

# EDITORS' NOTE: ON THE RECENT TREND OF RED-TAGGING\*

## I. INTRODUCTION

Legal scholarship does not exist in a vacuum. Editors do not sit atop ivory towers while the rest are left to deal with the harsh realities of life. The same freedom that allows political groups to express their right to dissent in the streets of Mendiola is the same freedom that has allowed the PHILIPPINE LAW JOURNAL to thrive for the past century.

While the JOURNAL, for the longest time, has preferred to exercise restraint with respect to sociopolitical issues,<sup>1</sup> we believe that it will be a dereliction of duty for us to remain silent in the face of the current state of Philippine affairs. It is the main function of a law journal “to foster academic discussion and encourage the growth and development of the law.”<sup>2</sup> Part and parcel of this function is the capacity to communicate the unconventional and champion the controversial. But how are authors and editors alike expected to do this when the most basic of acts are frequently met with threats and violence?

Thus, we, the members of the Student Editorial Board of Volume 94, denounce all acts of red-tagging against activists, students, and professors as brazen and deplorable. We further condemn the blatant harassment and killings of lawyers, judges, and justices which undermine the rule of law and have no other motive than to instill fear in the profession and to prevent justice from prevailing.

## II. AN UNSAFE CAMPUS ENVIRONMENT

Red-tagging is the act of labelling individuals or groups as communists or terrorists affiliated with the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-

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<sup>1</sup> *But see* *Defend Legal Scholarship: A Statement by the Philippine Law Journal on the Allegations of Plagiarism in the Supreme Court*, 85 PHIL. L.J. i (2010-2011).

<sup>2</sup> *Id.* at i.

NDF)<sup>3</sup> without substantial proof.<sup>4</sup> When done, acts of red-tagging are often accompanied by warnings or death threats from anonymous persons, illegal arrests, or enforced disappearances.<sup>5</sup>

Just recently, campus publications such as the *Philippine Collegian* and *Tinig ng Plaridel* have found themselves the subjects of red-tagging. According to the former, they were accused of being “wanted terrorist reporters” and were threatened with assassination if they were to continue with their work.<sup>6</sup> The same was true of the latter which received the following message from a suspected troll Facebook account: “*Binabalaan namin kayo. Itigil niyo na ang ginagawa niyo. Kung ayaw niyong itumba namin kayo[.]*”<sup>7</sup>

These incidents are just a few among the countless others which have struck at the very heart of the freedoms of speech, of expression, and of the press.<sup>8</sup> Student journalists and activists are forced to live in a constant state of paranoia simply because of the contents of their works and posts. These attacks do not just target students, but also professors. One University of Santo Tomas professor, for example, who was noted for his outspoken political statements, was alluded to by a certain Facebook page as being a covert recruiter for guerilla forces.<sup>9</sup>

Such hasty allegations have resulted in a chilling effect on the constitutionally-enshrined freedom of speech and have cast a dark cloud over critical thinking. The importance of this freedom is unquestionable. As Justice Fernando declared in his concurring opinion in *Laxamana v. Borlaza*:<sup>10</sup> “The

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<sup>3</sup> Ruby Rosselle Tugade, *The Modern Scarlet Letter: Red-Tagging of Civilians as Violation of the Principle of Distinction in International Humanitarian Law* (Oct. 2020) (unpublished essay on file with the author).

<sup>4</sup> Oliver Haynes, *Deadly ‘Red-Tagging’ Campaign Ramps Up in Philippines*, VOA NEWS, Feb. 18, 2021, at <https://www.voanews.com/east-asia-pacific/deadly-red-tagging-campaign-ramps-philippines>.

<sup>5</sup> This practice is not new and is akin to the concept of “red-baiting” as discussed in detail by Justice Marvic M.V.F. Leonen. See *Zarate v. Aquino*, G.R. No. 220028, Nov. 10, 2015 (Leonen, J., *dissenting*).

<sup>6</sup> Phil. Collegian, *Defend the Campus Press*, FACEBOOK (Mar. 1, 2021), <https://www.facebook.com/phkule/photos/a.130663580347931/3713845108696409/?type=3>.

<sup>7</sup> Denver Del Rosario, *‘Journalism is not a crime’: Campus journals slam threats vs UP student publications*, INQUIRER.NET, Mar. 2, 2021, at <https://newsinfo.inquirer.net/1402100/journalism-is-not-a-crime-campus-journals-slam-threats-vs-up-student-publications>.

<sup>8</sup> CONST. art. III, § 4.

<sup>9</sup> Krixia Subingsubing, *UST journalism professor latest target of red-tagging spree*, INQUIRER.NET, Dec. 30, 2020, at <https://newsinfo.inquirer.net/1377490/ust-journalism-professor-latest-target-of-red-tagging-spreec>.

<sup>10</sup> *Laxamana v. Borlaza*, G.R. No. 26965, 47 SCRA 29, Sept. 20, 1972.

vital need in a constitutional democracy for freedom of expression is undeniable [...] as a means of [...] attaining the truth, of securing participation by the people in social, including political, decision-making, and of maintaining the balance between stability and change.”<sup>11</sup> The realm of protected speech is a broad one such that the views espoused by these people are immaterial. It is a basic tenet of constitutional law “that the best test of truth is the power of the thought to get itself accepted in the competition of the market[.]”<sup>12</sup> As explained in *Chavez v. Gonzales*:<sup>13</sup> “To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others[.]”<sup>14</sup>

### III. THE FIRST THING WE DO, LET’S KILL ALL THE LAWYERS<sup>15</sup>

Every person deserves their day in court. Lawyers are expected to represent their clients, while judges and justices are expected to decide cases. That is how the profession goes—it is not personal; it is strictly business.

Recently, however, even lawyers,<sup>16</sup> judges,<sup>17</sup> and justices<sup>18</sup> have found themselves the targets of a seemingly widespread campaign to suppress political dissent. On March 3, 2021, Atty. Angelo Karlo Guillen was stabbed

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<sup>11</sup> *Id.* at 42. (Fernando, J., *concurring*).

<sup>12</sup> *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., *dissenting*).

<sup>13</sup> G.R. No. 168338, 545 SCRA 441, Feb. 15, 2008.

<sup>14</sup> *Id.* at 484.

<sup>15</sup> WILLIAM SHAKESPEARE, 2 HENRY VI, act 4, sc. 2.

<sup>16</sup> Lian Buan, *Lawyers killed: 61 under Duterte, 49 from Marcos to Aquino*, RAPPLER, Mar. 15, 2021, at <https://www.rappler.com/nation/lawyers-killed-duterte-marcos-aquino-administrations-data-studies>; Jodesz Gavilan, *LIST: Judges, prosecutors, lawyers killed under Duterte gov't*, RAPPLER, Nov. 8, 2018, at <https://www.rappler.com/newsbreak/iq/list-judges-prosecutors-lawyers-killed-under-duterte-government>.

<sup>17</sup> Jason Gutierrez & Mike Ives, *Judge Is Shot and Killed in Her Office at Manila's City Hall*, N.Y. TIMES, Nov. 11, 2020, available at <https://www.nytimes.com/2020/11/11/world/asia/philippines-manila-judge-shooting-maria-theresa-abadilla.html>; Jodesz Gavilan, *LIST: Judges, prosecutors, lawyers killed under Duterte gov't*, RAPPLER, Nov. 8, 2018, at <https://www.rappler.com/newsbreak/iq/list-judges-prosecutors-lawyers-killed-under-duterte-government>.

<sup>18</sup> *Missing ex-CA justice found dead in Tarlac*, CNN PHIL, Dec. 21, 2020, at <https://cnnphilippines.com/news/2020/12/21/DOJ-confirms-ex-CA-justice-Pizarro-dead.html>; Mike Navallo, *Carpio group asks SC to look into Parlade post red-tagging petitioners vs anti-terror law*, ABS-CBN NEWS, at Jan. 25, 2021, <https://news.abs-cbn.com/news/01/25/21/carpio-group-asks-sc-to-look-into-an-afp-ofcls-post-red-tagging-petitioners-vs-anti-terror-law>.

in the temple with a screwdriver.<sup>19</sup> Atty. Guillen, it so happened, handles a case involving the arrest of Tumandok land defenders, and is one of the counsels for the National Union of Peoples' Lawyers' petition against the constitutionality of Republic Act No. 11479, otherwise known as The Anti-Terrorism Act of 2020.<sup>20</sup>

Less than two weeks later, it was reported that Judge Monique Quisumbing-Ignacio was featured on a tarpaulin plastered along the EDSA-Shaw thoroughfare. The tarpaulin, which bore the logo of the CPP, "thanked" Judge Quisumbing-Ignacio for clearing two activists of criminal charges,<sup>21</sup> thereby seemingly implying that she has ties to the CPP. This came just a few days after a letter from the Calbayog City Police Station went public, requesting from the Office of the Clerk of Court of the Calbayog Regional Trial Court a list of lawyers supposedly representing "Communist Terrorist Group personalities."<sup>22</sup>

Going after lawyers, judges, and justices aims to weaken the justice system as we know it. After all, if lawyers refuse to handle cases, and judges and justices are predisposed to rule a certain way, then the actual persons who will stand before the courts will effectively be left defenseless. If this happens, we might soon face a society governed by barbarity as opposed to the rule of law.

#### IV. CONCLUDING REMARKS

We write this Editors' Note for three reasons.

*First*, we write this as a plea, not just to school authorities, but to the government itself, to take the necessary actions to address these problems. The liberty from intellectual restraint is a foundational piece to our national independence. The Philippines came to be because our forebears dared to

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<sup>19</sup> Kristine Patag, *Tumandok Land defenders' lawyer stabbed in Iloilo*, PHIL. STAR, Mar. 4, 2021, available at <https://www.philstar.com/headlines/2021/03/04/2081926/tumandok-land-defen-ders-lawyer-stabbed-ilolilo>.

<sup>20</sup> *Id.*

<sup>21</sup> Lian Buan, *After freeing activists, Mandaluyong judge gets red-tagged in an EDA tarp*, RAPPLER, Mar. 16, 2021, at <https://www.rappler.com/nation/after-freeing-activists-mandaluyong-judge-red-tagged-edsa-tarpaulin-march-2021>.

<sup>22</sup> Lian Buan, *Calbayog police ask court for list of alleged communists' lawyers*, RAPPLER, Mar. 12, 2021, at <https://www.rappler.com/nation/calbayog-police-ask-court-lawyers-alleged-communists-march-2021>.

speaking their minds, even if it went against the conventions of their time. To let this liberty wither, then, is no less unpatriotic than the vilest of traitorisms.

*Second*, we write this as a reassurance that the JOURNAL has been and will continue to be a safe haven for all kinds of thoughts and ideas. As a handmaiden of jurisprudence, it is the JOURNAL'S duty to be "the academe's monitor and critic regarding the evolution of the Supreme Court's doctrine."<sup>23</sup> We reiterate this, but with a slight modification. The JOURNAL should not only be a monitor and critic of Supreme Court doctrine; it should also be a monitor and critic of society writ-large. Articles published in the JOURNAL have generally retained a "radical, revolutionary character"<sup>24</sup> and we commit to uphold that tradition.

*Last, but not the least*, we write this to say that some matters are not up for debate. We may argue about the constitutionality of laws or the correctness of court decisions—that is the beauty of legal scholarship—but we draw the line when voices are arbitrarily silenced and blood is unjustifiably shed. No amount of legalese in the world can make a wrong thing right.

Indeed, legal scholarship does not exist in a vacuum. A law journal functions best when it is not a mere repository of academic knowledge, but rather when its pages become conduits for free discourse and catalysts for social change and justice.

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<sup>23</sup> Oscar Franklin B. Tan, *Sisyphus' Lament, Part I: The Next Ninety Years and the Transcendence of Academic Legal Writing*, 79 PHIL L.J. 7, 7 (2004).

<sup>24</sup> Paolo S. Tamase, *Reforming the Philippine Law Journal as a Hundred-Year Institution*, 88 PHIL L.J. xv, xvi (2014).