EN BANC

G.R. No. 257401 — LINCONN UY ONG, *petitioner*, ***versus*** **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*, ***versus*** **SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS,** *respondent*.

Promulgated:

March 28, 2023

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

After the Commission on Audit (COA) released its Consolidated Annual Audit Report for Fiscal Year 2020, the Senate Committee on Accountability of Public Officers and Investigations (Senate Blue Ribbon Committee) initiated an inquiry in aid of legislation relative to the Department of Health's disbursement of funds for addressing the Coronavirus Disease 2019 pandemic. Pursuant to the conduct of the inquiry, several resource persons were requested to attend, which included the officials of Pharmally Pharmaceuticals Corporation (Pharmally), a corporation that secured ₱8.868 Billion worth of contracts from the Procurement Service of the Department of Budget and Management (PS-DBM).[1]

As a member of the Board of Directors, and as the Supply Chain Manager of Pharmally, petitioner Linconn Ong (Ong) was among the resource persons invited by the Senate Blue Ribbon Committee. Petitioner Michael Yang Hong Ming (Yang) was likewise invited after the Senate Blue Ribbon Committee discovered that the incorporators of Pharmally had links with Yang.[2] Accordingly, *subpoenas ad testificandum* were sent to Ong and Yang (together, petitioners), to appear on various dates before the Senate Blue Ribbon Committee.[3]

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1 *Ponencia*, p. 4.
2 Id.
3 Id. at 5.

Due to the failure of petitioners to appear on various dates, despite having received the subpoenas directing them to do so, the Senate Blue Ribbon Committee cited them both in contempt. Thus, on September 7, 2021, Orders were issued directing the Office of the Senate Sergeant-at-Arms (OSAA) to arrest and detain petitioners until they appear and give their testimonies.[4]

Subsequently, petitioners appeared during the September 10, 2021 hearing, where they were again cited in contempt by the Senate Blue Ribbon Committee for "testifying falsely and evasively."[5] Ong was eventually arrested and detained at the Pasay City Jail, while a Lookout Bulletin was issued by the Bureau of Immigration against Yang, pursuant to a request from the Senate Blue Ribbon Committee.[6]

Ong and Yang separately filed petitions for *certiorari* and prohibition directly before the Court, assailing the September 7 and 10, 2021 Orders of Contempt. Ong, in particular, challenges the constitutionality of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, as amended (Senate Rules of Procedure on Inquiries), as well as the Rules of the Senate Blue Ribbon Committee, insofar as these rules punish for contempt the act of "testifying falsely or evasively."[7]

The pertinent portions of the assailed provisions are as follows:

> RULES OF PROCEDURE GOVERNING INQUIRIES
> IN AID OF LEGISLATION
>
> x x x x
>
> SECTION 18. *Contempt.* —
>
> (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, **testifies falsely or evasively**, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. A majority of all the members of the Committee may, however, reverse or modify the aforesaid order of contempt within seven (7) days.
>
> 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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4 Id.
5 Id. at 5.
6 Id. at 3, 6-7.
7 Id. at 3.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate.[8] (Emphasis supplied)

RULES OF THE SENATE BLUE RIBBON COMMITTEE
ARTICLE 6
INVESTIGATIONS

x x x x

SECTION 6. *Contempt.* — (a) The Committee, by vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee, including refusal to produce documents pursuant to a *subpoena duces tecum*, 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**. 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 [or she] agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself [or herself] on that contempt.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate. (Emphasis supplied)

According to Ong, the determination of whether a witness testifies falsely or evasively is an evidentiary matter that is within the power of the courts to resolve. He further assails the rules for being vague, there being no clear standards on what constitutes "testifying falsely or evasively," which is entirely within the discretion of the Senate Blue Ribbon Committee to determine.[9]

The *ponencia* acknowledges the Legislature's power of contempt corollary to its authority to conduct inquiries in aid of legislation, as well as its concomitant power to arrest contumacious witnesses. It likewise finds the argument of Ong untenable and rules that the phrase "testifies falsely or evasively" is sufficiently clear and understandable by any person of common knowledge or intelligence.[10]

However, the *ponencia* nonetheless holds that Yang's "inconsistent or incomplete answers in the course of his testimony does not conclusively establish that x x x [there was] *refusal or unwillingness to testify*."[11] The *ponencia* further rules that the Senate Blue Ribbon Committee failed to accord petitioners with due process consistent with the safeguards in criminal proceedings. Accordingly, the *ponencia* rules that the Senate Blue Ribbon

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8 SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION (August 21, 1995), as amended by Resolution No. 145-13 (adopted on February 6, 2013).

9 *Ponencia*, pp. 9, 43-44.

10 Id. at 14-17, 42-46.

11 Id. at 41.

Committee gravely abused its discretion in citing petitioners in contempt and ordering their arrest without an opportunity to be heard.[12]

I respectfully submit this Opinion to register my concurrence and dissent with the *ponencia*.

In particular, I concur with the finding that the phrase "testifies falsely or evasively" does not suffer the vice of vagueness. However, I dissent as to the ruling that the September 10, 2021 Order citing petitioners in contempt should be nullified.

The inherent contempt power of the Legislature, or in this case, the Senate, rests on the principle of self-preservation. As a mechanism for compulsion, its contempt power is integral to conducting inquiries in aid of legislation, which, in turn, is vital to its exercise of its core functions — to legislate policies wisely and effectively.[13] Thus, I respectfully submit that its findings of contempt, particularly whether a witness committed a contumacious act, should be accorded respect by the Court.

As well, witnesses or resource persons invited to attend legislative investigations are reasonably expected not only to be present during the hearing, but to provide accurate and correct information. Viewed through this lens, a witness who "testifies falsely or evasively" may be penalized by the Senate pursuant to its contempt power as this essentially amounts to the obstruction of its legislative functions. Indeed, the phrase "testifies falsely or evasively" can hardly be construed as unclear or ambiguous, especially when read in relation to the entire purpose of a legislative inquiry.

I.

In the early case of *Arnault v. Balagtas*[14] (*Balagtas*), the Court acknowledged that the Legislature's exercise of its power of contempt is auxiliary to its power to conduct inquiries in aid of legislation. As a necessary consequence of its legislative functions, the broad prerogative of the Legislature in wielding this power was recognized by the Court:

> There is an inherent fundamental error in the course of action that the lower court followed. It assumed that courts have the right to review the findings of legislative bodies in the exercise of the prerogative of legislation, or interfere with their proceedings or their discretion in what is known as the legislative process.
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> The courts avoid encroachment upon the legislature in its exercise of departmental discretion in the means used to accomplish legitimate legislative ends. Since the legislature is given a large discretion in reference to the

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12 Id. at 41-43.

13 *Lopez v. De los Reyes*, 55 Phil. 170, 184 (1930); *Arnault v. Nazareno*, 87 Phil. 29, 45 (1950); *Arnault v. Balagtas*, 97 Phil. 358, 370-371 (1955); *Balag v. Senate of the Philippines*, 835 Phil. 451, 466-467 (2018).

14 Id.

> means it may employ to promote the general welfare, and alone may judge what means are necessary and appropriate to accomplish an end which the Constitution makes legitimate, the courts cannot undertake to decide whether the means adopted by the legislature are the only means or even the best means possible to attain the end sought, for such course would best the exercise of the police power of the state in the judicial department. It has been said that the methods, regulations, and restrictions to be imposed to attain results consistent with the public welfare are purely of legislative cognizance, and the determination of the legislature is final, except when so arbitrary as to be violative of the constitutional rights of the citizen. Furthermore, in the absence of a clear violation of a constitutional inhibition, the courts should assume that legislative discretion has been properly exercised. (11 Am. Jur., pp. 901-902)
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> These the judicial department of the government has no right or power or authority to do, much in the same manner that the legislative department may not invade the judicial realm in the ascertainment of truth and in the application and interpretation of the law, in what is known as the judicial process, because that would be in direct conflict with the fundamental principle of separation of powers established by the Constitution. The only instances when judicial intervention may lawfully be [invoked] are when there has been a violation of a constitutional inhibition, or when there has been an arbitrary exercise of the legislative discretion.[15]

While *Balagtas* was decided prior to the expansion of the Court's power of judicial review under the 1987 Constitution, the Court recognized that it may review the exercise of the contempt power "when there has been a violation of a constitutional inhibition, or when there has been an arbitrary exercise of the legislative discretion."[16] Thus, it nonetheless passed upon the extent of the Senate's contempt power by determining whether the person cited in contempt was accorded due process.

In the much more recent case of *Balag v. Senate of the Philippines*[17] (*Balag*), the Court ruled on the duration of detention for persons cited by the Senate in contempt. On one hand, the Court recognized that the rights of persons appearing in legislative inquiries must be respected, and on the other, it emphasized the significant role of the Senate's inherent power of contempt in the effective discharge of its legislative functions. For this purpose, the Court held that there should be a balance between the interests of the Senate and the rights of persons cited in contempt.[18]

Verily, there is no question that the Court may pass upon the issues raised in the petition, there being an allegation of grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the Senate for ordering the arrest and detention of petitioners. As in *Balag*, the Court is once

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15 Id. at 365-366.
16 Id. at 365.
17 Supra note 13.
18 Id. at 470-471.

again tasked with the onerous duty of having to strike a balance between the rights of persons appearing in legislative inquiries and the inherent contempt power of a co-equal branch.

II.

The power of Congress to conduct inquiries in aid of legislation is essential to its legislative function. This enables the Legislature to obtain information for potential legislation and ensures that policies are not mere guesswork. The significance of the power of Congress to conduct inquiries in aid of legislation was particularly highlighted in *Sabio v. Gordon*,[19] where the Court held that **the breadth of the power to conduct legislative inquiries is as wide as its legislative power**:[20]

> Dispelling any doubt as to the Philippine Congress' power of inquiry, provisions on such power made their maiden appearance in Article VIII, Section 12 of the 1973 Constitution. Then came the 1987 Constitution incorporating the present Article VI, Section 12. What was therefore implicit under the 1935 Constitution, as influenced by American jurisprudence, became explicit under the 1973 and 1987 Constitutions.
>
> Notably, the 1987 Constitution recognizes the power of investigation, not just of Congress, but also of "any of its committee." This is significant because it constitutes a direct conferral of investigatory power upon the committees and it means that the mechanisms which the Houses can take in order to effectively perform their investigative function are also available to the committees.
>
> **It can be said that the Congress' power of inquiry has gained more solid existence and expansive construal.** The Court's high regard to such power is rendered more evident in *Senate v. Ermita*, where it categorically ruled that "the power of inquiry is broad enough to cover officials of the executive branch." Verily, the Court reinforced the doctrine in [*Nazareno*] that "the operation of government, being a legitimate subject for legislation, is a proper subject for investigation" and that "**the power of inquiry is co-extensive with the power to legislate.**"[21] (Emphasis supplied)

In fine, the power to punish for contempt is inextricably linked to the power of inquiry of Congress. The contempt power is conferred to Congress "as a means of preserving its authority and dignity in the same way that courts wield an inherent power to 'enforce their authority, preserve their integrity, maintain their dignity, and ensure the effectiveness of the administration of justice.'"[22] Thus, while there is no explicit constitutional grant of the power of contempt, its critical role in enforcing the authority of Congress to conduct legislative inquiries is well-entrenched.

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19 535 Phil. 687 (2006).

20 Id. at 705, citing *Senate of the Phils. v. Ermita*, 522 Phil. 1 (2006).

21 Id. at 704-705.

22 *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*, 239 Phil. 403, 409-410 (1987). Citations omitted.

As far back as 1950, in *Arnault v. Nazareno*[23] (*Nazareno*), the Court stated:

> Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry — **with process to enforce it** — is an essential and appropriate auxiliary to the legislative function. **A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations [are] intended to affect or change; and where the legislative body does not itself possess the requisite information — which is not frequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.** (McGrain *vs.* Daugherty, 273 U.S., 135; 71 L. ed., 580; 50 A. L. R., 1.) The fact that the Constitution expressly hives to congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person. (Anderson *vs.* Dunn, 6 Wheaton. 204; 5 L ed., 242.)[24] (Emphasis and underscoring supplied)

The Court then expounded in *Balagtas* that the contempt power is essential to the legislative function to "require and compel the disclosure of x x x knowledge and information [on which to base intended legislation]."[25] Simply put, the contempt power of Congress, for all intents and purposes, effectuates its legislative function.

As an integral aspect of the functions of a co-equal branch, the Court's review of its contempt power must be in line with the constitutional limitations to the conduct of legislative investigations, namely: (1) the power must be exercised in aid of legislation; (2) it must be in accordance with the duly published rules of procedure; and (3) the rights of persons appearing in or affected by such inquiries shall be respected.[26]

Here, the *ponencia* does not take any issue with the first two limitations. As to the third limitation, however, the *ponencia* holds that the Senate Blue Ribbon Committee failed to accord due process to petitioners prior to citing them in contempt.[27] It further rules that the finding of contempt "lacks factual basis," as petitioners cannot be held in contempt for testifying evasively solely on the basis of the testimony given during the hearing of September 10,

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23 Supra note 13.

24 Id. This was reiterated in *Balag v. Senate of the Philippines*, supra note 13, at 470:

> x x x A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change. Mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed through the power of contempt during legislative inquiry.

25 *Arnault v. Balagtas*, supra note 13, at 370.

26 CONSTITUTION, Art. VI, Sec. 21.

27 *Ponencia*, pp. 43.

2021.[28] Thus, the *ponencia* nullifies the Senate Blue Ribbon Committee's Order dated September 10, 2021 on these grounds.

With due respect, I dissent.

A careful review of the records reveals that petitioners were unable to establish a capricious and whimsical exercise of discretion on the part of the Senate Blue Ribbon Committee. The pertinent portions of the September 10, 2021 Transcript of Stenographic Notes[29] (TSN) patently show that Ong's responses to the questions concerning Yang's participation in the supply contracts were far from ideal. Senator Lacson repeated the question to Ong several times, giving him opportunities to grasp the matters being inquired upon. Ong, however, answered in a roundabout manner that largely avoided providing definite and concrete responses to the members of the Senate Blue Ribbon Committee, and in the main, denied any firm recollection of the transactions of his company.[30]

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[28] Id. 41.

[29] Quoted in the *ponencia*, pp. 26-35.

[30] In brief, the pertinent portions of their testimony, as cited in the *ponencia* (pp. 26-30), are as follows:

SEN. LACSON. Iyon lang ang role niya, hindi na siya nakialam pagkatapos ka maipakilala sa mga suppliers?
MR. ONG. I am not privy what's their discussion, pero may ipinapakilala talaga siya. Kung ano iyong discussion nila, hindi ko alam.
SEN. LACSON. Hindi maliwanag, ano? Okay.
Ang sabi ni Mr. Yang, ang role niya lang ipinakilala sa iyo iyong mga tao sa China na kakilala niya. Pagktapos, wala na siyang kinalaman, ikaw na lahat ang nakipag-deal doon sa mga suppliers. Is that true?
MR. ONG. Mr. Chair, nakikipag-usap talaga kami isa mga supplier na ipinakilala niya. Yes po.
SEN. LACSON. Hindi. Ang tinatanong ko, wala na ba siyang kinalaman? Umalis na siya, kayo na lang ang nagtuloy-tuloy na nagusap at hindi na nakialam si Mr. Yang?
MR. ONG. Hindi ko—well, paano itong hindi—
SEN. LACSON. Iyong diretsong sagot lang, Mr. Linconn.
MR. ONG. Sige po, Mr. Chairman. Ano po ulit iyong tanong ninyo para maintindihan ko nang maayos at masagot ko nang maayos?
SEN. LACSON. Ganito ang flow. Sabi ni Mr. Yang, ang papel lang niya, ipinakilala ka sa apat na suppliers from China...
MR. ONG. Opo, opo.
SEN. LACSON. ...at wala na siyang ginawang iba pa. Ikaw na lahat ang nagpatuloy kung papaano makipagtransaksyon, kung papaano tumanggap ng supplies at makipag-deal doon sa mga suppliers na sinasabi niyang pinakilala lamang sa iyo.
MR. ONG. In addition to that, Mr. Chair, he also guarantees for us. Nagga-guarantee sila para sa amin kasi totoo po iyong analysis ni Mr. Chairman na medyo challenging talaga pagdating sa financial.
x x x x
SEN. LACSON. **So, hindi totoo na pinakilala ka lang at tapos na. Tuloy-tuloy ang kanyang participation by way of continuously guaranteeing sa mga suppliers na babayaran sila.** Parang utang. Sabihin na natin na credit.
x x x x
SEN. LACSON. Do you have documents to show your proof of payment doon sa mga suppliers?
MR. ONG. **We have all those documents as long as it's--wala naman pong rights or -- maba-violate sa amin, we are more than willing to cooperate.**
SEN. LACSON. Okay. How much in total did you pay the four suppliers. Doon sa mga dumating, iyong na-procure ninyo and supplied to the PS-DBM, magkano iyong binayaran ninyo sa mga suppliers?
MR. ONG. **Mr. Chairman, wala po kasi sa amin iyong mga -- sa akin, wala talaga sa akin ang record. I think I have to access our accounting records.**
x x x x

Yang, for his part, was asked how he became involved with Pharmally. Despite having the benefit of an interpreter to translate the questions in the language he understands, Yang provided inconsistent answers — initially denying any involvement, but subsequently revealing, in piecemeal answers, that he introduced Ong to the suppliers of face masks and protective equipment.[31]

The *ponencia* maintains, however, that the evasiveness of the witnesses "could not have been made on the basis of [their testimonies] given in the hearing of September 10, 2021 alone."[32] With due respect, this finding glosses over the undisputed fact that petitioners, despite duly issued subpoenas of the Senate Blue Ribbon Committee, refused to, as they did not, appear in the hearings scheduled before the September 10, 2021 hearing. To be sure, the records bear out that petitioners complied with the subpoenas **only after** the Order dated September 7, 2021 was issued, citing them in contempt and directing their arrest and detention.

Stated simply, it is in the context of these factual antecedents, that the Senate Blue Ribbon Committee made its appreciation of petitioners' testimonies as being "evasive."

To be sure, the initial refusal of petitioners to follow the subpoena and appear during the prior hearings, taken together with their purposeful stonewalling during the hearing of September 10, 2021, totally negates any allegation of capriciousness on the part of the Senate Blue Ribbon Committee.

This conclusion may have been different had the members of the Senate Blue Ribbon Committee cited them both in contempt and ordered their arrest at the first instance that they answered the queries, instead of allowing petitioners several chances to provide a clear answer. But that is not what happened here. The Senate Blue Ribbon Committee in fact gave Ong several

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SEN. LACSON. Mr. Linconn Ong x x x did you have any document...mayroon kayong parang joint venture agreement with Mr. Yang?
MR. ONG. We do have agreement po.
SEN. LACSON. Yes. Do you have a copy of that agreement?
MR. ONG. I don't have it with me, Mr. Chairman.
SEN. LACSON. What kind of agreement do you have with Mr. Yang?
MR. ONG. **Hindi ko po talaga maalala noong, noong mga—specific content na iyan, Mr. Chairman, bnt sana po maintindihan ninyo na kami po, sa community naming minsan—totoo po iyan. Pagka-minsan may mga transaksiyon kami na minsan verbal-verbal talaga negosyante lang po.**
SEN. LACSON. No. But in this particular case, iyong supplies ng mga PPEs, sinabi mo, mayroon kayong pinirmahan na agreement with Mr. Yang. Ang tanong ko, anong klaseng agreement? Anong klase iyong pinirmahan ninyong dokumento? Anong form? Is it a joint venture agreement?
x x x x
MR. ONG. **Mr. Chairman, I'm not really privy or hindi ko talaga ma-recall ngayon kung ano iyong content, but we have—we do have kasulatan po.**
SEN. LACSON. A very important document, hindi mo matandaan kung anong form? Joint venture ba? Contract ba? Hindi mo man lang maalala kung ano iyon?
MR. ONG. **Mayroon po talagang ganoon.** (Emphasis supplied)

31 Id. at 35-40.

32 Id. at 40.

opportunities to provide a direct answer to the questions propounded by its members, not only during the September 10, 2021 hearing but in the subsequent proceedings thereafter. In the September 13, 2021 proceedings of the Senate Blue Ribbon Committee, Ong adamantly refused to testify as to the cost of the surgical masks that Pharmally obtained from its supplier, providing the cost only after painstaking requests and pleas from various members of the Senate Blue Ribbon Committee:

> THE CHAIRPERSON. Bakit ba lumilihis ka?
>
> MR. ONG. Sige po.
>
> THE CHAIRPERSON. Anong sige po? Hindi mo pa sinasagot anong pangalan. Iyan ang mahirap, pag nagsisinungaling, nagkakalubak-lubak ka.
>
> MR. ONG. Hindi po ako nagsisinungaling, Mr. Chair. Ang tawag po naming doon sa —
>
> THE CHAIRPERSON. Huwag mong sagutin iyon. Sinasabi ko lang iyon dahil iyon ang impression ko. Ilang araw mo na kaming pinapasyal. Ito ano, anong pangalan?
>
> MR. ONG. **Ang tawag ko po doon sa pangalan ng supplier ay si "Brother Tiger." Mayroon po siyang Chinese name. I have to confirm it.**
>
> x x x x
>
> THE CHAIRPERSON. Okay, sige, ipasyal mo kami. Sasagot ako sa iyo. Sige. Magkano ang binayad mo sa kanya? Sabi sa iyo…kayo diyan.
>
> MR. ONG. **Mr. Chairman, trade secret po iyon, baka po puwedeng —**
>
> THE CHAIRPERSON. No, no, walang secret dito. Corruption investigation ito.
>
> MR. ONG. **Costing po kasi namin iyon, Mr. Chairman.**
>
> x x x x
>
> SEN. DRILON. **Mayroon silang seven billion na cost of sales. So hindi talaga secret ito dahil dine-declare nila sa finanacial statement nila, "Cost of sales, seven billion." Kasama diyan iyong binayad siguro doon sa 500,000. So kalokohan iyong sinasabi ni Mr. Ong na trade secret.**
>
> THE CHAIRPERSON. **Magkano ba ang halaga ng ibabayad mo dapat?**
>
> MR. ONG. **I'm sorry, Mr. Chair. I'm really sorry.**
>
> x x x x

SEN. DELA ROSA. **Bakit takot kang sabihin kung ano iyong tinatanong ni Senator Gordon na—Bakit mahiya kang malaman ng taongbayan kung magkano ang kinita mo?** Hindi naman illegal iyong kumita ka dahil negosyante ka, bakit ayaw mong sabihin kung magkanong ibiniyad mo kay—iyong sabi mong Brother Tiger? Para hindi magduda ang taongbayan sa hearing na ito na mayoroon kang tinatago, sabihin mo kung magkanong ibinayad mo at magkano ang kinita mo. Bakit illegal ba iyong kumita? You're a businessman, kikita ka diyan, basta hindi ka lang—hindi lang nagkakaroon ng ghost delivery. Tatanungin kita tungkol sa ghost delivery, ghost delivery ba ito o hindi?

MR. ONG. Hindi po, Mr. Chairman.

x x x x

SEN. DELA ROSA. **Magsalita ka kung ano iyong tinatanong ng Chairman natin. Sabihin mo kung magkano ang kinita mo, wala namang problema diyan dahil negosyo ito.**

x x x x

SEN. RECTO. Thank you very much.

Material iyong tanong ng ating Chairman kung magkanong binayaran mo sa supplier in the same month may local na kompanya na nag-supply at P13. Okay. Ito ang supply ninyo, ang presyo, bente-siyete. Ang local supplier, 13.50. Okay. Kaya palagay ko kung mayroon kayo—sabi nga, negosyo naman ito, sabi nga ni Senator Bato, puwede mo bang sagutin kung magkano nga naman ang binayaran ninyo doon sa Tiger for the supply?

MR. ONG. Opo, Mr. Chairman. Opo, Mr. Chairman. Ang naalala ko po, mga nasa P23 po.[33] (Emphasis supplied)

In the succeeding hearing, or on September 21, 2021, it was established by direct reference to the invoice that the cost provided by Ong was actually inaccurate:

THE CHAIRPERSON. And Mr. Linconn Ong, when you got that, how much did you sell it to—you were quoted 27.35, right?—27.72. So, you made a profit of how much? Twenty-seven minus 11.

MR. L. ONG. Mr. Chariman, hindi ko po—

THE CHAIRPERSON. Answer my question, 27.72 minus [11.95]?

MR. L. ONG. Mr. Chairman, hindi po 11. Paki-clarify ulit kay Mr. Ke.

THE CHAIRPERSON. **Ayan ang resibo. Tingnan mo nasa papel mo—nasa harap mo.**

MR. L. ONG. **Ano po?**

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[33] *Rollo* (G.R. No. 257401), Vol. 1, pp. 415-418, Comment of the Senate Blue Ribbon Committee quoting Annex "19," TSN for the September 13, 2021 Hearing, *rollo* (G.R. No. 257401) Vol. 2, pp. 889-897.

> THE CHAIRPERSON. Iyan ang mga resibo. Controlling document, iyan o.
>
> MR. L. ONG. [27.72] po ang presyo namin sa gobyerno.
>
> THE CHAIRPERSON. Pinatungan mo iyong [11.95] at ibinenta mo ng ₱27.72, correct?
>
> MR. L. ONG. I think iyong cost po namin, 23.
>
> THE CHAIRPERSON. **Alam mo iyan ang mahirap sa nagsisingunaling. Na-confront ka na ng papel, nakalagay kung magkano. So, kumita ka nang malaki diyan. Correct?**
>
> MR. L. ONG. **Mr. Chairman, pwede ba, please lang, paki-tanong ulit si TigerPhil nang maayos.**
>
> THE CHAIRPERSON. **I think the document speaks for itself. Sinasabi mo 23, pero we have documents to show that you got it for [11.95]. Iyan ang nakalagay, "Sold to Pharmally." Nakikita mo ba? Basahin mo iyong dokumento, nasa harap mo.**
>
> MR. L. ONG. **Hindi ko po makita.**[34] (Emphasis supplied)

In the September 24, 2021 hearing, several members of the Senate Blue Ribbon Committee moved to transfer the custody of Ong to a City Jail or the New Bilibid Prison. The Chairperson did not immediately approve the motion. Instead, Ong was granted the option of providing information and documents in an executive session, with another member of the Senate Blue Ribbon Committee floating the idea of having him admitted into the witness protection program.[35]

On the other hand, except for the September 21 and 24, 2021 hearings,[36] Yang no longer appeared in the hearings following the September 10, 2021 inquiry. This constrained the Senate Blue Ribbon Committee to ask Yang to submit several documents, which were pertinent to the legislative inquiry.[37] The requests were made on two separate occasions, *i.e.*, on October 29, 2021 and on November 9, 2021. He did not comply with either request.[38]

Based on the foregoing, petitioners were clearly not deprived of due process. Ong, in particular, was not arrested until September 21, 2021, or 11

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34 *Rollo* (G.R. No. 257401), Vol. 1, p. 432, Comment of the Senate Blue Ribbon Committee quoting Annex "20," TSN for the September 17, 2021 hearing, *rollo* (G.R. No. 257401) Vol. 2, pp. 957-959.

35 Id. at 437-439, Comment of the Senate Blue Ribbon Committee quoting Annex "22," TSN for the September 24, 2021 hearing, *rollo* (G.R. No. 257401) Vol. 2, pp. 981-986.

36 *Rollo* (G.R. No. 257916) Vol. 2, p. 511, Comment of the Senate Blue Ribbon Committee quoting Annex "16," TSN for the September 13, 2021 hearing, (id. at 923); See *rollo* (G.R. No. 257401) Vol. 2, p. 945, Annex "21," TSN for the September 21, 2021 hearing; and p. 967, Annex "22," TSN for the September 24, 2021 hearing.

37 *Ponencia*, p. 8.

38 *Rollo* (G.R. No. 257916), Vol. 2, pp. 514-515, Comment of the Senate Blue Ribbon Committee.

days after the issuance of the assailed Order.[39] He was detained at the Senate premises and later on transferred to the Pasay City Jail on November 29, 2021.[40] Yang, meanwhile, evaded arrest. During the intervening period, petitioners were granted numerous chances to answer directly or provide the relevant information to the Court, but due to their continued evasion of the questions of the Senate Blue Ribbon Committee, their contempt citation remained.

At this juncture, it is important to emphasize that the contempt power of the Legislature is *sui generis*.[41] It is distinct from a criminal prosecution of an accused charged with false testimony or perjury because, again, a witness penalized for testifying falsely or evasively may still purge themselves of contempt once they are willing to comply with their obligation to provide truthful and accurate testimony. Ultimately, maintaining good order and obtaining accurate information is at the core of the inherent contempt power of Congress.

Surely, contumacy should not be confined to merely refusing to attend a legislative hearing, to produce required documents, or to answer questions propounded during the inquiry. **The witness may be present but if he or she provides circuitous or unresponsive answers to reasonable queries from the members of Congress, Congress should be able to resort to its coercive power by penalizing the witness for his or her uncooperative behavior. Willful refusal to provide information within the witness' knowledge, and in response to queries pertinent to the subject of the inquiry, is tantamount to a refusal to testify.** Citing that witness in contempt is not any less coercive in nature, even when, as in this case, it was brought about by the exasperation of the members of the Senate Blue Ribbon Committee with the roundabout answers of the witnesses.

Hence, the due process requirement in a criminal proceeding, which the *ponencia* argues should apply in this case, may not necessarily be observed. In the final analysis, the citation of petitioners in contempt, and the Order for their arrest, were for purposes of compelling their attendance and testimony in the legislative inquiry. That this Order was issued to likewise penalize petitioners for testifying falsely or evasively does not make it any less coercive in nature.

Furthermore, as mentioned earlier, the Court, in *Balag*, recognized that it must balance the interests of the Legislature with the rights of persons found to be contumacious during its legislative inquiries. I submit, however, that the Court's balancing of interests does not authorize it to intervene in matters of policy — as to how and when Congress should cite witnesses in contempt. These are matters within the discretion of Congress, as its contempt power is

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39 *Rollo* (G.R. No. 257401), Vol. 1, p. 412. Annex "18," Post-Operation Report of the Office of the Sergeant-at-Arms dated September 21, 2023.

40 *Ponencia*, p. 7.

41 *Negros Oriental II Electric Cooperative, Inc.*, supra note 22, at 412.

attached to the "sovereign character of the legislature as one of the three independent and coordinate branches of government."[42]

At any rate, the Court also held in *Balag* that "[t]he balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation."[43] Here, it is apparent from the records that the due process rights of petitioners were observed, and the Senate Blue Ribbon Committee's inquiry as to the pandemic expenditures was adversely affected by their refusal to testify in a straightforward manner. Thus, to my mind, the Court is not in the position to confine Congress' exercise of its contempt power by reviewing whether the conduct is actually contumacious, and imposing the appropriate procedure for citing a witness in contempt.

In all, the *ponencia* substantially erodes the Senate's inherent contempt power by imposing the Court's own appreciation of the testimonies of petitioners. The members of the Senate Blue Ribbon Committee, and not the members of this Court, were the ones able to observe firsthand the deportment and demeanor of petitioners. The Senate Blue Ribbon Committee is therefore in a better position — better than the Court — to assess the forthrightness of the witnesses in answering the queries. Its finding of contempt should be accorded great weight and respect. The Court certainly cannot substitute its own judgment unless there is a clear showing of grave abuse of discretion, which is glaringly absent in this case.

III.

The review of the contempt power of Congress should be directed to its observation of the constitutional limits to its power of inquiry — that is, ensuring that the constitutional rights of the persons appearing before a legislative inquiry of the Senate are protected.[44] In this regard, it is relevant to consider Ong's argument that the phrase "testifies falsely or evasively" is ambiguous, thus violating his right to due process. The *ponencia* found Ong's arguments unmeritorious and upheld the validity of the assailed Senate Rules of Procedure on Inquiries and the Rules of the Senate Blue Ribbon Committee.[45]

I concur. The phrase "testifies falsely or evasively" has a straightforward meaning; it is neither vague nor ambiguous. I respectfully expound on the *ponencia*'s disquisition on this matter, in order to emphasize the significance of the Legislature's contempt power.

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42 *Standard Chartered Bank v. Senate Committee on Banks, Financial Institutions and Currencies*, 565 Phil. 744, 761 (2007).

43 *Balag v. Senate of the Philippines*, supra note 13, at 471.

44 CONSTITUTION, Art. VI, Sec. 21.

45 *Ponencia*, pp. 45-46.

A statute or regulation suffers from the vice of vagueness if it fails to provide "fair notice" of the prescribed or prohibited conduct. A vague statute or regulation is thus deemed primarily offensive to the right to due process because persons are not apprised of what conduct to avoid, and law enforcers are granted unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle.[46] The Court's ruling in *People v. Dela Piedra*[47] is enlightening in this regard:

> Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what **conduct** on their part will render them liable to its penalties. A criminal statute that "**fails to give a person of ordinary intelligence fair notice that his[/her] contemplated conduct is forbidden by the statute,**" or is so indefinite that "**it encourages arbitrary and erratic arrests and convictions,**" is void for vagueness. **The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him[/her] on trial for an offense, the nature of which he[/she] is given no fair warning.**[48] (Emphasis and underscoring supplied)

Aside from the recognition that the inherent contempt power of Congress is critical to its exercise of its legislative powers, the Court, in *Nazareno*, held that the contempt power of the Senate may be exercised only as against persons or witnesses whose testimonies are required for a matter over which it has jurisdiction to inquire. Further, the question that the witness is required to answer must be pertinent to the subject matter of the legislative inquiry:

> Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, we think the investigating committee has the power to require a witness to answer any question pertinent to that inquiry, subject of course to his [or her] constitutional right against self-incrimination. **The inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate, or to expel a Member; and every question which the investigator is empowered to coerce a witness to answer must be material or pertinent to the subject of the inquiry or investigation.** So a witness may not be coerced to answer a question that obviously has no relation to the subject of the inquiry. But from this it does not follow that every question that may be propounded to a witness must be material to any proposed or possible legislation. In other words, the materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The reason is, that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question.[49] (Emphasis supplied)

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46 Dissenting Opinion of Associate Justice Dante O. Tinga in *Spouses Romualdez v. COMELEC*, 576 Phil. 357, 430 (2008).

47 403 Phil. 31 (2001).

48 Id. at 47-48.

49 *Arnault v. Nazareno*, supra note 13, at 48.

Here, an examination of the assailed Senate Rules of Procedure on Inquiries and the Rules of the Senate Blue Ribbon Committee would reveal that both Rules refer to a "proper question" of the Senate Blue Ribbon Committee or its members, in relation to the contumacious refusal of a witness to answer. In order to be contumacious, the witness must refuse to testify or answer a proper question, or when testifying, must testify falsely or evasively. Such "proper question" thus circumscribes the discretion granted to the Senate or the Senate Blue Ribbon Committee as it may not compel witnesses under the pain of contempt to answer queries that are not relevant to, or outside the scope of the legislative inquiry.

In the same manner, the assailed Rules are not lacking in parameters on what constitutes a false or evasive testimony. As may be gleaned from the relevant provisions of the Senate Rules of Procedure on Inquiries and the Rules of the Senate Blue Ribbon Committee, the meaning of the phrase "testifies falsely or evasively" may be inferred from the other acts that constitute contempt, **all of which illustrate a patent refusal or disobedience to the lawful processes of the Senate or the Senate Blue Ribbon Committee**: (1) disobeying any order; (2) refusing to be sworn or to testify or to answer a proper question; and (3) unduly refusing to appear or bring before the Senate Blue Ribbon Committee certain documents or evidence notwithstanding the issuance of the appropriate subpoena therefor. From these acts, it may be reasonably inferred that the phrase "testifies falsely or evasively" is meant to cover situations where a witness does not refuse outright to answer the question propounded by the Senate Blue Ribbon Committee or its members but provides a false answer or a non-answer **that is tantamount to a refusal to testify**. Such testimony, taking into consideration the purpose for the inherent contempt power of the Senate, must be of such character that is disruptive to the orderly administration of its legislative functions.

The falsity of the testimony or the evasiveness of the witness may also be inferred from the answers and demeanor of the witness sought to be punished with contempt. On this point, *Nazareno* is, again, enlightening:

> **"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."** (12 Am. Jur., sec. 15, Contempt, pp. 399-400.) In the case of Mason *vs.* U. S., 61 L. ed., 1198, it appears that Mason was called to testify before a grand jury engaged in investigating a charge of gambling against six other men. After stating that he was sitting at a table with said men when they were arrested, he refused to answer two questions, claiming so to do might tend to incriminate him: (1) "Was there a game of cards being played on this particular evening at the table at which you were sitting?" (2) "Was there a game of cards being played at another table at this time?" The foreman of the grand jury reported the matter to the judge, who ruled "that each and all of said questions are proper and that the answers thereto would not tend to incriminate the witnesses." Mason was again called and he refused to answer the first question propounded to him, but, **half yielding to frustration, he said in response to the second**

> **question: "I don't know."** In affirming the conviction for contempt, the Supreme Court of the United States among other things said:
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> > In the present case the witnesses certainly were not relieved from answering merely because they declared that so to do might incriminate them. **The wisdom of the rule in this regard is well illustrated by the enforced answer, "I don't know," given by Mason to the second question, after he had refused to reply under a claim of constitutional privilege.**[50] (Emphasis supplied)

Furthermore, the import of the phrase "testifying falsely or evasively" may be understood by referring to the general meaning and acceptation of the words *false* and *evasive*. A witness is testifying falsely if he or she knowingly provides incorrect or untrue statements with intent to deceive or mislead.

A witness called to attend legislative hearings and to testify as to matters of fact, is required to swear an oath or to give such testimony under affirmation to tell the truth.[51] The assailed provisions of the Rules further provide that "[s]uch 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."[52] The foregoing language of the Rules therefore sufficiently warns the witnesses appearing in legislative hearings of the conduct expected from them, and the corresponding consequence for contumacy.

In the same manner, neither can it be argued that the language of the challenged Rules has a chilling effect on speech.[53] Being enjoined to be present when required, to produce the requested documents, and to give clear answers to questions — questions which should be pertinent to the subject of the inquiry — should not be equated to a chilling effect that censors certain forms or subject matters of expression. Again, the Court should bear in mind that the underlying principle behind the inherent contempt power of Congress is to effectuate its power of inquiry. Hence, the phrase "testifies falsely or evasively" only emphasizes the coercive nature of the contempt power in order to obtain accurate and truthful information from the witnesses appearing therein.

All told, the inherent power of contempt being assailed here is inextricably linked to the constitutional mandate of the legislature, which is to draft policies that have far-reaching implications to the public, **and, in this particular case, the magnitude of the matter being investigated should not be lost on the Court — the billions of public funds spent on the pandemic response**. This subject matter bears heavily on the government

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50 Id. at 65.

51 SENATE RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, Sec. 12.

52 Id. at Sec. 18(a); *See also* RULES OF THE SENATE BLUE RIBBON COMMITTEE, Sec 6.

53 Separate Opinion of Senior Associate Justice Marvic M.V.F. Leonen.

appropriations, the preparation of which is solely vested in Congress. Thus, the Court should not hastily rule in a manner that erodes the authority of a co-equal branch; rather, it should exercise prudence in reviewing the exercise thereof by taking conscious consideration of the public interest involved.[54]

Based on these premises, I **VOTE** to **DISMISS** the petitions.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY

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

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[54] See *Balag v. Senate of the Philippines*, supra note 13, at 471:

> Thus, the Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. **The balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.** These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other. (Emphasis supplied)