EN BANC

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

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

Promulgated: March 28, 2023

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CONCURRENCE and DISSENT

LAZARO-JAVIER, *J.*:

I agree with the *ponencia* that the Order dated September 10, 2021 of the Senate citing petitioners for contempt and ordering their arrest and detention should be nullified. Nonetheless, I dissent from the finding that Section 6, Article 6 of the *Rules of the Committee on Accountability of Public Officers and Investigations* is constitutional.

I. "Testifies falsely or evasively" not a vague standard

The phrase **"testifies falsely or evasively"** as the gravamen of contempt is not vague.

To testify *evasively* simply means *to respond to questions frequently obliquely and without giving straight answers*, or *to respond to questions with answers that change over time*. An online law dictionary, US Legal, defines *evasive*:

> Evasive means **tending or seeking to evade; elusive; intentionally vague or ambiguous**. The reason for evasiveness may be **to avoid something unpleasant.** When a pleading requiring response is **evasive**, the other party can ask the court to order for an **unambiguous and definite pleading**.
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> "A party may **move for a more definite statement** of a pleading to which a responsive pleading is allowed but which is **so vague or ambiguous** that the party cannot reasonably prepare a response. The motion must be made before filing a

> responsive pleading and must **point out the defects complained of and the details desired**", [USCS Fed Rules Civ Proc R 12.][1]

Given this straightforward definition of *evasive*, and from this, of the derivative *evasively*, any person of ordinary reason would know what testifying *evasively* means.

The same is true with the gravamen of *testifying falsely*. We cannot claim that this phrase is vague because Articles 161 to 184 of *The Revised Penal Code* on *Forgeries* are based on the *actus reus* of *falsities*. If we accept *testifying falsely* as vague, then we must also accept as vague the common *actus reus* of *falsities* in these criminal code articles – which of course we do not accept at all. Something is *false* or an individual testifies *falsely* when the thing or the testimony is *not in accordance with the fact or truth*. In a prosecution for any of the crimes in Articles 161 to 184, we ordinarily end up with either an acquittal or conviction depending on whether there was something *false*. We do not quiver on what is meant by *false*.

II. The Senate's inherent power to cite and punish for contempt in inquiries in aid of legislation

Balag v. Senate[2] has settled that the Senate or any of its Committees has the power to cite and to punish for contempt its resource persons during inquiries in aid of legislation. The purpose of this power, according to *Balag*, is not essentially to punish but to make the inquiries potent and compelling. Thus:

> Period of imprisonment for contempt during inquiries in aid of legislation
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> The contempt power of the legislature under our Constitution is sourced from the American system. A study of foreign jurisprudence reveals that the Congress' inherent power of contempt must have a limitation. In the 1821 landmark case of *Anderson v. Dunn*, the Supreme Court of the United States (*SCOTUS*) held that although the offense committed under the **inherent power of contempt by Congress** may be undefinable, it is justly contended that the punishment need not be indefinite. It held that as the legislative body ceases to exist from the moment of its adjournment or periodical dissolution, then it follows that imprisonment under the contempt power of Congress must terminate with adjournment.[3]
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1 https://definitions.uslegal.com/e/evasive/ (last accessed on September 21, 2022).

2 See 835 Phil. 451 (2018) [Per J. Gesmundo, *En Banc*].

3 Id. at 464.

Subsequently, in *Jurney v. MacCracken*, the SCOTUS clarified that **the power of either Houses of Congress to punish for contempt was not impaired by the enactment of the 1857 statute. The said law was enacted, not because the power of both Houses to punish for a past contempt was doubted, but because imprisonment limited to the duration of the session was not considered sufficiently drastic** as a punishment for contumacious witnesses. The **purpose of the statutory contempt was merely to supplement the inherent power of contempt by providing for additional punishment.** On June 22, 1938, Section 102 of the Revised Statutes was codified in Section 192, Title II of the U.S. Code.[4]
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xxx The Court also discussed the **nature of Congress' inherent power of contempt** as follows:

xxx **We have said that the power to find in contempt rests fundamentally on the power of self-preservation.** That is true even of contempt of court where the power to punish is exercised on the preservative and not on the vindictive principle. **Where more is desired, where punishment as such is to be imposed, a criminal prosecution must be brought, and in all fairness to the culprit, he must have thrown around him all the protections afforded by the Bill of Rights.** Proceeding a step further, it is evident that, while the legislative power is perpetual, and while one of the bodies composing the legislative power disappears only every three years, yet the sessions of that body mark new beginnings and abrupt endings, which must be respected.[5](Emphasis in the original)
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Later, in *Neri v. Senate* (Neri), the Court clarified the nature of the Senate as continuing body:

On the nature of the Senate as a "continuing body", this Court sees fit to issue a clarification. Certainly, there is no debate that the Senate as an institution is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, **in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it** xxx [6]
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As discussed in *Lopez*, **Congress' power of contempt rests solely upon the right of self-preservation and does not extend to the infliction of punishment as such. It is a means to an end and not the end itself.** Even *arguendo* that detention under the legislative's inherent power of contempt is not entirely punitive in character because it may be used by Congress only to secure information from a recalcitrant witness or to remove an obstruction, it is still a restriction to the liberty of the said witness. **It is when the restrictions during detention are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to**

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[4] Id. at 465.
[5] Id. at 466.
[6] Id. at 468.

> **be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose.** An indefinite and unspecified period of detention will amount to excessive restriction and will certainly violate any person's right to liberty.[7]
>
> Nevertheless, **it is recognized that the Senate's inherent power of contempt is of utmost importance.** A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change. Mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed through the power of contempt during legislative inquiry. While there is a presumption of regularity that the Senate will not gravely abuse its power of contempt, there is still a lingering and unavoidable possibility of indefinite imprisonment of witnesses as long as there is no specific period of detention, which is certainly not contemplated and envisioned by the Constitution.[8] (Emphases supplied)
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With due respect, the categorization of the contempt power as either *compulsory* or *punitive* in the context of the present case may not be relevant. For the issue here is *the Senate's contempt power as a means to make its inquiries potent and compelling*. Whether the contempt exercise and detention amounted to compulsion or punishment is unimportant. It was *done to obtain what the Senators believed to be truthful and responsive testimonies* that petitioners were allegedly hiding from them. While in reality and effect the goal *could be both* compulsory and punitive, this *does not void* the contempt power. It still arose from an inquiry in aid of legislation.

This *obiter, with due respect,* may only spawn needless litigation on whether the Senate is exercising its contempt power to compel truthful and reliable evidence or solely to punish its resource persons. Where the contempt power is *invoked in the situation of an inquiry in aid of legislation*, as in this case, this power is *not ultra vires* to the Senate or its committees, *regardless* of its *punitive* impact.

III. Void Senate Order to cite and punish for contempt for testifying falsely or evasively during the inquiry in aid of legislation

With due respect to the Senate or its Committees, while they are *empowered to decide* that a resource person is *testifying falsely or evasively* and *punish* the individual by virtue of their contempt power, they *cannot* do so through a *legislative* process.

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[7] Id. at 470.
[8] Id.

Both Section 18 of the *Senate Rules of Procedure Governing Inquiries in aid of Legislation* and Section 6, Article 6 of the *Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon)* allow the Committee's Chairperson, with the concurrence of a Committee member, to cite and punish a resource person for contempt. This *method* of exercising and imposing the contempt power applies *invariably* to *all the grounds* for citing and punishing for contempt:

- disobeying any order of the Committee or refusing to be sworn or to testify or to answer a proper question by the Committee or any of its members,
- **testifying falsely or evasively,**
- unduly refusing to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor

I will not discuss the first and third grounds. My reference is only to the second ground – *testifying falsely or evasively.*

The *concurrence method* of exercising and imposing the contempt power is unconstitutional. It violates the *procedural due process right* of an individual appearing before the Committee. The compliance and punitive measure arise solely from the determination of the Chairperson and the concurrence of a member. The individual is not heard. No reasons are necessary. It comes from a legislative fiat – at least in legislation there are three readings and hearings in between.

A hearing is especially necessary in determining the presence of the second ground because it is something that is *not easily verifiable* unlike the first and third grounds. This is the case *not because* evasiveness or falsity is vague or cannot be understood. Rather, *testifying evasively or falsely* is highly *contextual.* The testimony is *false* only because it is *not in accord with the truth.* It is *evasive* only because a *direct* answer was in fact available and known to the resource person. It is *quite unlike* the first and third grounds which are verifiable at once through sight and hearing.

The *hearing* is the proper forum where the Senate or its Committee is able to *inform* the resource person of the *cause* of the contempt charge. What *false* testimony was said? Why was the testimony vilified as *evasive*? At the hearing, the resource person is able to answer the charge. The result will be clarity as to why contempt is the proper remedy. The just punishment may also be sorted out in such proceeding.

This hearing does not have to be a trial-type hearing. It can take place through the exchange of written submissions. The Senate has the constitutional power to promulgate its rules of procedure[9] in this regard. What is important is the provision of a fair procedure that hears before it condemns. The contents of this procedure are for the Senate to determine.

The procedure laid down in Section 18 of the *Senate Rules of Procedure Governing Inquiries in aid of Legislation* and Section 6, Article 6 of the *Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon)* does not comply with procedural due process. These provisions grant *unilateral* power to the Committee Chairperson with the concurrence of a Member to cite and punish a resource person for contempt:

> Section 18. Contempt. - (a) The **Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness** before the Committee....

> Section 6. Contempt. — (a) The **Chairman, with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness** before the Committee....

There is *absolutely no hearing* afforded to the resource person. There is *absolutely no procedure* by which to *inform* the alleged contemner of the cause of the allegedly false or evasive testimony. There is *absolutely nothing* in the foregoing provisions by which to measure the fairness of the compulsory and punitive process. This procedure in Section 18 of the *Senate Rules of Procedure Governing Inquiries in aid of Legislation* and Section 6, Article 6 of the *Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon)* is *void* for being contrary to the *Constitution*.

I agree that the Order dated September 10, 2021 of the Senate Blue Ribbon Committee should be set aside. I am of the stand, however, that Section 6, Article 6 of the *Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon)*, granting to the Committee Chairperson (with the concurrence of one Member of the Committee) the power to cite and punish for contempt, is contrary to the Constitution.

CERTIFIED TRUE COPY

AMY C. LAZARO-JAVIER

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

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[9] Constitution, Article VI, Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation **in accordance with its duly published rules of procedure.** The rights of persons appearing in or affected by such inquiries shall be respected.