Honorable **John S. Morlu, II**, Auditor General, Auditing Commission, Gurley Street, City of Monrovia, Liberia A Petitioner versus The **Honorable House of Senate of the National OF Legislature of the** Republic of Liberia, by and thru the **President of the Senate**, or the **President pro tempore** or its Presiding Officer, of Capitol Hill, City of Monrovia, Liberia Respondent

PETITION FOR THE WRIT OF PROHIBITION GRANTED WITHOUT PREJUDICE.

Heard: October 30, 2007 Decided: June 28, 2008

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

On August 29, 2007, Mrs. Jannave V. Massaquoi, Assistant Secretary of the Liberian Senate, addressed the following letter to Hon. John S. Morlu, II, Auditor General, General Auditing Commission, the petitioner.

"Dear Hon. Morlu:
"I present my compliments and apprise you that the Honorable Liberian Senate received a communication on Thursday, August 23, 2007 from aggrieved employees of the General Auditing Commission against you on several counts. Following the reading of said communication, plenary mandated its committees on Autonomous Commissions, Public Accounts, Audit and Labor to launch an investigation against into the matter and report to the body on Tuesday, August 28, 2007. As a result of the instruction from plenary, you are encouraged to adhere to the following:

"1. That pending the outcome of the investigation of complaints, you place a hold on all actions of dismissal or attempted dismissal by your office.

"2. That you further re-instate all affected employees by the dismissal or downsizing endeavor of your office.

"Please accept, Hon. Morlu, sentiments of my highest consideration and esteem."

On August 30, 2007, Franco B. S. Grimes, officer-in-charge of the General Auditing Commission acknowledged receipt of the communication from the Assistant Secretary of the Liberian Senate, and informed her that the respondent was out of the country, and that "a copy of [her] letter [had] been mailed to him and he will communicate with the Honorable the Liberian Senate regarding this matter."

On September 3, 2007, the respondent addressed the following letter to Senator Isaac Nyenabo, President pro tempore of the Liberian Senate:

"I present my compliments and acknowledge receipt of the letter of the Honorable Liberian Senate in regard to complaints filed against the Office of the Auditor General (OAG) with respect to the restructuring program of the General Auditing Commission, the GAC.

"You may recall, Honorable Members of the Liberian Senate, that on March 22, 2007, I wrote separately the Liberian Senate and the House of Representatives to submit the Fiscal Year 2007/2008 budget proposal for the GAC. In that communication, I outlined the need for building a world class GAC, predicated on the Honorable Senate to provide the necessary financing to secure qualified manpower and adequate infrastructure. I also requested a supplementary funding, among others, 'to actively and competitively recruit qualified manpower.' The Notes on page 29 of the GAC budget submission explained how the requested supplementary funding for competitive recruitment process would be used.

"In furtherance of the goal to build a world class GAC, and in consonance with Government's civil service restructuring program, I wrote the Director General of the Civil Service Agency [CSA] and the President of Liberia, both being directly responsible for the day-to-day administration of civil service matters.

"Honorable Members of the Senate, in my communication to the President and the Director General of the CSA to approve the recruitment process of the GAC, I provided a detailed restructuring plan and made a financial request of US$122,480.00 to facilitate the process.

"I fought hard to obtain a good package containing an average payout of US$1,300 per person, which includes a minimum two years education and training opportunities. That is equivalent to nearly two years of salary, plus education. There are also several employees who are retiring and in addition to the regular retirement benefits, the OAG requested for a flat payment of US$1,000 per person to thank them for their long services provided the GAC.

"The President wrote back and accepted the process of recruitment, but requested that I discuss the employment action with the Director General of the Civil Service

Agency to ensure that laws and policies in this regard are respected. I followed through on her recommendation.

"After several weeks of discussions, the employment action plan of the GAC was granted by the Civil Service Agency pending the passage of the 20072008 national budget.

"Upon the passage of the national budget, we commenced the restructuring program at the GAC.

"Honorable Members of the Liberian Senate, my decision to restructure the GAC is in good faith and I closely collaborated with the agency responsible for civil service matters to ensure that I was properly guided in the process. The Director General of the CSA was generous enough to provide one of his staff to serve as a point man during the challenging process of restructuring the manpower capacity of the GAC, for which we are indeed grateful.

"Building a credible, professional and apolitical GAC that meets international standard and best practice is a tall order. However, it has to be done, because GAC is viewed as the pillar of accountability and transparency; a Supreme Audit Institution that is integral to the Administration's overall goal to secure debt relief and direct donor support of the national budget.

"Again, I would like to emphasize to the Honorable Members of the Liberian Senate that I requested a generous package for those being laid off at GAC, cognizant of the economic realities of this time. The President and the Director General of the GSA understanding the importance of building a professional and credible and credible GAC provided the approval and the necessary funding.

"The benefit package of average US$1,300 and two years plus education is a special dispensation that should be applauded and welcomed.

"Furthermore, in order to avoid the pain of departing from any institution, I made a decision to allow everyone at the GAC, irrespective of the benefit package, to also participate in the competitive process. Realizing the importance of the GAC to improving accountability and transparency in government financial management, a competitive recruitment process is vital and all important.

"Thanks for your usual cooperation and support in the fight against Liberia's three diabolical enemies - fraud, waste and abuse. I have enclosed for your information relevant documents and communications regarding the restructuring and recruitment program.

"With sentiments of highest esteem."

It would appear that the respondent's response to the Liberian Senate did not go down well, for on September 7, 2007, Mr. J. Nanborlor F. Singbeh, Sr., Secretary of the Liberiary Senate addressed the following letter to the respondent:

"Dear Honorable Morlu:
"I have the honor to present my compliments and by directive of the Honorable Liberian Senate (in session), inform you that a communication was earlier sent to you placing a "stay order" on all dismissals pending an investigation.

"The Senate would have me to also inform you that based on your failure to adhere to the above, you are cited to appear before the full plenary on Tuesday, September 11, 2007, in the Chambers of the Senate, Unity Conference Center, Virginia, at the hour of 10:00 a.m. to show reasons why you should not be held in contempt of the Senate.

"Please accept, Mr. Director General, the renewed assurances of my highest consideration and esteem."

On September 19, 2007, Mrs. Jannave V. Massaquoi, Acting Secretary of the Liberian Senate, addressed the following letter to the petitioner.

"Dear Hon. Morlu:
"I present my compliments and by directive of the Honorable Liberian Senate (in session), inform you of plenary's decision of Tuesday, September 18, 2007, to hold you in legislative contempt for misinforming the international press of an alleged witch hunt against you by members of the Liberian Senate because, according to you, you are attempting to implement plans of the General Auditing Commission that were endorsed by the Legislature in the approved fiscal budget of July 1, 2007 - June 30, 2008, thus bringing the Senate into disrepute.

"Plenary has further mandated me to inform you to pay a fine of L$4,999.99 into government's revenue and present a flag receipt to the office of the secretariat of the

Senate within 24 hours. Further, you are to appear before the Committees on Labor, Public Accounts, Judiciary, Ways and Means and Autonomous Commissions, on Thursday, September 20, 2007, at the hour of 3:00 p.m. with a restructuring plan for study and approval, and that you take no further action against the employees of the General Auditing Commission.

"May I remind you, Hon. Morlu, that failure on your part to consider the above will compel members of the Senate to pass a 'vote of no confidence' on your confirmation as Auditor General of the Republic of Liberia.

"Please accept, Hon. Morlu, the renewed assurances of my highest consideration and esteem."

The petitioner argued in his brief, and the respondent did not dispute it, that up the time of the hearing of the petition for the writ of prohibition by this Court, the respondent had not served upon the petitioner any citation or information on the contents of the misinformation for which he was being held in legislative contempt.

On September 19, 2007, the petitioner filed a fourteen-count petition for the writ of prohibition before our distinguished colleague, Associate Justice Kabineh M. Ja'Neh, Justice presiding in Chambers. The petition named the Honorable House of Senate of the National Legislature of the Republic of Liberia, by and thru the President of the Senate, or the President pro tempore or its Presiding Officer, of Capitol Hill, City of Monrovia, Liberia, as respondent.

Attached to the petition were copies of (i) the respondent's letters to the President and Director General of the Civil Service Agency, respectively; (ii) the respondent's restructuring budget; (iii) the President's letter of approval; and (iv) the Director General of the Civil Service Agency's letter of approval.

We quote the petitioner's prayer.

"Wherefore and in view of the foregoing, petitioner prays the Honorable Supreme Court of the Republic of Liberia to issue the peremptory writ of prohibition against respondent, the Liberian Senate, prohibiting and restraining it from interfering in executive and judicial matters and functions and from implementing its illegal and unconstitutional decision of legislative contempt against petitioner, and to determine whether or not respondent is constitutionally authorized to approve the work plans of the Executive Branch of the Government and to further determine whether or not

because the General Auditing Commission reports to the Legislature, the Senate, respondent herein, or the Legislature as a whole, can constitutionally investigate and decide administrative matters purely delegated to the Executive Branch of the Government, and not fiscal matters, given the history of the Act establishing the General Auditing Commission as an independent and autonomous agency, and to appoint a date and time for respondent to appear and show cause why the peremptory writ of prohibition should not [issue] and to quash the interference of the respondent into the downsizing plan of the General Auditing Commission, and to restrain and prohibit the illegal and unconstitutional charges brought against the petitioner, and declare all acts relative to the fines emanating from respondent's conduct as unconstitutional because the petitioner, the Auditor General of the Republic of Liberia, has done nothing to infringe upon the performance of the respondents, in keeping with the Constitution, and to grant unto petitioner any and all further relief deemed just and legal under the circumstances, with costs against the respondent."

On September 20, 2007, His Honor Justice Ja'Neh ordered the issuance of the alternative writ, and required the respondent to file returns on or before October 2, 2007. Because of the constitutional issues raised in the petition, His Honor Justice Ja'Neh ordered the petition forwarded to the Supreme Court *en banc*.

On October 2, 2007, the respondent, represented by its legal counsel, Counselor Jonathan RAL Williams, filed returns containing twenty-four counts, in which the respondent contended substantially:

1. The Supreme Court is precluded and prohibited from interfering with official legislative acts of the Liberian Legislature and that the Legislature is political in function and only answerable to the people who elected them, and not the Judiciary.

2. The respondent is not a tribunal or court, nor is it attempting to assume any jurisdiction of any court, hence prohibition cannot lie against it.

3. The judiciary, the third branch of Government, is not vested with authority to compel or prohibit the Legislature in the performance of its legislative duties, which duties are purely political in nature and only answerable to the people who elected them, and that to grant prohibition against the Legislature will be repugnant to the Liberian Constitution as an attempt to intrude and obstruct legislative functions in violation of the Constitution, which the members of the Judicial Branch swore to uphold, protect and defend.

The petitioner was cited, he appeared, he was heard, he testified on his own behalf and offered documentary evidence to the investigation committee, all prior to the imposition of contempt charges.

In the determination of this matter, we shall consider the following issues:

1. Whether the Supreme Court of Liberia has the power to declare unconstitutional acts of the Senate?

2. Whether the respondent was afforded due process of law when he was held in legislative contempt?

3. Whether the Legislature, in its oversight responsibilities, is constitutionally and legally authorized to make administrative decisions, which are solely within the authority of the executive branch of the Government?

4. What constitutes contempt of the Senate?

We now address whether the Supreme Court of Liberia has the power to declare unconstitutional acts of the Senate?

The Supreme Court derives its power to declare unconstitutional laws, treaties, statutes, decrees, customs and regulations from Article 2 of the Liberian Constitution (1986), which provides:

"This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic.

"Any laws, treaties, statutes, decrees, customs and regulations to be inconsistent with it shall, to the extent of the inconsistency, by void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."

The issue of whether the Supreme Court of Liberia has power to declare unconstitutional acts, decrees, laws or decisions of the other two branches of the Government was raised in *Catholic Justice and Peace Commission v. The Republic of Liberia,*

petition for the writ of prohibition, a case decided during the March Term, 2006 of this Court, the first term we sat as Chief Justice of the Supreme Court of Liberia.

The petition for the writ of prohibition had named the Republic of Liberia, by and thru the executive branch of Government, Counselor Kabineh M. Ja'Neh and the Honorable House of Senate, by and thru its President pro tempore, as respondents. In separate briefs filed by the respondents, each argued essentially that the Supreme Court did not have authority to declare the act of the Senate in confirming Mr. Justice Ja'Neh unconstitutional, if there were grounds. The Court did not have to pass upon whether the decision by the Liberian Senate was unconstitutional since the petitioners had not "pointed out" or "specifically designated" the particular provision or provisions of the Constitution which the co-respondent Liberian Senate was alleged to have violated during the confirmation process involving co-respondent Kabineh M. Ja'Neh. This Court, however, in an opinion by Mr. Chief Justice Lewis, provided meaning to the phrase "or any other authority" contained in Article 66 of the Liberian Constitution (1986).

Article 66 of the Liberian Constitution. (1986) provides:
"The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies *or any other authority,* both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein" (emphasis supplied).

"This Court accepts the responsibility that it is the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies *or any other authority,* both as to law and fact.

"This Court holds that *'any other authority,* as stated in Art. 66 of the Constitution, includes, within limitations, acts by both the legislative and executive branches of the Government; for, "it is emphatically the province and duty of the judicial department to say what the law is". *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).

'"This Court accepts, also, that the nature of the power of the Supreme Court to declare acts unconstitutional is one of an obligatory duty and that "the rule is fixed

that the duty in a proper case to declare a law unconstitutional cannot be declined and must be performed in accordance with the deliberate judgment of the tribunal before which the validity of the enactment is *directly* drawn into question" (emphasis supplied). 16 Am Jur 2d *Constitutional Law,* §155. *Re Notice from the President of the Removal of Associate Justice McCants-Stewart,* 2 LLR 175, 181-2 (1915).

The authority of the Supreme Court to declare acts of the Legislature unconstitutional was confirmed in *Snowe v. Some Members of the House of Representatives,* decided during the Special Session of this Court, January 2007, petition for the writ of prohibition, where this Court passed upon the issue and declared that all acts taken by the respondents in the "removal" of petitioner Edwin M. Snowe, Jr., as Speaker of the House of Representatives were unconstitutional.

In determining whether to decide upon an act of the Legislature, we are guided by this constitutional law principle:

"The judiciary should cautiously abstain from any invasion or usurpation of the powers which are properly exercisable by any other departments of the government, and should refrain from nullifying their acts *except where they are plainly and clearly in conflict with constitutional provisions"* (emphasis supplied). 16 Am Jur 2d *Constitutional Law,* §311.

We determine that the petitioner has drawn into question the violation of his constitutional right to due process by the respondent, a constitutional right guaranteed under Articles 20(a) and 44 of the Liberian Constitution (1986), when he was held in legislative contempt by the Liberian Senate. As the final arbiter of constitutional issues, it is therefore obligatory upon this Court to declare whether the petitioner's constitutional rights were violated, and if they were, to declare the act of the Liberian Senate unconstitutional.

We address next the issue whether the respondent was afforded due process of the law when he was held in legislative contempt?

The petitioner has relied upon articles 20(a) and 44 of the Liberian Constitution (1986) in maintaining that his constitutional rights were violated.

Article 20(a) of the Liberian Constitution (1986) provides:

"No person shall be deprived of life, liberty, security of the person, property, privilege *or any other right* except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with *due process of law"* (emphasis supplied).

Article 44 of the Liberian Constitution (1886), on contempt power of the Legislature, provides:

"Contempt of the Legislature shall consist of actions which obstruct the legislative functions or which obstruct or impede members or officers of the Legislature in the discharge of their legislative duties and may be punished by the House concerned by reasonable sanctions *after a hearing consistent with due process of law.* No sanction shall extend beyond the session of the Legislature wherein it is imposed and any sanction imposed shall conform to the provisions of Fundamental Rights laid down in this Constitution. Disputes between legislators and non-members which are properly cognizable in the courts shall not be entertained or heard in the Legislature" (emphasis supplied).

We hold that while each House, under Article 44 of the Liberian Constitution (1986), has the power to punish for contempt, the process must be in conformity with Article 20(a) of the Liberian Constitution (1986) guaranteeing "due process of law," and Article 44 of the Liberian Constitution (1986) providing that punishment for contempt shall be imposed "after a hearing consistent with due process of law." Any act, by either House, therefore, not consistent with articles 20(a) and 44 of the Constitution, is unconstitutional.

As we noted in *Snowe v. Some Members of the House of Representatives,* the landmark case in this jurisdiction defining "due process or law" is Wolo v. Wolo, 5 LLR 423, (1937), in which Mr. Chief Louis Arthur Grimes, speaking for the Court, held inter *alia:*

"The term 'due process of law' is synonymous with 'law of the land.' The constitution contains no description of those processes which it was intended to allow or forbid, and it does not even declare what principles are to be applied to ascertain whether it be due process. But clearly it is not left to the legislative power to enact any process which might be devised. 'Due process of law' does not mean the general body of the law, common and statute, as it was at the time the constitution took effect. It means certain fundamental rights, which our system of jurisprudence has always recognized. *The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law extend to* every *governmental proceeding which may interfere with personal or property*

rights, whether the proceeding be legislative, judicial, administrative, or executive, and relate to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government. . . .

"The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which it means, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered" (emphasis supplied).

In accord: *Howard v. Republic,* 8 LLR 135, 138 (1943); *Mulba v. Dennis,* 22 LLR 46, 49-50; *IBM v. Tulay,* 33 LLR 105, 112 (1985); *Wilson v. Firestone,* 34 LLR 134, 143-4 (1986); *The Middle East Trading Company v. Chase Manhattan Bank,* 34 LLR 419, 429-430 (1986); *Express Printing House, Inc. v. Reeves,* 35 LLR 455, 464 (1988); *Heirs of the Intestate Estate of S. B. Nagbe, Jr. v. The Intestate Estate of S. B. Nagbe, Sr.,* opinion of the Supreme Court, March Term, 2001; *Dweh v. The National Transitional Legislative Assembly,* opinion of the Supreme Court, decided August 2, 2005.

The respondent, in its brief before this Court, indicated:

". . . Honorable Morlu appeared as per the citation of September 7, 2007, before committee of the whole, that is the full plenary. He was put under oath to tell the truth and nothing but the truth, and thereafter testified under oath on his own behalf, produced documentary evidence in support of his case, and was questioned by members of the Senate, and matter suspended pending plenary final decision on the matter as evidenced by the Journal of September 11, 2007, in manuscript form hereto attached to form a cogent part of respondent's case."

Besides the fact that the Journal of September 11, 2007, referred to in the respondent's brief, is most illegible, we would have though, out of deference to the Supreme Court of Liberia, that the members of this Bar, representing the respondent, would have had the Journal transcribed. Be that as it may, if by reference to the

Journal the respondent was implying that the petitioner was accorded due process of law, we disagree.

The letter from the respondent to the petitioner, dated September 7, 2007, cited the petitioner to appear before the full plenary to show cause why he should not be held in contempt based upon his failure to adhere to the Senate's "stay order" regarding the restructuring of the General Auditing Commission. It is this citation which was the requisite "notice" to the petitioner, consistent with due process of law. Wolo v. Wolo, 5 LLR 423, 428-9 (1927).

The second letter from the respondent to the petitioner, dated September 19, 2007, held the petitioner in legislative contempt "for misinforming the international press of an alleged witch hunt against [him] by members of the Liberian Senate because, according to you, you are attempting to implement plans of the General Auditing Commission that were endorsed by the Legislature in the approved fiscal budget of July 1, 2007 - June 30, 2008, thus bringing the Senate into disrepute."

The certified record before this Court is devoid of any citation, or communication, from the respondent to the petitioner, ordering him to show cause why he should not be held in contempt for "misinforming the international press of an alleged witch hunt against [him] by members of the Liberian Senate because, according to [him, he was] attempting to implement plans of the General Auditing Commission that were endorsed by the Legislature in the approved fiscal budget of July 1, 2007 - June 30, 2008, thus bringing the Senate into disrepute."

We hold that in the absence of such citation, or communication, from the respondent to the petitioner, the petitioner's constitutional right to "due process of law," under Articles 20(a) and 44 of the Liberian Constitution (1986), were violated, and that the act of the Senate in holding the petitioner in legislative contempt was unconstitutional.

We address next the issue whether the Legislature, in its oversight responsibilities, is constitutionally and legally authorized to make administrative decisions, which are solely within the authority of the Executive Branch of the Government?

Article 54 of the Liberian Constitution [1986] provides:

"The President shall nominate and, with the consent of the Senate, appoint and commission:

"(a) cabinet ministers, deputy and assistant cabinet ministers;

"(b) ambassadors, ministers, consuls;

“(c) the Chief Justice and Associate Justices of the Supreme Court and judges of subordinate courts;

“(d)superintendents, other county officials and officials of other political

"(e)members of the military from the rank of lieutenant or its equivalent and above; and

"(f)marshals, deputy marshals, and sheriffs" (emphasis supplied).

The aggrieved employees of the General Auditing Commission who wrote to the Liberian Senate were not nominated by the President, and with the consent of the Senate, appointed and commissioned. Even if they were, this constitutional law principle would bar the Senate from infringing upon the constitutional powers of the executive branch of government.

"It is a fundamental rule that the legislature may not infringe upon the constitutional powers of the executive department by interference with the functions conferred on that department by the organic law. Thus, the Supreme Court has held that Congress cannot take away from the executive department the power to dismiss a purely executive officer appointed by that department, even though the appointment was made by and with the advice and consent of the Senate, nor can it make it a condition of such dismissal that the advice and consent of the Senate be necessary to effect it." 16 Am Jur 2d *Constitutional Law,* §325.

Not having been nominated by the President, and with the consent of the Senate, appointed and commissioned, the status and rights of those employees are governed by Executive Law, tit. 12, §10.7 (1972), which provides:

"The head of a ministry or other autonomous agency in the Executive Branch of the Government not otherwise exempted, may, subject to the approval of the President and subject to the provisions of the Civil Service Act, employ for service in such ministry or agency such number of employees, in addition to those appointed by the

President by law, as are required effectively to carry out the functions of the ministry or agency and as may be appropriated for by the Legislature from year."

We hold that under this provision of the Executive Law, the head of the ministry or autonomous agency, and in this case the General Auditing Commission, has the authority, subject to the approval of the President and subject to the provisions of the Civil Service Act, to employ such number of employees, in addition to those appointed by the President by law, as are required effectively to carry out the functions of the ministry or agency. We hold, also, that with this delegation of power, the head of the ministry or autonomous agency, subject to the approval of the President and subject to the provisions of the Civil Service Act, has the power to dismiss for cause, to lay off and retire, and to restructure.

From the certified record before this Court, the petitioner complied with Executive Law, tit. 12, §10.7 (1972).

Our holding finds support in the following constitutional law principles:

"The appointing power rests in the executive department of the Government, and the Legislature cannot usurp the powers of the executive department by exercising functions of the latter. The two departments should be kept as distinct and independent as possible." 16 Am Jur 2d *Constitutional Law,* §323.

"[The Legislature] cannot supplant the executive in what belongs exclusively to the executive." 16 Am Jur 2d *Constitutional Law,* §323, fn. 94.

There is seemingly some confusion regarding the authority of the Legislature over the General Auditing Commission.

Article 89 of the Liberian Constitution (1986) provides for the establishment of three autonomous public commissions: The Civil Service Commission, the Elections Commission, and the General Auditing Commission.

In June 2005, the National Transitional Legislative Assembly enacted an "Act to Repeal Chapter 53 of the Executive Law of 1972 creating the General Auditing Office placing [it under] the Executive Branch of Government and to grant it Status of Independent Autonomous Agency of Government amenable to the Legislative Branch of the Government of the Republic of Liberia." The sentence of the Act which the Senate relies upon in justification of its action is this: "The General

Auditing Office is hereby given autonomous status and shall *report* directly to the Legislative Branch of Government" (emphasis supplied).

Article 89 of the Liberian Constitution (1986) having established the General Auditing Commission as an autonomous public commission, it was not necessary for the National Transitional Legislative Assembly to enact a law to give it "autonomous status." The Constitution provided only that "[t]he Legislature shall enact laws for the governance of [the three] commissions. . . ."

The issue which this Court will decide is what it means when the Act states that "the General Auditing Office . . . shall *report* directly to the Legislative Branch of Government."

To decide the issue, we look to the history of the General Auditing Office. When established by an Act of the National Legislature in 1961-62, the General Auditing Office was established in the Executive Branch of the Government. It was perceived over the years as being under the direct control of the President, and thus not independent. It was this legislative history which the framers of the Liberian Constitution had in mind when they established the General Auditing Commission as an autonomous public commission.

We hold that it was never the intent of the framers of the Constitution to remove the General Auditing Commission from the yoke of the executive branch of the Government to be replaced by the legislative branch of the Government.

Article 58 of the Liberian Constitution (1986) provides, *inter alia:*

"The President shall . . . once a year *report* to the Legislature on the state of the Republic" (emphasis supplied).

A report is "a formal oral or written presentation of facts or a recommendation for action." *Black's Law Dictionary, Report,1326* (8th ed. 2004).

Of this duty of the President, does the Legislature, or either House of the Legislature, have the power to issue a "stay order" on the President's human resource structure of the President's office, or a minister's human resource structure of a ministry? As it is clear that neither the Legislature, nor either House of the Legislature, has that authority, so also neither the Legislature, nor either House of the Legislature, have that authority over the General Auditing Commission.

Quite frankly, the aggrieved employees were ill-advised and misdirected, and the respondent did not provide proper guidance. There is a procedure under the Civil Service Act where the aggrieved employees could have filed a complaint, and if their complaint was warranted, they might have been afforded adequate remedy, if not through the Civil Service Agency, through the judicial process. The alleged grievance which the employees had could only have been resolved through the judicial system, and not through the legislative branch of the Government.

We address, lastly, what constitutes contempt of the Senate?

Article 44 of the Liberian Constitution (1886), on contempt power of the Legislature, provides:

"Contempt of the Legislature shall consist of *actions which obstruct the legislative functions or which obstruct or impede members or officers of the Legislature in the discharge of their legislative duties* and may be punished by the House concerned by reasonable sanctions after a hearing consistent with due process of law. No sanction shall extend beyond the session of the Legislature wherein it is imposed and any sanction imposed shall conform to the provisions of Fundamental Rights laid down in this Constitution. Disputes between legislators and non-members which are properly cognizable in the courts shall not be entertained or heard in the Legislature" (emphasis supplied).

In the letter dated September 19, 2007 over the signature of Mrs. Jannave V. Massaquoi, Acting Secretary of the Liberian Senate, addressed to the respondent, the cause for the legislative contempt was stated in the first paragraph of that letter:

I present my compliments and by directive of the Honorable Liberian Senate (in session), inform you of plenary's decision of Tuesday, September 18, 2007, *to hold you in legislative contempt for misinforming the international press of an alleged witch hunt against you by members of the Liberian Senate because, according to you, you are attempting to implement plans of the commission that were endorsed by the Legislature in the approved fiscal budget of July 1, 2007 - June 30, 2008, thus bringing the Senate into disrepute"* (emphasis supplied).

This issue is of first impression in this jurisdiction. We shall, therefore, look to the United States Supreme Court for guidance.

The United States Supreme Court, in *Marshall v. Gordon,* 37 S.Ct. 448 (1917), was faced with a similar issue, and had to decide. The facts in the Marshall case, as stated in the opinion, were as follows:

"A member of the House of Representatives on the floor charged [H. Snowden Marshall], the appellant, who was the district attorney for the southern district of New York, with many acts of misfeasance and nonfeasance. When this done the grand jury in the southern district of New York was engaged in investigating alleged illegal conduct of the member in relation to the Sherman Anti-trust Law, July 2, 1890, c. 647, 26 Stat. 209, and asserted illegal activities of an organization known as Labor's National Peace Council to which the member belonged. The investigation as to the latter subject not having been yet reported upon by the grand jury, that body found an indictment against the member for a violation of the Sherman Law. Subsequently calling attention to his previous charges and stating others, the member requested that the judiciary committee be directed to inquire and report concerning the charges against the appellant in so far as they constituted impeachable offenses. After the adoption of this resolution, a subcommittee was appointed which proceeded to New York to take testimony. Friction there arose between the subcommittee and the office of the district attorney, based upon the assertion that the subcommittee was seeking to unlawfully penetrate the proceedings of the grand jury relating to the indictment and the investigations in question. In a daily newspaper an article appeared charging that the writer was informed that the subcommittee was endeavoring rather to investigate and frustrate the action of the grand jury then to investigate the conduct of the district attorney. When called upon by the subcommittee to disclose the name of his informant, the writer declined to do so and proceedings for contempt of the House were threatened. The district attorney thereupon addressed a letter to the chairman of the subcommittee, avowing that he was the informant referred to in the article, averring that the charges were true, and repeating them in amplified form in language which was certainly unparliamentary and manifestly ill-tempered, and which was well calculated to arouse the indignity not only of the members of the subcommittee, but those of the house generally. This letter was given to the press so that it might be published contemporaneously with its receipt by the chairman of the subcommittee. The judiciary committee reported the matter to the House and a select committee was appointed to consider the subject. The district attorney was called before the committee and reasserted the charges made in the letter, that they were justified by the circumstances, and stating that they would, under the same condition, be made again. Thereupon the select committee made a report and stated its conclusions and recommendation to the House as follows:

"'We conclude and find that the aforesaid letter written and published by said H. Snowden Marshall to Hon. C. C. Carlin, chairman of the subcommittee of the judiciary committee of the House of Representatives, on March 4, 1916 is as a whole and in several of the separate sentences defamatory and insulting and tends to bring the House into public contempt and ridicule, and that the said H. Snowden Marshall, by writing and publishing the same, is guilty of contempt of the House of Representatives of the United States because of the violating of its privileges, its honor, and its dignity.

"Upon the adoption of this report, under the authority of the House, a formal warrant for arrest was issued and its execution by the Sergeant of Arms in New York was followed by an application for discharge on habeas corpus; and the correctness of the judgment of the court below, refusing the same, is the matter before us on this direct appeal."

The Supreme Court stated the issue which was before it.

"Whether the House had power under the Constitution to deal with the conduct of the district attorney in writing the letter as a contempt of its authority, and to inflict punishment upon the writer for such contempt as a matter of legislative power, that is, without subjecting him to the statutory modes of trial provided for criminal offenses, protected by the limitations and safeguards which the Constitution imposes as to such subject, is the question which is before us."

The United States Supreme Court, in an opinion by Mr. Chief Justice White, held, *inter alia:*

". . Coming to test the question by a consideration of the conclusion upon which the contempt proceedings were based as expressed in the report of the select committee which we have previously quoted, and the action of the House of Representatives, based on it, there is room only for the conclusion that the contempt was deemed to result from the writing of the letter, *not because of any obstruction to the performance of legislative duty resulting from the letter, or because the preservation of the power of the House to carry out its legislative authority was endangered by its writing, but because of the* effect *and operation which the irritating and ill-tempered statements made in the letter would produce upon the public mind, or because of the sense of indignity which it may be assumed was produced by the letter upon the members of the committee and of the House generally.* But to state this situation is to demonstrate that the contempt relied upon was not intrinsic to the right of the House

to preserve the means of discharging its legislative duties, and was extrinsic to the discharge of such duties, and related only to the presumed operation which the letter might have upon the public mind and the indignation naturally felt by members of the committee on the subject. But these considerations plainly serve to mark the broad boundary line which separates the limited implied power to deal with classes of acts as contempts for self-preservation, and the comprehensive legislative power to provide by law for punishment for wrongful acts" (emphasis supplied).

We hold, assuming the respondent had indeed provided misinformation to the international press of an alleged witch hunt against him by members of the Liberian Senate, the action would not "obstruct the legislative functions or . . . obstruct or impede members or officers of the [Senate] in the discharge of their legislative duties."

During arguments before this Court, counsel for the respondent represented that the petitioner, when he appeared before the Senate in plenary, in response to the Senate's letter dated August 29, 2007 mandating that "[he] place a hold on all actions of dismissal or attempted dismissal by [the General Auditing Commission]," to "re-instate all affected employees by the dismissal or downsizing endeavor of [the General Audition Commission]," and to "submit plans of the commission," offered insults, and was most disrespectful to the members of the Senate. Counsel for the respondent represented, specifically, that the petitioner, exhibiting budget documents, indicated that notwithstanding the Senate had approved everything he recommended by enacting the budget into law to facilitate his downsizing program and the recruitment of qualified personnel as replacements, the Senate seemingly did not understand what they had approved. Counsel for the respondent represented, finally, that because of this arrogance and disrespect of the petitioner, he was held in contempt of the Senate and fined L$4,999.00.

This representation by counsel for the respondent, if true, is not only reprehensible but of grave concern, for this Court will not tolerate any official of Government, the Auditor General not excluded, who offers insult or disrespect to constituted authority. Where properly verified, this Court shall be firm and unbending in its decision in confirming disciplinary actions taken against any such official.

In this case, unfortunately, the petitioner was not held in contempt for offering insults and being disrespectful to the members of the Senate when he appeared before the Senate in plenary; rather, the letter of Mrs. Jannaeve V. Massaquoi, Acting Secretary of the Liberian Senate, dated September 19, 2007, stated that he was being

held in contempt "for misinforming the international press of an alleged witch hunt against [him] by members of the Liberian Senate."

In view of what we have said, the petition is hereby granted, and the peremptory writ of prohibition is hereby issued. This decision is without prejudice.

The clerk of this Court is hereby ordered to transmit a copy of this opinion to the Honourable House of Senate of the National Legislature of the Republic of Liberia, by and thru President of the Senate, or the President pro tempore or its Presiding Officer. It is so ordered.

Petition for the Writ of Prohibition granted without prejudice.