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RIGHT TO INFORMATION IN THE PHILIPPINES

SEMINAR ON ASIAN MEDIA AND FREEDOM OF INFORMATION
May 8 –10, 2000, Bangkok, Thailand
Right to Information in the Philippines

Introduction:

Population

The Philippines consists of approximately seven thousand islands, with a total land area of 300,000 sq./km. (see Map 1). As of 1999 population estimate was 75 million (split 50%-50% males & females). Its three major islands are: Luzon (Population, 41,622,624), Visayas (Population, 15,307,540), & Mindanao (17,793,215). There is decline in the annual growth rate from 2.32% (1990 – Aug.1995) to 2.24% (Sept.'95-present).

Filipinos are predominantly of Malay stock with an intermingling of Spanish, Chinese, American and other races. Literacy rate is 94% (total Phils), 99% in MetroManila. English literacy is 73% (total Phils), 76% in MetroManila. Although there are about 54 ethnic groups who speak nearly 100 languages and dialects, Pilipino (or Tagalog) is the national language. English is widely spoken since it is used as the medium of instruction.

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1 Sum of regional population may not add up to Philippine Population due to rounding; source is Technical Advisory Group and National Statistics Coordination Board Population Projections Unit, found in Association of Accredited Advertising Agencies Philippines (4A's) Media Fact Book 2000 pp.1-3).

2 Report of the Technical Committee on Population & Housing, National Statistical Coordination Board (NSCB). Henceforth, when NSCB is cited as source other that the 4As Media Fact Book, it shall mean that the data was obtained directly from the NSCB, through the assistance of a retired Director of NSCB, who is a consultant of the same office for some projects. She has requested not to be named.
in school and business. 84% are Catholics, the others belong to other religious groups (Protestants, Baptists, etc). Roughly 4% have Islam as their religion.

1998 Population Profile by age show that the youth sector predominates.: below 15-36%; 15-24,19%; 25-34,16%;35-44,12%;45 +, 17% (see chart 1).

Socio-Economic Profile
Annual per capita income as of 1999 was $1,070.50 (P 41,839.00). Out of total households of 13.8 million, the biggest group is lower class D-39.0% (P8,001-15,000/$ 204.68 – 383.73 estimated monthly income [emi]); lower class E follows – 36.0% (less than P8000/ $204.70 emi); middle class C is next – 22.0%. This broken down into middle class C2 (P15,001-30,000/$383.76-767.47 emi) and upper middle class C1 (P30,001-50,000/$ 767.50-1279.13 emi). The smallest group is the upper class – AB-3.0%, divided into A (P100,000+/ $2558.26+ emi) and B (P50,000-99,000/$1279.13-2532.68 emi).

Extent of Media Coverage
National media coverage is better understood when compared to Metro Manila, since it is the country’s business, political and cultural center. Metro Manila consists of twelve cities and six towns adjacent to each other (Manila, Quezon City, Pasig City, Makati City, etc. – see map 2).

It is the country’s business, political and cultural center. It consists of 0.2% of total land area, and has 14.0% of total population (10.2 million), or a total of 2.0 million households (average of 5 persons per household) and absorbs 50.0% of national sales.

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3 A’s Media Fact Book pp.1-3.
4 Latest count was 1990 – 2,769,643 (population then was 60,559,116); this figure of 4% is an estimate from 1990. Source is NSCB.
6 1999 GNP: 3 Trillion 137 Billion 945 million (NSCB) divided by 75 million estimated total population,
7 Fact Book, op. cit. pp. 9-10; figures were divided by the 1999 average peso/dollar rate of P39.089-$1).
8 NSCB fax transmission April 17, 2000.
The comparative media penetration between MetroManila and nationwide show that television has the highest penetration of 96% in MetroManila, followed by radio at 94% and print at 82%. Nationwide, radio has the highest penetration at 85%, followed by television at 74%, and print at 32% (see chart 3).

Television
The first TV commercial broadcast started in 1953 with 120 TV sets. As of 1998, there were 9.8 TV households (average of 5 persons per household) for total Philippines (85% urban, 58% rural). Free TV is offered by 6 VHF Channels (2,4,5,7,9,10) and 5 UHF Channels (21,23,27,29,31). Pay TV (cable) have over 60 channels, with 900,000 households subscribers nationwide.

Radio
The total number of radio stations nationwide is 539 (273-AM; 266 FM). AM is still the dominant format nationwide but Metro Manila has 73% FM listeners while AM has 27%. Key provincial areas also have higher FM than AM listenership. In Metro Manila, 100% of the AB class own radio. In Manila, there is no available frequency on the AM & FM bands for they have all been allocated since 1988.

Print
In 1987, shortly after the People Power Revolution, the Philippine Information Agency (PIA) reported that 80% of the country’s publications were newspapers. There were 12 major national broadsheets and 8 daily tabloids. In 1994, the number of newspapers from different parts of the country rose to 384 with 72 daily newspapers, 245 weekly newspapers and the rest are distributed bi-weekly or quarterly.

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10 Id., p. 34. Source: 1997 Television Research Council (TVRC) Establishment Survey.
11 Id., pp.37,40 & 41
12 Id., pp.56 & 57.
14 Id., pp.124-125.
In 1996, newspaper readership for Metro Manila was 48.0%, while total Phils. was 29.0%. In the 4A’s Media Factbook 2000, the circulation of newspapers, broadsheets and tabloids combined show that tabloids have a higher circulation than broadsheets. People’s Journal (tabloid) has the highest circulation (372,487), followed by Abante (tabloid, circulation-350,000). The broadsheet, Philippine Star is third, (267,000) followed by two other broadsheets, Manila Bulletin (239,614), and by Philippine Daily Inquirer-PDI (225,925).

In June 1997, Philippine Journalism Review featured the community press, which has grown to around 300 newspapers. Newspaper buying habits have changed in the countryside. “Now, the local paper is a must,” according to a successful publisher in the Visayas. PJR noted that this pattern reflects other aspects of development, such as the decentralization of the political system through the Local Government Code, which has given more power and responsibility to the local government officials. Senior journalists and bright young recruits are now assigned to far-flung positions in the country.

PJR also cited that PDI has started weeklies for Mindanao and the Visayas which are sold in the region, while Today adds a supplement to its Manila edition with alternating features on Luzon, Visayas, & Mindanao. The most startling, it said, was the launching of the nationwide chain of Sun-Star newspapers which had its beginning in Cebu.

Sun-Star Daily of Cebu was founded by a new name in the national newspaper business, Jesus B. Garcia, former President Ramos’ Secretary of Department of Transportation and Communication. In the same PJR issue, Sunstar News Service editor-in-chief Honor Cabie wrote that the regional newspapers which belong to the Sun-Star Publications Network, are collaborations between publishers in the locality where each paper is based and the publishers of the flagship paper.

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The 1999 ARO Tri-Media Exposure Survey in May-June showed that among the top three broadsheets read nationwide, Philippine Daily Inquirer (PDI) came up with 50%, followed by Manila Bulletin (MB- 34%) and Philippine Star (PS-25%). In Metro Manila, the ranking is the same, with the following figures: 48%, 41%, & 33%.

Note that in 1992, at the Roundtable Discussion on “A Critical Review of Philippine Media’s Role in Public Opinion and Public Information” then Undersecretary of the Press Honesto M. Isleta commented that although the radio is the most accessible medium, “normally, what is aired by the radio and TV news commentaries and headlines are what the print newspapers carry in their front pages…and the Metro Manila/key urban cities are usually heavy in print audiences as well as TV audiences.”

In the same forum, Yen Makabenta said: “If you try to decipher for a moment what kind of reportage and commentary really gets the attention of the Presidency and Congress today, it is obvious that opinion and reportage in our broadsheet press are by far the most influential.” He stressed that “The impact of the serious press on public opinion surpasses that of all media.”

Internet Coverage
As of January 2000, data from AsiaOnline show that there are 200 Internet Service Providers (ISPs), 0.5M Internet Users, 2M PCs, and 1.5mn GSM Users.

Salient features of the March 23, 2000 assessment by Merrill Lynch (ML) of Internet in the Philippines expressed that the Philippine Internet industry is at the critical take off stage. Accordingly, the country has one of the lowest levels of PC users in the Asian region, with an estimated 1.1 million users out of 75 million people. Telephone density is low, with only 4 people out of 100 having phones although Metro Manila’s telephone


17 conducted by the Institute of Human Rights, Univ. of the Phils. (UP) Law Center, in cooperation with the Center for Media Freedom and Responsibility and the UP College of Mass Communication on December 10-11, 1992, at the Malcolm Theater, UP College of Law, Quezon City.
density is better at 27%. ML estimates that there are only 400,000 PC users in the country. Among the Asian countries ML covers, only Indonesia has fewer PC users than the Philippines. Only 0.5% of the population is online, and less than 1% of Internet users shop online. ML prescribed that to become successful, Internet business models have to be adapted to the local setting.

The local setting is such, that Internet access is mostly through traditional dial-up ISP services. But in 1999, Destiny Cable pioneered broadband services by offering high-speed access using cable modems. This year, PLDT offered broadband services that integrate voice, data, and video services. Globe now uses Wireless Application Protocol (WAP). It is the arrival of the 3G cellular phones that gives a solution and alternative to Internet access nationwide because it will not limit the number of subscribers to those with telephone lines. The future of Internet access in the country lies in high-bandwidth wireless rather than wired networks, as evidenced by the e-texting phenomenon in Manila.\(^\text{18}\)

The government, through the National Computer Center (NCC) is aware of the significance of the Internet and it has an on-going project, “Internet Para Sa Lahat” (Internet for Everyone). In a speech on March 23, 2000, the NCC Director General disclosed that some Filipinos had been accessing the Internet even without the local ISP. Among them, through FTP (File Transfer Protocol), Gopher and UUCP (Unix to Unix Copy Protocol). He explained what NCC means by Internet for everyone: it means anyone should have access to the Internet anytime, from anywhere, in order to be able to do anything that could possibly done online. He is advocating for the redefinition of bandwidth to include not only phone lines, but also UHF, VHF, CATV, VSAT, microwave, spread spectrum and even digital power lines. His objective is for the Internet to be used by craftsmen, farmers, and fishermen, and the marginalized sectors of Philippine society.\(^\text{19}\)


\(^{19}\) Ramon Ike V. Seneres, Director General, National Computer Center *Internet Para Sa Lahat: Initiatives In Promoting Universal Internet Access (UIA)* Speech Delivered during the One Internet Day 28 March
NCC findings also show that 0.27% (222 out of 800) of government offices are online, and 0.03% (54 out of 1607) towns and cities nationwide have existing Internet connections.20

**Media Ownership**

The 1987 Constitution which was crafted by the 1986 Constitutional Commission (1986 Con Com) shortly after the overthrow of the Marcos dictatorship specifically provides that “The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.” This was already in the 1973 Constitution except for the addition of “cooperatives.”21

A provision on the advertising industry was also added because by then, the Commissioners were already conscious of the impact of advertising on culture. It confirms that the advertising industry is impressed with public interest and prescribes that only Filipino citizens or corporations 70% owned by Filipinos may engage in the industry. It also limits the participation of foreign investors in the governing body of advertising agencies to their proportionate share in the capital, and prescribes that all the executives and managing officers of the agency must be Filipinos.22 The advertising industry has complied with this.

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2000. He disclosed a partial list of what NCC is doing to promote Universal Internet Access, among them: conducting an inventory of available bandwidth; identifying all roadblocks deterring the growth of Internet in the country; testing and implementing the DOS Internet, which involves low-end, low cost PCs; working with some IT organizations in order to reduce costs of full body machines; they will soon roll out a network of BBS operators who will be capable of providing e-mail only accounts to the marginalized sectors where there are no ISPs in the locality, and others.

20 All data from the NCC were obtained through Antonette T. Torres, NCC Assistant Director and Mary Galvez, Data Analyst on April 13, and 18, 2000.

21 The 1987 Constitution also added: “The Congress shall regulate or prohibit the monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.” (Art XVI Sec.11(1))

22 [Art.XVI Sec.11(2)].
At present, ownership of Philippine media is more diversified and pluralistic compared to the pre-martial law, and to the Marcos era. Although there are still old and familiar names, there has been much change. The old names consist of the Spanish mestizo elite but the new names consist of the Chinese mestizo, and then there is the *Philippine Daily Inquirer* which is independent although it is currently headed by the Prieto family.

In 1997, the Garcias of Cebu dominated the countryside with their *Sun-star Publications Network*. More recently, new owners (*Manila Times*) cropped up who are believed to be close to the incumbent President.

There are still some media owned by government which were part of the assets transferred to the National Government in 1986 by Government Financial Institutions from the Marcos era. But an interview with Senior Officers of the *Committee on Privatization (Dept. of Finance)* confirmed that the sale of Channels 9 & 13 are in process. *Philippine Journalists Inc.* which publishes *People’s Journal* (highest circulation among print) and others are in the process of being fully privatized.

**The Political System**

The 1986 Con Com made sure that a repetition of its recent history under Marcos would be Constitutionally prevented in the future. The 1987 Constitution states that “*The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.*” It not only a *republican* but a *democratic* State, which was not stated in the 1935 and 1973 Constitutions. The President may no longer do the declaration of martial law alone but with the participation of Congress.

For purposes of the elections, the legislative districts have been apportioned among Metropolitan Manila, and the provinces and cities, which were divided into twelve

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Regions in 1986. Now, the political subdivisions consist of sixteen Regions composed of 78 provinces, 1,525 towns, 84 cities, subdivided into 41,940 barangays.

Following the American model as in the 1935 Constitution, the 1987 Constitution provides for a republican form of government under a presidential system where the functions of government are divided into three distinct classes, with separation of powers: the executive, legislative, and judicial departments. Each department is supreme, coordinate and co-equal with the other, with a system of checks and balances wherein the Constitution gives each department certain powers by which it may definitely restrain the others from exceeding their authority.

The Constitution, Legal & Judicial Systems

The Constitution is the test of legality of all government action, whether proceeding from the highest official or the lowest functionary. This was adopted during the American colonial period (1900-1946) from the American legal system, where the supremacy of the Constitution over laws passed by Congress was established in the Marbury case of 1803.

The basic rights are protected by the Constitution in the Bill of Rights (Art.III). These are the rights of the people against the Government which is all powerful. It is worth noting that there was a change in the 1987 Preamble from the promotion of general welfare (1973 & 1935) to the promotion of the common good. While “general welfare” means

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24 All the foregoing information on political systems have been obtained from Carmelo V. Sison, Comparative Study of the 1987, 1973, & 1935 Constitutions, Quezon City: Law Publishing House, Univ. of the Phils. Law Complex 1988.


27 This portion consists of revised excerpts from: Luis Teodoro & Rosalinda V. Kahatay, Mass Media Laws and Regulations in the Philippines, Quezon City: 1998 Asian Media Information and Communication Center (AMIC), pp.15-16.

“the greatest good for the greatest number,” “common good” is defined as “a social order which enables every individual in society to attain his or her full development, politically, culturally, and spiritually.” It guarantees that the majority will not persecute the minority.  

To realize the promotion of the common good and all the other aspirations enumerated in the Preamble, the Bill of Rights guarantees freedom of expression and the right to information.

The Philippine legal system is aptly described as a blend of customary usage, the Roman (civil law) and the Anglo-American (common law) systems. The civil law and common law influences have been derived from the Spaniards and the Americans respectively, the country’s former colonizers. The main sources of Philippine law are the Constitution, statutes, treaties, conventions and judicial decisions. The Civil Code (Art. 8) provides that “judicial decisions applying to or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines.” Thus Philippine law is also derived from cases. But only decisions of the Supreme Court establish jurisprudence and are binding on all other courts. They form that body of law known as case law. They assume the same authority as the statutes which they apply and interpret. Therefore, when the decision of “the Court” is mentioned here, it shall mean the Supreme Court, unless otherwise indicated.

The judicial system consists of a hierarchy of courts with the Supreme Court at the apex. Supreme Court decisions form part of the body of law of the land. There exists a highly developed hierarchy of courts with two main branches. The first branch is the court

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Dr. Florangel Rosario Braid has written a book on Communication and the Common Good. However, it seems that there is a lack of awareness of this provision among the politicians. They still usually refer to general welfare.

system proper, otherwise known as the “integrated judicial system,” a multi-tiered complex of tribunals with general adjudicative powers, composed of the Supreme Court; the Court of Appeals; the Regional Trial Courts. Below the Regional Trial Courts are the Courts of the First Level (or formerly, the “inferior courts”): the Metropolitan Trial Courts, the Municipal Trial Courts and the Municipal Circuit Trial Courts. The second and parallel branch is made up of special or administrative tribunals or quasi-courts, exercising judicial functions.

There is no trial by jury in the Philippines. The Rules of Court govern pleading, practice and procedure before all courts.

**Major Laws on Freedom of Media**

The major law affecting freedom of media in the Philippines is in the Bill of Rights (Sec.4) of the 1987 Constitution: *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.*

This provision is not new, and has many antecedents in Philippine history. When the Filipinos rose against Spain in the Revolution of 1896, the *Malolos Constitution* - the first democratic constitution in the whole of Asia, which was drafted on September 15, 1898 and approved on January 20, 1899 - guaranteed that no Filipino would be deprived of “right to freely express his ideas or opinions, orally or in writing, through the use of the press and other similar means.” The fight for freedom of expression in the Philippines is part of the revolutionary tradition, and was always part of previous less successful attempts at attaining freedom from colonial rule.

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32 This portion consists of revised excerpts from Teodoro & Kabatay, *op cit.*, pp13-15; 49-50; 40-41; & 47.

Freedom of speech and of the press as we know it now was transplanted into the Philippine legal system by the Americans as early as 1900 in President McKinley's Instruction to the Second Philippine Commission. It was the counterpart of the First Amendment to the US Constitution and it carried with it all the applicable jurisprudence of the English and American Constitution cases. The same was incorporated into the 1935 and 1973 Constitutions.

The 1987 provision preserves the 1935 and 1973 texts, with the addition of the phrase “of expression” which is a broader formula, inclusive of various forms of expression which jurisprudence has placed under the speech and press clause. But the Philippine Supreme Court has not followed foreign jurisprudence blindly. It has applied the law on freedom of expression to Philippine cases in a manner distinctly applicable to the Philippine context. Knowledge of the historical background of the Constitution is thus essential in understanding the present laws, which concern directly or indirectly, mass media in the Philippines.

The core principle of the laws affecting all forms of communication media are: the right to freedom of expression which is the fountainhead of all the media laws and the right to information. Their limitations are: the right to privacy, national security, libel and obscenity, & contempt.

Other laws which also limit the freedom of mass media in particular instances are the 1987 Electoral Reforms Law Section.11(b) pursuant to Article IX(C)(4) of the Constitution, Presidential Decrees and the Rules and Regulations issued by government agencies tasked with implementing the laws.

The press and the general public may also be excluded from the courtroom during the trial of specified sexual offenses to protect the victim from trauma and encourage victims

to come forward and testify. Another instance is during the proceedings against judges in consideration of the propensity of losing parties in pending cases to file administrative cases against judges thought to be partial, susceptible to bribery, or oppressive.

On October 22, 1991, after the live broadcast of the testimony of President Aquino the Supreme Court issued a Resolution prohibiting live radio and television coverage of court proceedings to avoid a miscarriage of justice. Video footage of court proceedings for news purposes are now restricted to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings.

But Republic Act # 53 as amended by Republic Act # 1477 (Shield Law) and the Campus Journalism Act of 1991 (CJA, 1991) enhance freedom of expression.

The Shield Law was passed on June 15, 1956. It prohibits revelation of "the source of any news report or information xxx related in confidence xxx unless the Court or a House of Committee of congress finds that such revelation is demanded by the security of the State." This is a departure from the American model where reporters may be compelled under certain circumstances to reveal their sources of information. It gives the journalist the right to refuse to reveal the source of any news report, but it does not give him immunity from prosecution for libel or other sanctions under the law.

CJA 1991 was approved under the Aquino Presidency to encourage the vital role played by campus journalism during the dark days of martial rule. The Act allows maximum freedom to the campus journalists. For instance, the function of the adviser is limited to

35 Under Rule 119 Section 14 of the Rules of Court, "the Court may, upon its motion exclude the public from the courtroom if the evidence to be produced from the trial is of such a character as to be offensive to decency and public morals."

36 Rule 139 Section 6 also of the Rules of Court provides that proceedings against judges shall be private and confidential.

37 for the prosecution in her libel case against the late journalist Louie Beltran for having written that she hid under the bed during the August 28, 1987 coup attempt.

38 In Re: Emil Jurado 243 Supreme Court Reports Annotated (SCRA) 299 at 357 April 6, 1995.
technical guidance. Also, a member of the publication staff is granted security of tenure and cannot be expelled solely on the basis of the performance of his or her duties in the student publication.

**Freedom of Expression & The Right to Information**

The right to freedom of expression embraces the exercise of the right to information. These rights are necessarily linked to other rights: right to due process; right against prior restraint; & freedom from subsequent punishment.

**Due Process**

Due process is provided in Article III Sec. 1 of the Constitution: *No person shall be deprived of life, liberty, and property without due process of law, nor shall any person be denied the equal protection of the laws.*

In the case of *DYRE v. Dans* 40 (1985) which was brought to court because of the summary closure of a radio station in 1980 (during martial law) the Supreme Court stated that "while there is no controlling and precise definition of due process, it furnishes an unavoidable standard to which government action must conform" so that any deprivation of life, liberty or property may be valid. Due process signifies "freedom from arbitrariness and is the embodiment of the sporting idea of fair play." The heart of due process is the need for notice and the right to be heard.

**Prior Restraint**

Prior restraint means official government restrictions on the press or other forms of expression in advance of actual publication or dissemination such as judicial prior restraint, which takes the form of an injunction against publication. 41

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40 137 SCRA 628

An example of judicial prior restraint through injunction is the case of *Ayer Productions Pty. v. Capulong* (1988), where the Judge of the Regional Trial Court of Makati issued a writ of preliminary injunction against *Ayer Productions*, producer of "The Four Day Revolution" on the People Power Revolution of 1986, to "cease and desist from filming and producing" the mini series. The injunction was issued upon application of Juan Ponce Enrile alleging that its production without his consent and over his objection constitutes an obvious violation of his right of privacy. Here, the Supreme Court, observed that "what is involved in the instant case is a prior and direct restraint on the part of respondent Judge upon the exercise of speech and expression by petitioner," *Ayer Productions*. Because of the preferred character of the constitutional rights of freedom of speech and of expression, a weighty presumption of invalidity vitiates measures of prior restraint upon the exercise of such freedoms.43

In *Mutuc v. Comelec*, (1970),44 the Commission on Elections (Comelec) gave due course to the certificate of candidacy of Mutuc, but prohibited him from using jingles in his mobile units equipped with sound systems and loud speakers. The Supreme Court sustained Mutuc's claim that it was an infringement of his freedom of expression, and said that what Comelec did was to impose censorship, an evil against which the constitutional right is directed.

**Freedom From Subsequent Punishment**

Although the language of the guaranty of freedom of expression is unqualified, freedom of expression is not absolute. It is, like all rights, subject to the police power of the state. It may be regulated in the interest of the public. But the free speech and press clause also prohibits systems of punishment which have the effect of unduly curtailing expression. Thus, three major criteria have been applied as the standards for allowable subsequent punishment of expression: 1) the dangerous tendency rule; 2) clear and present danger test, and 3) the balancing of interests test.

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42 160 SCRA 861
Among the three, the clear and present danger test is now usually used as the test for limitations on freedom of expression as it is considered more liberal than the dangerous tendency rule. This test determines if the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent.45

The balancing of interests test is used by the Court in determining the constitutionality of a statute which seeks to limit the free flow of information.46

Differentiating the three tests former Justice Cruz wrote that: "Authority is preferred under the dangerous tendency doctrine, liberty under the clear and present danger rule. The balancing test resolves the issue in the light of the peculiar circumstances obtaining in each particular case." 47

The Right to Information
The right to information was not in the 1935 Constitution for it was crafted during the American colonial period, and in the U. S., it is merely implied from common law and the First Amendment.48

44 36 SCRA 228
45 this text has been applied in these cases: Primicias v. Fugoso 80 Phil. 71; American Bible Society v. City of Manila 101 Phil. 386; Cabansag v. Fernandez 102 Phil. 152; Vera v. Arca 28 SCRA 351; Navarro v. Villegas 31 SCRA 931; Imbong v. Ferrer 35 SCRA 28; Badong v. Comelec 35 SCRA 285; People v. Ferrer 48 SCRA 382; Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc. 51 SCRA 189; Anti Bases Coalition v. Bagatsing 125 SCRA 553 all cited in Eastern Broadcasting Corporation (DYRE) v. Dans, Jr. 137 SCRA 628, 634-635 (1985).

This was further explained in Gonzales v. Comelec [27 SCRA 835,860-861 (1969)] "Unlike the dangerous tendency doctrine, the danger must not only be clear, but also present. The term clear seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. Present refers to the time element. x x x The danger must not only be probable but very likely inevitable."


In *Subido v. Ozaeta*, (1948) 49 the Supreme Court, was asked whether the press, and for that matter, the public had a constitutional right to demand the examination of public land records. An editor of a newspaper wanted to compel the Register of Deeds to allow examination of his records relating to sales of private lands to aliens. The Court ruled that the press had a statutory right to examine the records under Act No. 496 as amended by Act No. 3300 but also stated that "freedom to obtain information for publication is not guaranteed by the Constitution."

The separate opinion of Justice Briones in *Subido* asserted that press freedom necessarily includes the right to information. This provided the first glimmers of reality that access to information is part of the system of freedom of expression. 50

The 1973 Marcos Constitution gave the right to information subject to statutory limitations. 51 It provided: the right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen, subject to such limitations as may be provided by law. 52

This is significant in the light of the American legal framework, the origin of the freedom of expression clause. In the U.S., the statutory recognition of the right to know came only with the passage of the Federal Freedom of Information Act in 1966, a constitutionally protected right recognized only in 1980. But in the Philippines, because of this constitutional provision, there is no need to search for an elaborate legal basis, for the

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49 80 Phil. 383 (1948)


52 (Art.III Sec. 6, 1973 Constitution).
assertion of the right to know. The direct and explicit recognition makes the public's claim to information stronger than in the U.S. 53

The first case decided under this new constitutional right was Baldoza v. Dimaano (1976) 54 where the issue was the reasonableness of the internal regulation imposed by the judge on the right of a municipal mayor to examine judicial records. The mayor also questioned the judge's authority to control and regulate such examination. The Court ruled in favor of the judge. It found the rules and conditions imposed as reasonable, but added that such authority did not include the power to prohibit such examination. They may only regulate the manner in which the public records may be examined, with respect to time, place, and how the inspection is to be done.

This rule was reiterated in Lantaco Sr. v. Llamas (1981) 55 where the Court declared: access to public records is "predicated xxx on the right of the people to acquire information on matters of public concern in which the public has a legitimate interest."

In Tañada v. Tuvera (1985) 56 due process and the right to be informed on matters of public concern were invoked by petitioners in demanding the disclosure of Presidential Decrees and other issuances which have not been published in the Official Gazette as required by the Civil Code for validity. This case is significant for two reasons: first, it firmly established that any citizen of the Philippines may invoke the public's right to information, regardless of whether or not he has a specific interest in the information


54 71 SCRA 14
55 108 SCRA502,508. Here, the Court found the judge of the lower court guilty of grave abuse of discretion in refusing the petitioners a copy of his decision in four criminal cases in which they were the complaining witnesses.

56 136 SCRA 27. The petitioners asked the Court to compel the Executive Assistant to the President, et. al. to publish in the Official Gazette all Presidential Decrees, executive orders, etc. The respondents questioned the legal standing of the petitioners, since there was no showing that they were directly affected by the non-publication of the presidential issuances. Accordingly, they did not fall within the definition of "aggrieved parties" who could validly file a petition for mandamus under the Rules of Court. But the Court held that since the petitioners were all citizens, they had the legal personality to seek the enforceability of a public right, and could validly compel the performance of a public duty. 136 SCRA 27, 33-34 cited in Alberto Muyot, Ibid
sought. Second, it linked the right to know with the right to due process, insofar as the information sought is a legislative or executive act having the force and effect of law.  

The Court re-examined the 1985 Tañada case upon motion by petitioners, and in December 1986 stated that publication of all laws (not only those of general applicability) cannot in any way be omitted and that the right to information applies, “indeed especially to the legislative enactment of government.” It also said that newspapers of general circulation could better perform the function of communicating the laws to the people but the law provides that they be published in the Official Gazette, and their role is to interpret, not to modify the law. It also reaffirmed the place of access to information in a democratic society.  

Responding to the suggestion made in the case and in view of the erratic issuances and limited readership of the Official Gazette, President Corazon Aquino issued Executive Order No. 200 which provides that the required publication may be made alternatively in a newspaper of general circulation in the Philippines.

The 1987 Constitution has preserved the 1973 text, except for the addition of the phrase: as well as to government data used as basis for policy development. This is a reaction to the government practice during martial law of withholding social research data from the public whenever it contradicted policies of government.

57 Alberto Muyot, op.cit. pp.231-232
58 146 SRC A 446, 456. "The days of secret laws and the unpublished decrees are over. xxx Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their deep dark secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people."
59 Article III Sec. 7 of the 1987 Constitution now reads: "The right of the people to information on matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."
60 Joaquin Bernas, S.J. op. cit., at 334.
to information on matters of public concern has been further enhanced in the 1987 Constitution with the adoption of a policy of full public disclosure, "subject to reasonable conditions prescribed by law."  

This is a relatively new area of constitutional jurisprudence for it involves not just the right to disseminate information but the right of access to information that is within the control of government. The standards already developed which regulate freedom of expression may be applied to this right. They all rest on the premise that it is an informed and critical public opinion which alone can protect the values of a democratic government.

The leading case of *Legaspi v. Civil Service Commission* (1987) provides insights into the Court's interpretation of the right of access under the 1987 Constitution. Here, a request for civil service eligibilities of certain sanitarians in the Health Dept. of Cebu City was denied by the Civil Service Commission. The Court affirmed the right of Legaspi to obtain from the Civil Service Commission information regarding the civil service eligibility of certain persons employed by the Cebu City Health Department. In doing so, the Court confirmed that

1) that right of the people to information on matters of public concern is a public right. It is sufficient to show that he is a citizen and as such, interested in the execution of the laws;

2) While the manner of examining public records may be subject to reasonable regulation by the government agencies, they do not have the power to prohibit access

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61 Article II (Declaration of Principles and State Policies) Section 28, reads: "Subject to reasonable conditions prescribed by law, the state adopts and implements a policy of full public disclosure of all its transactions involving public interest."


63 150 SCRA 530.

64 This is in contrast with the United States where there was the need for the enactment of the Freedom of Information Act in order to give tangibility to the people's ideal of the people's right to know (Alberto Muyot, *op.cit.*, p.238).
to public records altogether; In a later case (*Valmonte*) the Court would also hold that while citizens have access to public records, the Constitution does not accord them a right to compel custodians of official records to prepare lists, abstracts, summaries and the like in their desire to acquire information on matters of public concern.

3) There is no rigid test which can be applied in determining “public concern.” It is for the courts to determine in a cease to case basis whether the issue is of importance as it relates to the public; 65 and

1) 4) The public's constitutional right to know is *self-executing* and there is no need for any act of the Legislature before the citizens may exercise it.

In *Legaspi* also, the Court established the two-pronged test with regard to the information sought, which must be 1) of public concern; and 2) not exempted by law. This was first applied in the case of *Valmonte v. Belmonte* (1989). 66 Here, the Court held that the public nature of the loanable funds of the Government Service Insurance System and the public nature of the loanable funds of the Government Service Insurance System and the public

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65 This has been applied by the Court in these cases:

1) in *Legaspi*, the public concern was the "legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles."

2) in *Aquino-Sarmiento v. Morato* (203 SCRA 515 [1991]) the Court decided that since the decisions of the Movie Television Review and Classification Board and the individual voting slips of the members are acts made pursuant to their official functions, they are public in nature. Therefore, the records reflecting the votes taken by the Board are public records and matters of public concern.

3) *Garcia v. Board of Investments* (177 SCRA 374 [1989]) involved the transfer of the Bataan Petrochemical project from Bataan to Batangas. Congressman Garcia of Bataan asked the Department of Trade and Industry (DTI) for a copy of the amendment reportedly submitted by the Taiwanese investors in their application for the establishment of the plant and also the original application. But DTI refused, saying that the investors declined to give their consent to the release of the documents and the Board of Industry approved the revision. Garcia contended that DTI violated the right to information. The Court held that Garcia has the right of access to information about the application contained in documents submitted. The requirement of publication is clear indication that the matter is of public concern.

4) 66 170 SCRA 276, where the petitioners were media practitioners who sought information regarding the truth of reports that certain members of the legislative body under Marcos were able to secure clean loans from the Government Service Insurance System (GSIS) immediately before the February 7, 1986 election through the intercession of the former First Lady, Mrs. Imelda R. Marcos.
office held by the alleged borrowers (they were members of the Legislature) make the information sought clearly a matter of public interest and concern. Besides, GSIS failed to identify any law granting it the privilege of confidentiality as regards subject.

The Court also declared: “The right to information goes hand-in-hand with the Constitutional policies of full public disclosure(Art.II sec.28) and honesty in public service(Art.XI sec.1). It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.”

_Chavez v. Presidential Commission on Good Government_ (1998) 67 is unique, because for the first time, the Court decided on whether or not the right to information extended to government negotiations that has not yet been concluded. 68 The Court granted the petition, invoking _Tañada_ and _Legaspi_, and held that the question regarding the recovery of the ill-gotten wealth of the Marcoses is, by its very nature, public in character therefore Chavez, a Filipino citizen, had the right to disclosure of any agreement that would be arrived at, even while they were not yet effective.

**Recognized Restrictions**

In the _Chavez_ case too, the Court acknowleged that there were no specific laws prescribing the exact limitations, but mentioned some of the recognized restrictions: 1) national security matters; 2) trade secrets and banking transactions; 3) criminal matters; and 4) confidential information. 69

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68 In determining the issue of whether or not to grant the right to information as regards all negotiations and agreement, be they ongoing or perfected, and all documents relating to or such negotiations between the PCGG and the Marcos heirs, the Court had to decide on the precise scope of the "official records... documents, and papers pertaining to official acts, transactions, and decisions, as described in Art.III Sec.7 and the correlative duty to reveal these transactions based on Art. II Sec. 28. (Alberto Muyot, _op.cit._,p.242).

69 Alberto Muyot, _Ibid._
Electoral Reforms Law

Sometime prior to the 1998 Presidential elections, Osmeña, one of the candidates for President, sought a re-examination of the validity of sec.11 (b) of the 1987 Electoral Reforms Law, contending that the events after the ruling in *National Press Club (NPC) v. Commission on Elections (COMELEC) (1992)* have called into question the validity of the decision, which upheld the validity of the questioned provision.\(^7\)

In *NPC*, the Court explained that the provision serves as an *equalizer* between candidates who had financial resources and the less affluent candidate, and is designed to bring about equal opportunity. It applied the *balancing of interests test*, weighing the public's rights to free expression and to information (which is not limited to that which the government possesses) against the public interest in clean and orderly election. Ultimately, the public's right to an orderly election outweighed other rights.\(^7\)

In *Osmeña v. COMELEC (1998)*\(^7\), the Court again upheld the validity of the provision. It held that the main purpose is regulatory, and such is a valid exercise of the power of the State.\(^7\) What cannot be done is content regulation, in the absence of any compelling reason. This happened in *Sanidad v. COMELEC*.\(^7\)

\(^7\)207 SCRA 1 (1992).

\(^7\) Sec. 11 (b) 1987 ERL provides: it shall be unlawful for any newspapers, radio broadcasting or television station or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other purposes except to the COMELEC...Any mass media columnist, commentator, announcer or personality who is a candidate for any elective office shall take a leave of absence from his work as such during the election period.

\(^7\) Alberto Muyot, *op. cit.*, p.245.

\(^7\) 288 SCRA 447,464 (1998).

\(^7\) It also clarified that the term political “ad ban” when used to describe the provision is misleading. Because even as it prohibits the sale or donation of print space or airtime to political candidates, it
Other Limits

Privacy

The right to privacy gives a person the right to determine what, how much, to whom and when information about himself shall be disclosed. In the case of Lagunzad v. Vda. De Gonzales the Court held, "Being a public figure ipso facto does not automatically destroy in toto a person's right to privacy. The right to invade a person's privacy to disseminate public information does not extend to a fictional representation of a person, no matter how public a figure he or she may be."

However, in the Ayer case mentioned earlier, Enrile who tried to stop the filming of "The Four Day Revolution" on the ground that it violated his privacy, failed. In Ayer, the Court held that Enrile was a public figure and stated that a limited intrusion into a person's privacy has long been regarded as permissible when that person is a public figure and the COMELEC mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. (Id., at 464).

75 181 SCRA 529 (1990), where the COMELEC Resolution that prohibited columnists, radio commentators from using their columns to campaign for or against the plebiscite ratifying the establishment of the Cordillera Autonomous Region, was declared unconstitutional.

76 Irene R. Cortes, "The Constitutional Foundations of Privacy" Emerging Trends in Law, (Quezon City: University of the Philippines Press, 1983) pp. 6,12-13. The right to privacy has been defined as "the right to be left alone."

77 92 SCRA 487 (1979).

78 "A public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs and his character, has become a "public personage." He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short anyone who has arrived at a position where public attention is focused upon him as a person." 160 SCRA 861,874-875 (1988).
information sought constitute matters of public character. ... the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest.

Libel

The recent libel case of Borjal v. Court of Appeals (1999) 79 is instructive as regards libel and the public figure. In reversing the Court of Appeals decision, the Supreme Court reasoned that since Wenceslao, the person who brought the case against Borjal, was engaged in an activity imbued with public interest, 80 he was a public figure. 81 Consequently, Borjal’s various articles in his column criticizing Wenceslao was fair comment 82 and thus, privileged communication even if it was not explicitly enumerated in the law. 83 Being privileged, the presumption of malice against Borjal is destroyed, and the burden of proving actual malice 84 as the true motive of Borjal’s conduct, which


80 Wenceslao was the Executive Director of a joint project of the private sector and the government with the objective of solving the transportation crisis by holding a conference that would lead to the drafting of an omnibus bill on transportation policy. The fund for the conference was raised through public solicitation. This was the topic of various articles by Borjal from May to June 1989.

81 Citing Rosenbloom v. Metromedia 403 U.S. 296, the Court explained that Wenceslao could be the subject of a public comment even if he was not a public official or at least a public figure as long as he was involved with a public issue. Id., at p. 19.

82 Fair comment means that while in general, every discreditable imputation is directed against a public person publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. To be actionable, it must either be a false allegation of fact or a comment based on a false supposition. Id., at p. 16.

83 Art. 354 of the Revised Penal Code: Requirement of publicity. Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions

84 Actual malice means, with knowledge that it was false or with reckless disregard of whether it was false or not. Id., at p. 18.
is the essence of the crime of libel, lies on Wenceslao. But the latter failed to prove the existence of actual malice, and thus, Borjal was acquitted.

The Court deemed that he was a public figure within the purview of the New York Times v. Sullivan ruling where the U.S. Supreme Court held that honest criticisms on the official conduct of public officials and public figures are insulated from libel judgements. The rationale for the Sullivan doctrine was that to require critics of official conduct to guarantee the truth of all their factual assertions on pain of libel judgement would lead to self-censorship.

Accordingly, the rule on privileged communication has its genesis in the Bill of Rights of the Constitution and it cannot be abolished by the failure of the legislature to include it in the statute. It went further to explain that as early as 1918 the Philippine Court had ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of free speech.

In fact, in a 1981 case the Court noted that the landmark case of U.S. v. Bustos (1918) where the Philippine Supreme Court had made clear that in deciding suits for libel, the Judiciary must ascertain whether or not the offending words may be embraced by the guarantees of free speech and of the press, was promulgated years before a doctrine analogous in character was enunciated by the U.S. Supreme Court in Sullivan (1964).

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85 376 U.S.254 (1964), Id., p.18
86 People V. Cañete 38 Phil.253, 265 (1918).
87 PCIB v. Philnabank Employees' Association (105 SCRA314 [1981]).
88 37 Phil.371 (1918).
In *Borjal*, the Court did not fail to quote from *Bustos*: "the interest of society and the maintenance of good government demand full discussion of public affairs... men in public life may suffer under a hostile and unjust accusation; he would be assuaged by the balm of a clear conscience. A public official must not be too thin-skinned with reference to comments upon his official acts."

There are numerous cases on libel. Historically, the American colonizers have used libel to deter critics of government. At the beginning of the century, libel laws were strictly enforced that to criticize a high government official meant a stiff prison term, a sizeable fine and crippling damages. During the Marcos dictatorship, million peso libel suits were used to silence the press. But we now know that it was ineffective.

On March 9, 1999 President Estrada filed a P101-million libel suit against the *Manila Times* for having published the banner story "Palace in P17-B contract rigging." The owner of the *Times* was John Gokongwei, one of the country's business taipans. A month later, his daughter published an apology causing the mass resignation of its editors. On April 23, the case was formally withdrawn. At present, the newspaper is owned by a family perceived to be close to Estrada. If he pursued the case, could he have won, based on the merits?

The *Borjal* and a most recent libel case will give us the clue. In *Velasquez v. Court of Appeals* the Supreme Court again reversed the Court of Appeals. The issue was the liability of a citizen who denounces an Olmedo, a barangay official for misconduct in

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90 G.R. No.118971 September 14, 1999.
On the basis of a newspaper article published, Olmedo filed a libel case against Vasquez. Here, the Court enumerated the elements of libel under the law. As in Borjal, it referred to the rule on privileged communication. In addition, the Court referred to Art. 361.

Finally, the Court expressed that the recognition of the right and duty of every citizen to see to it that public duty is discharged faithfully and well by those who have the duty is inconsistent with the requirement of the burden of proving that he had acted with good faith and for justifiable ends. It would “infringe on the constitutionally guaranteed freedom of expression... without free speech... discussions of our most abiding concerns as a nation would be stifled.” Again citing Sullivan, the Court said that actual malice must be shown by the public official, which he failed to do.

91 Vazquez denounced their Barangay Chairman for allegedly conniving with some officials of the National Housing Authority to effect the illegal transfer of title of the land on which he and the other 37 families live.

92 ART. 353. Definition of Libel - A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

93 ART. 361. Proof of the truth - In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.

In such cases if the defendant proves the truth of an imputation made by him, he shall be acquitted.
Contempt

The contempt power of the Court can be traced to the American influence which in turn, can be traced to the influence of England.

Any of the following acts may be punished for contempt: "Any improper conduct, tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice." 94

The power to punish for contempt is inherent in all courts and is essential to their right of self-preservation. 95

The old rule was, contemptuous publications were actionable only if committed with respect to pending / sub judice suits. But since In re Brilliantes (1946) 96 the termination of the case has ceased to be a guaranty of immunity. The present rule is that one may be held liable for contempt without relation to a pending case.

The power to punish for contempt is necessary for its own protection against improper interference with the due administration of justice; it is not dependent upon the complaint of any of the parties litigant. 97

One such case where there were no parties litigant was the case of In re: Jurado (1995) 98 which is a leading case on contempt. This case was denounced by the Manila Standard where Mr. Jurado writes a regular column as an "Abuse of Power." 99

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94 Rule 71 Sec. 3(d) of the Rules of Court of the Philippines.

95 Slade v. Director of Prisons, 58 Phil. 271; In re Kelly 35 Phil.944 (1916); U.S.V. Loo Hoe, 36 Phil 867; In re Sotto 82 Phil. 595.

96 42 O.G. 59 (1946).

97 Herras v. Director of Prisons, 58 Phil. 630 (1946); Commissions of Immigration v. Claribel, 20 SCRA 1241 (1967); Montalban v. Canonoy, 38 SCRA 1 (1971); Andres v. Cabrera 127 SCRA 802 (1984); Halili v. Court of Industrial Relations 136 SCRA 112 (1985).

The direct cause of the proceedings was the letters supported by affidavits, denouncing certain stories of Mr. Jurado as false. According to the Court Mr. Jurado had been writing about alleged irregularities in the judiciary from October 1992 to March 1993. Other journalists followed and anonymous communications were extensively circulated about corruption in the Courts. In view of these, the Chief Justice created the "Ad Hoc Committee to Investigate Reports of Corruption in the Judiciary." Mr. Jurado was summoned by the Committee to help in the investigation, but failed to appear. Mr. Jurado invoked the Shield Law.

The Court wrote that he cannot invoke such right as a shield for printing stories that are untrue and derogatory of the courts and others and the right of refusal to disclose sources under the Shield Law is without prejudice to liability under civil and criminal laws.

The Court found that Jurado's actuation constitute contempt of court directly tending to degrade the administration of justice, that he was unrepentant based on his succeeding columns, and declared him guilty of contempt of Court. He was sentenced to pay a fine of P1,000.00 (US $ 25.58 ).

90 " Mr. Jurado has been critical of the behavior of certain justices...One does not have to be a lawyer or a journalist to realize that they are trying to silence Mr. Jurado... What makes the Supreme Court's action open to question is the fact that the Court disciplined Mr. Jurado as a lawyer, not as a journalist." Manila Standard editorial April 10, 1995.

100 The Court likewise enumerated Mr. Jurado's published statements which were material to the inquiry: he wrote about the so-called Makati's "Magnificent Seven" who allegedly are a bunch of Makati Regional Trial Court judges who fix drug-related cases; the "Magnificent Seven" in the Supreme Court consisting of a group of justices who allegedly vote as one; he also dubbed some judges as the "Dirty Dozen" each of which sell their decision to the litigants that offer the larger bribe; etc.

101 based on Sec. 6, Rule 71 of the Rules of Court. The discussion was based on 243 SCRA 99 (1995) pp.299-368.
The *Jurado* case is significant for it is where the Court spelled out The *Norms for the Proper Exercise of Press Freedom*. 102

**National Security**

During the Marcos dictatorship, the Chief Justice said that "the greatest threat to press freedom is national security… In applying the balance of interests test, ahead of everything else, is national security… Government has the obligation to defend itself." 103

Indeed, during this period, many media practitioners lost their freedom because of national security but they continued the fight. One of them was Jose Burgos, Jr. who published the *We Forum* which was the opposition voice as early as 1977. By 1979, he was denied travel clearance. In 1982, the office of the newspaper was searched and all the equipment used in the publication and distribution of the paper were seized, and he was taken under house arrest. 104 In May this year, Burgos will be honored in Boston as one of the world’s 50 “Press Freedom Heroes” by the *International Press Institute*. 105

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102 As follows:

1) **Constitutional Law Norms** The constitutional guarantee of free speech must be balanced against equally important public interests such as the maintenance of the integrity and orderly functioning of the administration of justice.

2) **Civil Law Norms**: Everyone practicing freedom of expression, the right of speech and of the press, as Article 19 of the Civil Code stresses, is obliged "to act with justice, give everyone his due and observe honesty and good faith.

3) **Philippine Journalist’s Code of Ethics** The court wrote that also relevant to the determination of the propriety of Jurado’s acts subject to inquiry are the norms laid down in "The Philippine Journalists Code of Ethics."

4) **Right to Private Honor and Reputation**: Members of the Judiciary cannot be regarded as having forfeited their right to private honor and reputation. Public interest in freedom of speech and the individual interest in the maintenance of private honor and reputation need to be accommodated, or balanced one to the other. See *In re: Jurado*, *Ibid.*


104 See Burgos v. Chief of Staff 133 SCRA 800 (1984).

105 "Ex-Malaya Boss Wins Award" * Philippine Star* April 9, 2000 Frontpage.
There is no clear definition of national security in Philippine jurisprudence. The crimes against national security, are in the Revised Penal Code. Those that refer to national security have undergone changes since its effectivity in 1932.

Marcos' Presidential Decrees escalated the penalties of crimes against public order, which were directed against the media. For instance, P.D. 942 (1976) amended the crimes on public order by increasing the penalties and adding Art. 142-A providing that when other offenses are committed, the penalty for the most serious offense in its maximum period shall be imposed. P.D. 1834 which affected not a few media people, further escalated the penalties for crimes against public order such as sedition and rebellion, to death. This was originally dated January 16, 1981 (a day before the "paper lifting" of martial law) but was kept "secret" until July 1983 with its publication in the Official Gazette.106

Executive Order #187 by Cory Aquino repealed those articles and restored the penalties to their original state prior to the amendatory Decrees.

After the restoration of democracy, there were no cases on press freedom and national security of the same nature as those during the Marcos regime which reached the Supreme Court. However, in 1994, the Inquirer reported that the Dept. of Foreign Affairs (DFA) barred reporters from getting direct access to all DFA officials. DFA explained that this policy was to protect national security and other sensitive information, and not to infringe on press freedom. DFA was constrained to exercise caution because of leakage to the press such, as the report on the mauling of a DFA Officer by Saudi Arabian Police and the round up of 305 Filipino workers in Malaysia.106

106 P.D. 1834 added Article 142-B. It prescribed the penalty of life imprisonment to death to any person who, having control and management of ... any form of mass communication, shall use or allow such facilities for the purpose of mounting sustained propaganda assaults against the government, or who shall use such facilities for acts which constitute rebellion, insurrection, or sedition. Conviction meant forfeiture and/or sequestration of the mass media facilities.

Recently, a case was filed against the *Inquirer* for sedition because of its news reports unfavorable to the Estrada Administration, but it did not stop the *Inquirer*, and nothing more has been written about it.

At present, national security concerns focus on international relations rather than the "preservation of the state".

**Obscenity**

Obscenity is unprotected speech and it is punished under the Revised Penal Code 107 but there is no definition of what is obscene anywhere in Philippine law. The tests developed in American jurisprudence have been incorporated into Philippine jurisprudence.

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107 Art. 201 of the RPC has been amended in 1976 by two presidential decrees of Marcos which have not been repealed. It provides:

"Art. 201 Immoral doctrines, obscene publications and exhibitions, and incident shows. -

The penalty of mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

2. (a) The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;

   (b) Those who, in the theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts.

3. Those who shall sell, give away or exhibit films, prints, engravings, sculptures or literature which are offensive to morals. (As amended by PD Nos. 960 & 969, July 24, 1976.)

Other provisions of PD No. 960 and further amended by PD No. 969, promulgated July 24, 1976 and to take effect fifteen (15) days after publication in two (2) newspapers of general circulation, provided:

"Sec. 2 Disposition of the Prohibited Articles. - The disposition of the literature, films, engravings, sculptures, paintings, or other materials involved in the violation referred to in Section 1 (referring to Art. 201, RPC) hereof shall be governed by the following rules:

a. Upon conviction of the offender, to be forfeited in favor of the government to be destroyed.

b. Where the criminal case against any violator of this decree results in an acquittal, the obscene/immoral literature, films, prints, engravings, sculptures, painting or other materials and articles involved in the violation referred to in Section 1 (referring to Art. 201, RPC) hereof shall nevertheless be forfeited in favor of the government to be
The *Hicklin test* ("isolated passages test"), the *Roth test* (applying contemporary community standards) and the latest word on obscenity, the *Miller test* \(^{108}\) which the Court acknowledged in *Pita v. Court of Appeals* (1989)\(^ {109}\) which appears to be the latest case on the subject.

Pita, publisher of *Pinoy Playboy* brought the case to the Supreme Court due to the incident which occurred on December 1 and 3, 1983 when elements of the Western Police District seized materials believed to be obscene, at the University belt in Manila, pursuant to the Anti-Smut Campaign of Mayor Bagatsing. These were later burned in public. The confiscation and seizure was undertaken pursuant to P.D. 960 as amended by P.D. 969 which amended Article 201 of the Revised Penal Code.

In *Pita*, the Court held that immoral literature comes within the ambit of free expression, although not its protection. In free expression cases, the Court has consistently been on the side of the exercise of the right, barring a *clear and present danger* that would destroyed, after forfeiture proceedings conducted by the Chief of Constabulary.

c. The person aggrieved by the forfeiture action of the Chief of Constabulary may, within fifteen (15) days after his receipt of a copy of the decision, appeal the matter to the Secretary of National Defense for review. The decision of the Secretary of National Defense shall be final and unappealable." (As amended by PD No. 969.)

\(^{108}\) 413 U.S. 15 (1973) The Miller test consist of a three-fold conjunctive test: a) whether the person, applying contemporary community standards, would find the material taken as a whole, appeals to prurient interest b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value. It indicated that only "hard core" pornography might be condemned.

\(^{109}\) 178 SCRA 363 (October 5, 1989) at 371
warrant state interference. But the burden to show the existence of grave and imminent danger that would justify action lies on the authorities. P.D. Nos. 960 and 969 are police power measures, but they are not, by themselves, authorities for high-handed acts. The law enforcer must respect the right to due process and against unreasonable searches and seizures. The Decrees laid down procedures for implementation which the Court summarized in *Pita*. These do not foreclose, however, defenses under the Constitution or applicable statutes, or remedies against abuse of official power under the *Civil Code* or the *Revised Penal Code*.

In September 1998, Estrada ordered a crackdown on smut publications, because his Office “has been besieged by complaints of proliferation of newspapers and magazines openly displaying pornographic pictures and carrying prurient material.” President Estrada ordered the PNP Chief and the National Capital Region Director to close down offices and printers of “these purveyors of filth” and file charges against publishers, including writers and photographers. Pursuant to the order, the police seized copies of the tabloids sold in Metro Manila newsstands on charges of pornography.

Despite this, they continue to proliferate This issue on obscenity is a contentious issue in Philippine society. There are non-governmental organizations which try to fight smut, but to no avail. Aside from the economic aspect, the status of the law on the subject explains

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110 The procedure for implementation of Art.201 as amended by P.D.960 &969:
1. The authorities must apply for the issuance of a search warrant from a judge, if in their opinion an obscenity rap is in order;
2. The authorities must convince the court that the materials sought to be seized are "obscene", and pose a clear and present danger of an evil substantive enough to warrant State interference and action;
3. The judge must determine whether or not the same are indeed "obscene": the question is to be resolved on a case-to-case basis and on His Honor's sound discretion.
4. If, in the opinion of the court, probable cause exists, it may issue the search warrant prayed for;
5. The proper suit is then brought in the court under Article 201 of the Revised Penal Code;
6. Any conviction is subject to appeal. The appellate court may assess whether or not the properties seized are indeed "obscene".

this situation. There are attempts in the Senate and in Congress to solve the issue, with Bills defining obscenity, but it does not seem to be a priority of the Legislature.

The concept of "indecency" is broader than "obscenity" and indecent materials may not be broadcasted during times when children are presumed to be in the audience. Of all forms of communication, broadcasting has the most limited protection. It has a uniquely pervasive presence in our lives for it extends into the privacy of the home and is uniquely accessible to children.\textsuperscript{112}

In the Philippines, obscenity is not only a legal or moral issue but a political one.

\textbf{Right to Information in Statutes\textsuperscript{113}}

The right to information is not only constitutional guaranteed and protected as discussed above. In addition there are statutes which enhance this right further. For instance, the first statutory recognition of the right to know came with the \textit{Administrative Code of 1987}, or the \textit{Local Government Code} which explicitly recognizes the people’s right of access as essential to enable them to participate in the policy making and decision making process of government. It also provides for the establishment of a \textit{Public Information and Assistance Office} and the \textit{Office of the National Administrative Register} where all the rules and regulations of all the government agencies are mandatorily filed for publication.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{112} Federal Communications Commission \textit{v. Pacifica Foundation} (438 U.S. 726[1978]) cited in Eastern Broadcasting \textit{v. Dans, Jr.} (137 SCRA 628 [1985]).
\item \textsuperscript{113} see Albert Muyot, op. cit., pp248-249; Teodoro & Kabatay \textit{op.cit.}, p.115.
\end{enumerate}
\end{footnotesize}
Perhaps the closest that the Philippines has in the way of the Freedom of Information Act is the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. 6713 [1989]) which provides for transparency of transactions and access to information keeping with the state policy of full public disclosure of transaction involving public interest.

Executive Order (EO) No. 89 (1993) mandates national government agencies to formulate procedures for the public and the agencies to follow when there are requests for government data and information. This has since been reinforced by Memorandum Circular 60 (July 8, 1993) which seeks to establish a system to ensure smooth flow of transactions in government and prompt response to public requests. It mandates that all government offices shall strictly observe the provisions of R.A. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) requiring all public employees to respond to letters and routinary requests sent by the public within fifteen (15) days from receipt.

Right to Information in Practice

Inspite of the Constitutional guaranty on the right to information, the judicial pronouncements, and the executive orders and memoranda on the subject, "Access to information is really difficult," said a research associate at the Philippine Center for Philippine Studies (PCPS), a non-governmental organization that gathers data from various government agencies.

Access to information is observed differently by different agencies, journalists concurred. Confidential information is easier to get if the person who made the request has gained the trust of the source. Sometimes a person's status is a factor that works in favor of the
journalist. "If you are well-known, they (government agencies) accommodate you," said another researcher.

The Department of Foreign Affairs (DFA) and the National Security Council (NSC) are two agencies that are a veritable mine of sensitive information. A DFA Assistant Secretary said DFA "exercises transparency in compliance with Civil Service Commission rules and regulations" and cited that they are mandated by Memorandum Circular No. 60 to respond to public request for information promptly. The NSC Assistant Director-General said that NSC adheres to the transparency doctrine as required by EO 89 "but added that it withholds information on its position on national policies."

Despite transparency claims by agencies, Philippine Center for Investigative Journalism (PCIJ) Executive-Director Sheila Coronel admits that media practitioners need to look for ways to go around a touchy bureaucracy. The Research Director of IPD said there is a certain arbitrariness in the way government officials classify information.

The view of Howie Severino of the PCIJ is, that an "institutionalized mechanism" for gaining access to records will not necessarily result in freedom of information because right now even without such a law, reporters are able to gain access through sheer persistence and cultivation of contacts."

An excellent guide for journalists reporting on government is the book published by the PCIJ, Uncovering the Beat. Mostly written by journalists who have been in their beats for long periods of time, "It is intended as a road map, a survival guide and security blanket,

114 all the foregoing discussion, see Alfredo P. Herbona, Jr., "Focus: Access to Information A Case for Transparency", Businessworld, Wednesday, October 11, 1995, front page and "A Law Doesn't Guarantee Access to Information", Businessworld, Thursday, October 12, 1995 front page
and contains the most essential information reporters should know when they are sent out to cover the Palace, Congress, the courts, business, education, health and the environment." This book is a must for any journalist who is determined to exercise the right to information for the common good.

Pending Laws

In 1994, a Congressman authored a bill which sought to require media practitioners to reveal the source of their news reports. But the House Committee on public information unanimously voted against the bill which was sent to the congressional archives.  

Several Senators realized the need for a Philippine version of the *U.S. Freedom of Information Act*. Senator Tatad (a former journalist) refiled Senate Bill 1004 in 1995 which was originally filed by four other senators earlier. It provides norms and standards and penal provisions. In Congress, Congressman Guanzon filed Housebill 3018 which contains provisions defining public documents and confidential information. Both Bills contain common provisions. But provisions on exemptions and procedures have raised different concerns. Journalists and researchers interviewed by *BusinessWorld* agree that enactment of a law is helpful, but not sufficient.  


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117 Alfredo P. Herbona, Jr. *op.cit.*,ibid.
Concern...” They are both pending and it is uncertain whether they will ever be enacted into law.

Conclusions & Assessments of Trends for Freedom of Information (FOI)

Considering the prevailing Philippine information environment, the availability of the communications media, the laws, and the advocacy tradition of the press, U.P. Law Professor Muyot is correct in concluding that “At present, a Freedom of Information Act is unnecessary and redundant...There is no need to enact a law similar to the FOIA which is riddled with exemptions that limit rather than advance the right of access.” It cannot be further emphasized that because of the constitutional protection for FOI, the Filipino’s claim to information is stronger than the U.S.

But this does not mean that there is no need for improvement so that FOI may be truly fruitful and benefit the common good. First, there must be awareness of this right, and the corresponding consequences among the citizenry and among the media practitioners. Observation has indicated that even among some senior journalists, the FOI and its effect on gathering information is not very clear. Some media practitioners are even unaware of it. Second, FOI must be exercised responsibly following the basic ethical principles of journalism.

It cannot often be said that the Philippine press is the freest in Asia, but it can also be irresponsible. However, there are promising developments in this regard. There is a newly self-critical attitude that has been slowly taking root in the profession largely attributed to the younger crop of practitioners, with the support of their seniors who have

118 Alberto Muyot, op.cit., p.257
And there is now a move to make media ethics a mandatory course for communication schools.

Perhaps the best indicative of the trend of FOI in the Philippines is the current attitude of the Supreme Court toward media recently revealed by Justice Panganiban who admitted that the "invasive power of the media" had forced the judiciary to be more transparent and accountable. He said that the information and technological innovations as well as a new generation made up of a young critical public, had made judges more vulnerable to media criticism and stripped them of their once "sacrosanct" positions.

Now, he said, the "people power" culture had encouraged the young to question the authoritarian or hierarchical impositions. He said that the best response to media criticism is a policy of transparency and accountability, without betraying those aspects of the judicial process which require utmost confidentiality. To carry this out, The Court has decided to employ competent public affairs officers who can help journalists explain accurately and authoritatively judicial issues, and the court's actions and decisions.

"Mount Olympus has been invaded by microchips, modems and media, and the lives of the gods have been irreversibly altered." If the media and the youth who comprise the biggest segment of the population could penetrate "Mt. Olympus," towards more transparency, what could the future be for FOI?

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119 In 1986, they crossed over to mainstream journalism from the alternative media and the campus press, which had distinguished themselves in the struggle against the dictatorship. Carolina S. Malay, "The Battle Against Corruption" Philippine Journalism Review July-September 1998.
122 Donna S. Cueto, op.cit.
123 Amando Doronilla, op.cit.
Chart 1

1998 POPULATION PROFILE by AGE

Total Philippines

Below 15: 36%

15-24: 19%

25-34: 16%

35-44: 12%

45+: 17%

 bás. Total Population = 75 Million

Males = 50.2%

Females = 49.8%

Source: Association of Accredited Advertising Agencies (4A's)

Media Factbook 2000, Page 7
Chart 2

Socio-Economic Class

Total Philippines

D 39.0%
E 36.0%
C 22.0%
AB 3.0%

Base: Total Households = 13.8 million

Source: 4A’s Media Factbook 2000
Page 10
COMPARATIVE MEDIA PENETRATION

(Total Philippines/Metro Manila)

Source: 4A's Media Factbook 2000
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Source: 1997 TVRC Establishment Survey