LAW *opinion*

Friends or foes: The press and the courts

ATTORNEY PABLITO A PEREZ

A lawyer, like a dentist, is the last person you want to see in this life. Until you have a toothache. Until you find yourself facing arrest. Then courts and lawyers become necessary parts of media life. At best, the relation between these two institutions is described in this manner: good fences make good neighbours. As long as media and the courts stay within their respective spheres, no conflict arises between them. Unfortunately, this fence that divides these two institutions is often breached, and between the press and the courts, the courts will always have final say about what the law is, what rights have been infringed and what remedies are justified.

There are certain basic premises that give rise to this conflicted situation.

First, the judiciary's power to interpret the legal order necessarily limits and restricts directly or indirectly what the press can do within the bounds of law -- the extent of the access right to news sources, the extent of media's newsgathering rights, the disclosure of information, and the right to publish when other rights are involved. There is no question that "...the press must comply with laws of general application even if their enforcement has incidental effects on its ability to gather and report news...."

Second, the judiciary as arbiter of disputes finds itself protecting non-media parties from media parties. Such a role has not been more pronounced than now, when the press has been getting a "bad press." As in any dispute, the offended party looks to the court for retribution and indemnification, especially against an abusive press or a media that has gone out of ethical control. In cases where private offended parties find no other recourse, the courts become the forum to teach the press a lesson.

Third, the courts do not consider media as a special person who is entitled to any preferential treatment. The judicial ideal of impartiality requires that the court view every litigant as equal in all respects, both as to rights and as to their obligations to each other. Before the courts, the press is just another litigant who has the same rights and duties under the law as any other person. The constitutional preference for the press hardly impresses a trial court hearing a private injury claim. As one Philippine Supreme Court Justice said, "It is for the poet and the politician to pen beautiful paeans to the people's rights and liberties, it is for this Court to provide viable legal means to enforce and safeguard these rights and liberties."

Finally, the great institutions of the judiciary and the press are driven by a different set of values and principles. Generally, these values are equally valid and compelling; yet, in an adversarial conflict, the courts cannot declare a draw but is driven by its dispute-resolution function to choose which value will be promoted.

Press and courts are driven by different values

The greatness of an institution flows from the values and principles that animate its actions and proceedings. It is true with the press; it is true with the courts.

The courts in every known jurisdiction have shared the same set of values which happen to be diametrically oppose to the values that make the press a great social institution. An understanding of these distinct values will help the media understand how more productively it can relate to the judiciary.

The first of these conflicted values is the value of immediacy that makes news valuable as against the deliberate, calculated and slow requirement of due process. These values are most conflicted where the right of publication and public disclosure is challenged on the ground of national security, a rational fear of horrendous consequence or a privacy claim. Generally, the question that the courts are asked to resolve is whether the press will be allowed to publish considering the contrary claims that on their face justify an immediate restraint on publication. Such an issue is not easily resolved and the judicial process that will weight the conflicting claims of the plaintiff, or the parties who bring the action, and the press who desires to publish, may not be hastened or short-cut to accommodate the publishing dateline. Worse, while the court take their the time to receive evidence and make a ruling demanded by due process, the mere delay in the publication itself lessens the value and effectiveness of the news. In such cases, [T]he result is a loss in the immediacy of speech, and in some cases, an accompanying loss in its value". Even if in the end the injunction is denied or set aside, "... the risk that an injunction against speech, even though ultimately invalidated, will so delay publication as to make speech untimely and hence valueless for the purpose."

Second, despite the oft-repeated claim that "experience is the life of the law", the courts exist to defend the status quo. While the press are molded to afflict the comfortable and to change the impossible, the courts recognise their role to be the preservation of the status quo, to carry the present to the future, to maintain the prevailing rules and manner of life, and to defend social and political equipoise against all predisposed to interfere with it.

Thirdly, in a conflict of rights, the courts will promote and protect public rights over private rights, or in case of conflict between private rights, the courts will sustain the hierarchy of rights that make some rights more important than others. In the world of rights, the courts have established by practice and repeated judicial holding that not all rights are equal, and the balancing of conflicted rights will always result in a right to be protected and a right to be suppressed. Of course, the press does not always see it that way, such as when the media convinces itself that there is nothing more valuable than free speech and the right to publish. The courts will not always agree. As we have already seen, even the press right will have to concede its primary position to more important rights in the hierarchy, such as to the right to a fair and free trial and the personal right of privacy.

Know thy neighbour: Know thy enemy

In the relationship of media and the courts, it is not enough to have good fences. The better strategy should be to know the courts and their processes. Having a competent and experienced counsel available for consultation in case of doubt is an invaluable asset in any media organisation. Media professionals who belong to large and well-established media may not find this a problem, although there is always that hesitation to listen to lawyers particularly when legal advice impinges on editorial judgment. Even small media entities should not however be without a lawyer. Despite what they say of lawyers, there are many who would be willing to render service, if not for the incidental publicity essential to a successful law practice then for the idealism to help protect the press and media practitioners. After all, media cases always present constitutional issues which if handled properly can give any lawyer a career-making break. Get in touch with your local bar associations. But first, media must disabuse itself of the thought that consulting with lawyers and other professionals amounts to a loss of independence or even self-respect. I assure you -- wave the flag of press freedom and some lawyers will charge with passion and abandon.

Media practitioners must seriously consider an indemnity arrangement with their publisher and the media owner. When a media person acts according to legal advice or editorial judgment, the publisher must accept the duty to defend the reporter in case of litigation. They must realise that a free press also means a free press practitioner.

For those in the judicial and crime beat, legal knowledge no matter how little is always a useful thing. Know practical law and general court procedure. The most common complaint against journalists reporting on judicial matters is the inaccuracy of the report which is primarily spawned by a lack of understanding of what is important in a judicial setting and of the relevant procedure affecting cases. It is not unusual for media to erroneously report that a pending case has been finally decided, when the court has actually disposed only of what is incidental or interlocutory matter.

The courts will in turn be more appreciative of correct and accurate reporting of its actions and decisions by an informed media, as this enables the greater public to correctly understand the judicial system and how it works.

Conclusion

The changing media landscape demands that the media re-examine its relations with the courts and the judicial system. It is not a relationship made in heaven; but neither is it a relationship that can be ignored or evaded.

Win or lose, court cases mean a waste of time and money. Many private plaintiffs file cases against media but do not expect to win; they merely want to deter media or to get even by tying up media in a costly, public and long-drawn out trial.

Finally, courts are not the only fora to settle disputes involving media. Part of media's on-going advocacy should be to innovate alternative dispute-mechanisms that will accommodate the distinct needs of media and the public that media serves. Of course, where there is clearly mistake or misjudgment by media, the simplest solution is still best -- correct the mistake and move on.

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LAW *campaign*

OBSERVING MAY DAY 2007
National mobilisation to support immigrant workers

May 1st 2007 is the first anniversary of the Great Boycott of 2006, in which immigrants led walkouts, boycotts, and protests all over the US. May 1st is the original International Workers' Day, and it has been reclaimed in the last few years to honor immigrants' labor and contributions to the society and economy of the United States. The 2007 national day of action will call attention to the "unfinished agenda" of fixing the country's broken immigration legal system, and will insist on a just and humane immigration reform law that grants full legalization for all people. People will protest ICE's increased, militarized raids on families' homes,

in which people are captured and held incommunicado, violating their due process of law and causing financial hardship to immigrants' US-born children. The Movement for an Unconditional Amnesty says, "These measures do not serve to stop immigration, but (force) immigrants underground, encouraging black market immigration and (causing) the separation of families."

In San Francisco on May 1st, immigrant and workers' rights groups gathered at Dolores Park for a rally, followed by The Grand March for Unconditional Amnesty to Civic Center. Organizers say, "On this day the many contributions to society that the immigrant workers provide will be highlighted and applauded, and we are reminded that immigrants and workers are one and the same." In Oakland, people gathered for an immigrant rights protest at 100th Ave. and International Blvd. to the Federal Building in downtown Oakland. A MayDay march against the migra raids took place in Watsonville, at Watsonville Plaza on Main St. The ILWU will reportedly stop work in 6 west coast ports on May 1st, in part to support the Alcatraz ferry workers and their struggle against Hornblower Cruises.

Source: San Francisco.com

RIGHTS *monitor*

Death penalty on the decline

Momentum is growing for an end to capital punishment after Amnesty International's (AI) latest analysis revealed a big drop in executions. The Annual Death Penalty Statistics launched in Rome show a worldwide trend towards abolition with an encouraging 25 per cent decrease in executions and death sentences in 2006.

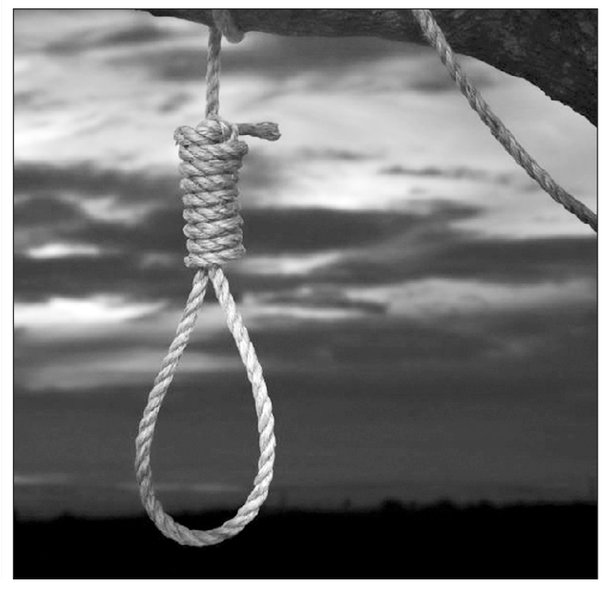
Last year, the Philippines became the 99th country to abolish the death penalty for ordinary crimes, while Georgia and Moldova removed provisions for the death penalty from their constitutions. Many more, including South Korea, stand on the brink of abolition. Only 16 countries were abolitionist in 1977. "AI is calling for a universal moratorium on execution," said Secretary General Irene Khan. "A death penalty free world is possible if key governments are willing to show political leadership." Despite the encouraging signs, statistics reveal that many states continue to kill their citizens with a total disregard for basic human rights.

At least 1,591 prisoners were executed by their own governments in 25 countries last year, while 3,861 new death sentences were issued (in 55 countries). Over 20,000 prisoners currently languish on death row across the globe.

91 per cent of all known executions in 2006 took place in six countries: China, Iran, Iraq, Sudan, Pakistan and the USA. "These hard core executioners are isolated and out of tune with global trends," said Ms Khan. "The figures are inexcusable, but even officials in Iraq and China have spoken of their desire to see an end to the use of the death penalty." Based on public reports available, AI estimated that at least 1,010 people were executed by the Chinese government last year. These figures are only the tip of the iceberg, with credible sources suggesting the real total is closer to 8,000. Iran's execution rate nearly doubled compared to 2005, with at least 177 people killed. It also executed the highest number of child offenders (four), while Pakistan killed one. Iraq was a new entry on the list of top executioners after a dramatic escalation in deaths, with at least 65 hangings.

"The death penalty is the ultimate cruel, inhuman and degrading punishment," said Ms Khan. "It must be abolished and a universal moratorium will be an important step forward."

Source: Amnesty International.



Star LAW *analysis*

Why do States obey international law

BARRISTER HARUN UR RASHID

THE national courts apply domestic law through executive agencies but in case of international law, there is no international judicial body or authority that can apply rules of international law on a state because of its inherent sovereignty.

In simple words, international law lacks authority to apply on states. That is why jurist Holland called international law as "the vanishing point of jurisprudence". Another jurist Austin held the view that international law was not "law" but consisted of a set of rules of conduct of moral force. What they meant was that since there was no authority to enforce international law, international law could not strictly be called "law".

A state must accept the jurisdiction of International Court of Justice or an international tribunal before it can take up any case against it. For example in 1973 when Pakistan filed a case against India for illegal detention of its war prisoners from Bangladesh to International Court of Justice (ICJ), it could not hear the case because India objected to its jurisdiction.

Despite the above observations about international law, why do states comply with international law?

There are many reasons for it and some of them deserve mention below:

First, states obey international law because they do not want to be isolated from mainstream community in an era of global or regional organizations. The new global era recognises that there are other actors on the world stage except states. It is a complex world in which states and international organizations play their part and one is dependent on the other. International law guides their smooth operation for the benefit of ordinary people. For example WHO work with states for AIDS programme and both sides obey certain rules of operation among them.

Second, the notion of legitimacy of an action of a state is very important. Legitimacy emanates from the application of international law. For example the US-led invasion of Iraq in 2003 is declared illegal by the UN Secretary General because it contravened the Charter of the UN and the current Iraqi war is seen by all states except a few states as illegal military operation. This is why the US is bogged down in Iraq with an illegitimate war against the militants.

Third, pressure from international community compels states to comply with international law. All states wish to have the image of being responsible, credible and trust worthy and such image can only be acquired with obeying international law. If a state flouts international law, it remains isolated from other states and as a result, other states do not interact with it because they are aware that the recalcitrant state does not obey international law.

Fourth, maintenance of peace and security is of paramount importance to states and the orderly and peaceful conduct of relations with other states needs some kind of accepted norms of conduct from states. The accepted norms are the result of customs, practices, and precedents. With the passage of time, they attain clarity, precision, and the status of general application. States apply such accepted norms, known as international law.

Fifth, international cooperation among states makes compliance of international law a necessity. For example, it is possible to dial direct to almost every person in the world who has a telephone without going through a local operator. The telephone dial code for a country (880 for Bangladesh) is provided under the authority of International Telecommunication Union (ITU), based in Geneva. Both ITU and a state have to agree to comply with international law.

Concluding remark

International law is not simply a set of rules but constitutes a method of conducting inter-states relations. The imperative character of international law is a matter of international relations. Furthermore if a state is democratic, decision-makers are likely to follow international law in inter-state relations and in human rights situations.

Finally it is the usefulness which underpins the observance of international law by states. No state can deny existence of international law and empirical evidence suggests that states try to prove the legitimacy of their actions by citing international law.

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