pretending to do independent research, the ones helping her craft her obscene decision were some of the most fanatical and hard core [sic] urban operatives of the CPP NPA NDF who get their directives straight from the Central Committee of the terrorist CPP NPA NDF and from the terrorist Joma Sison himself.
>
> In other words, *the decision this unprincipled and rotten judge wrote was really by the Communist Party of the Philippines, a terrorist organization.*
>
> . . . .
>
> 4. Who wrote your decision, Judge Malagar? Was it [sic] the CPP NPA NDF cadre operatives Edre Olalia, Sol Taule, Rachel Pastores?
>
> If so, that horrific decision that has enraged an entire nation was written by no less than the TERRORIST Joma Sison and the Central Committee of this Terrorist Organization the CPP NPA NDF.

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[10] *Rollo* (G.R. No. 263384), p. 13.

[11] As of September 25, 2022, this Facebook post gained at least 2,400 reactions, 696 comments, and 1,000 shares.

> *Kung ito ay tutoo* [sic], *napakalaki at napakawalang hiyang pagtataksil itong ginawa mong ito sa bayan,* Judge Malagar.[12] (Emphasis supplied)

Badoy-Partosa's followers responded with generating comments, remarks, images, and videos of the same vitriol as her posts, which she then uploaded on her Facebook page from September 23, 2022 to September 26, 2022.[13] Some of them read:

> Peter Flores Serrano: "Doc Lorraine Marie T. Badoy calls out Judge Marlo Magdoza Malagar of the Manila Regional Trial Court on her treachery. 'She made this country the saddest country for the mothers.' *We are right behind you, Doc Lorraine. Just let us know what to do and we will oblige.*"
>
> Ka Eric Almendras: "The voice of our people is more SUPREME AND SOVEREIGN than the *illogical and distorted political exhortation cum decision of this Manila RTC-JUDGE who exhibits a pattern of mindset as a CPP-NPA-NDF lover and promoter of perpetual protracted destruction of our country* through justification using 'higher ideals and political cause...' . . .
>
> . . . .
>
> Pastor Apollo YouTube video: "You're fired! *Nakakahiya ka! Hindi ka dapat maging Judge*!"
>
> Ka Eric YouTube video: "*Sinadya niyang hindi alamin ang batas pabor sa makakaliwang grupo.*"[14] (Emphasis supplied)

The series of social media posts caused various organizations from the legal community, including HUKOM, Inc.,[15] the Philippine Judges Association,[16] and the Integrated Bar of the Philippines,[17] to issue official statements denouncing Badoy-Partosa's "malicious and dangerous utterances on social media."[18]

On September 26, 2022, Badoy-Partosa responded to these statements on her Facebook page. The relevant excerpts are:

> A group of judges who form part of Hukom, Inc. has complained because a 'member of the Bench is again being challenged' as if members of the Bench ought to be beyond public scrutiny.
>
> . . . .

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12 *Rollo* (G.R. No. 263384), pp. 14–15.
13 *Id.* at 15.
14 *Id.* at 15–16.
15 *Id.* at 18–19.
16 *Id.* at 19.
17 *Id.* at 19–20.
18 *Id.* at 17.

> Shockingly enough, these judges have also used the issue of red-tagging and have, alarmingly enough, parroted the lines of the CPP NPA NDF.
>
> . . . .
>
> They make a big case out of their lives being threatened, echoing the CPP NPA NDF lines of twisting my words and making it mean whatever they want it to mean – an old, worn-out ploy straight out of the rotten communist terrorist propaganda machine that the Filipino people are so aware of now.
>
> And that [sic] if they believe I had threatened to kill Judge Malagar, then their reading comprehension, I am sorry to say, is lower than a kid fresh out of nursery. . . .
>
> . . . .
>
> The good judges of Hukom, Inc. then should refuse to be used by the CPP NPA NDF and instead uphold the dignity and sanctity of their profession and join the Filipino people in our expressions of rage and our cry to investigate Judge Marlo Malagar and then if found guilty, strip her of the immense power she holds so she can no longer hurt the Filipino people.
>
> . . . .
>
> Otherwise, they are no different from the Judge they give cover to who has weaponized the law against the Filipino nation.
>
> Worst of all, they are no different from the terrorist organization that could be behind this Judge.[19]

On October 4, 2022, this Court, acting *motu proprio* on this matter, docketed as A.M. No. 22-09-16-SC, issued a stern warning against those who "continue to incite violence through social media and other means which endanger the lives of judges and their families[.]"[20] We deemed such acts as contempt of court, which would be dealt with accordingly.[21]

We likewise issued a Show Cause Order, requiring Badoy-Partosa to show cause why she should not be cited in contempt of court, and to respond to the following questions: (1) whether she posted the statements attacking Judge Magdoza-Malagar's ruling on her social media accounts; (2) whether her social media post encouraged more violent language against the judge in her social media platforms; (3) whether her post was a clear incitement to produce violent actions against a judge and was likely to produce such act; and (4) whether her statements, which implied violence on a judge, was part of her protected constitutional speech.[22]

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19 *Id.* at 21–22.
20 *Id.* at 23.
21 *Id.*
22 *Rollo* (A.M. No. 22-09-16-SC), p. 23.

Meanwhile, on October 3, 2022, a group of lawyers[23] filed an Urgent Petition for Indirect Contempt[24] before this Court. They prayed, among others, that respondent Badoy-Partosa be found guilty of indirect contempt of court.[25]

First seeking to establish their legal standing, petitioners raise that they are actively engaged in the practice of law and, as officers of the court, are obligated to uphold the Constitution and the rule of law, including the elimination of any act inimical to its survival.[26]

Petitioners further argue that the issue of whether respondent should be cited in contempt is of transcendental importance, given that her statements threaten and assault the members of the Bench.[27] Her abhorrent acts, they say, has "far-reaching consequences to our constitutional democracy and the independence of the Judiciary."[28]

Finally, petitioners maintain that this Court must take cognizance of the Petition. While they recognize that Rule 71, Section 5 of the Rules of Court states that charges of indirect contempt committed against judges must be filed before the affected courts or those of higher or equivalent rank, or an officer appointed by it, they opine that respondent's and her supporters' contumacious conduct "constitutes a patently gross attack against the Philippine Judiciary as an institution."[29]

In an October 11, 2022 Resolution, this Court, without giving due course to the Petition, required respondent to file a comment within 15 days from notice.[30]

Respondent filed a Comment/Opposition to the Show Cause Order,[31] positing that her post over Judge Magdoza-Malagar's decision dismissing the proscription case was done "in the exercise of journalistic comments and constitute fair comments on a matter of public interest."[32] She also asserted that her comments were fair because of "eight palpable errors"[33] in Judge Magdoza-Malagar's Resolution.

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23 Atty. Rico V. Domingo, Dean Antonio Gabriel M. La Viña, Dean Ma. Soledad Deriquito-Mawis, Dean Anna Maria D. Abad, Dean Rodel A. Taton, Atty. Artemio P. Calumpong, Atty. Christianne Grace F. Salonga, Atty. Ray Paolo J. Santiago, and Atty. Ayn Ruth Z. Tolentino-Azarcon.
24 *Rollo* (G.R. No. 263384), pp. 3–44.
25 *Id.* at 37.
26 *Id.* at 25–26.
27 *Id.* at 28–29.
28 *Id.* at 28.
29 *Id.* at 29.
30 *Id.* at 264.
31 *Rollo* (A.M. No. 22-09-16-SC), pp. 33–83.
32 *Id.* at 35.
33 *Id.* at 37.

First, respondent points out that Judge Magdoza-Malagar erred in ruling that the CPP-NPA cannot be proscribed as a terrorist group as it used violence to achieve its noble goals. She cited United Nations General Assembly (UNGA) Resolution 49/60, which sought to criminalize a number of terrorist activities despite their political underpinnings, and which has become customary after all United Nations members had adopted it without objection.[34] Second, respondent stresses that Judge Magdoza-Malagar erred in declaring that political crimes were not terrorist acts and in relying on an outdated sense of leniency for acts of rebellion.[35]

Third, respondent states that the judge's application of leniency toward the acts of the CPP-NPA, because they were impelled by a single criminal intent—achieving a political purpose—was wrong because rebellion was not mutually exclusive with terrorism.[36] Fourth, respondent faults Judge Magdoza-Malagar for declaring that the acts alleged did not cause "widespread and extraordinary fear and panic" among Filipinos, which was why she criticized the judge for being out of touch with what was happening to the targeted indigenous peoples.[37]

Fifth, respondent claims that Judge Magdoza-Malagar's conclusion that guerilla warfare cannot constitute terrorism is wrong.[38] Sixth, she asserts that the judge's declarations contradict local and foreign jurisdictions declaring the CPP-NPA as a terrorist organization, and which should be subject of mandatory judicial notice.[39]

Seventh, she argues that the judge also erred in resolving the proscription case under the Human Security Act and not the Anti-Terror Act of 2020.[40] Finally, in relation to the seventh ground, respondent posits that the judge erred in treating the proscription case akin to declaratory relief[41] and, in any case, she should have divested herself of jurisdiction since the law vests jurisdiction to proscribe terrorist groups in the Court of Appeals.[42]

Respondent thus asserts that all her social media posts were valid criticisms;[43] hence, she should not be cited in indirect contempt without clear and present danger[44] or incitement of violence against Judge Magdoza-Malagar.[45] She also denies threatening the judge with her honest and

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34 *Id.* at 37–39.
35 *Id.* at 40.
36 *Id.* at 44.
37 *Id.* at 46–47.
38 *Id.* at 47–48.
39 *Id.* at 48–50.
40 *Id.* at 51–52.
41 *Id.* at 52.
42 *Id.* at 53–54.
43 *Id.* at 56–58.
44 *Id.* at 60–64.
45 *Id.* at 66–67.

informed criticisms.[46] She reiterates that she merely used the judge's same reasoning and established the flaw in it when she made her hyperbolic statement or hypothetical syllogism, which is now subject of the contempt case against her.[47]

Meanwhile, in her Answer[48] to the Petition in G.R. No. 263384, respondent explains that as an advocate against the CPP-NPA-NDF, she was "deeply disappointed" with Judge Magdoza-Malagar's dismissal of the proscription case as it condoned the group's "countless atrocities and violence" by declaring that they were done in pursuit of higher ideals.[49]

Respondent claims to have merely vented her frustration and anger on social media because she empathizes with the victims who have been deprived of justice, while the CPP-NPA-NDF were treated with leniency despite their many brutal acts.[50]

She also denies threatening Judge Magdoza-Malagar and stresses that her social media posts were misconstrued.[51] She says that the supposed threatening words,[52] if read in their entirety, were but "a hypothetical syllogism" to point out the error in the judge's ruling.[53]

She also maintains that her social media posts were made in the exercise of her freedom of expression, a valid criticism of a public officer; thus, she should not be held liable for indirect contempt.[54] She argues that her statements did not impede the administration of justice.[55] She says that "such expression [of] exasperation could not in any way be deemed as evil so strong that there is a need to curtail the freedom of expression and punish for contempt, for[ ]it would send more chilling effects than the very issue raised in this petition to be evil."[56]

Finally, she posits that this Court's contempt power cannot impair the freedom of the press and freedom of expression.[57]

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46 *Id.* at 60.
47 *Id.* at 60–61.
48 *Rollo* (G.R. No. 263384), pp. 270–286.
49 *Id.* at 271.
50 *Id.*
51 *Id.* at 271, 279–280.
52 *Id.* at 279. "So if I kill this judge and I do so out of my political belief that all allies of the CPP NPA NDF must be killed because there is no difference in my mind between a member of the CPP NPA NDF and their friends, then please be lenient with me."
53 *Id.* at. 273.
54 *Id.* at 272–277.
55 *Id.* at 276.
56 *Id.* at 277.
57 *Id.* at 277–281.

On February 14, 2023, this Court consolidated G.R. No. 263384 with A.M. No. 22-09-16-SC and directed petitioners to file their reply to respondent's pleadings.[58]

In their Reply,[59] petitioners maintain that respondent cannot claim that she merely exercised her freedom of expression since she disseminated lies or half-truths. They point out that her use of "gutter language" to defame the good name and reputation of Judge Magdoza-Malagar constitutes an abuse of rights, violating Article 19 of the Civil Code.[60] Moreover, they say her statements served as attacks not only against the judge, but the Judiciary and respected lawyers, which rules out any defense of good faith on her part.[61]

As her posts present serious and imminent threat to the administration of justice, petitioners maintain that clear and present danger is present, justifying this Court's exercise of contempt power.[62] They posit that her statements have "far-reaching consequences" to constitutional democracy, judicial independence, and the orderly system of dispensing justice. Finally, they say that her statements assault the basic rights of the members of the Bench, and thus, form matters of public concern.[63]

The two issues for this Court's resolution are:

First, whether petitioners in G.R. No. 263384 have the standing to file the Urgent Petition for Indirect Contempt against respondent; and

Second, whether respondent should be cited in indirect contempt of court.

I

Legal standing refers to a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[64] Interest, in turn, refers to a material interest and is distinguished from a mere interest or curiosity in the question involved or an incidental interest.[65] Thus, legal standing requires that the petitioner possess "a personal stake in the outcome of the controversy."[66]

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58 *Id.* at 313.
59 *Id.* at 319–349.
60 *Id.* at 323–324.
61 *Id.* at 328.
62 *Id.* at 329–330.
63 *Id.* at 331–333.
64 *People v. Vera*, 65 Phil. 56, 89 (1937) [Per J. Laurel, *En Banc*].
65 *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per J. Kapunan, *En Banc*].
66 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 471 (2010) [Per J. Carpio Morales, *En Banc*].

This Court finds that petitioners in G.R. No. 263384 possess legal standing to file the case for indirect contempt against respondent.

Petitioners-lawyers are officers of the court, having taken an oath to "obey the laws of the land, promote respect for laws and processes[.]"[67] As lawyers, they are not just tasked to observe and maintain the respect due to the courts, but must also ensure that other people observe the same respect, including those not in the legal profession.[68]

Further, as guardians of the rule of law and the indispensable partners of this Court in administering justice,[69] lawyers must help maintain public confidence in the Judiciary. A well-functioning society depends in part on a high level of trust in the legal system.[70] *Lumapas v. Tamin*[71] warns that "[i]f the people believe they cannot expect justice from the courts, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result. Courts exist to promote justice."[72]

In *Integrated Bar of the Philippines v. Zamora*,[73] the Integrated Bar of the Philippines, citing its responsibility to uphold the rule of law and the Constitution, assailed the deployment of the marines in Metro Manila to conduct joint visibility patrols with the Philippine National Police for crime prevention and suppression. This Court ruled that the Integrated Bar of the Philippines had no legal standing as it "failed to present a specific and substantial interest in the resolution of the case."[74] A bare invocation of the duty to preserve the rule of law, without more, "is too general an interest which is shared by other groups and the whole citizenry."[75]

Such is not the case here.

Petitioners, while also adverting to their duty to uphold the Constitution and the rule of law, do so in their capacity as lawyers and officers of the court. Respondent's vitriolic social media posts sow distrust and undermine the respect accorded to our judicial system while also creating actual danger for Judge Magdoza-Malagar, as evidenced by the similarly heated comments supporting respondent's statements. As court officers, petitioners have a material interest in the outcome of the contempt charge against respondent to safeguard the stability of our judicial system.

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67 CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon III, sec. 2.
68 CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon III, sec. 2.
69 *Nulada v. Atty. Paulma,* 784 Phil. 309, 315 (2016) [Per J. Perlas-Bernabe, *En Banc*].
70 *In Re Sotto,* 82 Phil. 595, 602 (1949) [Per J. Feria, *En Banc*].
71 452 Phil. 972 (2003) [*Per Curiam, En Banc*]. (Citations omitted)
72 *Id.* at 984.
73 392 Phil. 618 (2000) [Per J. Kapunan, *En Banc*].
74 *Id.* at 633.
75 *Id.*

II

The Constitution provides full protection to the legitimate exercise of the freedoms of expression, speech, and of the press. Article III, Section 4 of the 1987 Constitution provides:

> SECTION 4. 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.

While its 1935 and 1973 counterparts do not say so, the 1987 Constitution purposely included — "separate and in addition to freedom of speech and of the press"— the freedom of expression, which was deemed to be wider in scope.[76] This freedom protected the public's "means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social and political decision-making, and of maintaining the balance between stability and change."[77]

As a fundamental principle of every democratic government,[78] the public's freedom of expression should be respected and protected to the fullest extent possible.[79] In *The Diocese of Bacolod v. Commission on Elections*,[80] this Court touched on the role of freedom of expression in creating an enlightened civilization or society, which is the alternative to a "tyrannical, conformist, irrational[,] and stagnant" society:

> In this case, the assailed issuances of respondents prejudice not only petitioners' right to freedom of expression in the present case, but also of others in future similar cases. The case before this court involves an active effort on the part of the electorate to reform the political landscape. This has become a rare occasion when private citizens actively engage the public in political discourse. To quote an eminent political theorist:
>
> > [T]he theory of freedom of expression involves more than a technique for arriving at better social judgments through democratic procedures. It comprehends a vision of society, a faith and a whole way of life. The theory grew out of an age that was awakened and invigorated by the idea of new society in which man's mind was free, his fate determined by his own powers of reason, and his prospects of creating a rational and enlightened civilization virtually unlimited. It

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76 *The Diocese of Bacolod vs. Commission on Elections,* 751 Phil. 301, 354 (2015) [Per J. Leonen, *En Banc*].

77 *ABS-CBN Broadcasting Corp. v. Commission on Elections*, 380 Phil. 780, 792 (2000) [Per J. Panganiban, *En Banc*]. (Citation omitted)

78 *Nicolas-Lewis v. Commission on Elections,* 859 Phil. 560, 586 (2019) [J. Reyes, Jr., *En Banc*].

79 *Roque, Jr. v. Catapang,* 805 Phil. 921, 945–946 (2017) [Per J. Leonen, Second Division].

80 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

> is put forward as a prescription for attaining a creative, progressive, exciting and intellectually robust community. It contemplates a mode of life that, through encouraging toleration, skepticism, reason and initiative, will allow man to realize his full potentialities. It spurns the alternative of a society that is tyrannical, conformist, irrational and stagnant.[81] (Citation omitted)

The freedoms of speech and of the press, as components of freedom of expression, are powerful weapons of accountability to keep the government in check.[82] Press freedom, in particular, "is the instrument by which citizens keep their government informed of their needs, their aspirations and their grievances."[83] A press that puts to light the government's mistakes and abuses forces it to execute its duty properly and efficiently.[84]

These freedoms have been given the widest latitude in recognition of their crucial role in our democracy:

> The primacy, the high estate accorded freedom of expression is of course a fundamental postulate of our constitutional system....
>
> The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guaranty. It represents a profound commitment to the principle that debate of public issue should be uninhibited, robust, and wide-open. It is not going too far, according to another American decision, to view the function of free speech as inviting dispute. "It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."
>
> Freedom of speech and of the press thus means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, to take refuge in the existing climate of opinion on any matter of public consequence. So atrophied, the right becomes meaningless. The right belongs as well, if not more, for those who question, who do not conform, who differ. To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.[85] (Citations omitted)

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81 *Id.* at 331–332, *citing In re Gonzales*, 137 Phil. 471, 493–494 (1969) [Per J. Fernando, *En Banc*], *further citing* Thomas I. Emerson, *Toward a General Theory of the First Amendment*, FACULTY SCHOLARSHIP SERIES (1963).

82 *United States v. Bustos*, 37 Phil. 731, 740–741 (1918) [Per J. Malcolm, First Division].

83 *Tordesillas v. Puno*, 840 Phil. 699, 710 [Per J. Tijam, First Division].

84 *Id.*

85 *In re Gonzales*, 137 Phil. 471, 492–493 (1969) [Per J. Fernando, *En Banc*].

Subsumed within the guarantees of freedom of speech and the press is the right to criticize judicial conduct. Its exercise is primordial in ensuring the maintenance of good government and proper administration of the law.[86] As comprehensively discussed in *United States v. Bustos*:[87]

> The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorized defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official, or set of officials, to the Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy.
>
> The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment. If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official. On the contrary, it is a duty which every one [sic] owes to society or to the State to assist in the investigation of any alleged misconduct. It is further the duty of all who know of any official dereliction on the part of a magistrate or the wrongful act of any public officer to bring the facts to the notice of those whose duty it is to inquire into and punish them. In the words of Mr. Justice Gayner, who contributed so largely to the law of libel. "The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism."[88] (Citations omitted)

The freedoms of expression, speech, and the press enjoy a preferred status in our hierarchy of rights.[89] Without the enjoyment of these rights, "a free, stable, effective, and progressive democratic state would be difficult to attain".[90] As they make up the foundation of a functioning democracy, it is imperative that government protection from any undue interference be given to their exercise "for religious, political, economic, scientific, news, or informational ends"[91] for all forms of media.[92]

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86 *United States v. Bustos*, 37 Phil. 731, 740 (1918) [Per J. Malcolm, First Division].
87 37 Phil. 731 (1918) [Per J. Malcolm, First Division].
88 *Id.* at 740–741.
89 *1-United Transport Koalisyon v. Commission on Elections*, 758 Phil. 67, 85 (2015) [Per J. Reyes, *En Banc*].
90 *Soriano v. Laguardia*, 605 Phil. 43, 105 (2009) [Per J. Velasco, *En Banc*].
91 *Chavez v. Gonzales*, 569 Phil. 155, 198 (2008) [Per J. Puno, *En Banc*].
92 *Id.*, *citing Eastern Broadcasting Corporation v. Dans*, G.R. No. L-59329, July 19, 1985 [Per J. Puno, *En Banc*].

II (A)

Nevertheless, the exercise of these freedoms is not absolute. The realities of life in a complex society require a degree of moderation.[93] "[T]he freedom to express one's sentiments and belief does not grant one the license to vilify in public the honor and integrity of another. Any sentiments must be expressed within the proper forum and with proper regard for the rights of others[.]"[94] Accordingly, Article 19 of the Civil Code states that every person, in exercising their rights and performing their duties, must act with justice, give everyone their due, and observe honesty and good faith.[95] As explained in *People v. Godoy*:[96]

> The liberty of the press means that anyone can publish anything he pleases, but he is liable for the abuse of this liberty. If he does this by scandalizing the courts of his country, he is liable to be punished for contempt. In other words, the abuse of the privilege consists principally in not telling the truth. There is a right to publish the truth, but no right to publish falsehood to the injury of others with impunity.[97]

Further, these rights must never threaten other equally important public interests.[98] *Chavez v. Gonzales*[99] discusses:

> From the language of the specific constitutional provision, it would appear that the right to free speech and a free press is not susceptible of any limitation. But the realities of life in a complex society preclude a literal interpretation of the provision prohibiting the passage of a law that would abridge such freedom. For freedom of expression is not an absolute, nor is it an "unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."
>
> Thus, all speech are not treated the same. Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant interests of one type of speech, e.g., political speech, may vary from those of another, e.g., obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech. We have ruled, for example, that in our jurisdiction slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled

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93 *Tordesillas v. Puno*, 840 Phil. 699, 710–711 (2018) [Per J. Tijam, First Division].
94 *Soriano v. Laguardia*, 605 Phil. 43, 105 (2009) [Per J. Velasco, *En Banc*], *citing Lucas v. Spouses Royo*, 398 Phil. 400 (2000) [J. Bellosillo, Second Division].
95 CIVIL CODE, art. 19; *In Re Jurado*, 313 Phil. 119, 165 (1995) [Per J. Narvasa, *En Banc*].
96 312 Phil. 977 (1995) [Per J. Regalado, *En Banc*].
97 *Id.* at 1017.
98 *Garcia, Jr. v. Manrique*, 697 Phil. 157, 169 (2012) [Per J. Reyes, First Division].
99 569 Phil. 155 (2008) [Per J. Puno, *En Banc*].

to constitutional protection and may be penalized.[100] (Citations omitted)

II (B)

The exercise of the freedoms of expression, speech, and the press gained further traction with the advent of the digital age. Social media has not only encouraged the exercise of these rights, but has extended the reach of its content to audiences across the globe—proving that "cyberspace is an incomparable, pervasive medium of communication."[101] On the flip side, caution has been raised that the original message on social media may be taken out of context and misconstrued by the unintended audience:

> These platforms in social media allow users to establish their own social network. It enables instantaneous online interaction, with each social networking platform thriving on its ability to engage more and more users. In order to acquire more users, the owners and developers of these social media sites constantly provide their users with more features, and with more opportunities to interact. The number of networks grows as each participant is invited to bring in more of their friends and acquaintances to use the platforms. Social media platforms, thus, continue to expand in terms of its influence and its ability to serve as a medium for human interaction. These also encourage self-expression through words, pictures, video, and a combination of these genres.
>
> There can be personal networks created through these platforms simply for conversations among friends. Like its counterpart in the real world, this can be similar to a meeting over coffee where friends or acquaintances exchange views about any and all matters of their interest. In normal conversation, the context provided by the participants' relationships assure levels of confidence that will allow them to exchange remarks that may be caustic, ironic, sarcastic or even defamatory.
>
> With social media, one's message in virtual conversations may be reposted and may come in different forms. On Facebook, the post can be "shared" while on Twitter, the message can be "retweeted." *In these instances, the author remains the same but the reposted message can be put in a different context by the one sharing it which the author may not have originally intended. The message that someone is a thief and an idiot in friendly and private conversation when taken out of that context will become defamatory. This applies regardless of the standing of the subject of conversation: The person called a thief and an idiot may be an important public figure or an ordinary person.*
>
> . . . .
>
> There are other problems created by such broad law in the Internet. The network made by the original author may only be of real friends of about 10 people. The network where his or her post was shared might consist of a thousand participants. . . .

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[100] *Id.* at 198–199.

[101] *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 122 (2014) [Per J. Abad, *En Banc*].

> *A post, comment or status message regarding government or a public figure has the tendency to be shared. It easily becomes "viral." After all, there will be more interest among those who use the Internet with messages that involve issues that are common to them or are about people that are known to them—usually public officers and public figures. When the decision in this case will be made known to the public, it is certain to stimulate Internet users to initially post their gut reactions. It will also entice others to write thought pieces that will also be shared among their friends and followers.*[102] (Emphasis supplied)

As such, while social media is a powerful tool in advancing the freedoms of expression, speech, and the press, it is a double-edged sword, exponentially increasing the deleterious effects that abuse of the exercise of these rights may have spawned. A statement, no matter how much thought one has given it before uploading on social media, may be accessed by anyone and could unleash a tidal wave of unforeseen consequences.

To quell the fears that unchecked statements will proliferate on social media, proponents of freedom of speech suggest that truth will supposedly stick better than falsity ever could. They suggest that instead of prior restraint or censorship, the best test of truth is its adherence to a marketplace of ideas:

> [F]ree speech should be encouraged under the concept of a market place [sic] of ideas. This theory was articulated by Justice Holmes in that "the ultimate good desired is better reached by [the] free trade in ideas:"
>
> > When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the *best test of truth is the power of the thought to get itself accepted in the competition of the market*, and that *truth is the only ground* upon which their wishes safely can be carried out.
>
> The way it works, the *exposure to the ideas of others allows one to "consider, test, and develop their own conclusions."* A free, open, and dynamic market place [sic] of ideas is constantly shaping new ones. This promotes both stability and change where recurring points may crystallize and weak ones may develop. Of course, free speech is more than the right to approve existing political beliefs and economic arrangements as it includes, "[t]o paraphrase Justice Holmes, [the] freedom for the thought that we hate, no less than for the thought that agrees with us." In fact, free speech may "best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." It is in this context that we should guard against any

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[102] J. Leonen, Dissenting and Concurring Opinion, *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 379–381 (2014) [Per J. Abad, *En Banc*].

> curtailment of the people's right to participate in the free trade of ideas.[103] (Emphasis supplied, citations omitted)

However, this Court maintains that, as shown by current events, the free marketplace of ideas has never been an equal playing field. Some ideas have had a better chance at piercing and remaining in the public consciousness because of factors such as source of information, speed of news drowning out information, and the audience's own weakness in distinguishing between truth and falsity.

Before the internet, sources of information were limited to traditional media, such as print and broadcast, making it the "most powerful vehicle of opinion on public questions."[104] Aware of the power it yielded and the responsibility that went alongside its influence, it behooved the press to adhere to the high ethical standards for the profession.[105] This assured audiences that the contents of traditional media were carefully studied and verified, reducing the risk of incorrect information.

In one fell swoop, the internet and rampant social media usage tore down the traditional barriers that ensured the accuracy of published material.

By merely having access to social media, private individuals could publish their thoughts without need of self-policing or adhering to the ethical standards required of the press. As a result, content could be created and shared with abandon, purely for clout or for "likes," and even in disregard of the truth. Worse, its audience is so wide, certainly way above that of traditional media, unconstrained by physical reach. This has inevitably led to a glut in disseminated information, a large part of which is disinformation—the "verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm" on the internet.[106]

There are those who advance that "more speech" will trounce censorship since those with contrary views will "vigorously and earnestly contest it" to attain the truth.[107] However, this theory rests on the

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[103] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 361–362 (2015) [Per J. Leonen, *En Banc*].

[104] *Chavez v. Gonzales*, 569 Phil. 155, 201 (2008) [Per J. Puno, *En Banc*].

[105] *Valmonte v. Belmonte*, 252 Phil. 264, 271 (1989) [Per J. Cortes, *En Banc*].

[106] European Commission High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament, The European Council, The Council, and the European Economic And Social Committee And The Committee Of The Regions: Action Plan Against Disinformation*, *available at* https://www.eeas.europa.eu/sites/default/files/action_plan_against_disinformation.pdf (last accessed on October 1, 2023). (Citation omitted)

[107] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of Opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. MASS. L. REV. 2 (2020).

assumptions that the audience is able to analyze its truthfulness and that the publication will be easily accessible to those with contrary views.

Unfortunately, while great strides were made in increasing the public's ability to publish content, the audience's ability to discern the content's veracity made no such progress. People remain susceptible to cognitive biases, i.e., confirmation and repetition biases, information overload, and attention scarcity.[108] Readers are predisposed to unquestioningly believe new information that confirms existing prejudices and assumptions[109] and the statements made by people they deem credible. Conversely, statements inconsistent with their beliefs or made by those who have previously uttered views contrary to theirs are disregarded.[110]

As a result, people wade through a constant stream of information, with a great number absorbing without question what they come across when it is aligned with prior views. Dubious and unverified statements are placed on the same footing—if not more—as credible and substantiated information.

The materialization of "echo chambers" within social media, where people would only encounter others of similar opinion, contributes a great deal to the reduced exchange of ideas. These "echo chambers" create an environment free from contradiction, limiting the possibility that ideas would be tested against others. In the end, it reinforces one's belief that their sentiments are accurate and shared by the majority.[111]

Thus, instead of the truth prevailing, the democratization of the marketplace of ideas has led to "cheap speech,"[112] which has in turn led to abuses of the freedoms of speech, expression, and the press.

Due to the difficulty in determining which statements are true and which are false, this Court in *Chavez* deemed it best to treat statements made on social media similarly to those made in other platforms:

> The emergence of digital technology — which has led to the convergence of broadcasting, telecommunications and the computer industry — has likewise led to the question of whether the regulatory model for broadcasting will continue to be appropriate in the converged environment. Internet, for example, remains largely unregulated, yet the Internet and the broadcast media share similarities, and the rationales used to support broadcast regulation apply equally to the Internet.[113] (Citations omitted)

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108 Lili Levi, *Real "Fake News" and Fake "Fake News"*, 16 FIRST AMEND. L. REV. 232, 311–313 (2018).
109 Ari Ezra Waldman, *The Marketplace of Fake News*, 20 U. PA. J. CONST. L. 845, 851 (2018).
110 Lili Levi, *Real "Fake News" and Fake "Fake News"*, 16 FIRST AMEND. L. REV. 232, 312 (2018).
111 CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA 132 (2017).
112 Eugene Volokh, *Cheap Speech and What It Will Do*, 104 YALE L.J. 1805 (1995).
113 *Chavez v. Gonzales*, 569 Phil. 155, 217–218 (2008) [Per J. Puno, *En Banc*].

As we have repeatedly seen, the dawn of the digital age and social media have far-reaching effects that greatly impact the Judiciary.

III

The Judiciary is the institution responsible for settling actual controversies that are legally demandable and enforceable, and determining whether any branch or instrumentality of the government commits grave abuse of discretion amounting to lack or excess of jurisdiction.[114]

To properly execute this duty, the Judiciary must be able to decide its cases independently and without outside influence or pressure. An independent Judiciary ensures the protection of democracy, peace, and order in a society.[115] It is the "vital mechanism that empowers judges to make decisions that may be unpopular but nonetheless correct."[116]

Judicial independence, as a key part in upholding a constitutional democracy, has two aspects:

> Judicial independence has both individual and institutional aspects. As for the independence of individual judges, there are at least two avenues for securing that independence: First, judges must be protected from the threat of reprisals, so that fear does not direct their decision making. Second, the method by which judges are selected, and the ethical principles imposed upon them, must be constructed so as to minimize the risk of corruption and outside influence. The first endeavor is to protect judicial independence from outside threat. The second is to ensure that judicial authority is not abused, and it is the core concern of the enterprise of judicial accountability.[117]

Maintaining the courts' dignity and their ability to command respect from the public works hand-in-hand with its administration of justice.[118] Thus, while the freedoms of expression, speech, and the press include the right to criticize judicial conduct,[119] such exercise must not threaten judicial independence. As expounded in *Zaldivar v. Sandiganbayan*:[120]

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[114] CONST., art. VIII, sec. 1.

[115] *In re Published Alleged Threats against Members of the Court in the Plunder Case Hurled by Atty. Leonard De Vera,* 434 Phil. 503, 507 (2002) [Per J. Kapunan, *En Banc*].

[116] J. Leonen, Dissenting Opinion in *Republic v. Sereno*, 831 Phil. 271, 954–955 (2018) [Per J. Tijam, *En Banc*].

[117] J. Leonen, Dissenting Opinion in *Re: Republic v. Sereno*, 831 Phil. 271, 956 (2018) [Per J. Tijam, *En Banc*], *citing* Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. 1 (2008).

[118] *In re De Vera,* 434 Phil. 503, 507–508 (2002) [Per J. Kapunan, *En Banc*].

[119] *United States v. Bustos*, 37 Phil. 731, 741 (1918) [Per J. Malcolm, First Division].

[120] 248 Phil. 542 (1988) [*Per Curiam*, *En Banc*].

> [F]reedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interest. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antinomy between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community.[121]

In *In re De Vera*,[122] the respondent put up the defense that he was merely exercising his freedom of speech to justify his statements. However, this Court categorically stated that unwarranted attacks on the courts' dignity are not constitutionally protected speech:

> Indeed, freedom of speech includes the right to know and discuss judicial proceedings, but such right does not cover statements aimed at undermining the Court's integrity and authority, and interfering with the administration of justice. Freedom of speech is not absolute, and must occasionally be balanced with the requirements of equally important public interests, such as the maintenance of the integrity of the courts and orderly functioning of the administration of justice.
>
> Thus, the making of contemptuous statements directed against the Court is not an exercise of free speech; rather, it is an abuse of such right. Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefor and confidence therein. It is a traditional conviction of civilized society everywhere that courts should be immune from every extraneous influence as they resolve the issues presented before them. The court has previously held that —
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> > . . . As important as the maintenance of an unmuzzled press and the free exercise of the right of the citizen, is the maintenance of the independence of the judiciary. . . . This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.[123] (Citations omitted)

One's right to freedom of expression must be as fully protected as possible; however, its exercise must never transgress the equally important aspects of democracy, not least of all the Judiciary's dignity and authority.

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121 *Id.* at 579.
122 434 Phil. 503 (2002) [Per J. Kapunan, *En Banc*].
123 *Id.* at 508–509.

III (A)

To ensure judicial independence, courts possess the inherent power to punish for contempt. This power is considered "a permissible subsequent punishment for those who abuse their constitutional freedoms of speech, of expression, and of the press."[124] It is a "a content-based restriction because the 'communicative impact of the speech' is the subject of the regulation."[125] Nonetheless, it is essential to preserve order in judicial proceedings, and for courts to enforce their judgments, orders, and mandates and ensure the due administration of justice.[126] This prevents "the proliferation of untruths which, if unrefuted, would gain an undue influence in the public discourse."[127] In *Regalado v. Go*:[128]

> Contempt of court is a defiance of the authority, justice[,] or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation. It is defined as disobedience to the Court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but *such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.*
>
> The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice.
>
> Thus, contempt proceedings has a dual function: (1) vindication of public interest by punishment of contemptuous conduct; and (2) coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court.[129] (Emphasis supplied, citations omitted)

Contempt proceedings should be "impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise."[130] As such, the power to punish for contempt must be "exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of

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124 *ABS-CBN v. Ampatuan,* G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].

125 *Id.*, *citing* C.J. Puno, Dissenting Opinion in *Soriano v. Laguardia*, 605 Phil. 43, 162 (2009) [Per J. Velasco, Jr., *En BancEn Banc*].

126 *In re Macasaet*, 583 Phil. 391, 444–445 (2008) [Per J. Reyes, *En Banc*], *citing Perkins v. Director of Prisons,* 58 Phil. 271, 274 (1993) [Per J. Abad Santos, *En Banc*].

127 *Guingguing v. Court of Appeals*, 508 Phil. 193, 222 (2005) [Per J. Tinga, Second Division].

128 543 Phil. 578 (2007) [Per J. Chico-Nazario, Third Division].

129 *Id.* at 590–591.

130 *Garcia, Jr. v. Manrique,* 697 Phil. 157, 164 (2012) [Per J. Reyes, First Division]. (Citation omitted)

the court, not for retaliation or vindication. It should not be availed of unless necessary in the interest of justice."[131]

There are two forms of contempt court: direct and indirect.[132]

Direct contempt is committed when one engages in "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so[.]"[133]

Indirect contempt, on the other hand, involves actions that are committed not within the presence of the court,[134] but are nonetheless "directed against the dignity and authority of the court or a judge acting judicially[.]"[135] The following acts, as enumerated in Rule 71, Section 3 of the Rules of Court, constitute indirect contempt:

> SECTION 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;
>
> (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
>
> (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
>
> (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
>
> (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

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131 *Palad v. Patajo-Kapunan,* 864 Phil. 804, 811 (2019) [Per J. Lazaro-Javier, Second Division]. (Citation omitted)

132 RULES OF COURT, Rule 71, secs. 1, 3.

133 RULES OF COURT, Rule 71, sec. 1.

134 *Barredo-Fuentes v. Albarracin,* 496 Phil. 31, 41 (2005) [Per J. Tinga, Second Division].

135 *Marantan v. Diokno,* 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division].

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

Indirect contempt, especially "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[,]"[136] is considered an "offense against organized society and . . . an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive."[137]

The Court synthesized the key differences between direct and indirect proceedings in *Godoy*:

A. As to the Nature of the Offense.

A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the other hand, civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.

A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court.

It has further been stated that intent is a necessary element in criminal contempt, and that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. On the contrary, there is authority indicating that since the purpose of civil contempt proceedings is remedial, the defendant's intent in committing the contempt is immaterial. Hence, good faith or the absence of intent to violate the court's order is not a defense in civil contempt.

B. As to the Purpose for which the Power is Exercised

A major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. A criminal contempt

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[136] RULES OF COURT, Rule 71, sec. 3.
[137] *Palad v. Solis,* 796 Phil. 216, 227 (2016) [Per J. Peralta, Third Division].

involves no element of personal injury. It is directed against the power and dignity of the court; private parties have little, if any, interest in the proceedings for punishment. Conversely, if the contempt consists in the refusal of a person to do an act that the court has ordered him to do for the benefit or advantage of a party to an action pending before the court, and the contemnor is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court; the party in whose favor that judgment was rendered is the real party in interest in the proceedings. Civil contempt proceedings look only to the future. And it is said that in civil contempt proceedings, the contemnor must be in a position to purge himself.

C. As to the Character of the Contempt Proceeding

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 rules applicable 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. It has been held that a proceeding for contempt to enforce a remedy in a civil action is a proceeding in that action. Accordingly, where there has been a violation of a court order in a civil action, it is not necessary to docket an independent action in contempt or proceed in an independent prosecution

> to enforce the order. It has been held, however, that while the proceeding is auxiliary to the main case in that it proceeds out of the original case, it is essentially a new and independent proceeding in that it involves new issues and must be initiated by the issuance and service of new process.
>
> 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.[138] (Emphasis supplied, citations omitted)

ABS-CBN v. Ampatuan[139] expounds that in the exercise of the court's contempt power, the following elements of speech must be considered: "the content of the speech, intent on bringing ridicule to the courts and delay the due administration of justice, and the effect of the speech to destroy the courts' usefulness and public confidence in its administration of justice."[140]

Another tool to ensure that the Judiciary can execute its duties unhampered by prejudgment and extraneous influence is the *sub judice* rule,[141] which also relates to the court's contempt power.[142] *Sub judice* is defined in Canon II, Section 19 of the Code of Professional Responsibility and Accountability:

> SECTION 19. *Sub-Judice Rule.* — A lawyer shall not use any forum or medium to comment or publicize opinion pertaining to a pending proceeding before any court, tribunal, or other government agency that may:
>
> (a) cause a pre-judgment, or
> (b) sway public perception so as to impede, obstruct, or influence the decision of such court, tribunal, or other government agency, or which tends to tarnish the court's or tribunal's integrity, or
> (c) impute improper motives against any of its members, or
> (d) create a widespread perception of guilt or innocence before a final decision.

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138 *People v. Godoy,* 312 Phil. 977, 999–1002 (1995) [Per J. Regalado, *En Banc*].
139 G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
140 *Id.* (Citation omitted)
141 *Romero II v. Estrada*, 602 Phil. 312, 319 (2009) [Per J. Velasco, Jr., *En Banc*], *citing Nestle Philippines v. Sanchez*, 238 Phil. 543 (1987) [*Per Curiam, En Banc*].
142 *Republic v. Sereno*, 831 Phil. 271, 954–955 (2018) [Per J. Tijam, *En Banc*].

The *sub judice* rule prohibits parties and the public[143] from making "comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice."[144] While court proceedings are matters within the realm of public discussion,[145] statements intended to pressure judges to decide a pending case in a particular way are excluded from the guarantee of free speech.[146] As such, a violation of the *sub judice* rule is considered "improper conduct" and is punishable under indirect contempt.[147]

In his opinion in *Lejano v. People*,[148] Justice Arturo D. Brion discussed the importance of the *sub judice* rule:

> In so far as criminal proceedings are concerned, two classes of publicized speech made during the pendency of the proceedings can be considered as contemptuous: first, comments on the merits of the case, and second, intemperate and unreasonable comments on the conduct of the courts with respect to the case. Publicized speech should be understood to be limited to those aired or printed in the various forms of media such as television, radio, newspapers, magazines, and internet, and excludes discussions, in public or in private, between and among ordinary citizens. The Constitution simply gives the citizens the right to speech, not the right to unrestricted publicized speech.
>
> Comments on the merits of the case may refer to the credibility of witnesses, the character of the accused, the soundness of the alibis offered, the relevance of the evidence presented, and generally any other comment bearing on the guilt or innocence of the accused. The danger posed by this class of speech is the undue influence it may directly exert on the court in the resolution of the criminal case, or indirectly through the public opinion it may generate against the accused and the adverse impact this public opinion may have during the trial. The significance of the *sub judice* rule is highlighted in criminal cases, as the possibility of undue influence prejudices the accused's right to a fair trial. "The principal purpose of the *sub judice* rule is to preserve the impartiality of the judicial system by protecting it from undue influence." Public opinion has no place in a criminal trial.[149] (Citations omitted)

In cases where individuals are charged with contempt of court for making utterances or publishing writings against the Judiciary, this Court weighs one's freedom of speech against judicial independence. To constitute constitutionally protected speech, the statements must be bona fide and made with decency and propriety:

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143 *Causing v. Dela Rosa*, 827 Phil. 261, 265 (2018) [Per J. Caguioa, Second Division].
144 *Marantan v. Diokno*, 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division].
145 *Roque v. Armed Forces of the Philippines*, 805 Phil. 921 (2017) [Per J. Leonen, Second Division].
146 *In re De Vera*, 434 Phil. 503 (2002) [Per J. Kapunan, *En Banc*].
147 RULES OF COURT, Rule 71, sec. 3(d).
148 652 Phil. 512 (2010) [Per J. Abad, *En Banc*].
149 J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 654–655 (2010) [Per J. Abad, *En Banc*].

> But as we have emphasized time and time again, "[i]t is the cardinal condition of all such criticism that it shall be *bona fide,* and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on one hand, and abuse and slander of courts and the judges thereof, on the other." Obstructing, by means of opprobrious words, spoken or written, the administration of justice by the courts will subject the abuser to punishment for contempt of court. And regardless of whether or not the case of reference has been terminated is of little moment. One may be cited for contempt of court even after the case has ended where such punitive action is necessary to protect the court and to vindicate it from acts or conduct calculated to degrade, ridicule, or bring it into disfavor and thereby erode public confidence in that court.
>
> . . . .
>
> A becoming respect for the courts should always be the norm. Litigants, no matter how aggrieved or dissatisfied they may be of court's decision, do not have the unbridled freedom in expressing their frustration or grievance in any manner they want. Crossing the permissible line of fair comment and legitimate criticism of the bench and its actuations shall constitute contempt which may be visited with sanctions from the Court as a measure of protecting and preserving its dignity and honor.[150] (Citations omitted)

In *In re Macasaet*,[151] this Court explained the rationale for punishing speech that oversteps the threshold of legitimate criticism and enters the territory of illegitimate attacks against the Judiciary:

> But there is an important line between legitimate criticism and illegitimate attack upon the courts or their judges. Attacks upon the court or a judge not only risk the inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities; they also undermine the people's confidence in the courts.
>
> Personal attacks, criticisms laden with political threats, those that misrepresent and distort the nature and context of judicial decisions, those that are misleading or without factual or legal basis, and those that blame the judges for the ills of society, damage the integrity of the judiciary and threaten the doctrine of judicial independence. These attacks do a grave disservice to the principle of an independent judiciary and mislead the public as to the role of judges in a constitutional democracy, shaking the very foundation of our democratic government.[152]

The courts are not powerless against criticisms and attacks that directly threaten judges in the performance of their judicial functions. As held in *ABS-CBN*:

> However, attacks against a judge's personal security and safety relating to the exercise of their judicial functions are also directed against

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[150] *Bildner v. Ilusorio,* 606 Phil. 369, 384–387 (2009) [Per J. Velasco, Second Division].
[151] 583 Phil. 391 (2008) [Per J. Reyes, R.T., *En Banc*].
[152] *Id.* at 436.

the "court as an organ of the administration of justice." Contempt in these cases extends to this Court, as the protector of the Judiciary, who may punish the personal attack in lieu of the judge. This Court's power to protect judges and officers of the Court is rooted in our constitutional supervision of members of the judicial system. This includes the duty to uphold not only the dignity and authority of this Court as an institution but also the duty to protect the personal safety and security of our judges, lawyers, and other personnel of this Court.

. . . .

When defamatory allegations are uttered against the courts, justices and judges cannot defend themselves like other public officers. They have no political machinery to speak for and defend them, and the courts can only rely on their officers, who may likewise not be capable of responding in real time. Moreover, the filing of defamation cases is not available to them:

> Under the American doctrine, to repeat, the great weight of authority is that in so far as proceedings to punish for contempt are concerned, critical comment upon the behavior of the court in cases fully determined by it is unrestricted, under the constitutional guaranties of the liberty of the press and freedom of speech. Thus, comments, however stringent, which have relation to judicial proceedings which are past and ended, are not contemptuous of the authority of the court to which reference is made. Such comments may constitute a libel against the judge, but it cannot be treated as in contempt of the court's authority.
>
> On this score, it is said that prosecution for libel is usually the most appropriate and effective remedy. The force of American public opinion has greatly restrained the courts in the exercise of the power to punish one as in contempt for making disrespectful or injurious remarks, and it has been said that the remedy of a judge is the same as that given to a private citizen. In such a case, therefore, the remedy of a criminal action for libel is available to a judge who has been derogated in a newspaper publication made after the termination of a case tried by him, since such publication can no longer be made subject of contempt proceedings.
>
> The rule, however, is different in instances under the Philippine doctrine earlier discussed wherein there may still be a contempt of court even after a case has been decided and terminated. In such case, the offender may be cited for contempt for uttering libelous remarks against the court or the judge. The availability, however, of the power to punish for contempt does not and will not prevent a prosecution for libel, either before, during, or after the institution of contempt proceedings. In other words, the fact that certain contemptuous conduct likewise constitutes an indictable libel against the judge of the court contemned does not necessarily require him to bring a libel action, rather than relying on contempt proceedings.

The fact that an act constituting a contempt is also criminal and punishable by indictment or other method of criminal prosecution does not prevent the outraged court from punishing the contempt. This principle stems from the fundamental doctrine that an act may be punished as a contempt even though it has been punished as a criminal offense. The defense of having once been in jeopardy, based on a conviction for the criminal offense, would not lie in bar of the contempt proceedings, on the proposition that a contempt may be an offense, against the dignity of a court and, at the same time, an offense against the peace and dignity of the people of the State. But more importantly, adherence to the American doctrine by insisting that a judge should instead file an action for libel will definitely give rise to an absurd situation and may even cause more harm than good.

Drawing also from American jurisprudence, *to compel the judge to descend from the plane of his judicial office to the level of the contemnor, pass over the matter of contempt, and instead attack him by a civil action to satisfy the judge in damages for a libel, would be a still greater humiliation of a court. That conduct would be personal; the court is impersonal. In our jurisdiction, the judicial status is fixed to such a point that our courts and the judges thereof should be protected from the improper consequences of their discharge of duties so much so that judicial officers have always been shielded, on the highest considerations of the public good, from being called for questioning in civil actions for things done in their judicial capacity.*

Whenever we subject the established courts of the land to the degradation of private prosecution, we subdue their independence, and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden the licentious to trample upon everything sacred in society, and to overturn those institutions which have hitherto been deemed the best guardians of civil liberty.

Hence, *the suggestion that judges who are unjustly attacked have a remedy in an action for libel, has been assailed as being without rational basis in principle. In the first place, the outrage is not directed to the judge as a private individual but to the judge as such or to the court as an organ of the administration of justice. In the second place, public interests will gravely suffer where the judge, as such, will, from time to time, be pulled down and disrobed of his judicial authority to face his assailant on equal grounds and prosecute cases in his behalf as a private individual.* The same reasons of public policy which exempt a judge from civil liability in the exercise of his judicial functions, most fundamental of which is the policy to confine his time exclusively to the discharge of

> his public duties, applies here with equal, if not superior, force.
>
> Justices and judges are restrained from engaging in any other forum except in the content of their decisions. While they cannot be sensitive against legitimate criticisms of their public personalities, courts are weak to correct when false information about them is circulated. Hence, the inherent contempt powers of the court should be available to address the damaging effects of contemptuous speech.[153] (Citations omitted)

III (B)

In reconciling the conflict between the freedom of speech and the need to protect judicial independence, this Court generally uses the "clear and present danger" test to determine if a statement constitutes contempt for impeding the independence and integrity of the Judiciary.

Under the clear and present danger test, the freedom of speech prevails if the consequence of the expression is not "extremely serious and the degree of imminence extremely high" for it to be punished.[154] But if it is so, then the speech can be subsequently punished:

> The [clear and present danger test], as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.
>
> This rule had its origin in *Schenck vs. U. S.*, promulgated in 1919, and ever since it has afforded a practical guidance in a great variety of cases in which the scope of the constitutional protection of freedom of expression was put in issue. In one of said cases, the United States Supreme Court has made the significant suggestion that this rule "is an appropriate guide in determining the constitutionality of restriction upon expression where the substantial evil sought to be prevented by the restriction is destruction of life or property or invasion of the right of privacy."[155] (Citations omitted)

To fall under the clear and present danger test, "the publication must have an inherent tendency to influence, intimidate, impede, embarrass, or obstruct the court's administration of justice. It is . . . a public wrong, a

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[153] *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
[154] *Cabansag v. Fernandez*, 102 Phil. 152, 161 (1957) [Per J. Bautista Angelo, First Division].
[155] *Id.*

crime against the State, to undertake by libel or slander to impair confidence in the judicial functions."[156] In *Marantan v. Diokno*:[157]

> The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.
>
> *The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice.* Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat.[158] (Emphasis supplied, citations omitted)

When the clear and present danger test is applied, good faith or the absence of intent to harm the courts is considered a valid defense.[159] Nonetheless, "[a] person's intent, however good it maybe, cannot prevail over the plain import of his speech or writing. It is gathered from what is apparent, not on supposed or veiled objectives."[160]

As such, a contempt petition must contain the following allegations for the court to determine whether there is sufficient basis to punish the respondent for contempt:

> First, public statements were made regarding the merits of the case while it is pending before the courts. The petition must clearly state the contemptible conduct and reproduce the content of the speech ought to be punished.
>
> Second, since intent is necessary in criminal contempt, the required mental element of the speaker who uttered the contemptuous speech in a judicial proceeding must be specifically alleged. It must appear from the story that the "ultimate purpose" of its publication is to impede, obstruct or degrade the administration of justice. This is inferred from the totality of the story, the context of its publication, the wording used, the manner of reporting, and other relevant factors which may be derived from the story.
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> Third, the clear and present danger of the utterance to the court's administration of justice must be alleged, specifically identifying the importance and saliency of the information on the ability of courts to make

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156 *People v. Godoy*, 312 Phil. 977, 1022 (1995) [Per J. Regalado, *En Banc*]. (Citations omitted)
157 726 Phil. 642 (2014) [Per J. Mendoza, Third Division].
158 *Id.* at 649.
159 *In re Canlas*, 865 Phil. 279 (2019) [Per J. Carpio, *En Banc*].
160 *Garcia, Jr. v. Manrique*, 697 Phil. 157, 167 (2012) [Per J. Reyes, First Division].

> an impartial decision. There must be a showing of the serious and imminent threat of an utterance on the court's administration of justice for it to be subject to subsequent punishment.
>
> Finally, the effect of the speech on the administration of justice must be shown, particularly, that the utterance will influence the court's independence in ruling on a case, which will, in turn, affect the public confidence in the Judiciary.[161] (Citations omitted)

On the other hand, the "dangerous tendency" test provides that if the utterance tends to bring about a substantive evil, it cannot be deemed covered under the mantle of freedom of expression:

> The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt.
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> This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.[162] (Citations omitted)

The "balancing of interests" test is also applied "when courts need to balance conflicting social values and individual interests, and requires a conscious and detailed consideration of the interplay of interests observable in a given situation of type of situation[.]"[163]

Finally, when the speech may incite lawless action, the *Brandenburg* test, as recently used in *Calleja v. Executive Secretary*,[164] is used. This test determines whether a speech or expression is constitutionally protected or if it "has a reasonable probability or likelihood of producing such lawless action."[165] A speech that falls under the latter must be: "(1) directed to inciting or producing imminent lawless action; and (2) is likely to incite or

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161 *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
162 *Cabansag v. Fernandez*, 102 Phil. 152, 163 (1957) [Per J. Bautista Angelo, First Division].
163 *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per J. Puno, *En Banc*]. (Citation omitted)
164 G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*].
165 J. Caguioa, Concurring and Dissenting Opinion in *Calleja v. Executive Secretary*, G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*].

produce such action."[166]

Contemptuous speech is generally subject to punishment. However, if it is duly proven that the complaint was: (a) "made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having some interest or duty in the matter";[167] (b) "a fair and true reporting of a proceeding or any of its incidents";[168] or (c) "fair commentaries on matters of public interest[,]"[169] then such utterance will fall under the recognized qualified privileges protected under free speech. Nonetheless, to be considered fair, the comment or criticism must be "grounded in truth and facts[.]"[170]

Notably, one who asserts the existence of any of these qualified privileges impliedly admits engaging in improper conduct but justifies it through these grounds. Once the respondent proves the existence of a qualified privilege, the other party must establish that the contemptuous speech was made with actual malice, a "form of knowledge of the falsity or a reckless disregard for the falsity of the statements[.]"[171]

IV

Courts are not immune to criticism. The public has the right to criticize court issuances, proceedings, and the public persona of members of the Judiciary.[172] However, there is a well-defined line between legitimate criticism and utterances that are intended to attack the integrity of the courts or are aimed at influencing court decisions.

The Court has historically regulated three classes of speech, with the restrictions based on the possibility of substantive evil to the administration of justice because of the content, voluntariness, motive, and effect of the speech.[173] The three classes of speech are: (1) speech between litigants and their counsels; (2) speech of members of the Bar and Bench in general; and (3) speech of the press and the public.[174] In *ABS-CBN*, this Court added speech in social media as the fourth class of regulated speech.

Speech from these different actors in judicial proceedings are treated differently. In particular, the "personality of the speaker and their

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166 J. Leonen, Concurring and Dissenting Opinion in *Calleja v. Executive Secretary,* G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, *En Banc*].
167 *ABS-CBN v. Ampatuan,* G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*]. (Citation omitted)
168 *Id.*
169 *Id.*
170 *Id.*
171 *Id.* (Citation omitted)
172 *United States v. Bustos*, 37 Phil. 731 (1918) [Per J. Malcolm, First Division].
173 *ABS-CBN v. Ampatuan,* G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
174 *Id.*

corresponding duty to the courts are relevant in determining whether a speech may be subsequently punished."[175]

The first class, speech between litigants and their counsels, who are in the closest proximity to the courts, is the most restricted because these actors undertook to abide by the Rules of Court and the decorum expected in judicial proceedings.

In *Nestle Philippines, Inc. v. Sanchez*,[176] this Court dismissed the contempt charges against officers and members of a union that picketed in front of the Supreme Court compound in Padre Faura, Manila to draw attention to their pending case. However, this Court sternly warned them and their lawyers of the decorum expected of them as litigants and counsels:

> We accept the apologies offered by the respondents and at this time, forego the imposition of the sanction warranted by the contemptuous acts described earlier. The liberal stance taken by this Court in these cases as well as in the earlier case of AHS/PHILIPPINES EMPLOYEES UNION vs. NATIONAL LABOR RELATIONS COMMISSION, et al., G.R. No. 73721, March 30, 1987, should not, however, be considered in any other light than an acknowledgment of the euphoria apparently resulting from the rediscovery of a long-repressed freedom. *The Court will not hesitate in future similar situations to apply the full force of the law and punish for contempt those who attempt to pressure the Court into acting one way or the other in any case pending before it.* Grievances, if any, must be ventilated through the proper channels, i.e., through appropriate petitions, motions or other pleadings in keeping with the respect due to the Courts as impartial administrators of justice entitled to "proceed to the disposition of its business in an orderly manner, free from outside interference obstructive of its functions and tending to embarrass the administration of justice."
>
> *The right of petition is conceded to be an inherent right of the citizen under all free governments. However, such right, natural and inherent though it may be, has never been invoked to shatter the standards of propriety entertained for the conduct of courts.* For "it is a traditional conviction of civilized society everywhere that courts and juries, in the *decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.*"
>
> Moreover, "*parties have a constitutional right to have their causes tried fairly in court by an impartial tribunal, uninfluenced by publication or public clamor. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law free from outside coercion or interference.*" The aforecited acts of the respondents are therefore not only an affront to the dignity of this Court, but equally a violation of the above-stated right of the adverse parties and the citizenry at large.

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[175] *Id.*

[176] 238 Phil. 543 (1987) [*Per Curiam, En Banc*].

> We realize that the individuals herein cited who are non-lawyers are not knowledgeable in her intricacies of substantive and adjective laws. They are not aware that even as the rights of free speech and of assembly are protected by the Constitution, any attempt to pressure or influence courts of justice through the exercise of either right amounts to an abuse thereof, is no longer within the ambit of constitutional protection, nor did they realize that any such efforts to influence the course of justice constitutes contempt of court. *The duty and responsibility of advising them, therefore, rest primarily and heavily upon the shoulders of their counsel of record.* Atty. Jose C. Espinas, when his attention was called by this Court, did his best to demonstrate to the pickets the untenability of their acts and posture. Let this incident therefore serve as a reminder to all members of the legal profession that it is their duty as officers of the court to properly apprise their clients on matters of decorum and proper attitude toward courts of justice, and to labor leaders of the importance of a continuing educational program for their members.[177] (Emphasis supplied, citations omitted)

The second class of speech refers to the public commentaries of lawyers on court decisions or judicial proceedings, and the permissible restriction of speech of members of the Bench and Bar as part of this Court's plenary disciplinary authority.[178]

As court officers, lawyers must meet the exacting standards they swore to uphold in their oath and the Code of Professional Responsibility and Accountability. They are expected "to share in the task and responsibility of dispensing justice and resolving disputes in society";[179] thus, lawyers who impede the administration of justice by going beyond fair comment and legitimate criticism are disciplined.

In *Surigao Mineral Reservation Board v. Cloribel*,[180] this Court reminded litigants' counsels that passionately advocating for their clients does not justify the use of intemperate language or attempts to degrade the administration of justice:

> It ill behooves Santiago to justify his language with the statement that it was necessary for the defense of his client. A client's cause does not permit an attorney to cross the line between liberty and license. Lawyers must always keep in perspective the thought that "[s]ince lawyers are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice; to this, their clients' success is wholly subordinate; and their conduct ought to and must be scrupulously observant of law and ethics."[181] (Citation omitted)

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[177] *Id.* at 547–549.
[178] *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
[179] *Id.*
[180] 142 Phil. 1 (1970) [Per J. Sanchez, Second Division].
[181] *Id.*

Members of the Bench, the magistrates of the court, are held to an even higher ethical standard than what is expected of lawyers, as they are expected to embody competence, integrity, and independence[182] in both their professional dealings and in their personal lives.[183]

The third class of speech pertains to the permissible restriction on speech of the media and the public. *ABS-CBN* cautions against using the courts' contempt power against the media as it might deter freedom of the press and its obligation to publicize matters of public interest. We stressed that this power "should never be wielded to stifle comments on public interest."[184] Nonetheless, to be recognized as a qualified privilege, the comments and criticisms by the media and the public must be based on facts and not tainted with bad faith.

In *People v. Castelo*,[185] after scrutinizing the content and purpose of the publication complained of, this Court dismissed an indirect contempt charge against a journalist who reported on a pending murder case before the trial court. This Court found that the "mere factual appraisal of the investigation"[186] with no concomitant criticism or comment against the judge, cannot be said to have been intended to impede or obstruct the administration of justice. Further, this Court stressed that the assailed publication was duly protected by the freedom of the press:

> As this Court has aptly said, for a publication to be considered as contempt of court there must be a showing not only that the article was written while a case is pending but *that it must really appear* that such publication does impede, interfere with and embarrass the administration of justice. Here, there is no such clear showing. The very decision of the court shows the contrary.
>
> But, even if it may have that effect, we however believe that the publication in question comes well within the framework of the constitutional guaranty of the freedom of the press. At least it may be said that *it is a fair and true report of an official investigation that comes well within the principle of a privileged communication, so that even if the same is defamatory or contemptuous, the publisher need not be prosecuted upon the theory that he has done it to serve public interest or promote public good.* Thus, under our law, it is postulated that "a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in such proceedings, or of any other act performed by public officers in the exercise of their functions", is deemed privileged and not punishable.[187] (Emphasis supplied, citations omitted)

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182 CODE OF JUD. CONDUCT, Canon 1, Rule 1.01.
183 CODE OF JUD. CONDUCT, Canon 2.
184 *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
185 114 Phil. 892 (1962) [Per J. Bautista Angelo, *En Banc*].
186 *Id.* at 899.
187 *Id.* at 900.

Finally, this Court added speech made through social media as the fourth class of regulated speech, recognizing the effect of fake news spread through social media on the public's confidence in the Judiciary and in its administration of justice. In *ABS-CBN*:

> Internet publicity and the danger it presents in the administration of justice cannot be discounted. A social media post can be shared infinitely and become viral in a matter of minutes. Organized networks of disinformation thrive in anonymity and the lack of effective regulatory mechanism in social media. The proliferation of fake news is a very significant threat on the courts' legitimacy, which is anchored on the public's confidence in our administration of justice. The internet may be weaponized by those who desire to defeat public confidence against a particular target, which may include the Judiciary.
>
> We must recognize the dangers of unregulated speech against the Judiciary on the internet and in various social media where truth suffers from decay, where facts and objective analysis are inundated by false information. This is a huge threat to democracy as it hampers the ability of citizens to make informed decisions based on facts.[188] (Citations omitted)

In *Camacho IV v. Francisco*,[189] this Court expressed its concern at how fake news can easily spread through social media "without regard for the truth and the damage it might cause[.]"[190] Fake news in itself has dangerous consequences. However, when the Judiciary as an institution and the individuals who don judicial robes become the subject of these attacks, it could stir public distrust in one of the main pillars of democracy.

Judges who are the subject of fake news in their judicial capacity are prevented by propriety from defending themselves through social media or explaining themselves through a representative. They may only defend themselves in the proper forum—in contempt proceedings. This limitation has unintended consequences, such that in the interim, the news or information maligning them might have already spread like wildfire, scorching everything in its path and creating doubt and disquiet in the public consciousness. Even if the judge is later vindicated, this will not fix their already tarnished reputation and will do little to reverse the damage wreaked on the public confidence in the Judiciary.

These circumstances demand swift and corrective action, so that we may curtail any further destruction of the Judiciary.

ABS-CBN points out that absolute restriction of criticisms against the Judiciary in cyberspace is not the way to "stop the cancerous spread of disinformation online."[191] Instead, certain online speakers should be held to

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[188] *Id.* (Citations omitted)
[189] A.C. No. 12765, October 6, 2021 [Notice, First Division].
[190] *Id.*
[191] *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].

the same standard expected of journalists and should be treated and penalized similarly to writers in traditional media who were found to have recklessly published falsities.[192]

The focus is aptly put on online personalities who have a wide range of followers, as compared to others whose online presence reach only those they personally know. Their massive following signifies their influence on social media and speaks of the weight and value of their every statement as imprinted in the audience's consciousness.

To maintain their popularity, these online personalities tend to publish a steady stream of shocking or attention-grabbing content to take advantage of their audience's negativity bias, that is, the natural human tendency to latch on to something bad rather than good.[193] In a bid to ensure that their posts would become viral, they would make statements that produce heightened negative emotions, chasing after the dopamine rush brought about by the substantial increase in their followers and likes. The result is a proliferation of posts made to further their personal gain and popularity, without regard for the public good.[194] Celebrities, media sources, and individuals chasing after followers will more likely spread fake news.[195] They deliberately sensationalize a topic to shock and rouse the public, ensuring that the content go viral and lead to widespread damage.

ABS-CBN discussed this phenomenon as further justification to require that an online influencer's speech be held to a higher standard than a typical social media user:

> The more viral online content is, as assessed from the volume of people who saw the original post or by way of shared posts within the same platform or cross-posting other social media, the greater its effect and propensity to affect the public. The language employed may also be deliberately used to infuriate the public to generate more public engagement. Thus, an influencer's speech is held to a greater standard than an average social media user.[196]

Worse, the effects of statements made by these online personalities are not limited to the cyberworld. They can spur concrete action in the real world—even to the point of actual violence:

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192 *Id.*

193 Tom Stafford, *Psychology: Why bad news dominates the headlines*, BBC.COM, *available at* https://www.bbc.com/future/article/20140728-why-is-all-the-news-bad (last accessed on July 29, 2023).

194 Daniela C. Manzi, *Managing the Misinformation Marketplace: The First Amendment and the Fight against Fake News*, 87 FORDHAM L. REV. 2623, 2647 (2019).

195 Lili Levi, *Real "Fake News" and Fake "Fake News"*, 16 FIRST AMEND. L. REV. 232, 314 (2018).

196 *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].

> The unmediated character of social media speech also increases its potential for sparking violence. Social media increase the number of individuals who can engage in unmediated communication, which inherently increases the probability of incendiary speech. Moreover, the sheer size of prospective audiences also increases the potential for violent audience reactions. Audience size matters: the bigger the audience, the greater the chance at least one audience member will respond with violence to speech that is offensive or advocates violence.[197] (Citation omitted)

Recent years have proved the capacity of social media posts to wreak havoc on the real world.

In 2014, Ashin Wirathu, a popular Buddhist monk, shared on his Facebook page a post alleging that a Buddhist woman was raped by her Muslim coworkers. Less than 24 hours later, angry and armed Buddhist mobs descended on Muslims, targeting them and their belongings. The ensuing violence culminated in the death of one Buddhist and one Muslim, dozens of others injured, shops burned, and a mosque burned. An investigation later showed that the shared post had been fabricated.[198]

In 2016, a single tweet accusing Hillary Clinton, a presidential candidate in the 2016 elections in the United States of America, of being involved in a pedophilia ring prompted two armed citizens to storm a pizza parlor to rescue the children allegedly trapped in the basement. During the commotion, they fired multiple shots. Their search revealed that the claims had been unjustified, and they were arrested.[199]

Even the January 6, 2021 capitol riot was allegedly a response to then United States of America president Donald Trump's tweet, urging his supporters to join the riot protesting his loss in the 2020 elections.[200]

In today's digital age where credibility seems to be measured by online popularity instead of experience and hard-won credentials, online personalities or influencers must be put to task for the effects of their speech, since unregulated speech online and the unabated spread of fake news pose very real consequences, even in the real world.

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197 Lyrissa Barnett Lidsky, *Incendiary Speech and Social Media*, 44 TEX. TECH L. REV. 147, 149 (20111–2012).

198 Amina Waheed, *Rape used as a weapon in Myanmar to ignite fear*, October 28, 2015, https://www.aljazeera.com/features/2015/10/28/rape-used-as-a-weapon-in-myanmar-to-ignite-fear (last accessed on August 2, 2023).

199 Marc Fisher, John Woodrow Cox, & Peter Hermann, *Pizzagate: From rumor, to hashtag, to gunfire in D.C.*, December 6, 2016, https://www.washingtonpost.com/local/pizzagate-from-rumor-to-hashtag-to-gunfire-in-dc/2016/12/06/4c7def50-bbd4-11e6-94ac-3d324840106c_story.html (last accessed on August 2, 2023).

200 Jude Sheerin, *Capitol riots: 'Wild' Trump tweet incited attack, says inquiry*, July 12, 2022, https://www.bbc.com/news/world-us-canada-62140410 (last accessed on August 2, 2023).

These online personalities have a duty to verify the truthfulness of the content they put out on the internet. It behooves them to validate the source of news through fact-checking and even through source-checking, lest they unwittingly disseminate fake news and even cause real-world harm.

This tendency to disseminate scandalous and unverified content to increase one's popularity online or to pander to one's followers cannot be allowed to fester. This rot must be excised and thrown out once and for all.

"The value of information to a free society is in direct proportion to the truth it contains."[201] This value diminishes when the public is unable "to distinguish between truth and falsehood in news reports, and the courts are denied the mechanisms by which to make reasonably sure that only the truth reaches print."[202] After all, "[d]emocracy is under threat when the truth is no longer a check on power."[203]

V

Here, the Urgent Petition for Indirect Contempt contains all the necessary allegations for indirect contempt petitions, as outlined in *ABS-CBN*,[204] to be the basis for punishing respondent for contempt.

First, the Petition clearly stated and reproduced the published Facebook posts respondent made on the merits of a case that was still pending before the trial court.[205]

Second, this statement in the Petition, among others, establishes the required mental element that respondent's ultimate purpose in publishing her statements was to impede, obstruct, or degrade the administration of justice:

> 33. Clearly, this latest display of Respondent Badoy-Partosa's propensity to belittle and ridicule the entire Philippine judiciary is downright contemptuous and is undoubtedly an indication that there is absolutely nothing that would put an end to the Respondent's relentless invite [sic] to mockery and condemnation of our judicial system[.][206]

Third, petitioners sufficiently alleged that respondent's Facebook posts posed a clear and present danger to the court's administration of justice:

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201 *In re Jurado*, 313 Phil. 119, 193 (1995) [Per J. Narvasa, *En Banc*].
202 *Id.*
203 Ari Ezra Waldman, *The Marketplace of Fake News*, 20 U. PA. J. CONST. L. 845, 869 (2018).
204 *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
205 *Rollo* (G.R. No. 263384), pp. 8–24.
206 *Id.* at 23.

> 64. Indeed, the foregoing Facebook posts of Respondent Badoy-Partosa are nothing less than contumacious as they directly besmirch and tear down the reputation and credibility of Judge Malagar and likewise impair the respect due, not only to Judge Malagar, but also to all members of the Philippine Bench and Bar.
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> 65. Respondent Badoy-Partosa's misconduct and misbehavior call on the public to lose trust and confidence on the authority of the judiciary and to disregard the dignity and integrity of the courts of law. Her actions result to [sic] the inevitable discrediting of the authority of the court magistrates, as well as of the entire administration of justice.[207]
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> . . . .
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> 68. Applying the wisdom of the Honorable Court to the facts at hand, Respondent Badoy-Partosa's litany of falsehoods could not, by any stretch of the imagination, be categorized as fair and *bona fide* criticism of a public official's conduct. It is slanderous, unfair, abusive, criminal. Respondent has threatened the life and security of Judge Malagar and her husband; subjected them to slanderous accusations; and through her actions, called on and encouraged the public to do the same. This is truly detrimental to the independence of the judiciary and grossly violative of the duty of respect to courts.[208]

Lastly, by itemizing the different comments and posts made responding to respondent's published statements,[209] petitioners showed the effect of such speech on the public's confidence in the Judiciary.

As to the merits, respondent's posts are contemptuous.

First, the requirements of the "clear and present danger" test are met.

Contrary to respondent's allegation, her posts made on September 23, 2022 and September 25, 2022 constitute "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice"[210]—which equates to indirect contempt.

Her assertion that Judge Magdoza-Malagar dismissed the Department of Justice's petition because of her supposed friendly ties with the CPP-NPA-NDF threatens the impartial image of the Judiciary. Her claim that the judge lawyered for one of the parties due to her alleged political leanings similarly harms the court's administration of justice. Respondent even claimed that the judge was assisted by the CPP-NPA-NDF when she wrote the decision, putting into question its legality.

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207 *Id.* at 36.
208 *Id.* at 36–37.
209 *Id.* at 15–17.
210 RULES OF COURT, Rule 71, sec. 3(d).

These statements constitute conduct that "tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice."[211]

Respondent likewise failed to allege the existence of any qualified privilege that applied when she published her posts on Facebook.

First, respondent's "criticisms" were not made in good faith or without malice. She did not act with an "honest sense of duty" or with an interest in the pure and efficient administration of justice and public affairs.[212] Instead, she was impelled by a self-seeking motive, which was to stir discontent among her audience. Without a doubt, respondent's use of violent and abrasive language in hurling accusations at Judge Magdoza-Malagar belies any claim that she acted in good faith and without malice.

Second, respondent's comments were not a "fair and true reporting of a proceeding or any of its incidents."[213] On the contrary, respondent imputed serious allegations against Judge Magdoza-Malagar and the Judiciary without showing any factual basis. Her posts and even the pleadings she filed before this Court do not indicate that she possesses evidence to support her scandalous statements. She launched the tirade against the Judiciary without thinking of the consequences that her unverified statements may bring.

Third, her statements subject do not constitute "fair commentaries on matters of public interest" as they are not "grounded in truth and facts[.]"[214]

Similarly, each of respondent's posts on September 23, 2022, September 24, 2022, and September 26, 2022 are clear transgressions of judicial independence as they violate the *sub judice* rule for commenting on a case that is pending before the Judiciary.

As early as 1916, this Court in *In re Kelly*[215] held that the publication of criticisms directed toward a court is punishable for contempt for tending to obstruct the administration of justice:

> The power to punish for contempt is inherent in all courts.
>
> The power to fine for contempt, imprison for contumacy, or enforce the observance of order, are powers which cannot be dispensed with in the courts, because they are necessary to the exercise of all others.

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211 *Regalado v. Go*, 543 Phil. 578, 590 (2007) [Per J. Chico-Nazario, Third Division]. (Citation omitted)
212 *ABS-CBN v. Ampatuan,* G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
213 *Id.*
214 *Id.*
215 35 Phil. 944 (1916) [Per J. Johnson, Second Division].

> The summary power to commit and punish for contempt, tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority, is a part of the law of the land.
>
> Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence and submission to their lawful mandates, and as a corollary to this provision, to preserve themselves and their officers from the approach of insults and pollution.
>
> The existence of the inherent power of courts to punish for contempt is essential to the observance of order in judicial proceedings and to the enforcement of judgments, orders, and writs of the courts, and consequently to the due administration of justice.
>
> *Any publication, pending a suit, reflecting upon the court, the jury, the parties, the officers of the court, the counsel, etc., with reference to the suit, or tending to influence the decision of the controversy, is contempt of court and is punishable.*
>
> The *publication of a criticism of a party or of the court to a pending cause, respecting the same, has always been considered as misbehavior, tending to obstruct the administration of justice and subjects such persons to contempt proceedings*. Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by publications or public clamor. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law, free from outside coercion or interference.[216] (Emphasis supplied, citations omitted)

By alleging that Judge Magdoza-Malagar had basis other than the Constitution and the law in dismissing the proscription case, and by claiming that the decision was written by the winning party, respondent cast doubt on its legitimacy. The success of her efforts is evident in the overwhelming response she attained—which she would even compile later and post as a collection to further amplify the caustic voices—with numerous members of the public prejudging the case. Respondent clearly intended to prejudge the issue, influence the court, and obstruct the administration of justice, the very evil that the *sub judice* rule seeks to avoid.[217]

In *ABS-CBN*, this Court emphasized the effect of traditional media and social media in shaping public opinion and how their prevalence has inevitably led to a restriction of public coverage of judicial proceedings to maintain a fair trial:

> Technological advancements increased mass media's influence on public and government affairs. Justices, judges, lawyers, and witnesses may be exposed to pressures outside judicial proceedings when cases are

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[216] *Id.* at 950–951.

[217] *Marantan v. Diokno*, 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division].

discussed freely and publicly in mass media due to their pervasive presence in everyday life. This is especially true in the age of the internet and social media.

Publicity of judicial proceedings is restricted because it may endanger the fairness of trial:

> Witnesses and judges may very well be men and women of fortitude, able to thrive in hardy climate, with every reason to presume firmness of mind and resolute endurance, but it must also be conceded that "television can work profound changes in the behavior of the people it focuses on." *Even while it may be difficult to quantify the influence, or pressure that media can bring to bear on them directly and through the shaping of public opinion, it is a fact, nonetheless, that, indeed, it does so in so many ways and in varying degrees.* The conscious or unconscious effect that such a coverage may have on the testimony of witnesses and the decision of judges cannot be evaluated but, it can likewise be said, it is not at all unlikely for a vote of guilt or innocence to yield to it. It might be farcical to build around them an impregnable armor against the influence of the most powerful media of public opinion.
>
> To say that actual prejudice should first be present would leave to near nirvana the subtle threats to justice that a disturbance of the mind so indispensable to the calm and deliberate dispensation of justice can create. The effect of television may escape the ordinary means of proof, but it is not far-fetched for it to gradually erode our basal conception of a trial such as we know it now.[218] (Emphasis in the original, citations omitted)

While "[m]ere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated[,]"[219] declarations, such as those made by respondent, ascribing improper motives to and rounding up public support to exert pressure on Judge Magdoza-Malagar, cannot be seen as criticism done in good faith. It is nothing but an act of intimidation to influence the resolution of a pending case.

Malicious imputations made even after the finality of a decision still fall under contemptuous speech if they tend to disrespect the court or create clear and present danger in the administration of justice. *Godoy* expounds:

> The Philippine rule, therefore, is that in case of a post-litigation newspaper publication, fair criticism of the court, its proceedings and its members, are allowed. However, there may be a contempt of court, even though the case has been terminated, if the publication is attended by either of these two circumstances: (1) where it tends to bring the court into

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[218] *ABS-CBN v. Ampatuan*, G.R. No. 227004, April 25, 2023 [Per J. Leonen, *En Banc*].
[219] *In re Sotto*, 82 Phil. 595, 600 (1949) [Per J. Feria, *En Banc*].

> disrespect or, in other words, to scandalize the court; or (2) where there is a clear and present danger that the administration of justice would be impeded. And this brings us to the familiar invocation of freedom of expression usually resorted to as a defense in contempt proceedings.[220] (Citation omitted)

The elements of the *Brandenburg* test are likewise present in respondent's Facebook posts of September 23, 2022 when she unequivocally stated that she wanted to build an organization free of terrorists, which would bomb "the offices of these corrupt judges who are friends of terrorists- even if they kneel before us and beg for their lives."[221] Respondent even argued that if she killed Judge Magdoza-Malagar, the public should be lenient toward her, the way the judge purportedly showed leniency towards the CPP-NPA-NDF.

These explosive statements directed toward respondent's considerable number of followers were clearly made to incite and produce imminent lawless action and are likely capable of attaining this objective, as evidenced by the multiple comments made on the posts dated September 22, 2022, September 23, 2022, and September 25, 2022 openly supporting the statements and even offering assistance. Some have even gone as far as asking for Judge Magdoza-Malagar's address, a clear sign that they intended to execute respondent's call. One need not imagine how these responses would have caused Judge Magdoza-Malagar to fear for her life and seek shelter. The *Brandenburg* test has been met.

This Court gives no merit to respondent's insistence that she did not intend to threaten Judge Magdoza-Malagar with physical harm, but merely employed hypothetical syllogism to point out the errors in the ruling.[222] The precise wording of her statements does not reveal any "hypothetical syllogism," especially as she pled for leniency:

> So if I kill this judge and I do so out of my political belief that all allies of the CPP NPA NDF must be killed because there is no difference [in my mind] between a member of the CPP NPA NDF and their friends, then please be lenient with me.[223]

Her desire to build an organization to create a justice system free from terrorists, as well as to bomb the offices of corrupt judges, is not merely "hypothetical syllogism."[224] Her posts led multiple people to publish their comments swearing to assist her cause.[225] If respondent truly meant no harm, she would have pacified her followers and explained that she was

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220 *People v. Godoy*, 312 Phil. 977, 1019–1020 (1995) [Per J. Regalado, *En Banc*].
221 *Rollo* (G.R. No. 263384), p. 10.
222 *Id.* at 273.
223 *Id.* at 10.
224 *Id.* at 13.
225 *Id.* at 15–16.

merely employing "hypothetical syllogism." Instead, respondent continued to post scores of statements further stroking the fire.

An incitement to commit lawless violent action and is likely to cause such violent action causing death or injury is not covered by the constitutional privilege of protected speech. As shown by past experiences here and abroad,[226] when such incitement to cause lawless violent action is done through social media by its influencers, the imminence is high that it will actually be committed by those so provoked.

Thus, respondent's posts must not be treated lightly. Her statements, though unsubstantiated, have the power to spark a deluge of assaults against the Judiciary and its members. Owing to her status as an online personality with more than 166,000 Facebook followers,[227] respondent should have observed the high standard expected of her.

Respondent's assertion that she was merely exercising her freedom of expression cannot exculpate her from liability. "Liberty of speech must not be confused with abuse of such liberty."[228] As earlier discussed, the ferocity with which she responded to the trial court's ruling can in no way be considered as a legitimate exercise of her constitutional right.

Respondent's statements were beyond objective criticism of the decision, but were explicit declarations that the court was personally motivated to rule in favor of the winning party,[229] that the court of law was weaponized to inflict harm on the public,[230] and that the decision was written by private citizens connected with the CPP-NPA-NDF.[231] Her clear threats against Judge Magdoza-Malagar and other members of the Judiciary leave no doubt that she was imbued with bad faith in making her post. In so doing, respondent jeopardized the Judiciary by sowing distrust and impairing the public's confidence in the honesty, integrity, and impartiality of those donning judicial robes. She was not merely advancing her advocacy when she made those incendiary statements on social media; she effectively made a call to action against Judge Magdoza-Malagar and the entire Judiciary. This, we cannot allow.

"This Court does not curtail the right of a lawyer, or any person for that matter, to be critical of courts and judges as long as they are made in properly respectful terms and through legitimate channels."[232] Citizens have

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226 Charissa Yong, *US Capitol riot: How social media helped enable attack by die-hard Trump fans*, The Strait Times, January 8, 2021, *available at* https://www.straitstimes.com/world/united-states/how-social-media-helped-enable-the-storming-of-the-us-capitol (last accessed on September 30, 2022).

227 *Rollo* (G.R. No. 263384), p. 8.

228 *Mercado v. Security Bank Corp.*, 517 Phil. 690, 704 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

229 *Rollo* (G.R. No. 263384), p. 12.

230 *Id.*

231 *Id.* at 14.

232 *Roxas v. De Zuzuarregui, Jr.*, 554 Phil. 323, 338 (2007) [*Per Curiam, En Banc*].

a right to scrutinize and criticize the Judiciary, but it is their ethical and societal obligation not to cross the line.[233] In this case, this Court wields its contempt power due to the harmful, vicious, and unnecessary manner in which respondent launched her criticism, evident in the immediate aftereffects her statements had on the public. In *Zaldivar*:

> What is at stake in cases of this kind is the integrity of the judicial institutions of the country in general and of the Supreme Court in particular. Damage to such institutions might not be quantifiable at a given moment in time but damage there will surely be if acts like those of [respondent] are not effectively stopped and countered. The level of trust and confidence of the general public in the courts, including the court of last resort, is not easily measured; but few will dispute that a high level of such trust and confidence is critical for the stability of democratic government.[234]

For her vitriolic statements and outright threats against Judge Magdoza-Malagar and the Judiciary, respondent is found guilty of indirect contempt and is fined PHP 30,000.00[235] with a warning that repeating the same or similar acts will lead to a more severe penalty.

ACCORDINGLY, the Court finds Lorraine Marie T. Badoy-Partosa **GUILTY** of indirect contempt of court in accordance with Rule 71, Section 3(d) of the Rules of Court. She is **FINED** the amount of PHP 30,000.00 and **WARNED** that a repetition of the same or similar acts in the future shall merit a more severe sanction.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[233] *In re Macasaet*, 583 Phil. 391, 459 (2008) [Per J. Reyes, *En Banc*].
[234] *Zaldivar v. Sandiganbayan*, 248 Phil. 542, 583 (1998) [*Per Curiam, En Banc*].
[235] RULES OF COURT, Rule 71, sec. 7 states:
SECTION 7. Punishment for indirect contempt. – If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five thousand pesos or imprisonment not exceeding one (1) month, or both. If the contempt consists in the violation of a writ of injunction, temporary restraining order or *status quo* order, he may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved.
The writ of execution, as in ordinary civil actions, shall issue for the enforcement of a judgment imposing a fine unless the court otherwise provides.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

On official leave
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the court.

ALEXANDER G. GESMUNDO
Chief Justice