IN **RE COUNSELLOR C. ABAYOMI CASSELL**, Respondent.

CONTEMPT PROCEEDINGS.

Heard: March 13, 19-22, 1979. Decided: June 15, 1979.

1. A Justice of the Supreme Court is disqualified from sitting on a case in which he is interested or had made a ruling while presiding in Chambers or on which he sat while a judge on a lower court.
2. In the absence of any statute to the contrary, it is fairly well settled that a judge is not disqualified because of unfavorable comments or an expression of opinion as to the guilt or innocence of an accused.
3. The mere opinion expressed by a judge, which can be removed by evidence, is insufficient to disqualify a judge from sitting on a case.
4. In contempt matters, as a general rule, a judge is not disqualified from trying or disposing of the proceeding merely because he initiated the proceeding or on account of the fact that the contempt was committed against him or a court of which he is a member.
5. An order for the issuance of a citation for contempt is no more a prejudgment than an order for an alternative writ; and since the order for the alternative writ does not disqualify the issuer from hearing the merits thereof, similarly the order for the issuance of citation for contempt does not disqualify the judge who ordered it from hearing the merits thereof.
6. The general rule and the practice in Liberia is that the court against which a contempt is committed is the court that has jurisdiction to try the contempt.
7. The mere disqualification of a judge sitting on the trial of an offense is insufficient ground to warrant discharging the party of the offense itself.
8. The tests for determining whether a communication is privileged is whether the communication originates in confidence, whether confidence is essential to the relationship between the communicants, whether the relationship between the communicants is worthy of preservation, and whether the injury from disclosure outweighs the benefit of the use of the evidence which the privilege would eliminate.
9. In order to make a written communication privileged, there must exist some fiduciary relationship between the writer and the addressee of the letter, as for example, attorney and

client, husband and wife, doctor and patient, priest and penitent.

10. The mere fact that a communication is made in confidence does not entitle it to protected privilege, unless the persons bear to each other some relation which the law recognizes as necessary to be maintained by making privileged all confiden-tial communications made in pursuance thereof.

11. It is a general rule that in the absence of any showing to the contrary, a judgment of a court of competent jurisdiction is presumed to be valid and correct, and that the court acted impartially, honestly, justly, after due consideration in conformity to law and in accordance with its duty.

12. The presumption of the validity of a judgment extends to all matters in the various stages of the proceedings, from its initiation to its completion.

13. The powers of the Liberian Government are divided into three distinct departments: Legislative, Executive, and Judicial; and no person belonging to one of these departments shall exercise any of the powers belonging to either of the other.

14. No department of the Liberian Government but the courts can exercise judicial functions, except as it may be otherwise provided in the Constitution, as each branch set up in the Constitution is independent of, as well as coordinate to, the other two departments.

15. Each of the several departments of government derives its authority directly or indirectly from the people and is responsible to them. Each has exclusive cognizance of the matter within its jurisdiction and is supreme within its own sphere.

16. In the exercise of the powers of government assigned to the departments of government severally, each operates harmoniously and independently of the other, and the action of any one of them in the lawful exercise of its own powers is not subject to control by either of the others.

17. The function of the Legislature is to make laws; the Executive, to enforce them; and the Judiciary, to hear and decide cases according to the facts and the law, and to interpret laws enacted by the Legislature.

18. Under the Constitution and the doctrine of separation of powers, the functions of one branch of government cannot be delegated to or controlled by any other branch, and one department cannot interfere with or embarrass another by usurping its powers or by supervising the exercise of such powers unless the Constitution so ordains.

19. The judicial power of Liberia is vested in one Supreme Court, and such subordinate

courts as the Legislature may from time to time establish. The Supreme Court shall have original jurisdiction in certain cases and appellate jurisdiction in all other cases, both as to law and fact; and there shall be no appeal from its judgment.

20. The review of the judgments of the Supreme Court or any court for that matter, as a basis of determining their legality or enforceability does not fall within the purview of the Executive or Legislative branches of government, and no depart-ment of government other than the Judiciary can exercise those judicial functions.
21. Judicial powers are to be exercised by the courts, and the final review of cases is the sole preserve of the Supreme Court whose judgments are final and hence binding on the parties.
22. The only legally prescribed method for reviewing a judgment of the Supreme Court is by a motion for rehearing, which must show that some palpable mistake was made by the Court inadvertently overlooking some fact or point of law; and only the Court itself can review its judgment.
23. The request of a person to the President of Liberia for appointment of an attorney to review the Supreme Court's judgment suggests the creation of a tribunal above the Supreme Court, contrary to the Constitution, and it shows a gross disregard for the Court's judgment.
24. A lawyer who institutes and prosecutes proceedings which he knows or should know are in defiance of or an effort to circumvent a judgment of the Supreme Court, is guilty of contempt of court.
25. An attempt to prevent the execution of a lawful order, judgment, decree, or mandate of a court is such an interference with or attempt to obstruct the due administration of justice, as to constitute a contempt no matter where the act of contempt was committed.
26. Any person who with knowledge of the decisions and mandates of the Supreme Court directly or indirectly disturbs, disobeys or disregards them, or, in any manner aids and abets contemptuous acts against the Supreme Court, is guilty of contempt.
27. Since the right to speak or write is not absolute, it may be regulated or subordinated to accomplish other legitimate and overriding objectives of government such as the administration of justice.
28. In striking a balance between freedom of speech and press and the administration of justice, the line is fixed at that point where that which is spoken or published is calculated to obstruct the functioning processes of the court.
29. The right of the court to enforce respect for itself begins where the right of the citizen to

speak ends.

30. A person charged with contempt in making certain utterances or publishing writings which clearly constitute a contempt may not ordinarily escape liability therefor by merely invoking the constitutional guarantees of freedom of speech and press.
31. Obstructing the administration of justice by the courts through speech or press is an abuse of those liberties, such as will subject the person to punishment.
32. It is a constitutional right of a citizen to disagree and, if he cares to, express such disagreement, with a decision of the Court. Criticism of the court's rulings or decision is not improper, and may not be restricted after a cause has been finally disposed of and has ceased to be pending. However, it is contemptuous where the utterances or writings tend to obstruct the administration of justice in a pending case.
33. It is a hallmark of good and orderly government, that once a final decision is made by the highest court of the land, all parties to the action are bound by the judgment.
34. The President of Liberia may, after conviction, grant reprieve and pardons for public offenses except in cases of impeachment.
35. The conviction or acquittal of one charged with the commission of a crime rests solely with the judicial branch of government; therefore, the guilt or innocence of such person must be established in a judicial forum.
36. Once the courts have pronounced a defendant guilty, it is on the basis of this judicial determination, and not on the defendant's or his attorney's belief of guilt, that the President exercises, if he so desires, his pardoning power.
37. The Supreme Court, as a constitutional court, has the inherent power to punish for contempt and to determine what constitutes contempt of the Court. The Supreme Court also has the power to determine whether a contempt has been committed, and to punish for it, and such powers cannot be limited by statute.
38. Criminal contempt is instituted for the purpose of vindicating the dignity of the court.
39. And any act which tends to belittle, degrade, obstruct or embarrass the court in the administration of justice is contemptuous; the disregard of a court by conduct or language, in or out of the court's presence, which tends to disturb the admini-stration of justice or tends to impair the respect due the court, is contemptuous.
40. The definition of contempt applies in a special manner to lawyers who disobey, belittle and bring into disrepute the courts, and the offense is deemed much more grave than when committed by laymen.
41. Any breach of a lawyer's duty to maintain the respect due the courts constitutes

contempt.

42. Any act which tends to bring conflict between the judiciary and another branch of government and to undermine the independence of the judiciary is contemptuous.
43. When one is adjudged guilty of contempt, the Supreme Court may, depending on the gravity of the act, reprimand, fine, imprison; and, where a lawyer is involved, suspend or disbar him from the practice of law in Liberia.

Counsellor C. Abayomi Cassell was one of the defense counsels in the case *Yancy et al. v. Republic*, 27 LLR 365 (1978), in which the trial court's verdict of guilty for murder was affirmed by the Supreme Court. Thereafter, Counsellor Cassell, respon-dent in this contempt proceeding, sought audience with the President of Liberia. At that meeting, and in the presence of other government officials, he questioned the conduct of the trial and the application of the law by the Supreme Court in arriving at a judgment of confirmation of the conviction of the defendants. Counsellor Cassell concluded by advising the President to have an independent attorney scrutinize the entire case before the President exercises his constitutional and statutory duty of enforcing the judgment—executing the convicts by hanging.

The President rejected Counsellor Cassell's suggestion for reason that it would be unconstitutional for him to subject the Supreme Court's judgment to such scrutiny. After the meeting, Counsellor Cassell reduced his observation and suggestion to writing and sent it to the President. The President, in turn, sent it to the Chief Justice. Thereupon Counsellor Cassell was summoned in contempt of court and required to show cause, if any, why he should not be so attached in contempt of the Supreme Court.

In his returns, Counsellor Cassell requested the Supreme Court to disqualify itself since, by the contents of the Chief Justice's letter to the President, which was in response to the referral that the President had made to the Supreme Court, the Supreme Court had already prejudged him. Counsellor Cassell also requested the Supreme Court to discharge him of the offense of contempt of court for the same reason. The Supreme Court refused to grant these requests for many reasons, among which were that the Chief Justice's letter to the President and the citation for contempt had the same contents; that the court against which the contempt is alleged to be committed is the court that prefers the charge and hears the matter; and that the procedure in Liberia and other common law jurisdiction for contempt against a court is for the court against which the contempt is alleged to be committed to prefer the charge and try the offense.

Counsellor Cassell also claimed that his communication to the President was confidential and that, in any event, he has a constitutional right to criticize, speak and write about decisions of the Supreme Court. To this contention, the Supreme Court held, among other things, that there was no relationship between Counsellor Cassell and the President that is recognized as privileged and confidential under the law, and that such communication between them on judicial matters was not protected. More than that, the Supreme Court also observed that the communication was made in the presence of several government officials and therefore could not be considered as privileged under any circumstances. Furthermore, the Supreme Court ruled that the constitutional rights of free speech and free press do not give any person the liberty to belittle and obstruct the court in the administration of justice.

On its own, the Supreme Court explored whether the intent of the communication from Counsellor Cassell to the President was intended to advise the President on his power to reprieve or pardon convicted felons, but Counsellor Cassell removed this line of inquiry from consideration when he said that to do so would have meant that he conceded the guilt of the defendants, which he did not.

Finally, the Supreme Court found and ruled that Counsellor Cassell's letter to the President requesting the appointment of an attorney to review the Supreme Court's opinions and judgment in the case *Yancy et. al. v. Republic*, 27 LLR 365 (1978), decided October Term, 1978, was contemptuous of the Supreme Court; that the language used in the letter was clear so as not to be susceptible to a construction consistent with innocent intent; and that the act of Counsellor Cassell tended to disrespect and belittle the Supreme Court, hold its judgment up to public ridicule, obstruct the administration of justice in the execution of its judgment, and destroy the confidence of the people in such administration.

The Supreme Court also said that the contempt was grave enough to warrant the Court exercising its powers to imprison Counsellor Cassell and/or to suspend or disbar him from the practice of law in Liberia. However, in consideration of Counsellor Cassell's advance age and the many contributions he had made to the legal profession and jurisprudence in Liberia, he was fined $2,000.00 to be paid within thirty days as of the judgment in the contempt proceeding. Counsellor Cassell was therefore *adjudged guilty* of contempt of the Supreme Court and *fined*.

Edward R. Moore and *C. Abayomi Cassell, pro se* appeared for respondent. *Toye C. Bernard* and *Joseph Williamson* appeared as *amici curiae*.

MR. JUSTICE HENRIES delivered the opinion of the Court.

On December 15, 1978, this Court rendered final judgment in the case *Yancy et al. v. Republic*, 27 LLR 365, affirming the trial court's judgment of guilt against the defendants who were charged with murder.

Following the final judgment two of the lawyers who had represented the defendants, Counsellors C. Abayomi Cassell and S. Raymond Horace, were received in audience, upon their request, by the President of Liberia. Apparently during their meeting with the President, in the presence of other officials of Government and the True Whig Party, Counsellor Cassell suggested that the President considers consulting an independent lawyer to examine and scrutinize the records, briefs, opinion and judgment in the *Yancy* case. The President rejected the sugges-tion on the ground that it would be unconstitutional to subject the Court's opinion and judgment to such a review.

Subsequently, after his audience with the President, Counsellor Cassell wrote a letter to the President, which reads as follows:

"January 9, 1979

The President of Liberia

Executive Mansion

Monrovia, Liberia

Dear Mr. President:

I seize this opportunity to express my deep and sincere gratitude to you for having received Honourable Horace and myself, upon our request, to put before you our views with respect to the entire processes of the case *Yancy et al v. Republic.*

There is one development which has been causing me some concern. It relates to my suggestion that you might consider consulting an independent attorney to carefully go over and scrutinize the records, briefs and opinions in the case. I recognized, as soon as you said that you considered such an act unconstitutional, that you would not do it. I was sorry because, if I had been afforded an opportunity to explore with you the proposal, some light as to my suggestion might have been thrown on it. In view of the purpose of our request for audience, and in view of what I considered the finality of your statement, there was nothing I could say or do at the time, especially so since I was not there to enter into an argument with you, not only because I considered it improper to have done so but also because to have done so would have served no useful purpose.

However, implicit in the view held by you that the suggestion, if followed by you,

would have placed you in a position of having violated the Constitution which, consequently to me, indicated that I might have been trying to mislead you. That I have never done, and that I would not do. In addition, there is generally a fall out which flows from such meetings, which I have heard and which further troubles me.

Now Sir, I wish you to understand and fully comprehend that in no matter, whether great or small, am I accustomed not to give careful thought to what I say. In view of which, I hold firmly to the view that you could, in the exercise of the executive powers, which are yours alone, consult any person -- official or private citizen -- on any matter which concerns the due, lawful and orderly execution of your duties, and, as reason for this holding I submit the following reasons, to wit:

1. The primary reason is based on the Constitution, as its genius provides for the separation of the powers of the Government into three independent, but coordinate, branches - the one serving as a check on the other.

To buttress this reason I submit the following: (1) The Legislature passes the laws, which are not only subject to your veto, but may also be declared unconsti-tutional by the Supreme Court. My understanding of this is that man has not as yet attained perfection, so that the people who are the ultimate authority in a democracy may meet and alter or change the form of government if they wish, and that is why it turns out that neither the executive, the legislative or the judicial branches of the Government can exercise complete and uncontrolled authority; otherwise in any other system the people could have an autocratic executive, or legislature, or judiciary. That is why, in a democracy, the people should ever be alert as to the conduct of each of the branches of their government.

2. In this particular matter, vis-a-vis any similar case, the ultimate power rests in your hands. It would therefore seem clearly incumbent upon you to be wholly and completely satisfied that the facts are straight, the verdict right, the judgment follows both; and upon review, that the appellate court also fully followed all of the trammels of the Constitution and laws of Liberia. Now, let us pre-suppose that you, as Chief Executive, were not satisfied in any given case that the courts had proceeded fully according to law, would you or could you undertake to dispose of a single human life without having that certainty, which, if you have doubts or uncertainty about, is available to you at all times?

About this reason, following the logic and reasoning of the proposition, I can see nothing which can prevent you from satisfying yourself, by every means possible, rather

than to commit an irreparable blunder by hanging a single person, not to speak of seven, as in this case, without that complete satisfaction you should have.

To prove the point heretofore, after a person charged with murder, treason, or such crimes to which the death penalty attaches, the statute heretofore provided that, upon a final judgment, the records together with the judgment should be transmitted to you. Whereupon you would require the Minister of Justice, not as a prosecutor, but as your principal legal advisor, to carefully examine the records, and all proceedings in the case, including the opinion of the Supreme Court, and to advise you whether or not the trial was regular, the facts and law support the verdict and judgment of the trial court; whether or not the opinion and judgment of the Supreme Court also follows the Consti-tution and laws of Liberia, especially, and in this case, its own opinions follow the trammels of the law. Upon receipt of your directive, it is the duty of the Minister to personally go carefully over these documents, and to respond to your request by giving what should be an honest, fair and unbiased opinion in the premises. The object of this exercise is to assist you in the exercise of your function and constitutional duties.

Now, let us rationalize: if that process were followed to a fair and ultimate conclusion, and the Minister responded by expressing the view that the trial was not regular, that gross injustices were committed, that the opinion of the Supreme Court was unfounded in fact and in law, the ball would still be in your court, as the final decision is yours.

An analogy to the above is, if the Executive is not satisfied with the opinion of his Minister or in his own heart that justice has been served, what is there to prevent him from taking private counsel?

Further, the opinions of the Supreme Court are not sacrosanct. If they were, why would the Court admit to its error by recalling, from time to time, its opinions? Further, although it has been held that it would be contempt of the Court to examine its opinions and differ in view with them, it should by now be recognized that that is violative of the Constitution because that very Constitution provides the people the right, under Section 15 of Article I of the Declaration of Rights, 'to examine the proceedings of the Legislature, or any branch of Government; and no law shall ever be made to restrain the rights thereof'.

To prove this point, in my last visit to the United States during the latter half of 1978, I had the opportunity of examining a most recent case of the United States Supreme Court in which the rights of minority group were involved. The case is entitled: *Regents of the University of California v. Bakke*, certiorari to the Supreme Court of California,

argued October 21, 1977, decided June 1978. This is an interesting case in which the University of California's admissions policy granted the right of special admissions to minority groups because of their educational and/or emotional disadvantaged circumstances. The Court was split wide open. There were dissents, concurrences with reservations, etc.

This case was, shortly after the rendition of the judgment, the subject of the most rigid analysis, both by lawyers, the press and public opinion of all categories. The reference here is to show that in a free society, the acts of the highest and lowest public servants are subject to review, and that it is my considered legal opinion that any act, opinion or other official matter of a public nature is the subject of lawful review.

In conclusion, I respectfully submit that if you had wished to consult any officer, public servant or private individual about whatever faced you, there is NOTHING in the Constitution to prevent you from doing so. And if you wished to do so, the presumption would be that it was of a confidential nature.

Respectfully yours,

C. Abayomi Cassell

COUNSELLOR-AT-LAW"

A copy of this letter was sent to the Chief Justice of Liberia by the President. The Chief Justice replied the President stating that Counsellor Cassell had been cited to answer in contempt proceedings. The Chief Justice also received a letter from his colleagues stating that it was their opinion that the counsellor be cited to answer in contempt proceedings.

Accordingly, on January 15, 1979, a citation was issued from this Court requiring Counsellor Cassell to appear to show cause why he should not be attached in contempt of this Court for insisting that in order for the President to be wholly and completely satisfied that the facts are straight, the verdict right, the judgment follows both, and upon review, that the appellate court also fully followed all of the trammels of the Constitution and laws of Liberia, he consult an independent attorney, who would carefully go over and scrutinize the records, briefs and opinions in the case and advise him whether or not the trial was regular, the facts and law support the verdict and judgment of the trial court; whether or not the opinion and judgment of the Supreme Court also follow the Constitution and laws of Liberia, and in this case, its own opinions follow the trammels of the law.

Since, according to the letter, the object of this exercise was to assist the President in the exercise of his functions and constitutional duties, presumably that the laws be faithfully executed, it was concluded in the citation that this attorney was to advise the President of

the correctness or incorrectness of this Court's judgment; that this advice would then form the basis of the enforcement or non-enforcement of this Court's judgment; and that such an act would have the effect of appointing a tribunal above the Supreme Court, which would have the authority to set aside, nullify and render of no effect the judgment of the Supreme Court, contrary to the letter, spirit and intent of Article IV of the Constitution of Liberia.

The respondent filed returns consisting of eighteen counts. In the first count, he contended that this Court should disqualify itself because it had already prejudged the matter as a result of the correspondence exchanged by the Chief Justice and the President of Liberia and that he be discharged from further answering in contempt. The contention is untenable because in the first place, the correspondence merely stated reasons why the Court felt that the respondent should be cited to show cause why he should not be held in contempt. The citation to which he filed returns also recited these reasons, and whether or not he would be adjudged in contempt would depend upon the justification he gave for his alleged contemptuous conduct.

A justice of this Court is disqualified from sitting on a case in which he is interested or had made a ruling while presiding in Chambers or on which he sat while a judge on a lower court. Judiciary Law, Rev. Code 17:2.7. In the instant case, the Court is being asked to disqualify itself because of expressed opinion which the respondent considers to be a prejudgment of the matter. This is the first time that such an issue has been raised here involving all of the Justices of the Supreme Court. In the absence of statute it is fairly well settled that a judge is not disqualified because of unfavorable comments or an expression of opinion as to the guilt or innocence of an accused. 48 C.J.S., *Judges*, § 82(c). Moreover, mere opinion which can be removed by evidence is insufficient to disqualify a judge. *Bestman v. Dunbar*, 21 LLR 227, 231 (1972).

In contempt matters, as a general rule, a judge is not disqualified merely because he initiated the proceeding or on account of the fact that the contempt was committed against himself or a court of which he is a member. The mere fact that contempt proceeding was initiated by a judge or a court does not disqualify the judge or court from trying and disposing of the proceeding. 64 ALR 2, 593, §2.5; see also 72 ALR 482.

In a proceeding to punish an attorney for contempt, he filed a motion to disqualify four of the five Justices of the Supreme Court of Montana on the ground that they had prejudged the matter by joining in making the order for the issuance of the contempt citation, which recited the alleged contemptuous conduct. The motion was denied on the ground that a court is not, merely because it moved to bring the alleged contemnor to trial, disqualified

from acting in the contempt proceeding, and also on the ground that an order for the issuance of a citation for contempt is no more a prejudgment than an order for an alternative writ. *State rel. Hall v. Niewoehner* 116 Mont. 427, 155, P2 205 (1944).

The general rule is that the court against which a contempt is committed is the court that has jurisdiction to try the contempt. It has always been the practice in Liberia that the judge presiding in the contempt court sits at the contempt proceeding. For these reasons, the issue of disqualification must fall.

The respondent has asked to be discharged on the ground that this Court is disqualified to hear the matter. If all of the members of this Court were disqualified, who would discharge him? More than this, the mere disqualification of a judge is insufficient ground to warrant a party's discharge from the offense.

In count 2 of his brief, the respondent contended that both the audience held with the President and the letter were in the nature of confidential communications which fell under the doctrine of qualified privilege because both were held and made in good faith to the President who had a duty to perform in connection with a matter in which the respondent had a right, duty and interest in the subject, especially so since the matter was of public interest.

It should be recalled that the audience was held, according to the respondent's brief, in the presence of an array of Government and True Whig Party officials. At that time, the respondent suggested to the President that he might consider consulting an independent attorney to carefully go over and scrutinize the records, briefs and opinions in the case and give the President the benefit of his opinion, vis-a-vis the view expressed by him, the respondent, during the interview, in which he had expressed his disagreement with the Supreme Court's opinion and judgment. Despite the President's rejection of this suggestion, the respondent wrote the letter in which he restated his suggestion, giving reasons therefor.

The questions that come to mind are: Amongst who did this privileged communication exist - between the respondent and the President or between him and the array of officials? If it did exist at all, what was the nature of the relationship between the respon-dent and the President, since in order to make communication privileged there must exist some fiduciary relationship between the writer and the addressee of the letter as, for example, attorney and client, husband and wife, etc.? *Clarke et al. v. Republic* 2 LLR 498 (1925). What happens to the claimed privilege when one of the parties to the alleged confidential communication divulges it to a third person, and, in this case, to the public via the news media? Who should assert the claim of privilege?

The letter itself gave no indication of it being confidential. The word confidential is mentioned in the very last sentence of the letter, and it does not refer to the letter itself, but to the presumption that if the President wished to consult someone, it would be of a confidential nature. The test for determining whether a communication is privileged is: Does the communica-tion originate in confidence? Is confidence essential to the relationship? Is the relationship worthy of preservation? And does the injury from disclosure outweigh the benefit of the use of the evidence which the privilege would eliminate? 81 AM JUR 2d., *Witnesses,* §141. The respondent has not shown that these conditions exist in this case. The mere fact that a communication is made in confidence does not entitle it to privilege unless the persons bear to each other some relation which the law recognizes as necessary to be maintained by making privileged all confidential communications made in pursuance thereof. That relation, at common law, is husband and wife, attorney and client; and statutes have included physician and patient, and priest and penitent. If none of these relations exists, as in the instant case, the privilege may not be invoked.

More than this, the doctrine of qualified privileged is a defense used in a civil action for libel or slander.

According to 53 C.J.S., *Libel & Slander,* § 89, a qualifiedly privileged communication is "a defamatory communication made on what is called an occasion of privilege without actual malice, and as to such communications there is no civil liability, regardless of whether or not the communication is libelous *per se* or libelous *per quod.*" The relevance of this doctrine to the instant case is not apparent since this contempt proceeding does not concern either libel or slander; nor is the letter, the subject of this proceeding, being regarded as a defamatory communication.

As the respondent's letter is the basis for the issuance of the contempt citation, it is important that the letter be closely scrutinized.

The letter in its second paragraph confirmed that the respon-dent suggested that the President considers consulting an independent attorney to scrutinize the records, briefs and opinion in the case; and that the suggestion was rejected by the President. The letter then went on to give reasons for the suggestion. The letter started off with the presumption that this Court's opinion is wrong and suggests a review of the entire judicial proceedings, including the Court's opinion, by an attorney who will advise the President on "whether or not the trial was regular, the facts and law support the verdict and judgment of the trial court; whether or not the opinion and judgment of the Supreme Court also follow the Constitution and laws of Liberia, especially, and in this case, its own opinion follows the

trammels of the law." The letter then stated that "the object of this exercise is to assist you in the exercise of your functions and constitutional duties." It is clear that the President is expected to use this attorney's advice as the basis for enforcing or not enforcing the judgment of this Court.

If this is not so why would respondent ask the following questions: "Now let us pre-suppose that you, as Chief Executive, were not satisfied, in any given case, that the Court had proceeded fully according to law, would you or could you undertake to dispose of a single human life without having that certainty, which if you have doubts or uncertainty about, is available to you at all times?" And "if the Executive is not satisfied with the opinion of his Minister or in his own heart that justice has been served, what is there to prevent him from taking a private counsel?"

He then rationalized thus: "I can see nothing which can prevent you from satisfying yourself, by every means possible, rather than to commit an irreparable blunder by hanging a single person, not to speak of seven, as in this case, without that satisfaction you should have"; and later on "If that process was followed to a fair and ultimate conclusion, and the Minister responded by expressing the view that the trial was not regular, that gross injustices were committed, that the opinion of the Supreme Court was unfounded in fact and in law, the ball would still be in your court, as the final decision is yours." It is obvious from these questions and rationalizations that the sole intent of this letter was to suggest to the President not to enforce this Court's judgment until it had been reviewed by an attorney. If the opinion and judgment met the approval of the Minister of Justice, the President should ask another lawyer; if this lawyer approved it, then the judgment could be enforced; if the attorney did not give his approval the President should not enforce it. It is patently clear that, to the respondent, the legality and enforcea-bility of this Court's judgment depended upon this attorney's advice, which in effect means that no credence should be given the judgment and opinion of this Court.

There are several other things which this letter brought out very clearly: (1) That the respondent had given careful thought to his suggestion that the President disregard this Court's review of the trial records and its judgment which was based upon this review. This is buttressed by count 13 of his returns in which he stated "that in the exercise of his rights to disagree with the opinion of the Court he disagreed with the opinion of the Court and told the President so, so that for him to have merely disagreed with the Court and do nothing about it would have been engaging in an exercise in futility." As a matter of fact, the respondent has not denied that he requested the President to seek an attorney's advice as to

the guilt of the accused.

He referred to a statute which he said authorized the Minister of Justice to review a judgment of this Court in crimes which carried the death penalty, but he did not cite or produce it. He also argued that this letter was directed mainly against the Minister of Justice in that since the Minister had participated in the trial, he could not give an unbiased opinion on this Court's opinion and judgment; but this contention is not borne out in the letter, as the only reference to the Minister is made in connection with the purported statute. The letter does not even mention or allude to the Minister's participation at the trial. As the respon-dent was one of the counsels for defendants, against whom judgment was rendered, one wonders whether his assessment of the judicial soundness of this Court's opinion was objective and devoid of prejudice.

There is no indication, either in his letter or in his returns and argument before this Court, that the President expressed doubts about or sought advice from him on this Court's opinion and judgment. As a matter of fact, he presupposed the President's dissatisfaction and wish to consult. He has not indicated in what manner the judgment did not conform to the evidence or the law; nor has he shown any evidence of abuse of judicial power or misapplication of the law by this Court. It is a general rule that in the absence of any showing to the contrary, a judgment of a court of competent jurisdiction is presumed to be valid and correct. According to 46 AM JUR 2d., *Judgments*, §28, "Under such circumstances the judgment so rendered raised a presump-tion that the court acted impartially, honestly, justly, after due consideration, in conformity to law, and in accordance with its duty. This presumption of the validity of a judgment extends to all matters in the various stages of the proceedings, from its initiation to its completion. It is presumed, in support of the judgment, that the proceedings were regular, in conformity with settled usage, and sufficient to support the judgment, and that every requisite, and every fact necessary to sustain the judgment, were present." Indeed, the integrity and value of the judicial system as an institution for the administration of justice rest largely upon these principles.

During the hearing of this proceeding, the respondent spent much time arguing that the contempt citation accused him of requesting that the President appoint a panel of lawyers to review this Court's opinion and judgment. He contended that he suggested that "an attorney" be consulted. It is true that the citation did mention a "panel of lawyers" but it also mentioned "an attorney." The gravamen of the matter at bar is not the number of attorneys, but the review of this Court's judgment by one or several lawyers as a means of determining whether or not said judgment should be enforced.

The respondent, in his letter, gave several reasons for making the request to the President. The first is that under the Liberian Constitution the government is divided into three independent, but coordinated branches, each serving as a check on the other. Here he seemed to be implying that the Executive has the power to check to see that facts are straight, verdicts are right, and opinions and judgments of the courts follow the Constitution and laws of Liberia.

There are two provisions of the Constitution of Liberia which must be taken into consideration in determining this issue, namely Article I, § 14 and Article IV § 3. Article 1, § 14 reads: "The power of this government shall be divided into three distinct departments: Legislative, Executive, and Judicial; and no person belonging to one of these departments shall exercise any of the powers belonging to either of the other. This section is not to be construed to include Justices of the Peace." (Emphasis ours).

It is important to observe here the unambiguous and unequi-vocal wording of this provision as it relates to a person of one branch exercising powers belonging to either of the other. This distinction between our Constitution and the constitution of the United States of America was underscored by Mr. Chief Justice Grimes in *Wolo v. Wolo,* 5 LLR 423, 438 (1937), when speaking for this Court, he said: "If with a constitution lacking the unique and express inhibition in ours to which attention has been called, the Supreme Court of the United States felt itself in duty bound to emphasize the separateness and distinctness of the powers of the three coordinated branches of that government, based upon logical inferences, how much more is that duty enjoined upon us since the provision in ours is express and not merely implied." It follows then that no department of the government but the courts, can exercise judicial functions except as it may be otherwise provided in the Constitution, as each branch set up in the Constitution is independent as well as coordinate. *In re the Constitutionality of the Act of the Legislature of Liberia, Approved January 20, 1914*, 2 LLR 157 (1914).

In the same vein it is stated in 16 AM JUR 2d., *Constitutional Law* § 213:

> "Each of the several departments of government derives its authority directly or indirectly from the people and is responsible to them. Each has exclusive cognizance of the matter within its jurisdiction and is supreme within its own sphere. In the exercise of the powers of government assigned to them severally, the departments operate harmoniously and indepen-dently of each other, and the action of any one of them in the lawful exercise of its own powers is not subject to control by either of the others. Each department of government must exercise of its own delegated powers, and unless

otherwise limited by the Constitution, each exercises such inherent power as will protect it in the performance of its major duty; one department may not be controlled or even embarrassed by another department unless the Constitution so ordains. For any one of the three equal and coordinate branches of government to police or supervise the operation of the others strikes at the very heart and core of the entire structure."

From this separation of the departments is derived the doctrine that certain functions, because of their essential nature, may properly be exercised by only a particular branch of the government. Hence the function of the Legislature to make laws; of the Executive to enforce them; and of the Judiciary to hear and decide cases according to the facts and the law, and to interpret laws enacted by the Legislature. Under the doctrine of separation of powers, such functions cannot be delegated to any other branch, and one department cannot interfere with another by usurping its powers or by supervising the exercise of such powers. Reviewing judgments of the Supreme Court, or any court for that matter, as a basis of determining their legality or enforceability does not fall within the purview of the Executive or Legislative branches of government. No department of go-vernment other than the Judiciary can exercise judicial functions.

If the President had adhered to the respondent's suggestion, to which branch of government would this attorney belong? Since there is already a court of *dernier resort*, the Supreme Court, it is obvious that he could not be a part of the Judiciary. He could not be attached to either the Legislature or Executive, because neither of these branches is constitutionally clothed with the authority to exercise judicial power. If he were to be a part of the Executive, as the suggestion seems to imply, it would be *ultra vires* for it would be a clear usurpation of the powers of the Judiciary.

The other relevant provisions of the Constitution are found in Article IV, and they are as follows: "the judicial power of this Republic shall be vested in one Supreme Court, and such subordinate courts as the Legislature may from time to time establish ..." (§ 1); "the Supreme Court shall have original jurisdiction in certain cases and appellate jurisdiction in all other cases, both as to law and fact" (§ 2); "and from whose judgment there shall be no appeal" (§ 3).

It is clear from these sections that judicial powers are to be exercised by the courts, final review of cases is the sole preserve of the Supreme Court, and its judgments are final and hence binding on the parties. The only legally prescribed method for reviewing a judgment of the Supreme Court is by a motion for rehearing which must show that some palpable mistake was made by the Court inadvertently overlooking some fact or point of law; and

only the Court itself can review its judgment. Unfortunately for the appellants in the *Yancy* case, none of the Justices found any palpable mistake that would warrant a rehearing of the case by this Court. Therefore the request for appointment of an attorney to review this Court's judgment suggests the creation of a tribunal above the Supreme Court, contrary to the Constitution, and it shows a gross disregard for the Court's judgment.

The respondent contended that once this Court had delivered its opinion and rendered a judgment, the matter was completely out of the hands of the Judiciary, and the matter of execution of the judgment rests solely with the President. This is true in so far as there is no attempt to circumvent or disregard the judgment and thus obstruct the administration of justice. This Court has held that a lawyer who institutes and prosecutes proceedings which he knows, or should know, are in defiance of, or an effort to circumvent a judgment of the Supreme Court, is guilty of contempt of the Court. *Brown et al. v. Sesay et al.*, 19 LLR 86 (1968).

An attempt to prevent the execution of a lawful order, judgment, decree, or mandate of a court is such an interference with, or attempt to obstruct the due administration of justice, as to constitute a contempt no matter where the act of contempt was committed. 17 C. J. S., *Contempt* §§ 12, 25 (a), (b) and (c).

Any person with knowledge of the decisions and mandates of the Supreme Court, who, directly or indirectly, disturbs, disobeys or disregards them, or in any manner aids and abets contemptuous acts against the Supreme Court, is guilty of contempt. *Trinity v. Hoff et al.*, 19 LLR 358 (1969). *In re Lawrence A Morgan*, 22 LLR 378 (1974).

The respondent sought to justify his acts by invoking the constitutional guarantee of freedom of speech and press. The relevant portion of Art. I, § 15th reads as follows: "...the free communication of thought and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print, on any subject, being responsible for the abuse of that liberty." While this provision guarantees free speech and press, it also imputes responsibility for any abuse of the privilege; therefore a line must be drawn between those speeches or writings which are protected by the privilege and those which constitute abuse of it.

It follows then that since the right to speak or write is not absolute, it may be regulated or subordinated to accomplish other legitimate and overriding objectives of government, such as the administration of justice. In striking a balance between this freedom and the administration of justice, the line is fixed at that point where that which is spoken or published is calculated to obstruct the functioning processes of the court. Freedom of

speech or press should not be allowed to interfere with, embarrass or obstruct the administration of justice. The right of the court to enforce respect for itself begins where the right of the citizen to speak ends.

Although, on the one hand, lawyers should be given the widest margin to advocate their client's causes effectively, on the other hand, they are officers of the court with a professional interest in the fair and respectful administration of justice. It is settled that a person charged with contempt in making certain utterances or publishing writings which clearly constitute a contempt may not ordinarily escape liability therefor by merely invoking the constitutional guarantees of freedom of speech and press. Obstructing by such means the administration of justice by the courts is an abuse of these liberties such as will subject the person to punishment. 17 AM JUR 2d., *Contempt,* § 58. The constitutional provision of freedom of speech and press does not confer the right to persuade others to violate the law. Speech or writing calculated to cause a violation of the law is not within the protection of this provision.

Closely allied with the free speech issue is respondent's assertion, in his letter, that "it has been held that it would be contempt of the Court to examine its opinions and differ in view with them." There is no such holding, and no one has been held in contempt for disagreeing with this Court's opinions. Indeed it is a constitutional right of a citizen to disagree and, if he cares to, express such disagreement, with a decision of the Court. Criticism of the court's rulings or decision is not improper, and may not be restricted after a cause has been finally disposed of and has ceased to be pending 17 C.J.S., *Contempt,* § 25. What has been held contemptuous is the utterances or writings tending to obstruct the administration of justice in a pending case. *In re Albert Porte et al.*, 24 LLR 3 (1975).

What is at issue here is not criticism of the Supreme Court's opinion, but the suggestion that the Court's decision be reviewed by someone to determine whether or not it was "unfounded in fact and in law." The case *The Regents of the University of California v. Bakke*, decided by the United States Supreme Court in 1978 is not relevant because it dealt with the quota system for admission into medical school, and also because although the United States Supreme Court's opinion was criticized by some, there was no suggestion that it be reviewed or that it not be enforced. In fact, the finality of that court's judgment in that case was accepted by all. In every case that comes before a court, one party must win and the other lose, and it is a hallmark of good and orderly government that once a final decision is made by the highest court of the land all parties to the action are bound by the judgment. Otherwise, no case would ever end.

As to whether or not respondent should have petitioned the President for a pardon or reprieve of the defendants in the *Yancy* case, instead of requesting a review of the Court's opinion and judgment, the respondent, in his returns, declared that to have done so would have implied the admission of guilt of the defendants in that case; and that since the attorneys felt that their clients had been wrongfully convicted, it was not advisable to have pursued that course. All that can be said is that Article III, § 1st of the Constitution of Liberia provides that the President "may after conviction... grant reprieve and pardons for public offense except in cases of impeachment." According to the Constitution and laws of Liberia, the conviction or acquittal of one charged with the commission of a crime rests solely with the judicial branch of government; therefore the guilt or innocence of such person must be established in a judicial forum. Once the courts have pronounced a defendant guilty, it is on the basis of this judicial determination, and not on the defendant's or his attorney's belief of guilt, that the President exercises, if he so desires, his pardoning power. Here again is another difference between the Constitution of Liberia and that of the United States. Unlike ours, the latter provides that "the President shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." It does not expressly require conviction.

After having reviewed carefully the respondent's letter, returns and the briefs filed in these proceedings, and having listened to the arguments, it is our considered opinion that the respondent's letter to the President requesting the appointment of an attorney to review this Court's opinions and judgment in the case *Yancy et. al. v. Republic*, decided October Term, 1978, was contemptuous of this Court; that the language used in the letter is clear so as not to be susceptible to a construction consistent with innocent intent; and that this act of the respondent tended to disrespect and belittle the Court, hold its judgment up to public ridicule, obstruct the administration of justice in the executing of its judgment, and destroy the confidence of the people in such administration.

In the case *In re Francis G. Doe, Sr.*, 23 LLR 38 (1974), Mr. Justice Horace speaking for the Court, summarized briefly this Court's power to punish for contempt as follows: "This Court has declared not only its inherent power to punish for contempt but also what constitutes contempt of Court; that the power to determine whether a contempt has been committed, and to punish for it, is inherent in a constitutional court, and such power cannot be limited by statute." The same holding was enunciated by this Court in the cases *In re Moore,* 2 LLR 97 (1913) and *In re: The Constitutionality of Sections 12.5 and 12.6 of the Judiciary Law, approved May 10, 1972*, 24 LLR 37 (1975). This Court also held in the case *Gibson v.*

Wilson and Blackie, 8 LLR 165 (1943), that "criminal contempt is instituted for the purpose of vindicating the dignity of the court." This Court has also held that "any act which tends to belittle, degrade, obstruct or embar-rass the Court in the administration of justice is contemptuous." *In re C. Abayomi Cassell, Attorney General of Liberia*, 10 LLR 17 (1948). In the case *Watts-Johnson v. Richards,* 12 LLR 8 (1954), this Court held that "a disregard of a court by conduct or language, in or out of the court's presence, which tends to disturb the administration of justice, or tends to impair the respect due the Court, is also contemptuous."

In addition to these holdings, this Court has further held that the definition of contempt applies in a special manner to lawyers who disobey, belittle and bring into disrepute the courts, and the offense is deemed much more grave than when committed by laymen (*Branly v. Vamply of Liberia, Inc.,* 22 LLR 337 (1973); that any breach of a lawyer's duty to maintain the respect due the courts constitutes contempt (*In re C. Abayomi Cassell, Counsel-lor at Law*, 14 LLR 391 (1961); and that any act which tends to bring conflict between the judiciary and another branch of government and to undermine the independence of the judiciary is contemptuous (*In re McDonald Acolatse* , 26 LLR 456 (1977) and *In re Beatrice Dennis-Webb & Venus Dennis*, 27 LLR 355 (1978).

In view of the foregoing, it is our holding that Counsellor C. Abayomi Cassell is guilty of gross contempt of the Supreme Court, and should be severely punished therefor. When one is adjudged guilty of contempt, this Court may, depending on the gravity of the act, reprimand, fine, imprison and, where a lawyer is involved, suspend or disbar him from the practice of law in Liberia. However, because of Counsellor Cassell's age and the contribution he has made to his nation as a member of the National Bar Association and as a former Dean of the Supreme Court Bar, we are inclined to be lenient with him. Nevertheless, Counsellor Cassell is fined the amount of $2,000.00 to be paid within a month from today's date; failing which he shall be expelled from the practice of law in Liberia. Costs against respondent. And it is so ordered.

Respondent adjudged guilty of contempt.