IN RE: CONTEMPT PROCEEDINGS AGAINST MR. RODNEY SIEH, EDITOR-IN-CHIEF OF THE FRONT PAGE NEWSPAPER

LRSC 10 (2011)

Heard: November 9, 2010 Decided: January 21, 2011

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

When this Court met for regular business on October 18, 2010, with Mr. Chief Justice Johnnie N. Lewis presiding, the Bench observed the presence in the Chambers of the Court of approximately 100 uniformed girls of school going age. The children were all dressed in white T-shirts with white head ties. The oldest appeared to be about 14 years old. Their presence was clearly an overbearing attraction and therefore could not go unnoticed.

As it is normal practice of the Court to acknowledge the presence of unusual visitors, the Chief Justice enquired as to who brought the school children to the Court and the purpose of their visit. A lady introduced herself and said she took the children to the Supreme Court 'to hear" the Angel Togbah case. This was in apparent reference to 'the case: Hans Williams and Mardea Williams, appellant, vs. Republic of Liberia, appellee, a matter before the Supreme Court on appeal.

The importance we attach to this case makes it appropriate to quote in relevance the Court's minutes of Monday, October 18, 2010, as adopted, for the benefit of this opinion.

"The Chief Justice brought to the attention of the Court that while coming to office this morning, he encountered some women and children who informed him that they were from the Center for Adolescent Girls Program and that they came to the Court to listen to Hans Williams case."

The following questions were put to the leader of the group by the Bench:

Ques: *What is the name of this group and why are you here?* W

Ans: *We are representing the Center for Adolescent Girls Program. We are here to listen to the case: Angel Togbah versus Hans Williams. We understand that the case is assigned for hearing today.*

Ques: *Why are these children not in school?*

Ans: *Your Honors, they attend school but today, they are here to listen to the Angel Togbah case which I understand is scheduled for today.*

Ques: *What do you intend to achieve by bringing these children here? Are you trying to pressurize the Court?*

Ans: *No Your Honors, this is a learning process for the children.*

Ques: *Will the children stay out of school as long as this case is here?*

Ans: I *do not want to pre-empt the Court; but I presume that this case will last for about a week.*

THE COURT:
"When this case is called for hearing, [We) do not want to see these children here. The Court is not a political place. All parties enjoy the benefit of the Court. This is not a place where supporters of party litigants come, shout and maneuver. The law protects everyone and there is no room for pressure as such action definitely has no effect on the Supreme Court. We wish to assure you that whomsoever you support will be fully protected in the face of the law. We must let you know that these young girls will not be allowed to enter Court when this matter is called. They belong in the classroom as the future leaders in this country. Just as we are not allowing you to come here with people, we will not allow, also, the appellants to parade people in this Court in their support."

To the mind of this Court, the directive issued by the Supreme Court as contained in the minutes herein above quoted, was clear and left nothing for interpretation. As set forth, our directive cogently conveyed the following to all interested parties in the Angel Tokpah case: that trooping crowd into the Court's Chambers, especially children, ostensibly either to bear pressure on, or as a means to elicit Court's empathy, not only is disallowed but also an exercise in futility; that our job is to accord all parties appearing

before the Supreme Court, the full protection of the law; that all interested persons, relatives and friends of the parties litigant desist from such and all partisanship conduct. The directive also carried a stern warning to anyone hereafter seeking to parade crowd in the Supreme Court's Chambers.

Fair and rational as the position assumed by the Supreme Court was, it appeared to have rallied Mr.Rodney B. Sieh, the contemnor to unwarranted anger. For on October 25, 2010, one week after the October 18, session of the Supreme Court, contemnor caused a letter to be published in Vol. 2, # 93 of his newspaper styled as *"Front Page Africa"*. The letter was captioned: *"Biasness, Discrimination and Prejudice in Angel Tokpa case"*. It was reportedly authored by one Garsuah Gborvlehn and published in the "Letters to the Editor" column of the newspaper.

These contempt proceedings having been prompted by the October 25, 2010 letter, it is well to quote it in its entirety as follows:

"The Editor,
In the Angel Tokpa appeal case: "Biasness, discrimination, and prejudice, in the interest of the convicted murderers have begun to surface on the part of [Justice] Gladys Johnson of the Supreme Court.

"The biasness on the part of Judge Gladys Johnson was made evident a couple of days ago when she arbitrarily drove family members and friends of the little murdered girl, and the general public from the Court. That is wrong and unconstitutional!

"According to [Justice] Johnson, the main reason the Supreme Court is hearing the case of the convicted murderers "seek the right of the convicted murderers and see where the lower court erred and see if we can correct it" as though [Justice] Johnson have already made her conclusion that the lower court have erred before the Supreme Court even begins to hear the appeal.

"The mere fact that [Justice] Johnson have already concluded on "how to correct the error of the lower court serves as proof that Judge Johnson has indeed, most definitely taken sides with the convicted murderers, and would certainly be bias and partial in the interest of the convicted murderers!

"We are aware that [Justice] Johnson's prime basis to dispense injustice and the miscarriage of justice in the interest of the convicted murders would be that the convicted murderers Hans Williams and his fiancée should have not been convicted and sentenced on the basis of circumstantial evidence.

"But we like to put [Justice] Gladys Johnson on notice that:

"Under appropriate circumstance, as is this case where the little girl was murdered on the lap and under the roof of the convicted murders, circumstantial evidence SHALL have the same weight as direct evidence.

"In other words, in criminal, and civil cases, issues may be established by, and verdicts founded on, circumstantial evidence- that is, by inferences from established facts- when no direct evidence is available, so long as there exists a logical and convincing connection between the facts established and the conclusion concurred as is this case in which the little girl was murdered on the laps and under the roof of the two convicted murderers, and they tried to escape and destroy evidence!"

"Thanks Mr. Editor, Garsuah Gborvlehn. Garsuah.qborvIehnqmail.com "

We desire to remark here that reading Gborvlehn's letter and comparing its contents with what truly transpired in the Chambers of this Court as recorded in the minutes of October 18, 2010, the Supreme Court was at a total loss. To our mind, the conclusion reached by Mr. Garsuah Gborvlehn accusing the Supreme Court of biasness and prejudice was incomprehensibly outrageous. But even more perplexing, in the opinion of this Court was the editorial judgment exercised by Contemnor Sieh in authorizing publication of a letter informed by naked lies. Was the allegation contained in the publication anything near the truth that Justice Johnson *"arbitrarily drove family members and friends of the little murdered girl, and the general public from the Court."?*

When Contemnor Sieh appeared before us on November 1, 2010, he was asked the following question:

"Ques: Before you published the letter, did you verify whether its contents were true?

"Ans: No, Your Honors.

Contemnor's answer as quoted above clearly evidences his utter disregard for reporting the truth and the grave accusation of biasness and prejudice levied against the nation's highest court. When an editor, as in the instant case, publishes a letter/story without verifying the truthfulness of its contents, in the opinion of this Court, his conduct cannot be regarded as an exercise of sound editorial judgment.

Contemnor admits, as indicated herein above, that the letter was not cross checked as to its veracity. But if subsequent publication should direct our reflection on this point, it could be said that contemnor felt absolutely justified. Evidently, two days after his first appearance before the Supreme Court, contemnor published a banner story: *"Gladys Johnson Again",* in which he sought to clearly justify his utter lack of editorial judgment as quoted: *"Chief Justice Johnnie Lewis and his Bench were insistent in their interrogation of the FrontFage Africa's editor that FPA did not contact Associate Justice Gladys K. Johnson to verify the contents in the letter prior to its publication. No newspaper anywhere in the world seeks the permission of institutions or personalities mentioned in reader's letters and/or opinions. In fact, currently in Liberia, radio stations read text messages from their listeners live on radio and television."*

Further, contemnor's demonstrated conduct that he was under no obligation to cross check an article issuing major allegations against a tribunal of justice, to the mind of this Court, violated Articles 13 and 19, two cardinal articles enshrined in the Code of Ethics and Conduct governing Liberian Journalists, provided in the Revised Constitution and By-Laws of the Press Union of Liberia, adopted on October 10, 2009.

Article 13 stipulates: *"The journalist should not publish or broadcast false information or unproven allegations."* [Our Emphasis]. Also, Article 19 of the Union's Ethical Code requires of every Liberian journalist *"to make adequate enquiries and cross-check the facts before publication/broadcast."*

As narrated herein, except for one whose mind is crippled by unbridled taste for

undesirable polemics, it cannot be insisted that the contents of Gborvlehn's letter was not patently calculated, at the instance of both its writer and the publisher, to generate a disdainful and demeaning public perception of the nation's highest Court. Also, it cannot be successfully argued that the writing and publication of Gborvlehn's letter was not intended to portray the Supreme Court as an unfair, partial and prejudicial tribunal driven by a resolute sense of injustice to free what the letter had adjudged and termed as "convicted murderers".

The obvious implications of the letter for the preservation of the dignity of the Supreme Court of this country prompted the issuance of a citation dated October 27, 2010. The Clerk of the Supreme Court, Martha Bryant-Henries, in the citation addressed to the Editor-In-Chief of the Front Page Africa newspaper, stated inter alia:

"By order of the Supreme Court of Liberia, you are hereby cited to appear before the Full Bench in the Chambers of the Honorable Supreme Court on Monday, November 1, 2010, at the hour of 9:00 a.m.

"It is anticipated that your presence will help the Bench understand the basis for the information provided in the article in the Front Page Newspaper, Vol. 2, No. 93, Page 5, published on Monday, October 25, 2010 entitled: "Biasness, Discrimination and Prejudice in Angel Tokpah case".

In keeping with the citation, contemnor appeared as scheduled. But to the utmost surprise of the Supreme Court, suddenly became outraged by questions put to him by the Bench. Contemnor's utterly disrespectful demeanor in the presence of the Court reached its pinnacle by his outburst reference to the Supreme Bench as "dictatorial.

From all indications, contemnor's November 1, 2010 appearance before the Bench probably succeeded only in fueling contemnor's unabated, misguided and glaringly entrenched disregard for the dignity of our nation's highest tribunal of justice.

For immediately on Tuesday, November 2, 2010 the following day, contemnor published a story in volume 2, No. 99 of his newspaper. In a tone shrouded in outright ridicule of the Court, contemnor wrote a report on his appearance before the

Honorable Supreme Court. As if to vent his anger in a banner headline: *"COME AND GET ME",* contemnor described his appearance before the Bench as *"Bad Day in the High Court",* and narrated in the manner following:

"On Monday, November 01, 2010, the editor, in response to a citation from the Supreme Court of Liberia appeared before the Full Bench as requested in a citation dated Oct. 27, 2010. The citation requested the editor to "help the bench understand the basis for the information provided in the article in the FrontPage Africa Newspaper, Vol. 2, No. 93, published on Monday, Oct. 25, 2010 entitled: "Biasness, Discrimination and Prejudice in Angel Tokpah case." To the editor's dismay, Chief Justice Johnnie Lewis used the editor's presence in the court as a means to interrogate the editor over whether the editor had any proof of evidence or even contacted Associate Justice Gladys Johnson whose name was mentioned in the letter to the editor published in the opinion section of the print edition of FrontPage Africa."

"To the editor's dismay, all Chief Justice Lewis and his three associates, present in the court, His Honor, Francis Korkpor, Kabineh Ja'neh, and Her Honor, Jamesetta Howard-Wollokolie sought to interrogate the editor and rejected attempts by the editor to explain the basis for the publication. The editor, upset with the manner of ill-treatment meted by Chief Justice Lewis and his Associate Justices took the Chief Justice to task over his dictatorial treatment of the editor who was invited to explain the basis of a reader's opinion but never given the chance to read a prepared text before the bench. The editor was instead ridiculed and questioned about whether or not he was a member of the Press Union and even asked to quote Article 8 of the Press Union Code of ethics as if the editor was on trial."

"The Chief Justice went on to instruct the editor to consult and find a lawyer and report back to court on Wednesday, Nov. 3, 2010 for consultation. However, in view of several articles previously published by Frontpage Africa involving misdeeds of the Chief Justice, the editor finds it hard to believe that the highest court in the land can ever deliver justice in an impartial manner. The editor wishes to state here that he will not be appearing before the full bench because he cannot find a local lawyer who understands and is prepared to defend his constitutional rights in the 48 hours mandated by the high court."

"This message will be communicated to the court in writing before Wednesday's scheduled appearance. Front Page Africa has learned from sources within the high court that several officials and former officials are behind what appears to be an attempt to sabotage FPA's Monrovia operation and shut

its premises down on the basis of legal jargons."

By the letter immediately herein above quoted, contemnor has admitted therein, his unsavory conduct of reckless disregard for the dignity of the highest court of the land. In his own publication, contemnor admits describing the Bench as *"dictatorial"*. On a second thought however, contemnor cleverly attempted to excuse himself from deserving penalty therefor under the apparent pretext of being *"upset with the manner of ill-treatment meted by Chief Justice Lewis and his Associate Justices"*. By his admission, contemnor has deposed against himself irrefutable direct evidence against himself. And here this Court remarks that in proof we have taken contemnor's admission as a major part of our ultimate conclusion in these proceedings.

Not only is contemnor defiant, but he has advanced an argument touching on what he believes is his constitutional right of freedom of speech and of the press is. This argument represents contemnor's definitive and resolute resistance in respect to these proceedings:

"The editor is prepared for any consequences the high court has threatened to deliver and is awaiting his date with justice. If the court or any authority wants to restrict the contents of our opinion (letters and commentaries) section we will not allow it and fwel prepared for whatever ruling the court decides. "[Emphasis Ours].

We desire to remark here that following the issuance and service on him of the writ of summons for contempt, contemnor, on November 8, 2010, filed his returns. We have herein quoted verbatim contemnor's returns for the benefit of this opinion as follows:

"RESPONDENT RODNEY SIEH'S MEMORANDUM IN OPPOSITION TO THE WRIT OF CONTEMPT.

NOW COMES the Respondent, pro se filing out of the usual form of court, and files this Memorandum in Opposition to the Writ of Contempt against him as commanded by the Honorable Supreme Court of Liberia.

STATEMENT OF THE CASE:

On… , the Supreme Court of Liberia cited the Respondent/Contemnor for contempt in relation to an opinion letter published in the print edition of FrontPage Africa, a newspaper in which Respondent/Contemnor serves as publisher. Respondent/Contemnor made an initial appearance on at which appearance after initial inquiry, the matter was continued until On , the Respondent/Contemnor was given until Tuesday, November 10 to appear with his attorney of record to answer to the contempt citation. Having been unable to secure representation, Respondent/Contemnor files this return in anticipation of a pro se appearance on November 10, 2010.

STATEMENT OF THE FACTS:

The case of the People of the Republic of Liberia v. Hans Williams and Mardea Parkyue is a celebrated case currently before the Supreme Court of Liberia. It is the case of the untimely death of a 13 year old child who was in the care of her foster parents, Mr. Hans Williams and his fiancé, Ms. Parkyue. The Defendants were tried and convicted in criminal court and have taken appeal to the Supreme Court of Liberia, where the case now sits. Intense public debate has raged the guilt and innocence of the accused. On the day of judgment and sentence organized groups were in the courtroom mainly demonstrating and advocating for conviction. Numerous articles letters to the editor and other opinion pieces have filed the newsprint in Monrovia.

"On October 25, 2010 FrontPage Africa printed a letter from a member of the general public under the pen name Garsuah Gborvlehn in which he questioned the objectivity of one of the Justices of the Supreme Court, Justice Gladys Johnson based on comments she had allegedly made concerning the Angel Tokgba case. After the publication, the contempt citation followed.

"THE QUESTIONS PRESENTED:

1. WHETHER OR NOT THE SUPREME COURT OF LIBERIA HAS SUBJECT MATTER JURISDICTION OF CONTEMPT INVOLVING SPEECH.

2. WHETHER OR NOT THE RESPONDENT IS ENTITLED TO *REPRESENTATION.*

3. WHETHER OR NOT THE CHIEF JUSTICE AND JUSTICE JOHNSON

SHOULD RECUSE THEMSELVES FROM THE PROCEEDINGS.

ARGUMENT:
1. WHETHER OR NOT THE SUPREME COURT OF LIBERIA HAS SUBJECT MATTER JURISDICTION OF CONTEMPT INVOLVING SPEECH.

The right to freedom of speech and of the press is a fundamental right enshrined in the Constitution of the Republic of Liberia Article 15(a) and (b) provides:

a) Every person shall have the right to freedom of expression, being fully responsible for the abuse thereof. This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution.

b) The right encompasses the right to hold opinion without interference and the right to knowledge. It includes freedom of speech and of the press, academic freedom to receive and impart knowledge and the right of Libraries to make such knowledge available." (Const. Of Liberia Article 15(a) (b) emphasis added.)

"The Supreme Court of Liberia is a branch of the government of Liberia, encompassing its third branch. The Court cannot by judicial decree, rule or process in any way restrict the right of a citizen of Liberia to express or the right of the press to publish said expression. The Constitution fully recognizes that the right to free speech could be abused. As such it provides a remedy whenever such an abuse is alleged to occur like in the instant case, and the respondent specifically denies that any such abuse has occurred. Article 15(f) reads in its entirety, "This freedom may be limited only by judicial action in proceedings grounded in defamation or invasion of the rights of privacy and publicity or in the commercial aspect of expression in deception, false advertising and copyright infringement." (Const. of Liberia, Article 15(f).

"Therefore in any instance where an official of government is offended by the fundamental speech by a citizen or publication by press, the only proper course prescribed under our Constitution is a suit in defamation. If Mr. Gbovelin's letter of October 28, 2010 questioning Justice Johnson's ability to be fair in the Angel Tokpa case offended the Justice, then the constitutionally prescribed remedy is a suit against the writer and perhaps the publisher for defamation. In no way can the Supreme Court of

Liberia circumvent that process by a Sua Sponte motion to cite the publisher for contempt. That is simply judicial overreaching. This Court must declare any practice, procedure or law which in any way curtail, restrict, or enjoin the freedom of speech and press protected by Article 15 of the Constitution of Liberia as unconstitutional. The power to haul individual citizens from the public street who are not party litigants to any case or matter before the Court or who are not officers of the Court (such as lawyers, judges or other judicial officers) when they are exercising rights under the Article 15 of the Constitution of Liberia is simply beyond the contempt powers, either explicit or implied, of the Supreme Court of Liberia.

"In American democracy and jurisprudence upon which our jurisprudence and democracy, including our constitutional scheme, is based criticism of a Justice or Judicial decision will never lead to such contempt, no matter how offensive or unfair. The Associated Press reported the following on January 28, 2010, excerpted here.

WASHINGTON — President Barack Obama on Saturday sharply criticized a Supreme Court decision easing limits on campaign spending by corporations and labor unions, saying he couldn't "think of anything more devastating to the public interest." He also suggested the ruling could jeopardize his domestic agenda.

"In its 5-4 decision this week, the high court overturned two decisions and threw out parts of a 63 year old law that said companies and unions can be prohibited from using their own money to produce and run campaign ads that urge the election or defeat of particular candidates by name.

Portraying himself as aligned with the people and not special interests, Obama said the decision was unacceptable "(Associated Press, Jan. 23, 2010, as reported by the Washington Post, Washington DC, Jan. 23, 2010. "Would anyone then argue that President Barack Obama, himself an American legal luminary and legal academician is guilty of contempt? Certainly not.

"Article 15 of the Constitution of Liberia is closely related to Article 19 of the Universal Declaration of Human Rights. More besides, the protection afforded in Article 15 of the Constitution of Liberia is critical if our fledging democracy is to survive. Two noted democracy advocates discussed this issue, excerpted here:

"The notion of freedom of expression is intimately linked to political debate and the concept of democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency. One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meiklejohn. He argues that the concept of democracy is that of selfgovernment by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. According to Meiklejohn, democracy will not be true to its essential idea if those in power are able to manipulate the electorate by withholding information and stifling criticism. Meiklejohn acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideal.

Eric Barendt has called this defense of free speech on the grounds of democracy "probably the most attractive and certainly the most fashionable free speech theory in modern Western democracies." Thomas I. Emerson expanded on this defense when he argued that freedom of speech acts as a "safety valve" to let off steam when people might otherwise be bent on revolution. He argues that "the principle of open discussion is a method of achieving a moral adaptable and at the same time more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus." Emerson furthermore maintains that "Opposition serves a vital social function in offsetting or ameliorating (the) normal process of bureaucratic decay.

Research undertaken by the Worldwide Governance Indicators project at the World Bank, indicates that freedom of speech, and the process of accountability that follows it, have a significant impact in the quality of governance of a country. "Voice and Accountability" within a country, defined as "the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media" is one of the six dimensions of governance that the Worldwide Governance Indicators measure for more than 200 countries." (Excerpted from Wikipedia online encyclopedia).

"It is not Respondent's argument here that the Court cannot use contempt power to control speech, protect the judicial process or the integrity of the Court. It certainly can. In mattes before it, the Court can issue gag orders, restricting party litigants and their attorneys, from public comment, the Court can issue rules and procedures for how proceedings are conducted including type, manner and style of speech, the Court can issue orders governing demeanor in or Court of law or before judges for those who are

properly before the Court, etc.; but this is not the case here.

"This case arises under Article 15 of the Constitution of Liberia which specifically bars the government from curtailing, restricting or enjoining the freedom of speech or the press, which abuse is subject to the constitutionally prescribed remedy, of which contempt of court is not the one. If the Court can haul a private citizen or a newspaper publishing off the street for either voicing or publishing speech the Court finds offensive, such action will have a chilling effect on the right of citizens and the press to monitor the government and debate openly whether or not their government is serving in their best interest. For reasons stated above, Respondent argues that the Supreme Court lacks subject matter jurisdiction in this matter and should dismiss this case.

2. WHETHER OR NOT THE RESPONDENT IS ENTITLED TO REPRESENTATION

"The Respondent is unclear, by the nature of summons, since there is no ongoing case or controversy, as to whether this is a civil contempt or a criminal contempt. A judge who feels someone is improperly challenging or ignoring the court's authority has the power to declare the defiant person (called the contemnor) in contempt of court. There are two types of contempt, criminal and civil. Criminal contempt occurs when the Contemnor actually interferes with the ability of the court to function properly — for example by yelling at the judge. This is also called direct contempt because it occurs directly in front of the judge. A criminal contemnor may be fined, jailed or both as punishment for his act.

"Civil contempt occurs when the contemnor willfully disobeys a court order. This is also called indirect contempt because it occurs outside the judge's immediate realm and evidence must be presented to the judge to prove the contempt. A civil contemnor, too, may be fined, jailed or both. The fine or jailing is meant to coerce the contemnor into obeying the court, not to punish him, and the contemnor will be released from jail just as soon as he complies with the court order.

"Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for disturbing them in their proceedings.

"In some states, as in Pennsylvania, the power to punish for contempt is restricted to offences committed by the officers of the court, or in its presence, or in disobedience of its mandates, Orders or rules; but

no one is guilty of a contempt for any publication made or act done out of court which is not in violation of such lawful rules or orders, or disobedience of its process.

"Similar provisions, limiting the power of the courts of the United States to punish for contempt, are incorporated in 28 U.S.C.

"Respondent has not been cited for contempt for either acting rudely in court (criminal) or disobeying an order of the Court (civil) given that development, Respondent is confused as to the nature of the contempt proceedings and whether or not the Court intends to take his liberty. If Respondent's liberty is in jeopardy, then he is entitled to the full protection of due process and trial by jut)/ under Article 20(a) and the right to counsel at every stage of the proceedings under Article 21(c).

"The Respondent has argued supra, that the Supreme Court lacks jurisdiction of the subject matter and cannot assume jurisdiction by dressing up a defamation issue into a contempt issue. Therefore, the case must be sent to a trial Court. According to Article 66 of the Constitution of Liberia, the Supreme Court may only exercise original jurisdiction in cases involving Ministers, Ambassadors or where a County is a party. For purposes of this proceeding, the Respondent is neither a Minister, an Ambassador nor a County.

"Respondent has diligently searched and cannot find an attorney licensed before the Supreme Court Bar to take his case.

3. WHETHER OR NOT THE CHIEF JUSTICE AND JUSTICE JOHNSON SHOULD RECUSE THEMSELVES FROM THE PROCEEDINGS

"A judge who has a personal or other material interest evincing a conflict of interest in a case should disqualify himself or herself. The most common grounds for disqualification or recusal are:

- The judge is related to a party, attorney, or spouse of either party (usually) within three degrees of kinship.

- The judge is a party.

- The judge is a material witness unless pleading purporting to make the Judge a party is false (determined by presiding judge, but see substitution (law).

- The judge has previously acted in the case in question as an attorney for a party, or participated in some other capacity.

- The judge prepared any legal instrument (such as a contract or will) whose validity or construction is at issue.

- Appellate judge previously handled case as a trial judge.

- The judge has personal or financial interest in the outcome. This particular ground varies by jurisdiction. Some require recusal if there is any interest at all in the outcome, while others only require recusal if there is interest beyond a certain value.

- The judge determines he or she cannot act impartially.

"In the instant case Justice Johnson is a party, constructively. She is the subject of the speech which gives rise to the contempt citation and therefore cannot be expected to act in a fair and impartial manner. She should therefore recue herself.

"As to the Honorable Chief Justice, Respondent is requesting that the Chief considers whether or not he can act impartially. The Chief Justice has been the subject of a few articles in the FrontPage print and online magazine which have not been favorable. Some letters and stories have been derisive. Respondent does not believe the Chief Justice can adjudge the Respondent fairly.

"CONCLUSION

Respondent argues that the Court lacks subject matter jurisdiction in the instant case because if the matter arises under Article 15 of the Constitution of Liberia which prevents the government from curtailing, restricting or enjoining freedom of speech or the press. The constitutionally prescribed formula for abuse of speech is an action in defamation.

"Respondent argues that he is entitled to counsel and that the Supreme Court cannot hear the matter

because it is not one of the instances where it may exercise original jurisdiction.

"Respondent was not a party-litigant nor was part of any proceeding which was before the Court or any of the subordinate courts of the Republic. To reach in the public square and haul him before the Court is in contravention of our Constitutional scheme.

"Finally, Respondent argues that he cannot get a fair hearing before the Court because one of the Justices is a party and another may have personal bias.

"For the foregoing reasons, Respondent prays that the Court dismiss the contempt citation to preserve the integrity of the Court and secure the basic tenets of our constitutional democracy.

Respectfully submitted:
Rodney Sieh, Pro se/RESPONDENT"

As herein above detailed in his returns filed with the Clerk of the Supreme Court, contemnor has vigorously defended both the contents of the "Gborvlehn letter" and the publisher-contemnor's right to publish said letter. In defending his conduct, contemnor has relied on Article 15 of the Liberian Constitution (1986).

According to contemnor, the case at bar arises under, and is protected by Article 15 of the Liberian Constitution. Article 15, according to contemnor, specifically bars the Government from curtailing, restricting or enjoining the freedom of speech or the press. Contemnor insists that even where there is abuse of this right, the aggrieved person has a remedy that is constitutionally prescribed. According to contemnor, the remedy provided by the Liberian Constitution does not include nor constitute contempt of court.

Further arguing, contemnor has submitted that if a citizen's exercise of free *"speech"* or press freedom, as Mr. Gborvlehn's letter questioning Justice Gladys Johnson's fairness in the Angel Tokpa case was offensive to the Justice, a suit for defamation against the writer and perhaps the publisher is the prescribed remedy.

Contemnor has therefore insisted that the Supreme Court of Liberia has no support in law to "circumvent that process by a *sua sponte* motion to cite the publisher for contempt", describing such an action as "judicial overreaching". The Supreme Court is duty-bound, urged the contemnor, to declare as unconstitutional any practice, procedure or law in this jurisdiction which in any way curtails, restricts, or enjoins the freedom of speech and of the press protected by Article 15 of the Constitution of Liberia.

Contemnor has therefore protested, maintaining that to summon individual citizens from the street who are not party litigants to any case before the Court when they are exercising rights granted under Article 15 of the Constitution of Liberia is simply beyond the contempt powers, either explicit or implied, of the Supreme Court of Liberia. In summary, it is Contemnor Sieh's basic contention that the Supreme Court lacks contempt power where the subject matter involves exercise of the constitutional right of free speech and of the press.

As can be seen, contemnor's substantive argument presents the pivotal question *whether exercising rights under Article 15 shields a reporter from summons to answer in contempt proceedings before a court of law in Liberia.*

This Court does not disagree that to speak freely, write and publish an opinion on any subject matter is a right granted by the laws of the Republic of Liberia. To the mind of this Court, there is no iota of doubt in constitutional clarity directing that Article 15 rights be protected and preserved. Freedom of speech and of the press is sacrosanct under the Liberian Constitution. It is recognized as indispensable to safeguarding individual liberties and the preservation of the security of the state.

Section 15th of Liberia's 1847 Constitution reads, inter alia:

"The liberty of the press is essential to the security of freedom in a state it ought not, therefore, to be restrained in this Republic..... The free expression of thoughts and opinions is one of the invaluable rights of man, and every citizen shall freely speak, write and print on any subject being responsible for the abuse of that liberty...."

In this jurisdiction, the reported case of first instance presenting questions bearing on "free speech and expression" was *Dennis v. Bowser.* (Dennis v. Bowser, I LLR (Liberian Law Reports) 5, (1861) It was decided by the Supreme Court of Liberia during its January Term in 1861, some 150 (one hundred and fifty) years ago.

In that case, appellee who was the plaintiff in the court below, filed an action in slander. He complained that the appellant, who was defendant in the trial court, had spoken words slanderous and injurious to plaintiff's person. And for the alleged injury sustained consequential of the slander, plaintiff sought to recover damages from the defendant.

Trial was had and the defendant adjudged "guilty of slander". Defendant was ordered to pay $250.00 (two hundred and fifty dollars) in damages to the plaintiff. In 1861, $250.00 (two hundred and fifty dollars) was a huge sum of money.

But stepping up to its constitutional duty to safeguard and preserve the rights granted under our Constitution, the Supreme Court disagreed and reversed the lower court's judgment. In protecting the constitutional right of free speech, this Court observed that the words plaintiff complained of were nothing but *"the expression of an opinion against an opinion..."* The Supreme Court therefore held as follows:

"The Constitution and statute laws [of Liberia] regard with sacred jealousy the right of "free speech" the full expression of those words and expressions which are necessary to convey our ideas and feeling and meaning to each other. It is a privilege that no jury in the land, nor court, has the right to suppress or circumscribe." Ibd. 7.

In 1861, the Supreme Court as the final arbiter in this land warned this nation in the following words:

"[I]t would be dangerous in the extreme, to allow the least intrusion upon sosacred a right [of free speech] and privilege, especially when the constitution declares that *"....every citizen shall freely speak, write and print on any subject, being responsible for the abuse of*

that liberty." [Emphasis supplied] Ibid.6

But let not a fundamental point escape us. Neither the Liberian Constitution intended nor the holding in the *Dennis* determine the exercise of freedom of speech and of the press to be a right absolute. For in *Dennis,* it was held:

"It is true that if malice is deceptively screened under, and these privileges and rights thus granted be used as a cloak, and other motives are the impromptер, the law fairly demands the proof, in the way and manner provided, and if true, will _give speedy and wholesome remedy,....." Ibid.6 [Emphasis Supplied].

By combining the right of free speech with the attendant responsibility in the scheme of constitutional construct, the framers of our Constitution ingeniously achieved a dual objective: they provided adequate constitutional safeguard for the protection of free speech and of the press while concurrently imposing equal and corresponding constitutional responsibility on anyone abusing said rights.

Invariably lodged in Liberian courts is the duty of delicate balancing. Faithful to this delicate enterprise of balancing, courts have sought, on the one hand, to safeguard free speech and of the press by vigorous insistence on deposition of evidence in proof of allegation of its abuse. But when evidence in support of allegation of abuse has been satisfactorily established, it is mandatory on the other hand that our courts in faithful execution of their constitutional mandate also impose appropriate penalties.

"The duty of the courts" says the Supreme Court of Liberia in the year 1861, *"is to guard with an eagle's eye the Constitution and laws, and only upon satisfactory proofs a citizen is to be held responsible for an abuse of his constitutional liberties." Dennis v. Bowser,* 1 LLR (Liberian Law Reports) 5, text at page 7 (1861).

Both the basic principle contained in section 15th of the 1847 Constitution as well as the standards enunciated in the Dennis case in 1861 are articulated in the current Constitution of Liberia (1986).

As a result, every person within the bailiwick of the Republic is guaranteed Article 15 protection of the Constitution of Liberia (1986). Article 15 states:

"a . Every person shall have the right to freedom of expression, being fully responsible for the abuse thereof. This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution. "

"b. The right encompasses the right to hold opinions without interference and the right to knowledge. It includes freedom of speech and of the press, academic freedom to receive an impart knowledge and information and the right of libraries to make such knowledge available. It includes non-interference with the use of the mail, telephone and telegraph. It likewise includes the right to remain silent.

"c. In pursuance of this right, there shall be no limitation on the public right to be informed about the government and its functionaries.

"d. Access to State owned media shall not be denied because of any disagreement with or dislike of the ideas expressed. Denial of such access may be challenged in a court of competent jurisdiction.

"e. This freedom may be limited only by judicial action in proceedings grounded in defamation or evasion of the rights of privacy and publicity or in the commercial aspect of expression in deception, false advertising and copyright infringement."

This Court in an opinion by Mr. Chief Justice Pierre said, and so we speak and affirm today that: *"freedom* [of speech] *should not be interpreted as license to exceed the constitutional liberties a citizen should enjoy."* Chief Justice Pierre continued by quoting Chancellor Kent as stated: "...that the liberty of the press consists in the right to publish with impunity, *truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals".* But the Chief Justice wittingly observed: *"Too often some of us are wont to use this constitutional privilege from motives other than could be called good, and for ends far removed from justifiable; therefore the Constitution has made the use of the privilege subject to personal responsibility for its abuse." In re* C. *Abavomi Cassell,* 14 LLR 391, 428 (1961).

In the case at bar however, contemnor has clearly demonstrated his gruesome

miscomprehension of the meaning of Article 15 rights as well as the proper exercise thereof within the law. There can be no scintilla of any form of rational argument in defense of the truthfulness of the contents of the October 25, 2010 publication here under scrutiny. The letter was a product of sheer lies with deceptions screened under, all calculated to malign the Supreme Court of Liberia.

We therefore hold that where there has been a glaring demonstration of reckless disregard for the truth with malicious intent to malign the court, as in the case at bar, Article 15 rights have been offended and abused, warranting consequential penalty. Said differently, where abuse of Article 15 rights has been alleged and evidence in support thereof deposed to the satisfaction of a court of law, as in the case at bar, appropriate sanction may be properly imposed by a tribunal of justice. This question has long been settled by a litany of decisions handed down by the Supreme Court of Liberia.

We desire to remark here after all that the Liberian Constitution confers on no one citizen, be it a reporter or publisher, the right to violate the law under the guise of exercising Article 15 rights of freedom of speech and of the press. The mere proposition that contemnor's publications are protected under Article 15, notwithstanding their sheer lack of truth and gruesome affront to the spirit and letter of the due process rights of parties litigant, offends and demeans Article 15 itself.

We will now carefully consider the second question presented: *whether contemnor's general conduct, demonstrated both in and out of the presence of the Court, constitutes contempt of the Supreme Court for which sanction may properly attach.*

Precedent thereto, it is important that for this Court to make a clear statement of what contempt is as well to provide an appreciation of the intrinsic power of every court of competent jurisdiction to punish therefor. In considering these contempt proceedings along the lines we propose, the Court has largely directed its reflections to contemnor's returns, quoted verbatim in this opinion. Contemnor filed said returns following service on him of a writ of summons for contempt directing contemnor to *"appear before the Full Bench of the Honorable Supreme Court of the Republic of Liberia, on Tuesday, November 9, 2010, at the hour of 9:0o a.m., to show cause if any, why he should not be held in*

contempt for publishing an article in the Front Page Newspaper dated October 25, 2010, Volume 2, No. 93, page 5, entitled: "Biasness, Discrimination and Prejudice in Angel Tokpah Case."

We have attached great deal of significance to these contempt proceedings. Our exercise of caution and care were informed by our resolute desire to be faithful to the discharge of our sacred duty to protect the rights of all persons appearing before us. What the "final arbiter" in the land means and what it entails was so aptly articulated by the Mr. Chief Justice, James A. A. Pierre at his installation as Chief Justice of the Honorable Supreme Court of Liberia on April 26, 1971. Mr. Chief Justice Pierre admonished the Full Bench *".....not [to] be unmindful of the fact [that] in our hands we hold the lives, liberties, privileges and rights of litigants who will bring their grievances to this altar for adjudication. From us there is no appeal but to God, and therefore we should be very careful less we advertently, but irreparably, wrong a litigant "* Reference: 20 LLR, pgs. 740 — 749.

In due consideration thereof, two distinguished members of the Supreme Court Bar, the President of the Liberian National Bar Association, Counselor Cyril Jones and former Associate Justice of the Supreme Court of Liberia, Counselor Clarence L. Simpson, Jr., were appointed as *Amici Curiae* in these proceedings.

We must state here that amici curiae are not mouthpiece of the court. Nor are they under any obligation to say simply what the inviting court desires. The Supreme Court of Liberia has been clear in many of its decisions that an *"amicus Curiae"* [amici curiae being the plural] is a person appointed by the court especially in matters involving contempt to advise the court as to the legality of its position against a respondent. As a lawyer, the *amicus curiae* represents neither the court nor the respondent. *"He is expected only to give conscientious legal advice for or against the Court's position, and thereby justify the confidence reposed in his integrity and ability in being asked to serve." In re C. L. Simpson,* 14 LLR 429, 434 (1961).

Appearing, Counselor Jones was emphatic in his view; that it amounts to contempt of the Supreme Court when a person appears before it and addresses members of the Bench in a manner that demeans the sanctity of the Court. He submitted that his review of the minutes of the Supreme Court disproved the contents of the publication,

subject of the contempt proceedings, attributed to Justice Johnson. Counselor Jones said that the October 18, 2010 minutes to the contrary shows that no person was ever driven from the chambers of the Supreme Court as erroneously published by contemnor.

For his part, Counselor Simpson said that he was at loss and simply could not understand why following a clearly unwarranted affront to the dignity to the Supreme Court, yet contemnor will appear but fail to throw himself at the mercy of the Court. He blames such conduct on lack of knowledge of basic law fuelled by arrogance.

Both lawyers concur that contemnor's conduct was utter disrespect to the dignity of the Court and therefore contemptuous. They both however beg the Court's mercy on contemnor, "for contemnor knows not, nor does he appreciate the full implications of his own conduct in the premises".

This Bench gratefully acknowledges the prompt manner in which these two astute lawyers of our common fraternity responded to their appointment. This Bench must also note with immense satisfaction the insightful brief filed by these fine lawyers of our country as well as the eloquent presentation they so ably made during the formal contempt hearing. We must also note that these gentlemen lawyers made this great contribution to the proceedings as amici curiae on a rather short notice.

Returning to question of what contempt is, there is a plethora of opinions defining same. From these opinions, it is settled that activities and acts constituting contempt of court are wide range. Along this line, this Court has expressly frowned on anyone, citizen and foreigner alike, who publishes in a manner tending to expose the courts of our country to scandal and ridicule..

In the case: In re: Joseph K. Jallah, 34 LLR 392, 396 (1987), contempt was briefly stated as a conduct *"despising of the authority, justice or dignity of the court which tends to bring the authority and administration of the law into disrepute, disregard and disrespect, to say the least, [and] lessens the public's confidence and credibility in the court."*

It was clearly established also in *Branly v. Vamply of Liberia Inc.,* 22 LLR 337, 358 (1973) that conduct which brings the court into disrepute or disrespect in the eyes of the public, act offending its dignity, or as an affront to its majesty, or challenges its authority constitutes contempt of court in our jurisdiction.

Also borrowing from common law authority, contempt proceedings are of two types; (1) Civil Contempt- These are proceedings instituted by private persons for the purpose of protecting their rights. The proceedings for punishing civil contempt is invoked by an interested party; and (2) Criminal. These are proceedings instituted for the singular object of vindicating the dignity of the court. In criminal contempt, the proceedings, [T]he court, *without complaint, may, of its own motion, institute proceedings to punish for offenses against its dignity and authority, although the contempt was not strictly speaking committed. Gibson v. Wilson and Blackie,* 8LLR164, 169-4 (1943). [Our Emphasis].

These laws being our premise, it can be safely concluded that two things are clearly deemed offensive to a court of law. Any one of the following or combined could justify institution of contempt proceedings against a person. (1) Affront and outright disrespect to the majesty of the court and its constituted authority. This is often demonstrated in disobeying or obstructing legal orders issued by a court of competent jurisdiction; and (2) Statement spoken, written or published, seen by the court as offensive to the administration of justice as well as prejudicial to a party litigant in a pending suit.

Having discussed what amounts to contempt in the contemplation of law, the related question is whether courts of law, as a general rule, punish therefor. *In re A. B. Ricks et al,* 4 LLR 58(1934), text beginning at page 63, the Supreme Court of Liberia, the Nation's Highest Court, on January 26, 1934 said:

"The power to punish for contempt is as old as the law itself, and has been exercised from the earliest times. In England, it has been exerted when the contempt consisted of scandalizing the sovereign or his ministers, the lawmaking powers or the courts. In the American states, the power to punish for contempt, so far as the executive department and the ministers of state are concerned, and in some degree so far as the legislative department is concerned, is obsolete, but it has been almost universally

preserved so far as regards the judicial department.

The power which the courts have of vindicating their own authority is a necessary incident to every court of justice, whether of record or not; and the authority for issuing attachments in a proper case for contempt out of court, it has been declared, stands upon the same immemorial usage as supports the whole fabric of the common law."

Further, one point needs to be mentioned at this juncture with emphasis. This is the provisional prohibition imposed by the court on all persons not to discuss or comment in any incisive manner on a matter pending before a court of law. Based on the principle of *sub judice,* a person in violation of this prohibition may be properly held to answer in contempt. One instructive case in which this Court applied sub judice principle is: *Liberian Bar Association, Relator, V. James A. Gittens.* 7 LLR 253 (1941).

The facts as related indicate that His Honor, Chief Justice Louis Arthur Grimes visited a clinic in Monrovia seeking relief from a terrible headache after a court session. The Chief Justice sat with a group, including Counselor Gittens, awaiting the doctor. Counselor Gittens began conversation with one Cooper purely on a non legal matter. But it was not long when the Counselor changed the conversation to a dispute brewing in the church of which both His Honor, the Chief Justice and Counselor Gittens, were members. The conversation drifted from one issue to another until Counselor Gittens started to comment on a matter which had been recently determined by the Supreme Court. Counselor Gittens did not heed the advice of a colleague of the Bar, Counselor Caranda, not to discuss *"this matter which was still sub judice."*

Like Contemnor Sieh, Counselor Gittens disregarded his colleague's admonition and sailed in his discussion of the matter while Chief Justice Grimes sat and remained silent. This incident was reported to the Court. Counselor Gittens was cited in contempt and adjudged guilty thereof.

The Supreme Court remarked as follows:

"Among the many evils that may arise from a disregard of this rule fi. e.; sub judice], one quite

apropos of the facts on record may here be mentioned. The case to which Counselor Gittens specifically made reference had been argued in this Court and remanded for a new trial; and, as Counselor Caranda pointed out to him at the clinic on that day and put on record during the course of his testimony here, "There is every possibility that the case may be again appealed here either in the same, or some other form."

"Let suppose then, for argument's sake, that testimony of witnesses who did not depose at the former trial or some fact not elicited before from those who did, should later on be put on record in said case so that the case when again appealed should be presented in a somewhat different light. Isn't it clear that some of the expressions made use of by respondent might cause an embarrassment to one or more members of this Bench in considering the matter in its altered aspect, in view of his present interference, and would not the same principle obtain in other matters sub judice?"Liberian Bar Association, Relator, V. James A. Gittens. 7 LLR 253, 259 (1941).

The Supreme Court succinctly held in the same case [Liberian Bar Association, Relator, V. James A. Gittensl that a person is guilty of contempt *"...whose conduct is such as tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigations* LLR 253, 257, (1941). [Emphasis Supplied].

As we have herein discussed, there is ample legal support for the conclusion that a court of law has an inherent authority to hold a person in contempt of a court of law, pass on what constitutes such contempt, is guided by the laws controlling as well as definitions of general application. A court may exercise its authority to punish contempt by imposition of fines and jail sentence or both. It is also settled law that a conduct which generally compels institution of contempt proceedings is discussion and expression of opinions on matters that are before a court undetermined as well as refusal to obey the orders of a court of competent jurisdiction.

It must also be said here that while courts universally impose penalties for conduct they determine to be contemptuous, they differ in exercise of contempt powers and the imposition of penalty under varying circumstances. The Judith Miller case which obtained in the United States of America as recently as in 2004, is instructive in this

direction.

The famous New York Times reporter with a journalism career spanning over two decades, was adjudged guilty of civil contempt. Contemnor Miller had been ordered by a Federal Judge, Thomas F. Hogan to appear before a Federal Grand Jury. The Federal Grand Jury was probing the issue as to who leaked the identity of an intelligence officer to reporters.

On her refusal to disclose her source, a conduct, Judge Hogan determined to constitute contempt of court, she was adjudged guilty of contempt. The journalist was sentenced to 18 months prison term. The sentence was subsequently stayed to allow Miller's appeal to be heard.

But the Court of Appeals for the District of Columbia Circuit affirmed Judge Hogan's ruling effectively affirming that the journalist's conduct was contemptuous and that the reporter should serve the 18 month jail sentence. Contemnor Miller's endeavors to have her appeal entertained and heard by the United States Supreme Court was also turned down on June 17, 2008.

It must be said here that Judith Miller was thereafter sent to Alexandria City jail on July 7, 2005. After serving 85 days in jail, Reporter Miller was released on September 29, 2005, but only after she agreed to comply with the order of court.

That contempt of court as generally punished by courts was demonstrated in Jim Taricani case in the United States of America. For over thirty (30) years, Jim Taricani worked as a respected American television journalist. But Taricani was tried and convicted of criminal contempt and sentenced to sixth month "house imprisonment". U.S. District Judge Ernest C. Torres sentenced the journalist to "house imprisonment" during which he was ordered not to use the internet or appear on TV. The court directed him not to leave his "prison house" save for medical emergencies or for appointments with the doctor.

The journalist-prisoner was a heart transplant recipient and suffered reduced kidney

function. That his medical condition requires a strict regimen of medication weighed heavily in Judge Torres' decision to sentence him to home confinement instead of sending him to normal prison.

The case of the journalist commenced in 2003. He was subpoenaed by special prosecutor, Marc DeSesto for the purpose of getting him to disclose the identity of his source in a two years failed endeavors to determine the leaker of an FBI tape. The journalist refused to comply with court's directive citing First Amendment privilege not to reveal confidential sources. His argument was dismissed by the court and ordered to testify. When the reporter refused, he was held in civil contempt. The court imposed a $1,000.00 (one thousand Dollars) daily fine until the reporter complied. When the fines reached a total of $85,000 and Judge Torres became convinced that fines would not compel the reporter to disclose his source, the court stayed the fines. This time the judge issued an ultimatum the reporter to reveal his source within two weeks or face a trial for criminal contempt of court and a sentence of up to six months in federal prison. When he still refused, the reporter was adjudged guilty of criminal contempt of court and accordingly sentenced.

But the point is that Jim Taricani, who was described by the judge as "a reporter who I have admired and respected for many years", was adjudged guilty of criminal contempt for refusing to identify what the reporters would generally call "confidential source" and was sentenced for sixth-months for disobeying the court.

Judge Torres stressed that he wanted the public to understand the real issues in the case, one of which was the "biggest and most misleading myth of all," was that ordering Taricani to reveal his source was an assault on the First Amendment. *"The First Amendment does not confer on reporters or anyone else the right to violate the law in order to get information that they might consider newsworthy, the right to encourage others to do so, or the right to conceal the identity of a source who committed a criminal act in providing the information by refusing to comply with a lawful court order directing the reporter to identify the source. To suggest that these things are protected by the First Amendment demeans the First Amendment."* [Our Emphasis]. At the sentencing, Judge Torres emphasized the point that *"a reporter should be chilled from violating the law in order to get a story."*

The Judge also opined that imposition of the sentence in this case must *"reflect the seriousness of offense, promote respect for the law, and deter others from being tempted to engage in similar conduct in the future."*

It must be noted that Judge Torres' decision to hold the reporter in contempt was affirmed by the U.S. Court of Appeals in Boston (1 st Cir.). Jim Taricani decided not to appeal to the U.S. Supreme Court.

In the case at bar, the records before the events of November 1, 2010, simply generated contemnor's unabated, misguided and entrenched disregard for the dignity of our nation's highest tribunal of justice. Immediately following his appearance on Tuesday, contemnor published on November 2, 2010, a story in volume 2, No. 99 (November 2, 2010). In the story, contemnor sought to report on his appearance of November 1, 2010 before the Honorable Supreme Court of Liberia and to ridicule the Court.

In a banner headline: *"COME AND GET ME",* clearly published in apparent vent of anger, contemnor described his appearance before the Supreme Court as *"Bad Day in the High Court",* and narrated in the manner following:

"On Monday, November 01, 2010, the editor, in response to a citation from the Supreme Court of Liberia appeared before the Full Bench as requested in a citation dated Oct. 27, 2010. The citation requested the editor to "help the bench understand the basis for the information provided in the article in the FrontPage Africa Newspaper, Vol. 2, No. 93, published on Monday, Oct. 25, 2010 entitled:

"Biasness, Discrimination and Prejudice in Angel Tokpah case." To the editor's dismay, Chief Justice Johnnie Lewis used the editor's presence in the court as a means to interrogate the editor over whether the editor had any proof of evidence or even contacted Associate Justice Gladys Johnson whose name was mentioned in the letter to the editor published in the opinion section of the print edition of FrontPage Africa."

"To the editor's dismay, all Chief Justice Lewis and his three associates, present in the court, His Honor, Francis Korkpor, Kabineh Ja'neh, and Her Honor, Jamesetta Howard-Wollokolie sought to

interrogate the editor and rejected attempts by the editor to explain the basis for the publication. The editor, upset with the manner of ill-treatment meted by Chief Justice Lewis and his Associate Justices took the Chief Justice to task over his dictatorial treatment of the editor who was invited to explain the basis of a reader's opinion but never given the chance to read a prepared text before the bench. The editor was instead ridiculed and questioned about whether or not he was a member of the Press Union and even asked to quote Article 8 of the Press Union Code of ethics as if the editor was on trial."

"The Chief Justice went on to instruct the editor to consult and find a lawyer and report back to court on Wednesday, Nov. 3, 2010 for consultation. However, in view of several articles previously published by Frontpage Africa involving misdeeds of the Chief Justice, the editor finds it hard to believe that the highest court in the land can ever deliver justice in an impartial manner. The editor wishes to state here that he will not be appearing before the full bench because he cannot find a local lawyer who understands and is prepared to defend his constitutional rights in the 48 hours mandated by the high court."

Contemnor's conduct in open Court, in the presence of the Court en banc, in the full view of the Bar, in addition to the various publications leading to his scheduled appearance on Wednesday, November 3, 2010, combined to compel the issuance of a writ of summons for contempt.

As if such headline *"COME AND GET ME"* did not convey adequate attitude of defiance and demonstrated a conduct of disregard for the authority of the Supreme Court, contemnor republished the letter of October 25, 2010, which in the first place prompted the contempt proceedings.

Contemnor again conveyed his apparent resolute conduct of affront in the following writing:

"The editor is prepared for any consequences the high court has threatened to deliver and is awaiting his date with justice. If the court or any authority wants to restrict the contents of our opinion (letters and commentaries) section we will not allow it and (we] prepared for whatever ruling the court decides."

Further demonstrating his calculated outrage and assault on the dignity of the Supreme Court, contemnor, on Wednesday, November 3, 2010, published another banner story

on page 2 of his Front Page Africa newspaper. The story written by Contemnor Rodney D. Sieh was entitled: *"Same Gladys Johnson?"*

In the story, contemnor reproduced a letter said to have been written by Her Honor, Associate Justice Gladys K. Johnson and published on July 18, 1979 in the opinion section of the Liberian Age Newspaper.

The reproduced letter appears to convey Justice Johnson's strong sentiments about the state of affairs on the African Continent and urging on visiting African leaders assembling in Monrovia for the O.A.U. summit to take corrective actions.

At the end of the reprinted letter, and seeking to justify his violation of our laws as well as ill advised professional judgment to republish the October 25, 2010 letter, contemnor once again took the newspaper stage. Disdainfully and in derogatory tone, contemnor observed in his publication as in the following manner:

"Ironically, in an edition of the Liberian Age from the archive of a student of Liberian affairs, letter writer Gladys K. Johnson, now an Associate Justice on the Full Bench of the Supreme Court of Liberia, vents her frustration as she took African leaders attending the Organization of African Unity (OAU) conference in Monrovia to task on a number of issues still relevant today.

"Among other things, the now Associate Justice of the high court blamed the numerous coups in Africa at the time on the very things she says she raised about the selfish attitude on part of our leaders, who people cannot confront them because the African leaders can do no wrong.

"FrontPage Africa has been unable to verify whether Associate Justice Johnson sought permission or inquired from the African leaders she took to task, how much money they had in their bank accounts or how they obtained their wealth, to conclude that they were corrupt. FrontPage Africa has also not been able to verify how Mrs. Johnson came to the conclusion that African leaders "do not ever want to step down from the throne."

As if to provide excuses for the conduct for which he was being held to answer, contemnor wrote:

"Observers wonder how Mrs. Johnson got away with such a critical letter at a time when President William R. Tolbert, Jr., whose government was overthrown for what was called "misuse of office", was hosting the entire African leadership did nothing to Mrs. Johnson. She was neither summoned nor sanctioned. Records of the Judiciary show that the next year, 1980, as Counselor Johnson was serving as judge of the Monthly & Probate Court of Montserrado County, when she registered Gabriel Bacchus Matthews' People's Progressive Party (PPP). [Emphasis Supplied].

In one of his publications also, contemnor accused the Supreme Court of being part of a plot to close down his newspaper, Front Page Africa. This grave accusation contemnor levied against the Supreme Court, without any proof whatsoever. *Frontpage Africa has learned from sources within the high court that several officials and former officials are behind what appears to be an attempt to sabotage FPA's Monrovia operation and shut its premises down on the basis of legal jargons."*

This is a fairly summarized version of noticeable events which transpired as of Monday, October 25, 2010 to the date the Supreme Court convened to consider summons for contempt in a formal contempt hearing on November 9, 2010.

In conducting these proceedings, this Court as Final Arbiter in the Republic, is not least oblivious of its constitutional obligation to uphold freedom of speech and of the press especially in post conflict Liberia. This Court was equally mindful of its mandate to preserve the dignity of the Court to ensure administration of justice in the Republic.

It is important to remember that these contempt proceedings were prompted by the contents of the October 25, 2010 in two ways. The letter pointedly commented on a murder case currently under judicial determination by basically deciding what ought to be a just outcome. Such a newspaper determination of a pending matter violates the principle of *sub judice. The principle of sub judice* strictly disallows commentaries, spoken or written on a case awaiting judicial determination; that is as *"from the time the first document in a case is filed until final judgment shall have been given and executed."* Secondly, by this letter, both the author and publisher accused the justices as being prejudicial in favor of the defendants in a murder case pending appeal before the court.

Additionally, the letter by portrayal undoubtedly tended to interfere with a pending case and subject the Supreme Court of Liberia to public indignity as an unjust tribunal.

Also upon common law authority, it is settled law of general application that:

"Under right of the freedom of speech and of the press, it is generally recognized that the public has a right to know and discuss all judicial proceedings, unless such right is expressly interdicted by constitutional provisions or unless the publication is of such nature as to obstruct or embarrass the court in its administration of the law. [Freedom of speech and of the press] does not, however, include the right to attempt, by wanton defamation, to prejudice the rights of litigants in a pending cause, degrade the tribunal, and impede, embarrass or corrupt the due administration of justice." [Emphasis Ours] 11 AM JUR, *Constitutional Law,* section 320 (1937).

On the basis of the laws as cited, the letter of October 25, 2010 pointedly demonstrates such prejudices frowned upon by our laws. Closely examined, there can be no reasonable argument to the contrary that letter is patently prejudicial to the interest of one of the parties. Contemnor's publication under reference has already condemned said parties as murderers. Not only that, contemnor repeatedly ran the letter and was determined thereby to dent the Court's image as a tribunal of justice. Maliciously, contemnor disregarded the truth, lamented Justice Johnson and portrayed the Court as leaning on the side of parties contemnor has substituted its opinion for that of the Supreme Court to declare guilty of murder. One concluding paragraph of the letter is infact emphatic in pronouncing the guilt of said parties:

"But we like to put Judge Gladys Johnson on notice that: "Under appropriate circumstance, as is this case where the little girl was murdered on the lap and under the roof of the convicted murders, circumstantial evidence SHALL have the same weight as direct evidence." [Emphasis Ours].

The third issue raised before this Bench is *whether there were compelling legal and factual bases such as to require recusal of Chief Justice Johnnie N. Lewis and Associate Justice Gladys K. Johnson from the determination of these contempt proceedings?*

Contemnor has maintained that both Chief Justice Johnnie N. Lewis and Justice Gladys Johnson are disqualified from sitting and determining these contempt proceedings. According to contemnor, "Justice Johnson is a party, constructively. She is the subject of the speech which gives rise to the contempt citation and therefore cannot be expected to act in a fair and impartial manner. She should therefore recuse herself. [Emphasis Added] "As to the Honorable Chief Justice, Contemnor is requesting that the Chief considers whether or not he can act impartially. The Chief Justice has been the subject of a few articles in the FrontPage print and online magazine which have not been favorable. Some letters and stories have been derisive. Contemnor does not believe the Chief Justice can adjudge the Contemnor fairly." [Our Emphasis]. Contemnor then concluded with a listing of legal grounds in support of his argument for recusal.

We disagree. Contempt case is unlike other cases in a court of law. It is about the court itself. IN-RE: Tom N. Bestman, et. al, 20 LLR 567, 571 (1972), it was held that contempt proceedings involve the very existence of the court. The offended party in contempt proceedings is the court itself. It is also the offended tribunal instituting the contempt proceedings. In instituting contempt proceedings, the court seeks to solely preserve the dignity of the court and protect the administration of justice.

On the specific question of recusal as insisted upon by contemnor, we recall a case where the judge sat and determined a matter involving his own action. The case was in 1885 involving the Supreme Court of Liberia presided over by the Chief Justice, His Honor, C.L. Parsons. The Court decided a celebrated question of contempt, arising from, and consequent upon a writ of Habeas Corpus, ordered issued by Chief Justice Parsons.

The facts reveal that two girls were reported detained by a Mr. Gaga. Consistent with law regulating Habeas Corpus process at the time, and having been duly petitioned on behalf of the two girls, a writ of Habeas Corpus was issued on the Chief Justice's order. Contemnor Gaga was commanded therein to produce the bodies of his prisoners before the Chief Justice on a scheduled date.

A compulsory writ of Habeas Corpus became necessary and same was ordered issued upon the court officer's returns that he was forbidden by Contemnor Gaga from service of any writ upon Respondent. To ensure this time that service was made, the court officer called the assistance of a *posse comitatis* — group of citizens to assist a sheriff in such matter. It appeared that Respondent Gaga got a tip off and as a consequence, fled the area with the prisoners.

Returns were filed by the officer to this effect. The officer also informed the court of resulting costs of the aborted service. Chief Justice Parsons having duly considered the returns, directed that said costs in the amount of $188.35 be charged to the Republic of Liberia.

In the course of time, Liberia's Attorney General, H. W. Grimes, by a communication dated July 10, 1883, responded to an official request of the Attorney General's opinion in the premises, as his duty it is to "advise the general government officers on all legal questions touching the duties of their several offices". The Attorney General advised the appropriate government authority *"not to pay the said bill of costs"*.

In the advisory opinion, the Attorney General expressed the opinion that the Chief Justice *"could have had no power to rule costs against the Republic even if it had been a party"* in such habeas corpus proceedings. The Attorney General thereafter caused copy of his opinion to be forwarded to Chief Justice Parsons.

This Court convened to consider the letter of the Attorney General in contempt proceedings presided over by Chief Justice Parsons. As a consequence thereof, the Attorney General was adjudged guilty of contempt. The point here is that although the Chief Justice was personally named and directly involved in the subject of the contempt, and it was his order that the Attorney General had attacked as not founded on law, the Supreme Court found no compelling legal grounds for recusal by the Chief Justice.

But the *"In re: MacDonald Acolatse,* 26 LLR 456 (1977) is instructive to this question. The contemnor, Counselor Acolatse accused the entire membership of the Supreme

Court bench of corruption. Contemnor was angered by the manner in which prohibition proceedings, arising from a libel action, filed by contemnor on behalf of his client, was handled.

In his rage, contemnor wrote a communication to President William Richard Tolbert accusing all five members of the Supreme Court of being corrupt.

The Supreme Court ordered the Grievance and Ethics Committee to investigate the matter. Following the investigation, the Supreme Court en banc convened to consider the findings and recommendations submitted by the Committee.

It is well to remark here that in the Acolatse case, referenced supra, all five justices were accused of corruption. By parity of contemnor's logic and reasoning, the entire bench should have retired in recusal. No; that was not the case as there is no law in this jurisdiction that so dictates. Infact, with Mr. Chief Justice James A. A. Pierre presiding, the full bench sat, conducted the contempt proceedings and thereafter adjudged the Counselor Acolatse guilty of contempt. The counselor was disbarred from practice of law in this jurisdiction directly or indirectly.

Unlike the Acolatse matter, Contemnor Sieh in the case at bar, has accused two of the five members of the bench, Chief Justice Lewis and Justice Johnson. According to contemnor, Justice Johnson "is the subiect of the speech which gives rise to the contempt citation and therefore cannot be expected to act fairly.

In respect to the Chief Justice, contemnor says that: "The Chief Justice has been the subject of a few articles in the FrontPage print and online magazine which have not been favorable. Some letters and stories have been derisive." Contemnor therefore does not believe that the Chief Justice would accord contemnor a fair judgment.

But on the basis of the authority of laws recited herein above, this Court is duty bound to dismiss Contemnor's argument that the law requiring recusal of a judge or justice, applies to both Mr. Chief Justice Lewis and Madam Justice Johnson in the disposition of the case at bar. In light of the laws controlling, the contention was simply frivolous.

Our organic law divides our Republican form of government into three branches, each assigned distinct functions. None may properly perform the functions of the other. Article sixty-five (65) (1986 Constitution) entirely vests the judicial power of the Republic in the Honorable Supreme Court and subordinate courts. The judiciary is clearly governed and regulated by the law of the land in the exercising of its constitutionally and statutorily designated functions, In re Acolatse, 472.

Adjudication is constitutionally a judicial function. This being its function, the offended court shall adjudged matters of contempt and it must do so within legal limits. Further on the recusal demand, it is a law of virtual universal application that justices of the Supreme Court ultimately determine election disputes. In some instances, judges in exercise of their legal functions declare who the winner is. But it is also undisputable fact that that as citizens first and foremost, judges are entitled to the exercise of their constitutional right of franchise. Under our laws as they are, justices are not disallowed to vote for the presidential candidates of their choice, though they are final arbiters in the land including disputes arising from elections.

As being urged by contemnor in these proceedings, should justices be requested to recuse themselves for as human-beings, they are likely to have personal preferences of one candidate over the other?

We decline to subscribe to such outrage on logic and law and faithful to stare decisis in our jurisdiction. So if there were legal reasons to require recusal by Chief Justice Johnnie N. Lewis and Associate Gladys K. Johnson, as the contemnor has urged upon this Court, such compelling legal grounds have escaped our most attentive review and searching scrutiny.

Whether contemnor's ignorance and misunderstanding of the laws prohibiting discussion of a pending case, is adequate legal basis to absolve him from penalty for violating said prohibition, is the fourth and final question to be addressed.

Despite the monstrous arrogance and outright disregard for the Supreme Court incessantly demonstrated by contemnor in the course of these proceedings, contemnor

nevertheless has not disputed one basic fact. Contemnor accepts that a tribunal of law has an inherent authority to preserve judicial integrity and to "control speech" in furtherance of that objective. On this point, we are in agreement.

But at the same time, contemnor strenuously contends nevertheless that if the Supreme Court had any desire to regulate and control speech in the "Angel Togbah" case pending appeal before it, the Supreme ought to have properly issued gag orders. When issued, contemnor contends, such orders would have strictly and effectively restricted all persons from making public comment on the murder case until it was determined by the Supreme Court. But the Supreme Court having not issued such gag orders, the contempt proceedings instituted by the Court against the contemnor, who was exercising his right of free speech of the press, lacks any legal foundation, whatsoever.

This argument is ludicrous, to say the least. This Court has difficulty resisting the temptation to believe that contemnor lacks basic knowledge and understanding about the workings of a court of law. As herein discussed earlier, there is a standing prohibition, as a matter of law, to engage in discussion of a case pending before the court. This law is as old as the practice of the law in Liberia. Unfortunately, contemnor's apparent ignorance of this law on prohibition in no manner excuses him from appropriate penalty consequential of transgression of said law.

In the case *Harris v. Republic* decided by the Supreme Court in1867, a situation obtained in which a party in violation of the law controlling in the case urged the plea of ignorance of the law. Such plea of ignorance, this Court held and here we reaffirm, cannot be admitted because: *"When the plea of ignorance of the law is urged by either a citizen or alien, the law cannot admit such plea. For if such pleas are allowed by law, who would be tried?"* 1 LLR 41 (1861).

We must also observe that while it appears that contemnor argument is the product of ignorance of the law on pendency, yet he attempted throughout to justify his position in these proceedings. In one such instance, contemnor referred to a statement of critique made by President Obama. The President criticized a United Stated Supreme Court decision saying that he could not think there was anything as devastating to the

public interest. The Court's sought to ease apparent stringent limits on campaign spending by corporations and labor unions.

Contemnor then contended that this sort of criticism of a Justice or Judicial decision will never lead to such contempt, no matter how offensive or unfair. "Would anyone then argue that President Barack Obama, himself an American legal luminary and legal academician is guilty of contempt? Certainly not", contemnor concluded.

It is indeed a pity that contemnor makes no distinction between a matter which has been decided and one pending determination before a court of law.

It must be stated clearly for all that in our jurisdiction as the United States, after a judicial determination has been made, any person who holds an opinion has a constitutional right, never to be unduly restrained, to express same. After rendition by a court of a final judgment in any matter, a person enjoys an unhindered constitutional right to "tear" the decision apart, both as to its merits and demerits; you have the legal and constitutional right to say that the court's decision is legally flawed and erroneous. For at this stage, your opinion obviously has no direct influence on the outcome of a matter that has been judicially concluded and is no longer under judicial consideration.

" [Freedom of speech and of the press] does not, however, include the right to attempt, by wanton defamation, to prejudice the rights of litigants in a pending cause, degrade the tribunal, and impede, embarrass or corrupt the due administration of justice." [Emphasis Ours] 11 AM JUR, *Constitutional Law,* section 320 (1937).

Finally, it was also strongly argued that to hold Contemnor Sieh answerable in contempt probably within the rule of pendency of court, of the Supreme Court Bench would invariably convey the impression that the Court's decision is and could be influenced by reckless, biased and hugely prejudicial utterances during pendency of cases before the Court. To hold contemnor to answer in contempt probably might legally be justified in the event a matter was before a trial court undetermined and where verdict by jury of "laymen and women" is often the basis for adjudication. Such temptation, according to proponent of this view, is literally a non issue for Supreme Court Justices.

According to proponents of this view, as trained lawyers, justices of the Supreme Court as such will and should decide matters based only on the evidence adduced during trial, not public comments.

We are troubled by such unguided proposition. This view equally strikes us as unfounded in law or logic for a number of reasons. Firstly, to allow unfettered and misguided comments, speech and opinions touching on a pending case, as in the instance, tends to materially undermine the venerated principle of fair and impartial hearing both in the court of law and that of public opinion. It tends to substantially deprive the accused of all that is embedded in the principles of due process of law, hearing judgment and presumption of innocence, the foundation of our criminal justice system. How could it be seen as just when newspapers begin to dwell on the guilt or innocence of criminal defendants whose matters remain undetermined before a court of law? Don't such utterances invariably offend the integrity of the court, dim the required impartiality of the judge and undermine the fair administration of justice, at least in the public eye? So this Court believes. We subscribe to the common law view that *"freedom of speech does not include the right to speak to prejudice the rights of parties whose case is pending before a court of law; for to do so, in our opinion, could and indeed has the tendency to embarrass and more likely than not, corrupt the due administration of justice."*

In concluding this opinion, we uphold the principle of *sub judice* as sacrosanct in the protection of due process rights in our jurisdiction. The law applies until a final rendition is made where a case is appealed to the Supreme Court. For the appellate court, in its wisdom, may remand a case for trial *de novo,* somtimes requiring testimony of witnesses who may not have testified. Under such circumstance, isn't it true that some of the expressions made and views assumed by commentators on the pending case could interfere with the fair administration of justice? We hold that this is more likely than not as this Supreme Court held in the case: Liberian Bar Association, Relator, V. James A. Gittens, cited herein above.

CONCLUSION:

In view of the facts enumerated herein and the laws applicable thereto, it is our considered opinion that the conduct of Contemnor Rodney Sieh, both in the presence

and out of the Chambers of the Supreme Court, were calculated and indeed intended to ridicule and malign the Court. By his conduct, contemnor also planned and acted within a design to undermine public confidence in the integrity of the Court and interfere with the administration of justice especially in a case pending before the Supreme Court. Rodney Sieh is hereby adjudged guilty of contempt of the Honorable Supreme Court of Liberia for all intents and purposes.

In reflection of the gravity of contemnor's demonstrated affront to this Court, for which contemnor has shown no penitence whatsoever, the Supreme Court hereby imposes both a fine and prison term in the manner following:

Immediately following the rendition of this opinion, and within 24 hours, the contemnor shall pay in full the amount of US300.00 (three Hundred United States Dollars) to the Treasury and shall exhibit an official receipt to the Marshal of this Court in evidence of compliance with this payment and within the time herein directed;

In light of contemnor's publication of the October 25, 2010 article in reckless disregard for the truth, contemnor shall write and publish in an appropriate banner heading, a letter of apology acceptable to the Supreme Court. The contents of the letter of apology shall highlight the obvious harm the October 25, 2010 publication caused to the dignity of the Court in its fair and impartial administration of justice in Liberia.

Contemnor is hereby sentenced to a jail term of 30 (thirty) days commencing immediately hereafter. However, should contemnor comply with the directives herein above stated in counts 1 (one) and 2 (two); then and in that instance, the jail term of 30 (thirty) days to be served at the Monrovia Central Prison, shall be reduced to 15 (fifteen) days only.

THE CLERK OF THIS COURT is hereby directed to give immediate effect to this judgment. AND IT IS SO ORDERED.