EN BANC

G.R. No. 257401 — ***(Linconn Uy Ong, petitioner vs. The Senate of the Philippines, The Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee); Hon. Senator Richard J. Gordon, in his capacity as the Chairman of the Blue Ribbon Committee; Hon. Senator Vicente C. Sotto III, in his capacity as Senate President of the Philippines; MGen Rene C. Samonte AFP (Ret.), in his capacity as Senate Sergeant-at Arms, respondents).***

G.R. No. 257916 — ***(Michael Yang Hong Ming, petitioner vs. Senate Committee on Accountability of Public Officers and Investigations, respondent).***

Promulgated: March 28, 2023

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CONCURRING OPINION[1]

GESMUNDO, *C.J.*:

I agree with the *ponencia* that grave abuse of discretion was committed when the Senate cited in contempt and directed the arrest of Linconn Uy Ong (*Ong*) and Michael Yang Hong Ming (*Yang*) for supposedly testifying "falsely or evasively." To my mind, the arrest order must be nullified for being issued without sufficiently observing due process. I also agree with the *ponencia*'s enlightened stance that the phrase "testifies falsely and evasively" in the Senate Rules is not vague, and as such, should not be declared unconstitutional. On the whole, I write this Opinion to further examine the scope of the power of legislative contempt as an inherent power of Congress.

As a background, Ong and Yang were invited by the Senate Committee on Accountability of Public Officers and Investigations (*Committee*) as resource speakers in its legislative inquiry regarding Pharmally Pharmaceutical Corporation's transactions with the government. Considering that Ong and Yang, among others, failed or refused to attend the hearing, the Committee issued an Order dated September 7, 2021 (*1st Contempt Order*) citing them in contempt and ordering their arrest and detention at the Office of the Senate Sergeant-at-Arms.

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1 In response to the *ponencia* as circulated for the agenda on March 28, 2023.

Later, Ong voluntarily attended the online video conference hearing on September 10, 2021. In the course of his examination, the Committee issued an Order dated September 10, 2021 (2nd *Contempt Order*)[2] citing him in contempt and ordering his arrest for "testifying falsely and evasively" during the hearing. Considering that Ong was then suffering from the COVID-19 virus, he was allowed to stay at his residence with a guard. He continued to attend and participate in the subsequent two hearings. A few days after, he was arrested at his residence and detained at the Senate Complex. The Committee members later moved to transfer him to the Pasay City Jail. Ong filed a petition before the Court assailing the validity of the contempt orders and the pertinent Senate rules, particularly, Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation (*Senate Rules on Inquiries*)[3] and Sec. 6, Article 6 of the Rules of the Committee,[4] insofar as they punish for contempt the act of testifying "falsely or evasively." The similarly worded provisions read, thus:

> Contempt.* (a) The Chairman with the concurrence of at least one (1) member of the Committee may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, **testifies falsely or evasively**, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor.
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> A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.
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> x x x x. (Emphasis supplied)

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[2] The Contempt Order provides thus: "For testifying false and evasively before the Committee on September 10, 2021 and thereby delaying, impeding, and obstructing the inquiry into the 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH), ESPECIALLY ITS EXPENDITURES RELATED TO THE RIGHT AGAINST COVID, therefore, upon motion of Senators Panfilo M. Lacson and Franklin M. Drilon and seconded by Senator Risa Hontiveros, the Committee hereby cites MR. LINCONN ONG in contempt and ordered arrested and detained at the Office of the Sergeant-At-Arms until such time that he gives his testimony without evasion, or otherwise purges himself of that contempt.
The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement." (See *ponencia* p. 6)

[3] *Senate Rules of Procedure Governing Inquiries in Aid of Legislation*, Senate Resolution No. 5, as amended by Resolution No. 145 adopted on February 6, 2013, available at <http://legacy.senate.gov.ph/about/rules82216.pdf>.

[4] See *Rules of the Committee on Accountability of Public Officers and Investigations, adopted by the Blue Ribbon Committee* on August 14, 2019.

As regards Yang, an arrest order was issued against him for failing to attend a hearing. On September 10, 2021, Yang appeared before the Committee. During said hearing, the Committee also issued an order placing Yang under arrest for allegedly giving evasive answers which amounted to contempt of the Committee.[5] Yang later filed a petition seeking, among others, nullification of the arrest orders issued against him.

In its Comments, the Senate emphasized that no grave abuse of discretion was committed when it cited them in contempt and ordered their arrest and detention. It claimed full compliance with the requirements of Sec. 21, Art. VI of the Constitution and the Senate Rules on Inquiries for the hearings it conducted.[6] The Senate stressed that constitutional rights were protected. It also asserted that the assailed provisions of the Senate Rules on Inquiries and Rules of the Committee are constitutional.

As intervenor, the Office of the Solicitor General (*OSG*) posited that the assailed Rules were unconstitutional insofar as they punish as contempt the act of "testifying falsely or evasively" for being vague and lacking clear standards. It stressed that the legislative hearings should always uphold the rights of the resource persons to due process and against self-incrimination. Moreover, the OSG argued that the power of contempt does not include the power to order arrest during the conduct of legislative investigation.

Two of the substantive issues raised by these consolidated petitions are: (a) whether the assailed Senate rules, which allow a witness who "testifies falsely or evasively" to be cited in contempt, is constitutional; and (b) whether the assailed orders that directed the arrest of Ong and Yang, are valid.

Exception to the mootness doctrine

Preliminarily, the *ponencia* holds that while the petitions have been rendered moot by Ong's voluntary release and the termination of the subject legislative inquiry, the Court can still decide on the issues based on the

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[5] *See* Annex H (Senate Order dated September 10, 2021) of Yang's Petition (G.R. No. 257916), which reads: "For testifying falsely and evasively before the Committee on September 10, 2021 and thereby delaying, impeding, and obstructing the inquiry into the 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH) ESPECIALLY ITS EXPENDITURES RELATED TO THE FIGHT AGAINST COVID, therefore, upon motion of Senator Panfilo M. Lacson and seconded by Senator Risa Hontiveros, the Committee hereby cites **MR. MICHAEL YANG AKA YANG HONG MING** in contempt and ordered arrested and detained at the Office of the Sergeant-At-Arms until such time that he gives his testimony without evasion, or otherwise purges himself of that contempt." (Underscoring supplied)

[6] See Senate's Comment (G.R. No. 257916), p. 78.

exceptions to the mootness doctrine.[7] Delving into the merits, the *ponencia* upholds the Senate's power of contempt as concomitant to the power of legislative inquiry.[8] It also underscores that the power to arrest is concomitant to the power of legislative contempt.[9] As regards the 2nd Contempt Order, it finds that the Senate Committee gravely abused its discretion in issuing such order for failing to accord Ong and Yang their constitutional right to due process in the conduct of the proceedings.[10] Moreover, the *ponencia* declares not unconstitutional the phrase "testifies falsely or evasively" in Sec. 18 of the Senate Rules on Inquiries and Sec. 6, Art. 6 of the Rules of the Senate Blue Ribbon Committee, and rejects the argument that such phrase is vague.[11]

I concur. A judicious resolution of this case requires an examination of the scope and limitations on legislative contempt power.

Extent of the legislative power of contempt

Contempt has been defined as "an act of disobedience or disrespect toward a judicial or *legislative* body of government or interference with its orderly process for which a summary punishment is usually exacted."[12] The Court has emphasized that the power to punish persons in contempt is allowed "to maintain the respect due" to the government branch involved and "to ensure the infallibility of justice where defiance is so clear and contumacious and there is an evident refusal to obey."[13] Considering however the serious implications on the rights of supposed contemnor, the Court notes such power must be "exercised cautiously, sparingly, and judiciously."[14]

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7 *Ponencia*, p. 14.

8 Id. at 16-17.

9 Id. at 17-18.

10 Id. at 24-42.

11 Id. at 43-35.

12 GOLDFARB, THE CONTEMPT POWER (1963) as cited in Watkins C. Gaylord. "*The Enforcement of Conformity to Law through Contempt Proceedings.*" Osgoode Hall Law Journal 5.2 (1967): 125-158; see also Ronald Goldfarb, *The History of the Contempt Power*, Wash. U.L.Q. 1 (1961); Contempt has also been broadly defined as a "willful disregard or disobedience of a public authority," (Black's Law Dictionary, 4th ed.) or of "the rules or orders of a *legislative* or *judicial* body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body." (*Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, 672 Phil. 1, 10 [2011]).

13 *Bro. Oca v. Custodio*, 814 Phil. 641, 681 (2017).

14 Id. at 683; see *Province of Camarines Norte v. Province of Quezon,* 419 Phil. 372, 389 (2001), stating that the power to "punish contemptuous acts should be exercised on the **preservative** and not on the vindictive principle"; see also *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, supra, at 19-20, reminding judges to exercise the "power to punish contempt judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the power for the **correction and preservation of the dignity** of the Court, not for retaliation or vindictiveness."

The inherent nature of the legislative power of contempt has long been recognized in our jurisdiction. During the American occupation,[15] the Court noted in *Lopez v. De Los Reyes*[16] that "the legislative bodies may inflict punishment on those guilty of acts which tend directly to defeat, embarrass, or obstruct legislative proceedings."[17] However, the exercise of such power should only be to the extent necessary to preserve and carry out its legislative powers, to wit:

> The power to deal directly by way of contempt, without criminal prosecution, may be implied from the constitutional grant of legislative power to the Congress in so far, and so far only, as such authority is necessary to preserve and carry out the legislative power granted. The two Houses of the Congress, in their separate relations, possess such auxiliary powers as are appropriate to make the express powers effective. In these latter cases, the power to punish for contempt rests solely upon the right of self-preservation. Proceeding on this theory, punishment has been imposed for assaults upon members of the House of Representatives which prevented members from attending the sessions of the House. But **the power does not extend to the infliction of punishment of such.** In the apt phrase of Chief Justice White of the United States Supreme Court, "It is a means to an end and not the end itself."[18] (Emphasis supplied)

Under the auspices of the 1935 Constitution, the Court in *Arnault v. Nazareno*[19] also acknowledged the existence of the legislature's inherent power of contempt, as auxiliary to its power to conduct investigations, *viz.*:

> **[T]he power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function.** A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to effect or change; and where the legislative body does not itself possess the requisite information — which is not infrequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.[20] (Emphasis supplied)

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15 See also C.S. Potts, Power of Legislative Bodies to Punish for Contempt, *University of Pennsylvania Law Review and American Law Register*, Vol. 74, No. 8 (1962), p. 782, which explains that commentators on American constitutional law recognizes the ground of "necessity" as basis for the legislative contempt power. Writing of the power to punish for contempt, Chancellor Kent wrote in 1826 that it "is a power inherent in all legislative assemblies, and is essential **to enable them to execute their great trusts with freedom and safety."**

16 55 Phil. 170 (1930). The Court held that "the power to punish for contempt is inherent in the bodies composing the legislative branch."

17 Id. at 178.

18 Id. at 177-178.

19 87 Phil. 29 (1950).

20 Id. at 45, citing *McGrain v. Daugherty*, 273 U.S., 135 (1927).

The breadth of Congress' power to punish witnesses before it for contempt was elucidated further in *Arnault v. Balagtas*,[21] thus:

> The principle that Congress or any [of its] bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power, or necessary to effectuate said power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, **it must have intended each department's authority to be full and complete, independently of the other's authority or power**. And **how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy**, because it is impotent by itself to punish or deal therewith, with the affronts committed against its authority or dignity. The process by which a contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authority must be distinguished from the judicial process by which offenders are brought to the courts of justice for the meting of the punishment which the criminal law imposes upon them. The former falls exclusively within the legislative authority, the latter within the domain of the courts; because the former is a necessary concomitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law.
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> We must also and (*sic*) that provided the contempt is related to the exercise of the legislative power and is committed in the course of the legislative process, **the legislature's authority to deal with the defiant and contumacious witness should be supreme**, and unless there is a manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference.[22] (Emphases supplied)

The early pronouncements on the scope of legislative contempt reveal that it was understood to have an expansive scope, granting Congress broad authority to punish recalcitrant witnesses. For instance, in *Arnault v. Nazareno*,[23] a senator propounded a question to elicit the identity of a person to whom he gave a sum of money, but the witness "refused to reveal it" by claiming that "he did not remember" and that his answer might incriminate

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21 97 Phil. 358 (1955).
22 Id. at 370-371.
23 Supra.

him.[24] The Senate adopted a resolution committing the witness to the custody of the Sergeant-at-Arms to be "imprisoned until he shall have purged the contempt by revealing" the name of the person to whom he gave the money.[25] The Court held that the Senate has the authority to commit a witness if he "refuses to answer a question pertinent to a legislative inquiry, to compel him to give the information, *i.e.*, by reason of its coercive power, not its punitive power."[26] The Court added that the witness' answers were "obviously false,"[27] noting that his insistent claim that he would incriminate himself by revealing the name necessarily implies that he knew the name. The Senate itself decided that the given information was false.[28] The Court concluded that:

> Testimony which is **obviously false or evasive** is **equivalent to a refusal to testify** and is punishable as contempt, assuming that a refusal to testify would be so punishable.[29]

In the subsequent case of *Arnault v. Balagtas*,[30] the same witness answered the question by giving the name "Jess D. Santos" but the Senate refused to believe that it was true. Affirming the Senate's finding of contempt, the Court held the witness did not purge himself of the contempt, *viz.*:

> In order that the petitioner may be considered as having purged himself of the contempt, it is necessary that he should have testified **truthfully**, disclosing the real identity of the person subject of the inquiry. **No person guilty of contempt may purge himself by another lie or falsehood**; this would be repetition of the offense. It is true that he gave a name, Jess D. Santos, as that of the person to whom delivery of the sum of ₱440,000 was made. The Senate Committee refused to believe, and justly, that is the real name of the person whose identity is being the subject of the inquiry. The Senate, therefore, held that the act of the petitioner continued the original contempt, or reiterated it. Furthermore, the act further interpreted as an affront to its dignity. It may well be taken as insult to the intelligence of the honorable members of the body that conducted the investigation. The act of defiance and contempt could not have been clearer and more evident. Certainly, the Senate resolution declaring the petitioner in contempt may not be claimed as an exertion of an arbitrary power.[31] (Emphases supplied)

In the succeeding years, limitations to the exercise of Congress' power to punish contempt were further emphasized and refined in this jurisdiction.

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24 Id. at 41.
25 Id. at 43.
26 *Arnault v. Balagtas*, supra, at 367.
27 *Arnault v. Nazareno*, supra note 19, at 64-65.
28 Id.
29 Id. at 65, citing 12 Am. Jur., sec. 15, Contempt, pp. 399-400.
30 Supra.
31 Id. at 371.

When Congress' power to conduct investigations in aid of legislation was made explicit in the 1973 Constitution,[32] and later in the 1987 Constitution,[33] the framers made sure to emphasize three limitations: (*1*) the power must be exercised in aid of legislation; (*2*) it must be in accordance with duly published rules of procedure;[34] and (*3*) the "rights of persons appearing in, or affected by, such inquiries shall be respected."[35] It has been explained that the incorporation of this constitutional provision was not intended to authorize the conduct of such inquiries, such power being inherent, "but to limit them and to forestall possible abuse" in light of excesses made in the past.[36]

Recently, the detention period of those cited for legislative contempt was re-examined and shortened. In *Balag v. Senate of the Philippines*,[37] the Senate conducted an inquiry in aid of legislation on the death of a student due to hazing. The Senate committee involved called upon a member of a fraternity as a witness. The witness refused to answer a senator's question (*i.e.,* if he was the president of the fraternity) while invoking his right against self-incrimination. Despite being cautioned that he could be cited in contempt, he continued to refuse to answer. A contempt order was then issued against him for "testifying falsely and evasively" and directed his arrest and detention at the Office of the Sergeant-at-Arms "until such time that he gives true testimony, or otherwise purges himself of that contempt."[38] While the Court denied the petition for being mooted by supervening events, it deemed it necessary to resolve the issue presented thus: "what is the duration of the detention for a contempt ordered by the Senate?" Notably, neither the Senate rules nor the contempt order specified a precise period of detention. The Court held that the duration of detention pursuant to the Senate's inherent power of

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32 CONSTITUTION, (1973), Art. VIII, Sec. 12, par. (2), states thus:
The National Assembly or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in such inquiries shall be respected.

33 CONSTITUTION, (1987), Art. VI, Sec. 21, states thus:
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.

34 *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 586 Phil. 135 (2008). The language of Section 21, Article VI of the 1987 Constitution is categorical in saying that the inquiry must be conducted "in accordance with the **duly published rules of procedure**." The Court stressed that the required promulgation of the rules pertaining to legislative inquiries is for the benefit of the witnesses, and the Senate committee does not have the discretion to set aside their rules anytime they wish. Thus, the Senate had abused its authority when it ordered the petitioner's arrest despite non-publication of its rules pertaining to contempt.

35 See Concurring Opinion of J. (later Chief Justice) Corona in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 572 Phil. 554, 675-676 (2008).

36 Id. at 675, citing Cruz, Isagani A., Philippine Political Law, 2002 edition, Central Lawbook Publishing Co., Inc., pp. 163-164 thus: "[I]n the past this power was much abused by some legislators who used it for illegitimate ends or to browbeat or intimidate witnesses, usually for grandstanding purposes only. There were also times when the subject of the inquiry was purely private in nature and therefore outside the scope of the powers of the Congress."

37 835 Phil. 451 (2018).

38 Id. at 464.

contempt is not indefinite, and is only **"until the termination of the legislative inquiry**."[39]

In *Calida v. Trillanes IV*,[40] the Court emphasized that the purpose of legislative inquiries is to be "in aid of legislation." It is not meant to embolden Congress to take on powers that are reposed upon the prosecutorial bodies and the courts. Indeed, "Congress is neither a law enforcement nor a trial agency," which functions reside in the Executive and Judicial branches, respectively, *viz.*:

> In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, this Court explained further that a legislative inquiry must prove to be in aid of legislation and not for other purposes, pronouncing that "Congress is neither a law enforcement nor a trial agency." It declared:
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> No matter how noble the intentions of respondent Committees are, they cannot assume the power reposed upon our prosecutorial bodies and courts. The determination of who is/are liable for a crime or illegal activity, the investigation of the role played by each official, the determination of who should be haled to court for prosecution and the task of coming up with conclusions and finding of facts regarding anomalies, especially the determination of criminal guilt, are not functions of the Senate. Congress is neither a law enforcement nor a trial agency. Moreover, it bears stressing that no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress, *i.e.*, legislation. Investigations conducted solely to gather incriminatory evidence and "punish" those investigated are indefensible. There is no Congressional power to expose for the sake of exposure.[41]

This is consistent with the previous rulings on legislative contempt that "disclosures by witnesses may be compelled constitutionally 'to enable the respective bodies to discharge their legitimate functions.'"[42] The presumption is that Congress will not "exert power beyond its proper bounds, or without due regard to the rights of witnesses."[43]

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39 Id. at 471.

40 G.R. No. 240873, September 3, 2019, 917 SCRA 490.

41 Id. at 498-499.

42 *McGrain v. Daugherty*, supra note 20.

43 Id. Should such happen, however, the "witness **may rightfully refuse to answer** where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry." (*McGrain v. Daugherty*, supra, citing *Kilbourn v. Thompson*, 103 U.S. 168 [1880], and *In Re Chapman*, 243 U.S. 521 [1917]).

In conducting legislative inquiries, the Court further stressed that rights of persons appearing or affected therein must be respected. It noted that "the power of legislative inquiry must be carefully balanced with the private rights of those affected. A person's right against self-incrimination and to due process cannot be swept aside in favor of the purported public need of a legislative inquiry."[44]

As may be gleamed from the foregoing, although an inherent power of legislative contempt exists and is broad in scope, it is subject to limitations that safeguard constitutionally guaranteed freedoms.

Dual aspect of judicial contempt may not be squarely applicable in legislative contempt

Contempt in judicial proceedings has a dual aspect; it may either be *criminal (punitive)* or *civil (remedial)*. The type of proceeding varies depending on the nature of the contempt involved. During the deliberations on this case, it was posited that the dual aspect also applies in legislative contempt, to which I disagreed. To clarify the matter, I write to assess the applicability of this distinction as regards legislative contempt.

To reiterate, the legislature's inherent power of contempt is auxiliary to its power to conduct investigations. The power to punish for contempt is the means by which Congress can *enforce* or *compel obedience* to its directives in the course of its investigation. The power of legislative contempt rests fundamentally on the power of self-preservation,[45] because absent such power, Congress may not effectively obtain information that will enable it to formulate intelligent and effective laws.

Being wholly ancillary to the power to investigate, the contempt power of Congress is *sui generis* and allows it to punish a person for noncompliance in order to remove obstructions to the investigation or otherwise assert its authority to inquire. Hence, a witness' refusal to be sworn, or to testify, or to answer a proper question, or to appear, or to bring required documents constitute contemptuous acts for which Congress can order the witness'

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44 *Calida v. Trillanes IV*, supra, at 499.

45 *Lopez v. De Los Reyes*, supra note 16, at 184; see also C.S. Potts, Power of Legislative Bodies to Punish for Contempt, *University of Pennsylvania Law Review and American Law Register*, Vol. 74, No. 8 (1962), p. 782. (See footnote on *Ex parte McCarthy, 29. Cal 395* [1866]).

detention.[46] Such punishment is "necessary to preserve and carry out"[47] the legislative power. Based on the Senate rules, the imposition of the punishment may be immediate – without need for further notice or opportunity to be heard.

Nevertheless, when "more [than preservation] 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."[48] Hence, an imposition of punishment in the exercise of legislative contempt is not "essentially criminal"[49] in nature. The resulting detention in legislative contempt serves mainly to coerce the witness to comply with orders. The distinction between "punishment for [legislative] contempt" and "punishment for crime" was explained thus:

> The implied power to punish for [legislative] contempt is coercive in nature. The power to punish crimes is punitive in nature. The first is a vindication by the House of its own privileges. The second is a proceeding brought by the State before the courts to punish offenders. The two are distinct, the one from the other.[50] (Citation omitted)

Judicial contempt is different. Contempt as used in judicial proceedings, which is expounded under Rule 71 of the Rules of Court, is further developed in jurisprudence. The dual purpose of the power to punish for contempt in judicial proceedings as punitive *(criminal)* and coercive *(civil)* is explained in *People v. Godoy*:[51]

> The exercise of the power to punish for contempt has a dual aspect, primarily, the proper punishment of the guilty party for his disrespect to the court, and, secondarily, his compulsory performance of some act or duty required of him by the court and which he refuses to perform. Due perhaps to this two fold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal. However, the line of demarcation between acts constituting criminal contempt, as distinguished from civil contempt, is quite indistinct. x x x.[52] (Citations omitted)

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46 See Section 18 of the Senate Rules on Inquiries.

47 *Lopez v. Delos Reyes*, supra, at 177. "The power to deal directly by way of contempt, without criminal prosecution, may be implied from the constitutional grant of legislative power to the Congress in so far, and so far only, as such authority is **necessary to preserve and carry out** the legislative power granted." (Emphasis supplied). See also *Marshall v. Gordon*, 243 U.S. 521 (1917).

48 *Lopez v. Delos Reyes*, supra, at 184.

49 *Ponencia*, p. 41.

50 *Lopez v. Delos Reyes*, supra, at 180.

51 312 Phil. 977 (1995).

52 Id. at 988.

In the aforementioned case, the Court has exhaustively discussed the difference between criminal and civil contempt as used in judicial proceedings, as follows:

A. As to the Nature of the Offense

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

x x x x

C. As to the Character of the Contempt Proceeding

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

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

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree

intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience. The rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings. x x x

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.[53] (Emphases supplied; citations omitted)

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[53] Id. at 999-1002; see also *Atty. Ceniza v. Wistehuff, Sr.*, 524 Phil. 462, 479-480 (2006), to wit:

In the recent case of *Montenegro v. Montenegro*, the Court distinguished criminal contempt from civil contempt, as follows:

Contempt, whether direct or indirect, may be **civil or criminal** depending on the **nature and effect of the contemptuous act. Criminal contempt** is "conduct directed **against the authority and dignity of the court** or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court to disrepute or disrespect." On the other hand, **civil contempt** is the failure to do something ordered to be done by a court or a judge **for the benefit of the opposing party** therein and is therefore, an offense against the party in whose behalf the violated order was made. **If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil**.

Thus, contempt proceedings has **a dual function**: (1) vindication of public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court.

Contempt proceedings are neither wholly civil nor altogether criminal. It may not always be easy to classify a particular act as belonging to one of those two classes. It may partake of the characteristics of both. If it is remedial and coercive in nature, it is civil; the parties are the individuals whose private rights and remedies they were instituted to protect or enforce. The absence of willfulness does not release one from civil contempt. It is civil if it is instituted to preserve and enforce the rights and administer the remedies of the parties to which the court has to force them to obey.

Proceedings for contempt are **criminal in natnre if presented to preserve the power of the courts and to punish for disobedience to their orders**. Criminal contempt involves no element of personal injury; it is directed against the power and dignity of the court and the private parties have little, if any interest in the proceedings for its punishment.

The Rules of Court provides for the following punishment for the contemnor: fine or imprisonment, or both.

It is not the fact of punishment, but rather its **character and purpose**, that often serve to distinguish between the two classes of contempt. **If it is for civil contempt the punishment is remedial, and for the benefit of the complainant.** But **if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.** But if the contempt consists in the refusal of a party or a person to do an act which the court has ordered him to do for the benefit or the advantage of a party to a suit or action pending before it, and he is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court, and the party in whose favor that judgment was rendered is the real party-in-interest in the proceedings. (Emphases supplied, citations omitted)

More succinctly, the difference between the two classes of contempt in judicial proceedings lies in the purpose of punishment: in criminal contempt, it is to assert the court's authority or to punish for disobedience *(punitive)*, while in civil contempt, it is to preserve the right of private persons in whose behalf the violated order was made *(remedial or compensatory)*.

To my mind, however, the distinction between civil and criminal contempt as used in judicial proceedings may not be squarely applicable to the legislative setting. It must be emphasized that the power of contempt of the legislature is *sui generis*. It is not absolutely similar with judicial contempt. Considering that there are no private persons for whose benefit an order is issued, there will not be an occasion for the contempt order of Congress to constitute civil contempt in the sense discussed above. Verily, a legislative body's directive to appear during its proceeding is for the benefit of the public – towards the end of legislation – and not for any private entity. Moreover, by citing a person in contempt, Congress primarily asserts its authority as one of the three independent branches of government. On this basis, if the civil contempt and criminal contempt dichotomy is used, the order of Congress citing a person in contempt will always be punitive in nature, which may not be an accurate characterization. Nevertheless, legislative contempt proceedings should be conducted pursuant to "the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings."[54]

To be clear, Congress is still mandated by the Constitution to **respect the rights of persons appearing before it** in the conduct of legislative inquiry.[55] A balance must be struck between the power of Congress to compel compliance and the rights of the persons affected.

The 1st Contempt Order is valid; the 2nd Contempt Order is invalid for failure to accord due process to Ong and Yang

In my view, persons who receive an order of Congress to attend, testify, or produce documents must dutifully comply, and those who fail to do so may be immediately cited for contempt. Hence, the 1st Contempt Order issued against Ong and Yang are valid. Their recourse is to comply with the directive.

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54 *People v. Godoy*, supra note 51, at 1001.

55 CONSTITUTION, (1987), Art. VI, Sec. 21, states: 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.

On the other hand, it is my opinion that witnesses who are deemed by Congress to have testified *falsely or evasively*, must be accorded stricter due process requirements, such as an opportunity to explain one's side before being penalized, consistent with the due process safeguards used in criminal proceedings. In *In Re Oliver*,[56] the U.S. Supreme Court held that "the failure to afford petitioner a reasonable opportunity to defend himself against the charge of giving false and evasive testimony was a denial of due process of law." In the Philippines, giving false testimony in an official proceeding is a crime punishable under the Revised Penal Code.[57]

Similarly, I posit that a legislative body cannot immediately cite a witness in contempt for giving false or evasive testimony. The Court has held that the "exercise of the *summary* power to imprison for contempt is a delicate one and care is needed to avoid arbitrary or oppressive conclusions."[58]

Again, in exercising its powers, including the power of contempt, Congress is mandated by the Constitution to **respect the rights of persons appearing before it**. Thus, when there is preliminary assessment that the witness before it is giving a false or evasive testimony, the witness must first be ordered to **show cause** why he or she should not be cited in contempt. Thereafter, if Congress remains convinced that the testimony is false or evasive, Congress can cite such person in contempt pursuant to its inherent power. Consistent with the ruling in *Balag v. Senate of the Philippines*,[59] the detention can last only until the termination of the legislative inquiry. Thereafter, a criminal prosecution needs to be initiated against such person if he or she needs to be further detained.[60]

Stated differently, indeed, Congress may declare a witness in contempt for "giving false or evasive testimony." However, considering the broad definition on this ground and to afford the witness the opportunity to be heard, at the very least, the witness must be given a chance to explain why his or her testimony is not false or evasive. Only after giving the requisite due process, as mandated under the Constitution, should Congress declare the witness in contempt.

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56 333 U.S. 257 (1948).

57 REVISED PENAL CODE, Art. 184, provides:
Art. 184. *Offering false testimony in evidence.* - Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this Section. (Emphases supplied)

58 *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, supra note 12, at 13; citation omitted.

59 Supra note 37.

60 Id. at 471.

Further, witnesses who are cited in contempt on this ground are not left without recourse. If there is no clear factual basis for citing them in contempt, they can assail the order of Congress on the ground of grave abuse of discretion. It bears stressing, however, that Congress only needs to show that it has a clear factual basis for such determination, and did not exercise its contempt power with grave abuse of discretion. If a clear factual basis is shown, the Court will respect such finding as was done in *Arnault v. Balagtas.*[61] This is consistent with the Court's respect to a co-equal branch of government and the *sui generis* character of legislative contempt.

Applying the foregoing discussion to the present case, I find that the 2nd contempt order which directed the arrest of Ong and Yang must be nullified, not because the Senate Rules regarding contempt are invalid, but due to the failure of the Senate Committee to provide the witnesses a prior opportunity to be heard *via* a show cause order, as a due process measure.

The phrase "testifies falsely or evasively" in the assailed Senate rules is not vague; hence, not unconstitutional

Notably, the *ponencia* declares not unconstitutional the phrase "*testifies falsely or evasively*" in the assailed Senate rules.[62]

I agree. To my mind, the terms 'false' and 'evasive' are not vague because they can be understood using simple statutory construction. False means "intended to or tending to mislead" or "intentionally untrue." On the other hand, to evade or be evasive means to "avoid answering directly" or to "turn aside."[63] Given that the terms can be reasonably understood in its ordinary usage, the resulting phrase should not be declared void.

Further, a provision may be challenged on its face based on the vagueness doctrine if the provision is "vague in all its possible applications."[64] The challenger must establish that "no set of circumstances exists under which the [provision] would be valid."[65] Based on this standard, the petitioners failed to prove how the resulting phrase (*i.e.*, "testifies falsely or evasively") is vague as to render it void.

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61 Supra note 21.
62 *Ponencia*, pp. 43-45.
63 Merriam Websters Dictionary (available at https://www.merriam-webster.com/dictionary/evade).
64 *Estrada v. Sandiganbayan*, 421 Phil. 290, 354 (2001).
65 Id. at 354.

Again, I believe that the Senate has the power to declare a witness in contempt for giving false or evasive testimony. However, as a minimum due process requirement, the witness should be given an opportunity to be heard so that the legislative body will have sufficient factual basis before it can cite the witness in contempt. Failure to afford such due process requirement, resulting to a lack of factual basis, shall render the contempt invalid on the ground of grave abuse of discretion on the part of the legislature.

The power to arrest is necessary to carry out legislative contempt power; it may be executed even without an explicit statement in the Senate Rules

To be clear, the Senate may order the arrest of a person when cited for contempt. There is no need for the Senate rules to be amended to specifically indicate arrest as a consequence of being cited in contempt. Otherwise, the inherent power of contempt would be toothless. The *ponencia* accurately pronounced thus:

> Strictly speaking, the power to arrest a witness is not specified under the Senate Rules of Procedure. Such Rules only cite the explicit power of the Senate to detain a witness. The Court, however, views that an arrest is necessary to carry out the coercive process of compelling attendance, testimony, and production of documents relevant in a legislative inquiry.[66]

During the deliberations on this case, it was intimated that there is difference between the power to arrest and the power to detain, as posited by Justice Corona in his dissenting opinion in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*,[67] *viz.*:

> Under the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee, respondent Committees are authorized only **to detain** a witness found guilty of contempt. On the other hand, **nowhere does the word "arrest" appear in either rules of procedure.**
>
> **There is a whale of a difference between the power to detain and the power to arrest.**

---

66 *Ponencia*, pp. 17-18.

67 Supra note 35.

> To detain means to hold or keep in custody. On the other hand, to arrest means to seize, capture or to take in custody by authority of law. Thus, the power to detain is the power to keep or maintain custody while the power to arrest is the power to take custody. **The power to detain implies** that the contumacious witness is **in the premises (or custody) of the Senate and that he will be kept therein or in some other designated place. In contrast, the power to arrest presupposes that the subject thereof is** not before the Senate or its committees but **in some other place outside.**
>
> The distinction is not simply a matter of semantics. It is substantial, not conceptual, for it affects the fundamental right to be free from unwarranted governmental restraint.
>
> Since the Rules of Procedure of the Senate and the Rules of the Blue Ribbon Committee speak only of a power to order the detention of a contumacious witness, it cannot be expanded to include the power to issue an order of arrest. Otherwise, the constitutional intent to limit the exercise of legislative investigations to the procedure established and published by the Senate or its committees will be for naught.[68] (Emphases supplied)

I respectfully differ. To my mind, requiring physical presence in the premises of the Senate before it can execute an arrest fails to take into account technological advancements that enable witnesses to appear before the Senate **without being within the physical confines of the legislative halls**. Surely, such witnesses who appear remotely before the legislative body are not beyond the reach of the legislative power of contempt. Hence, a witness, such as Ong, who attended the legislative hearings online *via* video conference, can properly be subject of arrest and detention even if he is located beyond the physical walls of the Senate.

Moreover, the formulation renders the power of contempt ineffective against witnesses who refuse to obey a subpoena to attend a legislative hearing, and are therefore also situated outside the premises of the Senate. It is for these reasons that I cannot subscribe to the previously suggested distinction between the two terms relative to the exercise of the power of legislative contempt. Hence, I commend the corrected stance in the *ponencia* on this matter.

To reiterate, the Senate rules need not be amended to explicitly indicate the power to take or "arrest" a person from outside the legislative halls.

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[68] Id. at 678-679.

In sum, I concur with the *ponencia*. I respectfully vote not to declare unconstitutional the phrase "*testifies falsely or evasively*" in the Senate Rules on the ground of vagueness. The 2nd contempt order which directed the arrest of Ong and Yang must be held invalid for noncompliance with due process, particularly by failing to provide a prior opportunity to be heard before citing them in contempt. Hence, in the 2nd contempt order, the Senate committed grave abuse of discretion.

WHEREFORE, I vote to **PARTLY GRANT** the petitions. The September 10, 2021 Order of the Senate Committee on Accountability of Public Officers and Investigations is **ANNULLED** and **SET ASIDE**. Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation is **CONSTITUTIONAL**.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

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