

PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
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INTERVIEW WITH PRESIDENTIAL SPOKESPERSON HARRY ROQUE
BY KAREN DAVILA – HEADSTART/ANC
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SEC. ROQUE: Good morning, Karen. And good morning, Philippines.

DAVILA: All right. We will be discussing many issues with you, Secretary. But since we are coming from a story about Maria Ressa and the support that she is getting from different parts of the world, I want to ask you something from your press conference yesterday. I'll start with that. Joseph Morong asked you in your press conference regarding the probation in regard to Maria Ressa. Can I read you, your exact quote, Secretary?

SEC. ROQUE: Go ahead please.

DAVILA: All right. You said, the sentence of Maria is subject to probation but you will lose the benefit of, ibig sabihin walang kulong kung tatanggapin ang desisyon at mag a-apply ng probation. Kung siya po ang aapila, mawawala ang prebelihiyo na wala ng kulong; at kapag siya ay nag-apila at natalo pa siya, kulong na siya talaga. Secretary, I know it seems quite clear, but can you explain that even more considering this was not at all in the dispositive portion of the verdict, of the decision?

SEC. ROQUE: No, but it's in our existing laws on probation and parole. That is why we have indeterminate sentence law, anything that it's punishable not in excess of six years and one day may be subject to probation. So, all you have to do, if you don't want to be incarcerated is to accept the decision, apply for probation. And as a matter of course, you will be entitled to probation unless you have prior convictions and I don't think she has any prior convictions 'no.

So this is not something that could really lead to imprisonment, if she accepts the decision 'no. And that is why I had to read the decision for myself. You are a journalist, Karen, we studied in the same school, and we all know how libel laws operate in the Philippines. If the complainant is a private individual, there is malice in law. There is a legal presumption that the malicious imputation is in fact malicious. And by way of defense, we have to show that there is no malice. How? By showing either steps taken to verify the truth.

Now, I'm surprised that American personalities have also attacked our libel laws in Philippines. Mind you, we have the exact same libel laws that they have in the United States. The only difference is that they have a federal system and not all states continue to impose criminal libel in their jurisdictions.

But the same defense for malice, New York Times vs. Sullivan, is applied here in the Philippines. We have incorporated that in Philippine Law among others in 'Borjal vs. Court of Appeals.' So, all she have to do in court was to show that the steps that she took to make sure that they are reporting the truth, because in the New York Times doctrine, malice is where there is in fact a failure to verify the truth or talagang it was clear instance of falsehood. And for as long as you can show your reasonable efforts to that to insure the accuracy of report you are reporting, then there would be malice.

But she did not do it, she did not even offer any evidence that they actually resorted to facts checking. She did not show that they even got any public documents to support their conclusion that Mr. Keng is a criminal.

DAVILA: Okay, Secretary, I don't want to get to the details of the case per se, because I'll have to have Atty. Teddy Te to respond to that. But I want to ask you—

SEC. ROQUE: Please let him respond.

DAVILA: I want to ask, Secretary, first because you have just mentioned very specifics under the law, but the decision reads this ... the decision reads, "The judgment is hereby rendered that each are hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from six months and one day of prison correctional as minimum to six years of prison" and then both are asked to pay Keng moral damages and exemplary damages. But what you have just explained sounds quite different from the decision itself. The decision essentially is there is jail time involved, so I have asked the strategy.

SEC. ROQUE: Nawala ka na, Karen

[DISCONNECTED]

DAVILA: The decision is quite clear that the sentenced to suffer technically six months to six years and then moral and exemplary damages. Where did your statement of "that she was actually subject to probation, and she lose the benefit of that if she does not accept," where did that come from?

SEC. ROQUE: Because that is the Indeterminate Sentenced Law and that is why the judge specified, she is found guilty and imposed the indeterminate sentence law. Now, our legal system now has gone beyond being punitive, and it's reformative and that is why we give convicted felons an opportunity to reform themselves. If they served for instance a minimum term, then they don't have to serve the full term. But in addition to that, our laws on Probations and Paroles say that anyone convicted for an offense with imprisonment for up to six years and one day are entitled to probation. So, there is the option not to go to jail, but you have to accept the decision. If you appeal, then you lose that benefit.

DAVILA: Okay, wait. So, you are saying, that is part of the—you have mentioned its court?

SEC. ROQUE: Indeterminate Sentences Law and the Probations and Parole Law.

DAVILA: All right. So, it does not mean you were privy to any details ahead of time?

SEC. ROQUE: No, no. That's how the law is written, and that is why judges now have to impose sentences pursuant to the Indeterminate Sentence Law.

DAVILA: All right. But then, what about the case of Raffy Tulfo in 2010. He took it all the way up to the Supreme Court, there was no jail time. It was not cyber libel, but libel. No jail time and he was asked to pay a fine of 1.7 million.

SEC. ROQUE: Well, because I think it was only the civil aspect of the case that was decided. If there is no imprisonment—remember, every case filed in court, there are two cases 'no – the criminal case against the state and the civil case against the private complainant. So, if there is no imprisonment, then the evidence warrants only civil damages because of the quantum of evidence is different in a civil case, which is only preponderance of evidence; whereas in a criminal case, it is proof beyond reasonable doubt.

DAVILA: Okay. I want to ask you this, this is coming from a viewer. Does the decision show some kind of—the decision has been called by some sectors as shady, and our viewer asks: President Duterte appointed Judge Montessa's husband in a Makati Court. I'll let you answer this, and the effect that the daughter of Mr. Keng was also appointed to a government position?

SEC. ROQUE: Well, you know, the President appoints literally thousands and thousands individual and not all of them are known. And I know this, because I'm somehow privy to judicial appointments. The trial courts appointments up to the CA, the President virtually does not know anyone anymore because when he was practicing, these people were not even born yet. That is why he has to rely on a system where PMS will get every candidate and then send it to the President with a ranking already.

And take note that on judicial appointments, are also made pursuant to the recommendations made by the Judicial and Bar Council. So, it's not as if the President alone has the power to appoint. I mean, the appointment is made by the President, but the process is a shared task with the Judicial Bar Council because his appointment is limited to the shortlisted individuals. Now, almost all the time, because these are very young lawyers already, the President has been appointing stranger, he has to rely on curriculum vitae; he has to rely on the vetting made by PMS.

DAVILA: Yes, but doesn't this affect somehow the integrity of the decision by appointing the judge's husband—

SEC. ROQUE: Not at all.

DAVILA: The judge's husband during ... while Maria's case was being heard?

SEC. ROQUE: Not at all because that would mean all decisions of the courts, just because the judges or the relative are appointees of the President, will be tainted. I think that's unfair for the judicial system. And, in fact, now that Maria Ressa is trying to condemn the entire judicial system, I have taken it upon myself to defend it and that is why, Karen, even if you say the details of the case need to be discussed with Teddy Te, you need to read the decision because the poor judge cannot defend her decision. The decision speaks for itself that is her defense. There is no suppression of freedom of the press. It was a case of bad journalism. It was case of bad lawyering.

DAVILA: Okay, I have read the decision actually. But then you also, in 2012, wrote a piece that the cybercrime law can be abused exactly in this manner. I have also read the piece that you wrote. You wrote it on Rappler, Secretary.

SEC. ROQUE: Yes, I did more than that.

DAVILA: Yes.

SEC. ROQUE: I did more than that. I went to the Committee on Human Rights to have a—I successfully get a view that criminal libel in the Philippines is contrary to freedom of expression, that was in the case of Adonis vs. Republic of the Philippines. And mind you, Adonis went to jail for libel because of his article on “Burlesk King” referring to then Speaker Nograles. It was no less than now President Duterte that provided material support for us to go to the UN Committee on Human Rights to get that decision that criminal libel is contrary to freedom of expression—

DAVILA: Okay. Secretary—

SEC. ROQUE: The President has never filed any libel case in his almost 40 years of career as a politician, which means he does not believe in the use of libel in suppressing freedom of expression. So, what more do you want from the President?

In fact, Alex Adonis that went to the Supreme Court to try to declare the Cybercrime Law including cyber libel as unconstitutional because he was the only one with a standing since he was already convicted of libel and he has a UN Human Rights Committee view in his favor. But the court said unfortunately that the recommendation of the Human Rights Committee was recommendatory to Congress, it was Congress that should de-criminalize it and they upheld that libel is not protected speech.

So unfortunately, the advocacy to declare libel and cyber libel as unconstitutional did not succeed in the Philippines and therefore we now have to use New York Times vs. Sullivan as a defense when you're accused of libel and Maria Ressa did not, because she did not lift a finger to prove the absence of malice despite the presumption of malice in law.

DAVILA: All right. I wanted to ask you because in the article that you wrote, you did write by criminalizing internet libel, “the government expanded the infringement of freedom of expression even to the realm that has enable us to give life to the principle of a free market place of ideas – the internet.” And you wrote this ending with, “there’s nothing sadder than suing the son of icons of democracy for infringement of a cherished right.”

I just want to ask you, Secretary, do you think this was an example, this was a test case for what you thought exactly against in 2012?

SEC. ROQUE: I think, yes.

DAVILA: You raised the alarm on 2012, you raised the alarm that cyber libel, treating it as a crime could be abused. That was the alarm you raised. Do you think this was the test case?

SEC. ROQUE: No.

DAVILA: Was there abuse?

SEC. ROQUE: No. In fact, we have proven that it can be used to abuse rights. We did also in another case involving First Gentleman Arroyo. We went to court and sued on the basis of abuse of right because he was filing a libel case indiscriminately, and we won on the Supreme Court.

So, we won already in the UN Committee on Human Rights that libel is contrary to freedom of expression; we won in the Philippine Supreme Court that the indiscriminate filing of libel cases is an abuse of right, but we lost in the case of *‘Adonis v Executive Secretary’* when we sought to declare the Cybercrime Law, specifically cyber libel as being unconstitutional because the court said, as far as the UN Committee on Human Rights is concerned, that’s recommendatory to Congress and libel is still not protected speech in the Philippines.

I believe until now in what I’ve said in 2012. Unfortunately, the court ... Supreme Court did not agree and I really maintained that in the case of Ressa, it was bad journalism, bad legal defense—

DAVILA: All right.

SEC. ROQUE: —not abuse.

DAVILA: Okay. So, you’re saying that this decision was not an example of possible ... a grave abuse of the use of the Cybercrime Law? I want to ask you, in terms of the—

SEC. ROQUE: Yes, it was really bad journalism. You know, in any jurisdiction, in US jurisdiction it’s called the *‘New York Times v Sullivan’* defense. But in continental Europe, it’s called by a

different way. But if you want to have a defense for libel, in many states of Europe still continue with criminal libel, you have to show diligent effort in reporting the truth, that is all that it's required and there was no such evidence presented in this case.

DAVILA: Okay. Secretary, another issue is the issue of the one-year prescriptive period. Under the Cybercrime Law, it's a period of twelve years. You also went against this in 2012. What are the implications that now there is a case that actually allows a prescriptive period of twelve years? What is the implication to all journalists, all bloggers?

SEC. ROQUE: Well, I think the—

DAVILA: Everyone who posts online?

SEC. ROQUE: Yeah, the implication is you have to be very careful with what you report. You have to observe professionalism, utmost diligence in reporting only the truth. You have to fact check, you cannot call someone a criminal without a decision of the court convicting him for a crime and, certainly, you need to get the side of the subject.

DAVILA: But you were against the twelve years also? You were against the twelve years in 2012?

SEC. ROQUE: Yes, I know. Karen, listen, I was really against libel. I still am against libel. What do I do? The court said it's constitutional. Do I commit hara-kiri? No. So, you need to defend the client pursuant to available defenses and that's '*New York Times v Sullivan*'.

And what I'm saying is, they did not even exert any effort to use the '*New York Times v Sullivan*' defense that there was no actual malice.

DAVILA: All right.

SEC. ROQUE: Natural, the court will convict them.

DAVILA: Okay, moving on to another topic now, the Anti-Terror Bill. You wrote that there are many ... there are 784 local chief executives that have already signed, including 43 governors, 68 city mayors, 673 municipal mayors as a sign of support. This is correct, Secretary?

SEC. ROQUE: Yes, that was handed to me by Sec. Año when the President addressed the nation the other day.

DAVILA: All right. It's quite unique for the President to ask support from local government officials; he's never done this in the past. The Anti-Terror Bill is just awaiting his signature frankly. Does this mean that, in a way, the President does have questions on the bill itself, on the constitutionality of the bill? Why asked the support, Secretary, of local government officials?

SEC. ROQUE: I don't think it was the President that asked for the support because he was on Davao; it was Sec. Año. And it is only but natural because he is Secretary of Department of Interior and Local Government, and terrorism, of course, can occur in specific jurisdictions of the Philippines constituting LGUs.

So, it is an expression of support from the stakeholders, the local government units that will all have to deal with the threat of modern-day terrorism.

DAVILA: Oo. My source tells me there's a mayor of a big city who has... who did not give his/her support to the bill. What happens to officials like that?

SEC. ROQUE: Nothing, because nothing has happened to that official but an overwhelming majority apparently have given their support to the bill.

DAVILA: Okay.

SEC. ROQUE: It's a free country.

DAVILA: Yeah. You have international lawyers who are calling on President Duterte to scrap the bill. Is that still possible? Is he open at this point? What is he waiting for to make a decision? I know the DOJ is studying the bill.

SEC. ROQUE: It is. And that is why when he addressed the nation it was not broadcasted. When he spoke about the Anti-Terror Bill, he is saying, "I'm waiting for Sen. Lacson to finalize his commas and periods before I signed the Bill."

That's rhetorical because apparently, he has not seen the enrolled bill in his desk itself which means that it is being vetted by the Office of the Executive Secretary and perhaps they're also awaiting inputs from the Department of Justice. Because I know Sec. Sal has already submitted his opinion.

But there are at least three departments that are given the leeway to comment on this legislation, the most important is the Office of the Executive Secretary, specifically the Deputy Executive Secretary for Legal Affairs (DESLA). And of course, it is important to listen to the Department of Justice as well.

DAVILA: So, there is a chance for the President to veto the bill depending on the recommendations of the office the ES and the DOJ?

SEC. ROQUE: Well, not only that. Let's not forget that the President was also a criminal lawyer, a public prosecutor. He will read the bill himself and he will himself make a determination if there's any provision that is contrary to the Bill of Rights and the Constitution.

DAVILA: Okay. Now on another issue, let's talk about GCQ, MGCQ. Why didn't Metro Manila qualify for MGCQ? And are there any adjustments made to the continuation of GCQ in Metro Manila? And I am asking this based on the concern of small businesses that have started to reopen.

SEC. ROQUE: Well, you know, we have been consistent that the qualifications will be based on the case doubling rate of the COVID cases, the critical care capacity of the area, as well as concern for the economy.

Metro Manila was even 'pasang-awa' for GCQ. To qualify for GCQ or moderate risk, you need to have a case doubling rate of 7; Metro Manila's case doubling rate is 6.9. So, if we were strict about it, Metro Manila would have been back to Modified ECQ. But 6.9 is, you know, almost 7 and that's why we classified for GCQ.

One thing going for Metro Manila though which is not going for Cebu City is that we have substantial critical care capacity. Our occupancy rate for our critical care wards as well as isolation facilities is only at around 30-40%, so we have about 60-70% capacity still. Whereas sa Cebu City, on the other hand, had a case doubling rate of 6.6 and then it had already 100% capacity for ICU beds and 93% capacity for its isolation facilities which is now classified as dangerous. And that's why Cebu became an ECQ and Metro Manila retained its classification of GCQ.

DAVILA: Secretary, is there a possibility to increase public transport even if Metro Manila is on continued GCQ?

SEC. ROQUE: We have already increased it. From two, we are now on or about, if I am not mistaken, around 16 routes 'no. And I think, as a matter of necessity, DOTr will also increase it. In any case, even prior, there's a Phase 2 on the transport plans of DOTr to increase public transportation. I just don't know if they will proceed with the second phase because the assumption there is, we were going to be downgraded to MGCQ. So, I will have to verify if DOTr will proceed with its Phase 2.

DAVILA: I'm curious, Secretary. Would you have details in terms ... you have said from two, there are now 16 routes. There was a period that there were only 90 buses out on the street. Would you have the number of just how many buses are out now under continued GCQ?

SEC. ROQUE: Not now. I normally have a kodigo, but I don't have it available now.

DAVILA: All right. In terms of stranded individuals, there was an estimate that came out that there were, at its peak, over 4.1 million stranded individuals in Metro Manila. The latest is you have 379 that were sent back to the provinces. Let's talk about those first stranded under the NAIA Expressway. I know that they were transferred to Villamor. What's the latest on that, Secretary?

SEC. ROQUE: There is no one under the expressway now because, Karen, what I do is, I have to walk the talk. When I announced that they will be relocated, I have to make sure that they were in fact relocated. I actually went to—

DAVILA: Villamor.

SEC. ROQUE: The vicinity of the airport to find out if anyone was still there, and it was empty. I went twice. The first time, I saw the crowd and I told my wife, “We should get a permission from the Pasay local government, we should give them food ‘no.’” But we did not have to because by the time I returned, they were gone. And then the figure of 4.1 million stranded, well, I doubt if that’s true because the phenomena of locally stranded individual became a problem after we had some commercial flights which were in fact cancelled and I don’t think we have that much flights to result in 4.1 million stranded individuals.

DAVILA: Okay, pero baka iyong stranded, Secretary, that figure of 4.1, that was actually by—it’s a study. Baka hindi po OFW, it could have been students or workers who couldn’t go back home.

SEC. ROQUE: Yes and correct, kasi iyong locally stranded individuals, we were referring to the individuals who were stranded in the airport because their flights were cancelled or because there were no buses going home to the provinces. And this is because of what happened to Michele. And that is why ‘Michelle’ had to happen, before we made a decision that even locally stranded individuals will be given assistance, which is really unfortunate.

DAVILA: So to simplify, if you are a stranded individual, Secretary, what do you do? I mean, the ones—

SEC. ROQUE: Call DSWD now, there is now a hotline for DSWD. Contact the local government unit because we have also asked also the local government units through the DILG to extend assistance. And if they cannot, at least just to refer them to the DSWD.

DAVILA: Okay. And the Balik Probinsiya Program, it was suspended for a time but it seems that it will be back. Is it by the end of the month, is that correct?

SEC. ROQUE: I think the deployments were temporarily suspended because we also had to send home locally stranded individuals. But as a matter of government policy, it will continue and we will deploy individuals again back to the provinces soon. I am not sure when, but now that the problem of locally stranded individuals have been addressed, perhaps it can be resumed soon.

DAVILA: Is there a change in the system? Vice President Leni Robredo in a radio interview said that because of the length of time before an individual is able to come home. She cited an example, that you have two who arrived positive in Leyte and when they were tested in Manila they were negative. So she talked about a problem with the lack of coordination with

LGU's and essentially the element of time when someone's tested to the time they are sent back home.

SEC. ROQUE: I just wish the Vice President could actually offer solutions 'no. But, no. The problem really is the nature of the disease. If you are tested now, you could test negative; in a few days later, you could test positive. So what we are doing now is in addition to the testing being done in Metro Manila which is PCR before being sent to the provinces. We have developed also the capability of the local government units outside of Manila to conduct their own PCR test, and that is why the local government upon receiving them, subject them to another test. And when they are found positive, they are simply be isolated and treated. It's the nature of the disease, we can't do anything about it.

DAVILA: Okay, another issue is—I interviewed Christian Monsod and he asked a question why prioritized on the Anti-Terror Bill, certifying it as urgent and not the extension of the Bayanihan Act which would have benefited actually the poor.

SEC. ROQUE: Karen, let me dig here on the timeline. The Anti-Terror Bill has been pending since the 17th Congress. The Senate passed it with the same principal authors, Senator Lacson and Senate President Sotto. It got stuck in the House. It was re-filed in January of 2018 in the Senate and it's passed in the Senate four months ago. By the time it was certified, and I was not even aware because it was asked of me on one press briefing 'has it been certified?' My press briefing is at noon. I said, "No, it hasn't been." Why? Because it was only certified in the afternoon at around 4:00 o'clock.

So what my point being, while the certification made sure that it will pass the House, the Anti-Terror Bill has been there, it has been approved on third and final reading four months ago by the Senate. So, it's not as if it was the President solely responsible for its passage 'no. It was simply Ping Lacson and Senate President Sotto doing their jobs and passing laws that they think are good policy.

Now, the Bayanihan Act is completely different matter because, initially, what the Executive wanted was merely an extension of the special powers. But the bills that have seem been filed included already plans to stimulate the economy – stimulus packages. And the position of Secretary Dominguez is that, it is better to have a very good credit rating so that we can borrow cheaply, was that we should not borrow too much to finance the stimulus package. So, the position of Secretary Dominguez is we should only offer stimulus that we can afford; and right now, that's a 140 billion pesos.

DAVILA: Yes, yeah, I'm glad you said that because he did say that the Senate version is unfundable. Does Malacañang ... do you still want a three-month extension? Earlier NEDA said, it should be till the end of the year. What would Malacañang want now?

SEC. ROQUE: Well, because the pending bill now talks about extension of emergency powers and the stimulus package, then Malacañang now wants something – a stimulus package that

we can actually fund and that will not require too much borrowing ‘no. There are a lot of negotiations ongoing between the Senate and the House. I was dragged into the negotiation rather unwillingly because I was telling them, I have too much work already. But I think they were close to a compromise. That is all I can say.

DAVILA: And does the compromise still involve special powers? Because the last time, I think, the Senate version didn’t have special powers. It was really more of a stimulus package. Is the version now being negotiated? Will it still involve some kind of special powers for the President?

SEC. ROQUE: I believe so because now we are looking at what happened to Cebu City, we are sending in ventilators, 50, the other day. Meaning, there may have to be purchases to be made, depending on what happens to the COVID outlook.

DAVILA: My last question is, we’ve also been criticized as a country for having the longest lockdown in the world, even longer than Wuhan. Go ahead, Secretary. Is this the only way? I think people are asking.

SEC. ROQUE: Well, that is why we are exploring now the localized lockdown and this has always been the suggestion of the private sector. But, I think, we made the right moves because in terms of deaths, we’ve had in excess of a thousand. Compare it to the hundreds of thousands that have already died in places like the United States ‘no. So, I don’t think there is any regret about what we have implemented. We have protected our people and we are hoping that in the near future, we will recover from the economic losses that we suffered because of a policy decision – to uphold the right to life.

DAVILA: All right. Secretary, I was going to let you go but a journalist just texted and wanted me to ask you: Are you standing by what you said that the problem with the decision was Rappler’s bad journalism? That was what you said.

SEC. ROQUE: Because there was no fact checking, it’s basic. Before you call someone criminal, make sure they are criminals. Where is the conviction? Where is even the complaint? You know what I’m saying. After all, that’s the very definition of what libel is – Imputation of a crime – why wasn’t that vetted?

DAVILA: All right, you said that already in the first part. This journalist just wanted to make sure that you are standing by saying that Rappler’s problem was bad journalism.

SEC. ROQUE: I am. I am standing by. That’s what the decision said. There was no effort at all to establish that there was no malice and you can only prove there was no malice if you made sure your stories were, in fact, facts and not mere accusations.

DAVILA: On that note, Secretary Roque, we don’t have enough time. But I want to thank you once again for coming on Headstart. I appreciate the time you have given us, sir.

SEC. ROQUE: Can I ask a question?

DAVILA: Go ahead, sir.

SEC. ROQUE: We are all contemporaries with Maria Ressa. But did you go to school with her in the Institute of Masscom of UP?

DAVILA: Personally, Maria is older than I am. But this may not be appropriate for Headstart now, but she is older than I am. Yes, she was my boss.

SEC. ROQUE: Yes, but is she also a graduate from the same institute that you graduated from together with my wife?

DAVILA: I graduated in UP. I think she graduated from Princeton.

SEC. ROQUE: Okay, that explains why. UP, I can see, knows what libel laws are. Thank you very much.

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