

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

S E N A T E

COMMITTEE REPORT NO. _____

Submitted by the Committee on Accountability of Public Officers and Investigations (*Blue Ribbon*) on _____.

Re: Proposed Senate Resolution No. 337 and Privilege Speech of Senator Jinggoy Ejercito Estrada delivered on January 19, 2011

Recommending its approval.

Sponsor: Senator Teofisto "TG" Guingona III

MR. PRESIDENT:

The Committee on Accountability of Public Officers and Investigations (*Blue Ribbon*) has conducted an inquiry, in aid of legislation, on the following referrals:

Proposed Senate Resolution No. 337, introduced by Senator Alan Peter "Compañero" Cayetano, entitled:

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON COMMITTEE) AND OTHER APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY IN AID OF LEGISLATION, INTO THE CIRCUMSTANCES SURROUNDING THE PLEA BARGAINING AGREEMENT BY AND BETWEEN GOVERNMENT PROSECUTORS AND GENERAL CARLOS GARCIA WHO IS CHARGED WITH PLUNDER WITH THE END IN VIEW OF CRAFTING LEGISLATIVE MEASURES TO CURTAIL CORRUPTION AND PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN THE GOVERNMENT

And **Privilege Speech of SEN. JINGGOY EJERCITO ESTRADA** delivered on **January 19, 2011**

The Committee has the honor to submit its Partial Report in relation to **Proposed Senate Resolution No. 337**, introduced by Senator Alan Peter “Compañero” Cayetano, after conducting an inquiry, to the Senate.

Recommending the adoption of the recommendations contained herein.

COMMITTEE REPORT

1. INTRODUCTION

1.1. PRELIMINARIES

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime...to flourish.

Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.

*Kofi Anan
former UN Secretary-General
New York, 2004*

Corruption in the military is a main cause of military unrest, grievance, and adventurism. Among the recommendations made after the Oakwood mutiny was for the government to effectively address legitimate grievances.¹ Said in the Feliciano

¹ Feliciano Commission Report on the Oakwood Mutiny of July 2003

Commission's Report, "*the Government and the AFP need to address the legitimate grievances of the military against corrupt officers, officials, bureaucrats, and practices.*"

The prosecution and arrest of former Major General Carlos F. Garcia in 2004 was a hopeful step in the right direction. After building a solid case supported by solid evidence, Forfeiture and Plunder cases were later filed by the Office of the Ombudsman then under Simeon Marcelo and the Office of the Special Prosecutor, then under Dennis Villa-Ignacio. The Republic was convinced that it was going to get a conviction.

This is the reason why the nation was deeply shocked and profoundly vexed when it found out that the Office of the Ombudsman together with the Office of the Special Prosecutor entered into a plea bargaining agreement with Garcia on February 25, 2010 which was later submitted to the Sandiganbayan for approval on March 16, 2010. On May 4, 2010, the Sandiganbayan practically approved this Agreement. Quite interestingly enough, it was at the height of the 2010 presidential elections when this plea bargaining deal was hatched and finalized.

On December 16, 2010, the Sandiganbayan granted former General Garcia's Plea Bargaining Agreement subject only to the transfer of certain real and personal properties to the Republic. According to General Garcia, the conditions have already been complied with. This is the reason why he was granted bail.²

² TSN: mhSantos XIV-1 February 3, 1011 11:49 a.m. p. 6.

MR. CADIZ.... There is a May 4 resolution, **May 4, 2010 resolution of the Sandiganbayan approving the plea bargaining for conditions and subject to the conditions to be satisfied which is the transfer of the assets of General Garcia to the Republic. And that according to General Garcia, has been complied with.** That was the reason why on December 16, Madam Senator, Your Honor please, **that was the reason on December 16, 2010 General Garcia filed a petition for bail which was not opposed by the Office of the Special Prosecutor...** (emphasis supplied)

Thus, the Senate, in aid of legislation, has decided to investigate the perceived, irregularity, haste and secrecy surrounding the Garcia Plea Bargaining Agreement (PBA).

This Committee Report is divided into four parts. The first part deals with the Preliminaries; the second part is the Antecedent Facts; the third part is the Findings of the Committee; and the final part contains the Committee's Recommendations.

1.2. HEARINGS OF THE GARCIA PLEA BARGAINING AGREEMENT

The 15th Congress conducted 6 hearings on the following dates with the following guests:

1.2.1. THE HEARINGS

January 27, 2011

Solicitor General Jose Anselmo I. Cadiz; Atty. Simeon V. Marcelo; Atty. Dennis Villa-Ignacio; Atty. Jose Balmeo Jr., Asst. Special Prosecutor; Atty. Joseph Capistrano, Asst. Special Prosecutor; Department of National Defense (DND) Secretary Voltaire T. Gazmin; Lt. Gen. Reynaldo Mapagu, Acting COS, AFP; Gen. Angelo T. Reyes, Former Secretary, DND; Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP; Special Prosecutor Atty. Wendell E. Barreras-Sulit; Atty. Vicente S. Aquino, Anti-Money Laundering Council (AMLC); Lt. Col. George Rabusa, Former Budget Officer, AFP; Atty. Noel Malaya, Counsel of Lt. Col., George Rabusa; Lt. Gen. Jacinto C. Ligot (Ret.), AFP Former Comptroller

February 3, 2011

Atty. Vicente S. Aquino, AMLC; Solicitor General Jose Anselmo I. Cadiz; Atty. Robert E. Kallos, Office of the Ombudsman; Atty. Jesus A. Micael, Office of the Ombudsman; Special Prosecutor Atty. Wendell E. Barreras-Sulit; Ombudsman Ma. Merceditas N. Gutierrez; Atty. Jose Balmeo Jr., Asst. Special Prosecutor; Atty. Simeon V.

Marcelo; Lt. Gen. Ricardo David Jr., Chief of Staff AFP; Atty. Joseph Capistrano, Asst. Special Prosecutor; Atty. Dennis Villa-Ignacio; Mr. Jarius Bondoc, Philippine Star; Lt. Col. George Rabusa, Former Budget Officer, AFP; Col. Antonio Ramon Lim PAF (GSC); Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP; Lt. Gen. Jacinto C. Ligot (Ret.), AFP Former Comptroller; Ms. Heidi Mendoza, Former COA Auditor; DND Usec. Honorio Azcueta

February 7, 2011

Ombudsman Ma. Merceditas N. Gutierrez; Ms. Divina Cabrera, COA; Lt. Col. George Rabusa, Former Budget Officer, AFP; Maj. Gen. Carlos F. Garcia, Former AFP Comptroller; Col. Antonio Ramon Lim, Former Deputy Budget Officer PAF; Ms. Heidi Mendoza, Former COA Auditor; Lt. Gen. Jacinto C. Ligot, Former AFP Comptroller; Lt. Gen. Reynaldo B. Mapagu, AFP; Mr. Lowell Jacob, Former COA Resident Auditor, AFP; Usec. Honorio S. Azcueta, DND; Atty. Wendell Barreras-Sulit, OMB/OSP; Atty. Jose M. Balmeo Jr., Asst. Special Prosecutor; Atty. Joseph Capistrano, Asst. Special Prosecutor; Atty. Jesus A. Micael, Office of the Ombudsman; Assistant Solicito General Amparo C. Tang; Atty. Vicente S. Aquino, AMLC; Atty. Dennis Villa-Ignacio

February 18, 2011

DND Sec. Voltaire T. Gazmin; AFP Chief of Staff Gen. Ricardo David Jr.; BGen. Benito De Leon, AFP, Chief AFP MFO; Col. Antonio Ramon Lim PAF (GSC), Former Deputy Budget Manager; Col. Abraham B. Bagasin, Former Deputy Budget Officer; Capt. Kenneth Paglinawan PN, Former Chief, ISAFP; Lt. Col. Romeo Mateo; Maj. Tomas Donato, Comptroller, ISAFP; Capt. Emerson Angulo, Former Deputy Budget Officer; Capt. Ernesto Paranes, Former Special Disbursing Officer, ISAFP; Atty. Wendell E. Barreras-Sulit, Special Prosecutor; Atty. Reynaldo A. Villar, COA Chairman; Ms. Maribeth F. De Jesus, Former COA Resident Auditor, DND; Mr. Lowell Jacob, Former COA Resident Auditor, AFP; Atty. Vicente S. Aquino, Executive Director, AMLC; Ms. Alicia Valderama-Torres, Bank Officer V; Mr. Prospero A. Pichay, Chairman, LWUA; Gen. Efren L. Abu, Former AFP Chief of Staff; Gen. Roy Cimatú (PA Ret.), Former AFP Chief of Staff; Gen. Diomedio Villanueva (PA Ret.), Former AFP Chief of Staff; Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP; MGen. Hilario A. Atendido; MGen. Epenito Logico (PA Ret.); Lt. Gen. Jacinto C. Ligot (Ret.), Former Comptroller AFP; Col. Gilbert I. Gapay, Former Budget Officer AFP; Col. Philip Vicencio, Former Finance Operations Officer, AFP; Lt. Col. George Rabusa (AFP Ret.), Former Budget Officer, AFP; Mr. Generoso R. Del Castillo Jr., Former Chief Accountant, AFP; Atty. Celso D. Gangan, Former COA Chairman; Atty. Guillermo N. Carague, Former COA Chairman; Ms. Heidi Mendoza, Former COA Auditor

February 24, 2011

DOJ Sec. Leila M. De Lima; Asec. Zabiden M. Azis, DOJ; Lt. Gen. Reynaldo B. Mapagu, AFP; Usec. Honorio Azcueta, DND; Usec. Pio Batino, DND; BGen. Benito De Leon, AFP, Chief AFP MFO; Col. Gilbert I. Gapay, Former Budget Officer AFP; Col. Antonio Ramon Lim PAF (GSC), Former Deputy Budget Manager; Capt. Kenneth Paglinawan PN, Former Chief, ISAFP; Lt. Col. Romeo Mateo; Maj. Roy Devesa; Maj. Emerlito Angulo, Former Deputy Budget Officer; Capt. Ernesto Paranes, Former Special

Disbursing Officer, ISAFP; Atty. Edith Santos, Chief Accountant, AFP; Atty. Wendell E. Barreras-Sulit, Special Prosecutor; Atty. Joffre Gil. C. Zapata, Division Clerk of Court, 4th Division, Sandiganbayan; Atty. Reynaldo A. Villar, COA Chairman; Ms. Maribeth F. De Jesus, Former COA Resident Auditor, DND; Mr. Noel Jacob, Former COA Resident Auditor, AFP; Atty. Julia C. Bacay-Abad, Dep. Dir. Legal Services Group, AMLC; Ms. Alicia Valderama-Torres, Bank Officer V; Atty. Celso D. Gangan, Former COA Chairman; Atty. Simeon V. Marcelo; Asec. Zabiden M. Azis, DOJ; Gen. Efren L. Abu, Former AFP Chief of Staff; Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP; MGen. Hilario A. Atendido; Lt. Gen. Jacinto C. Ligot (Ret.), Former Comptroller AFP; Col. Philip Vicencio, Former Finance Operations Officer, AFP; Lt. Col. George Rabusa (AFP Ret.), Former Budget Officer, AFP; Atty. Guillermo N. Carague, Former COA Chairman; Ms. Heidi Mendoza, Former COA Auditor

March 3, 2011

Atty. Robert E. Kallos, Office of the Ombudsman; Atty. Jesus A. Micael, Office of the Ombudsman; Atty. Rabindranath Uy, Office of the Ombudsman; Usec. Honorio S. Azcueta, DND; Usec Pio Lorenzo Batino, DND; Col. Antonio Ramon Lim, AFP; Gen. Roy Cimatú (Ret.); Gen. Diomedio Villanueva (Ret.); Maj. Gen. Carlos F. Garcia (Ret.); Lt. Gen. Jacinto C. Ligot (Ret.); Col. Felipe P. Vicencio, AFP; Atty. Dennis Villa-Ignacio; Atty. Francisco "Frank" I. Chavez; Mr. Edgardo T. Yambao; Ms. Erlinda Y. Ligot; Ms. Heidi Mendoza

2. ANTECEDENT FACTS

The case of former Deputy Chief of Staff Carlos F. Garcia dates back to December 19, 2003 when **his sons Juan Paulo D. Garcia** and **Ian Carl D. Garcia** smuggled into the United States US\$100,000. They pled guilty to the offense of **bulk cash smuggling** in September 2010. Both sons are now reportedly out on bail and the US\$100,000 has already been forfeited by the US authorities. In December 2010, the Philippine Department of Justice through the Mutual Legal Assistance Treaty (MLAT) has requested for the return of the US\$100,000, and that process is ongoing.

In an attempt by the spouse of Major General Carlos F. Garcia, **Clarita Garcia**, to recover the US\$100,000, she executed one sworn and another handwritten statement both on April 4, 2004 which she submitted to US Customs Agent Matthew

Van Dyke to justify their ownership of the US\$100,000. In the said statements, she admits that she and her husband have been receiving bribe money from contractors in the Armed Forces of the Philippines and that her husband has been falsifying his net worth in his annual Statement of Assets and Liabilities and Net Worth (SALN).

Pertinent part of her Sworn Statement dated April 4, 2004 provides:

My family's income is from four sources, two corporations, a daycare school and my husband's job as a Two Star General in the Philippine Military. My family has an 80% interest in the two corporations and we may earn a monthly income equivalent to US\$ 8,000. The day care school brings in more money, perhaps \$10,000 per month. **However, based on the Philippine tax laws regarding both the corporations and day care school, we are allowed to declare zero income. The income received from these businesses was not reported as a basis for tax liability.** The two corporations IJT MANGO ORCHARD, INC. and IJT KATAMNAN CORP were incorporated on March 22, 2002.

My husband, Carlos Garcia (Two Star General in the Armed Forces) was assigned to the Comptrollers Office until April 4, 2004. **He receives a salary that is declared as income for tax purposes.** In addition, **Carlos receives travel money and expenses in excess of several thousands of dollars. I often travel with my husband on business and my travel, expenses and shopping money in excess of US\$10,000 to US\$20,000 is provided to me. He also receives cash for travel and expenses from the businesses that are awarded contracts for military hardware. These businesses are in Europe and Asia. He also receives gifts and gratitude money from several Philippine companies that are awarded military contracts to build roads, bridges and military housing.**

As the comptroller, my husband handles all budgets for the armed forces. My husband prepares for the armed forces based on the requests from each branch of the military. The budget is sent to the Secretary of National Defense and it is sent to the Senate for approval. The Armed Forces Committee reviews each contractor's bids. Once the bids are approved and the review committee has checked out the companies, my husband is the final signature for funding the contracts. **The expense money, gratitude money and shopping money is not declared as income.**³

The handwritten statement of Clarita Garcia given to Agent Van Dyke on April 6, 2004 contains more disturbing revelations such as:

³ Sworn Statement of Clarita D. Garcia dated April 6, 2004. Attached as ANNEX A.

Honorarium benefits: My husband holds different chairmanship and directorship with different Armed Forces Institutions and he receives money allowances for every meeting that he attends weekly.

Travel Allowances: As a Comptroller, J6, Assistant deputy Chief Of Staff for Comptrollership, he is a member of the Management Team of Projects. For example: a certain foreign company wins a bidding from the Bids & Awards Committee for selling military hardware. This procurement is approved by the Secretary of National Defense and Office of the President. Then a team committee is formed by the Armed Forces to oversee the implementation of contracts. Since my husband's office is under the Department of Budget and Management that holds the budget of the whole government, his office is part of the inspection team. In one of the provisions of the contract, a team of committee will oversee the implementation of the contract before, during and after. During the before portion of the contract, my husband goes to inspect the site or location of the plants of the contracted party. Then during portion of the contract, he goes back to the contracted country to see the actual products. During the after portion of the contract, he returns to the contracted country to accept the finished product. **During these travels, my husband always brings me along and we are each given travel allowances by the proponents/host country. He is also (sic) by his office stipend and allowances to be used at his discretion. As a wife, I am also given an envelope as they call "shopping money" that I can use for my own discretion no receipt of how we use the stipends are ever required. Business class airfare/First Class Hotel accommodations and transportation are provided by the host/proponents and this happens on every trip since 1993 to present. Our meals, purchase (sic) of souvenir and cost of visiting sites are also paid for by our hosts. As a result, our allowances are not used and we are allowed to bring them. I am unable to provide the exact amount of each stipend/allowances because it varies from country to country we are assigned to visit.**

When my husband is assigned to travel domestically to the Philippine Islands to conduct inspection on different military camps, he is also given stipend/allowances and also often given gratuities.

With regards (sic) to expenses such as salaries for our drivers, security guards, their wages are paid for by the government. My husband's office are (sic) provided with government vehicle. Free gasolines (sic), housing allowances and cost of gratuities, gifts receive from colleagues. This is again part of the PERKS that my husband received from holding a key position in the Philippine Armed Forces.

Also when he was sent for schooling abroad, his salaries and allowances goes (sic) to his savings. The counterpart country also give (sic) him stipend and housing allowance...⁴

Garcia was subsequently convicted of perjury in one of the cases filed against him before the Sandiganbayan for falsifying his SALNs.

⁴ Handwritten letter of Clarita D. Garcia dated April 6, 2004 attached as ANNEX B.

To illustrate, in 1997, General Garcia only declared in his SALN that his net worth is only Php1,420,420. Despite having only that much money, it was later discovered that he owned the following pieces of property:

REAL PROPERTIES

1. Two (2) 1,000 square meter lots in Baguio City
2. Two (2) 500 square meter lots in Laurel, Batangas
3. One (1) 165 square meter lot in Sto. Tomas Batangas
4. A Condominium Unit at the Trump Park Avenue Condominium, New York. The Condominium Unit, as cited in the Plea Bargaining Agreement, is \$765,000.00 or Php43,155,180.00 based on the Peso-Dollar Exchange Rate at that time which was \$1 to Php56.412.⁵

It is also worth noting that Garcia's son, **Timothy Mark Garcia** also leased for US \$ 3,000 or Php168, 123.30 a month,⁶ an apartment unit at The Anthem, 222 East 34th Street, New York in October 2004. For a General's son whose net worth is not even P2 Million pesos, renting a US\$3,000 apartment per month is not only ostentatious and extravagant but also highly scandalous and suspicious.

As of 2005, the Garcias also own the following motor vehicles:

1. 1997 Honda Civic
2. 1997 Mitsubishi Van De Luxe
3. 2003 Honda CRV

⁵ People vs. Maj. Gen. Carlos F. Garcia, et al., Plea Bargaining Agreement, February 25, 2010.

⁶ The exchange rate is based on the Peso-Dollar exchange rate in 2004 which is US\$1 to Php56.0411 taken from <http://eofw.net/stats-and-facts/philippine-peso-us-dollar-exchange-rates-through-the-years/> (last accessed February 21, 2011).

4. 2001 Toyota RAV 4 Automatic
5. A Toyota Coaster Bus
6. An Isuzu Elf
7. 1993 Toyota Previa

Because of his unexplained wealth, frequent travels abroad, and the ostentatious lifestyle of his family that obviously could not be justified on a General's salary, on April 6, 2005 cases of **PLUNDER** and **MONEY LAUNDERING** were filed against him, his wife **Clarita D. Garcia** and his children **Ian Carl D. Garcia**, **Juan Paulo D. Garcia**, and **Timothy Mark D. Garcia** for connivance /conspiracy in criminally, amassing, accumulating and acquiring ill-gotten wealth in the form of funds, landholdings, and other pieces of properties, in the aggregate amount of **THREE HUNDRED THREE MILLION TWO HUNDRED SEVENTY-TWO THOUSAND FIVE AND 99/100 PESOS (Php303,272,005.99)** before the Sandiganbayan.

Consequently, on December 2, 2005, Garcia was found GUILTY by the General Court Martial of the Armed Forces of the Philippines (AFP) for violating Articles 96 and 97 for not declaring his true assets and for enjoying permanent-resident status (with a "green card") in the United States. He was dishonorably discharged from service, his pay and allowances were forfeited and he was sentenced to two (2) years of hard labor. It has been reported that the AFP Judge Advocate General's office confirmed that the court martial conviction was not acted upon by then President Gloria Macapagal-Arroyo.⁷

⁷ <http://politics.inquirer.net/politics/view/20110207-319028/Arroyo-did-not-affirm-Garcias-plunder-conviction-by-court-martial> (last accessed on February 21, 2011).

Garcia applied for bail which was subsequently denied on January 7, 2010 by the Sandiganbayan's 2nd Division.

What is very odd is that despite the denial of his bail, showing that the evidence of guilt is strong, the day after the retirement of Special Prosecutor Dennis Villa-Ignacio on February 24, 2010, the Office of the Ombudsman together with the Special Prosecutor on February 25, 2010 executed a Joint Motion for Approval of the Plea Bargaining Agreement with Garcia. This Motion was later filed on March 16, 2010 with the Sandiganbayan.

The Joint Motion for Approval of the Plea Bargaining Agreement allowed Garcia to plead to lesser offenses namely: INDIRECT BRIBERY under Article 211, par. 1 of the Revised Penal Code and Section 4(b) of RA 9160 or the Anti-Money Laundering Law which is Facilitating Money Laundering. Garcia also agreed to restitute Php 135,433,387.84 of ill-gotten wealth constituting pieces of real and personal property. This amount is not even half of the money he has allegedly plundered.

Thereafter, on May 4, 2010, a week before the 2010 Presidential elections, the Sandiganbayan issued a Resolution finding that the Plea Bargaining Agreement is warranted since it is in compliance with Section 5, Rule 116 of the Rules of Court. This in effect practically approves the plea bargaining agreement.⁸

The dispositive part of the Resolution reads:

⁸ Solicitor General's Omnibus Motion-In-Intervention dated January 11, 2011, p. 3.

ACCORDINGLY, and to this end, the Court hereby orders accused General Carlos F. Garcia to execute immediately the appropriate deeds of conveyance in order to transfer, convey, cede, surrender, and relinquish to the Republic of the Philippines his ownership and any and all interests which he may personally have over the real properties in his own name, and the names of his spouse Clarita Depakakibo Garcia, children Ian Carl D. Garcia, Juan Paulo D. Garcia, and Timothy Mark D. Garcia, as well as all the personal properties itemized and identified in the inventory of properties in the Plea Bargaining Agreement belonging to him, his spouse and three children, and thereafter to present to the Court within sixty (60) days from receipt hereof, such resultant and certificates of ownership in the name of the Republic of the Philippines.⁹

Thereafter, on December 16, 2010, Major General Garcia was granted bail by the Sandiganbayan right after he pled guilty to DIRECT BRIBERY and Section 4(b) of RA 9160 otherwise known as Facilitating Money Laundering.

On January 3, 2011, the Office of the Solicitor General filed an ***Urgent Motion for Leave to Intervention to (1) Nullify the Plea Bargaining Agreement Between Accused Maj. Gen. Carlos F. Garcia (Ret.) and the Office of the Special Prosecutor, (2) Set Aside the Honorable Court's Resolution promulgated on May 4, 2010 approving the said Plea Bargaining Agreement (3) Recall the Resolution of the Honorable Court promulgated on December 16, 2010 which granted Accused Garcia's Motion for Bail.***

On January 4, 2011, the Solicitor General filed an ***Omnibus Motion-In-Intervention.*** Thereafter on January 13, 2011, the Solicitor General once again filed a ***Motion for Leave to File and Admit attached Supplement to the Omnibus Motion for Intervention.***

⁹ People vs. Garcia, Criminal Case Nos. 28107 & SB-09-CRM-09194, May 4, 2010.

The Ombudsman subsequently opposed the Motion for Intervention filed by the Solicitor General.

The undue haste, seeming irregularity, and the “secrecy” of the circumstances surrounding the plea bargaining agreement prompted this inquiry, in aid of legislation.

The Committee needs to resolve the following issues in this inquiry:

- **WHETHER OR NOT THE OFFICE OF THE SPECIAL PROSECUTOR SHOULD BE HELD ACCOUNTABLE OR SHOULD BE HELD RESPONSIBLE FOR BETRAYAL OF PUBLIC TRUST**
- **WHETHER OR NOT THE OMBUDSMAN SHOULD BE HELD ACCOUNTABLE FOR NON-FEASANCE**
- **WHETHER OR NOT THE LAWS THAT HOLD THE OMBUDSMAN AND OFFICE OF THE SPECIAL PROSECUTOR ACCOUNTABLE ARE SUFFICIENT. WHO WILL, “GUARD THE GUARDIANS?”**

3. THE COMMITTEE’S FINDINGS

3.1 THE OFFICE OF THE SPECIAL PROSECUTOR BETRAYED PUBLIC TRUST BY ENTERING INTO THE GARCIA PLEA BARGAINING AGREEMENT. THERE WAS BETRAYAL OF PUBLIC TRUST THRU BREACH OF OFFICIAL DUTY.

It cannot be denied that there is an "***absolute necessity for prosecuting attorneys to lay 'before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state.***"¹⁰

What we have here, as admitted by the prosecutors themselves, is a situation where **Special Prosecutor Wendell E. Barreras-Sulit** and her team of prosecutors composed of **Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special Prosecutor Jesus A. Micael, Assistant Special Prosecutor II Jose M. Balmeo, Jr., and Assistant Special Prosecutor II Joseph F. Capistrano** (hereinafter Sulit, *et al.*) blame the previous officials of the Office of the Ombudsman for the filing of a case which allegedly does not have sufficient evidence to convict.¹¹

The Ombudsman herself reveals in her testimony on February 3, 2011:

MS. GUTIERREZ. Thank you. Thank you, Mr. Chairman.

¹⁰ ***People v. Esquivel, et al.***, 82 Phil. 453, 459

¹¹ L. Sapida IV-1 February 3, 2011 10:09 A.M. p. 3.

Now, why did we enter into this plea bargaining agreement? You know, with me here are the prosecutors and they told me, “Ma’am, we have a weak evidence.” I’m sorry that we have to tell this because whatever happens in the plea bargaining agreement that is now with the Sandiganbayan – well, what we’re saying now – (emphasis supplied)¹²

This Committee disagrees with this assessment made by Sulit, *et al.*, based on our evaluation of the records provided and our independent evaluation of the submissions made by the resource persons called upon to testify. However, what is most disturbing here is the lack of prosecutorial zeal and the grave inexcusable negligence exhibited by Sulit, *et al.*

As stated by UE Law Dean and President of the Philippine Association of Law Schools, Amado Valdez in his letter to the Committee:

When the prosecution entered into the plea bargaining agreement, he was given a room to maneuver for a legally questionable posting of bail for his temporary liberty. Thus, considering the circumstances, the plea bargaining agreement is a result of a reckless, cavalier and unpatriotic discharge of a solemn duty of the prosecutors: to employ the full force of the law in the prosecution of an accused who betrayed the public trust.¹³

There are at least **SIX GROUNDS** why Sulit, *et al.* betrayed public trust:

FIRST, Sulit, *et al.* failed to strengthen the evidence and case built at the time of the filing of the Information for Plunder in 2005. By their own admission, Sulit, *et al.* merely prosecuted the case based on the evidence collected by the team of former Ombudsman Simeon Marcelo and the investigation started by him through the team of Ms. Heidi Mendoza. If Sulit, *et al.* truly believed the

¹² Id.

¹³ TSN: Mhulep III-1 February 24, 2011 9:52 a.m. p. 3.

evidence to be insufficient, their obligation was to find more evidence to bolster the charge, in the language of the Supreme Court, "**clarifying contradictions and filling up gaps and loopholes in their evidence.**"¹⁴

Indeed, while laying blame for the alleged failure of former Ombudsman Marcelo¹⁵ to provide a list of military contractors, prosecutor Balmeo himself, when asked by the Hon. Senator Franklin Drilon, admitted that they (Sulit, *et al.*) did not even seek the help of the Armed Forces of the Philippines (AFP) nor ask for a list of military contractors, which obviously amounts to malfeasance or misfeasance in office. The prosecutorial attitude and negligence thus displayed by Sulit, *et al.* is utterly disappointing, to say the least. They also did not run after the monies amounting to P 128 Million that former Major General Garcia withdrew before a freeze order was issued. This failure was also admitted by the cabal of Sulit, *et al.*¹⁶

SECOND, Sulit, *et al.* failed to abide by the requisites of the Rules of Court with respect to plea bargaining agreements - making the agreement NULL AND VOID.

¹⁴ *People v. Esquivel, et al.*, 82 Phil. 453, 459

¹⁵ It must be recalled that Ombudsman Marcelo resigned as Ombudsman in November 2005, or seven (7) months after the filing of the Information, while the new Special Prosecutor Sulit, *et al.* had five years from 2006 to 2010 to strengthen the case, if indeed it needed strengthening.

¹⁶ TSN: MHBALAGNE IX-1 FEBRUARY 3, 2011 10:59 A.M. p.1; TSN: Caturla XI-1 February 3, 2011 11:19 a.m., pp. 1-4.

According to the Rules of Court, to effect a valid plea of guilt to a lesser offense, the consent of both the offended party and the prosecutor are required.

Section 2, Rule 116 states:

Sec. 2. Plea of guilty to a lesser offense. – At arraignment, the accused, with the consent of the offended party and prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

Ombudsman Gutierrez in her testimony before the Blue Ribbon Committee last February 3 asserted that plea bargaining agreements entered into by the Office of the Ombudsman do not require the consent of the offended party.

Ombudsman Gutierrez was quoted as saying:

MS. GUTIERREZ: Unang-una po sa nasabi dito ngayon, ang pahintulot ng offended party dito sa plea bargaining agreement. Mula po noong time ni Ombudsman Desierto at hanggang sa panahon ko po, madami po kaming ipinapatupad na plea bargain agreements na wala po kaming kinukuhang pahintulot kanino man. Dahil kami po, as prosecutors, kami po ang abogadong nagre-represent sa People of the Philippines. Kaya ang aming pag-enter into a plea bargaining agreement ay kami po ang nakakaalam dahil kami po ay authorized to enter into a plea bargaining agreement, at 'yan po ay nasasaad sa batas na itinatag ang Office of the Ombudsman.¹⁷ (emphasis supplied)

Ombudsman Gutierrez said further:

MS. GUTIERREZ: Mr. Chairman, as I said before, plea bargaining agreements were approved by the court without seeking, as I said, the consent of the offended parties. Ang dami po naming naaprubahan, ng korte, na plea bargaining agreements.¹⁸

¹⁷ TSN: SnTupaz III-1 February 3, 2011 9:59 a.m., pp. 4-5.

¹⁸ TSN: SgIrobles VII-1 February 3, 2011 10:39 a.m. p. 8.

Ombudsman Gutierrez was referring to Sub-paragraph b, Paragraph 4, Section 11 of the Ombudsman Act of 1997,¹⁹ which merely states that: “The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the power to enter into plea bargaining agreements.” However, this provision does not specifically give the Office of the Ombudsman the power to enter into plea bargaining agreements without the consent of the offended party.

Paragraph 2, Section 18 of the same law provides, in turn, that: “The rules of procedure (promulgated by the Office of the Ombudsman) shall include a provision whereby the Rules of Court are made suppletory.”

Administrative Order No. 7, which provides the Rules of Procedure of the Office of the Ombudsman pursuant to RA 6770, does not contain any provision which specifically vests the Office of the Ombudsman with the authority to enter into plea bargaining agreements without the consent of the offended party. In accordance with the rules of statutory construction, in the absence of specific rules, the general rules will prevail, in this case, the Rules of Court, which expressly stipulates that the consent of the offended party and the prosecutor are needed for the accused to plead guilty to a lesser offense.

¹⁹ Republic Act 6770

Daan vs. Sandiganbayan²⁰ reiterated the basic requirements of a plea bargaining agreement:

Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, i.e., **that it should be with the consent of the offended party** and the prosecutor, and that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged. (emphasis supplied)

Ombudsman Gutierrez defied the law and jurisprudence. She took for granted elementary requirements of a plea bargaining agreement. As the Ombudsman herself confirmed:

MS. GUTIERREZ: Mr. Chairman, as I said before, **plea bargaining agreements were approved by the court without seeking, as I said, the consent of the offended parties.** Ang dami po naming naaprubahan, ng korte, na plea bargaining agreements.²¹ (emphasis supplied)

The declaration of Ombudsman Gutierrez that the Office of the Ombudsman has already seemingly established a practice of entering into plea bargaining agreements without the consent of the offended party serves as her justification for not obtaining the consent of the offended party. This practice however obtaining does not necessarily turn something wrong into something right. An erroneous practice even if done frequently can NEVER legitimize the act.

²⁰ Daan vs. Sandiganbayan, G.R. Nos. 163972-77, March 28, 2008.

²¹ TSN: SgIrobles VII-1 February 3, 2011 10:39 a.m. p. 8.

The Rules of Court categorically requires the consent of both the offended party and the prosecutor, a basic element with which the Office of the Ombudsman did not comply.

All things considered, the Office of the Solicitor General (OSG) is right when it filed an **Urgent Motion for Leave to Intervene** with the Sandiganbayan. The Supreme Court in **Gonzales vs. Chavez**²² held that:

Being a public officer, the Solicitor General is "invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public." Another role of the Solicitor General is an officer of the Court, in which case he is called upon "to share in the task and responsibility of dispensing justice and resolving disputes;" therefore, he may be enjoined in the same manner that a special prosecutor was sought enjoined by this Court from committing any act which may tend to "obstruct, pervert or impede and degrade the administration of justice."

The Supreme Court also ruled that the Solicitor General "is sought to be compelled to appear before the different courts to ensure that the case of the Republic of the Philippines against those who illegally amassed wealth at the expense the people maybe (sic) made to account for their misdeeds and return said wealth."²³

Under Section 35, paragraph 11, Chapter 12, Title III of the Administrative Code of 1987, the Office of the Solicitor General has the power and function to "act and represent the Republic and/or the people before any

²² Gonzales vs. Chavez 205 SCRA 816 (1992).

²³ Id.

court, tribunal body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require.”

The **Omnibus Motion-in-Intervention**²⁴ of the Office of the Solicitor General states:

While the prosecutor appears on behalf of the People, the offended party in this case is the Republic (AFP). The direct and substantial injury suffered by the Republic in the form of misappropriated and purloined funds effectively constitutes it as an offended party.

At the end of the day, the plea bargaining agreement entered into between the Office of the Ombudsman and the camp of Maj. Gen. Carlos F. Garcia is null and void in the absence of the element of **consent of the offended party**. Consequently, all the actions undertaken by the Office of the Special Prosecutor and Garcia *et al.* that follow as a result of the defective plea bargaining agreement are also defective and of no legal effect. This is akin to the Doctrine of the “Fruit of the Poisonous Tree,” which states in Article III, Section 3 of the 1987 Philippine Constitution: “The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety or order requires otherwise, as prescribed by law. Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.” This Constitutional doctrine pertains to evidence obtained illegally. The doctrine essentially states that if the source of the evidence is ‘tainted,’ (tree) then anything gained from it is also tainted (fruits), and thereby inadmissible in evidence. Hence, with respect to Garcia’s Plea Bargaining Agreement, since the agreement is null and void, the grant of bail and everything else that follows are null and void as well.

²⁴ Omnibus Motion for Intervention of the Solicitor General, paragraph 31, page 22.

To further reinforce the nullity of the plea bargaining agreement, the Office of the Solicitor General also asserted that there was no effort on the part of the court to make an independent appreciation of the evidence. The Office of the Solicitor General asserts:

Indeed, when such an offer is made, the court is duty bound to inquire carefully into the circumstances on which it is premised. People vs. Kayanan pertinently decrees:

To top it all, the plea of guilty offered by the accused was not to the grave offense of murder charged in the information. It was for the lesser offense of homicide. A plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused. The rules allow such a plea only when the prosecution does not have sufficient evidence to establish guilt of the crime charged. Indeed, when such an offer is made, the court is duty bound to inquire carefully into the circumstances on which it is premised. The manifest indifference of respondent judge revealed in the record of the proceedings aforementioned is an unpardonable betrayal of the administration of justice.

Indeed, it is the bounden duty of the court before it approves a plea bargain to assess the evidence so far presented by the prosecution and determine whether such evidence will suffice or not suffice to establish the guilt of the accused for the crime charged.²⁵ (emphasis supplied)

As to Sulit *et al.*'s assertion that the Charlie "Atong" Ang plea bargain substantiates or upholds the Garcia plea bargain, it must be emphasized that contrary to the claims of Sulit, *et al.*, the Charlie "Atong" Ang plea bargain is not comparable; nor can it be cited as basis to justify the Garcia Plea Bargaining Agreement. There is no dispute that the offended party, the Republic of the Philippines, whether through the AFP, the Office of the Solicitor General, or the Department of Justice (DOJ) representing the Executive Department, was ever consulted. It must be noted that, contrary to the claim of Ombudsman

²⁵ Omnibus Motion-in-Intervention, pp. 9-10.

Merceditas Gutierrez, the “Atong” Ang Plea Bargaining Agreement had the imprimatur of the DOJ, through then Chief State Prosecutor Jovencito Zuño.²⁶

No less than Dean Marvic Leonen of the UP College of Law agrees with the Committee’s position that the Plea Bargaining Agreement lacks the consent of the offended party. In his letter to the Committee, he asserts:

I write to confirm that in my view and on the basis of the facts presented to your Committee, **the plea bargain with Major General Carlos F. Garcia appears tainted with illegality and irregularities. Not only does the plea bargain not have the requisite consent for the settlement of obligations as required by the General Accounting and Auditing Manual, it is also grossly disproportionate and thus, arguably, inconsistent with our anti-graft and corrupt practices statutes.** Hence, in my view, the **transaction was null and void *ab initio*.**²⁷ (emphasis supplied)

Under DOJ Department Circular No. 55 (December 11, 1990) issued by then Secretary (now Senator) Franklin Drilon, a Plea Bargaining Agreement where the offense charged is punishable by at least *prision mayor* (or at least six years and one day imprisonment) must bear the approval of the Chief State Prosecutor. The “Atong” Ang Plea Bargaining Agreement complies with this rule. Thus, it may be said the President of the Republic, through his *alter ego* the DOJ Secretary (delegating the authority to the Chief State Prosecutor under Department Circular No. 55) was actually involved and consented thereto. The “Atong” Ang Plea Bargaining Agreement was approved by Ombudsman Gutierrez. She also previously served as DOJ Acting Secretary. Surely, she must have known of these rules.

²⁶ Atong Ang Plea Bargaining Agreement attached as ANNEX C.

²⁷ Mhulep III-1 February 24, 2011 9:52 a.m. p. 4.

Finally, the Department of Justice itself when asked about their opinion on the status of the Garcia Plea Bargaining Agreement, the Department of Justice Secretary herself, Leila De Lima, gave their opinion similar to the Committee's views:

MS. DE LIMA. ...I do believe, Your Honors, that the Plea Bargaining Agreement is highly irregular or questionable, and therefore, can be considered as null and void. I believe that the fundamental or the basic requisites of the Rules of Court have not been complied with. And well, of course, the absence of the consent of the offended party, that's one. It's very clear there, offended party and prosecution is not supposed to be, one, prosecution assuming also or giving the consent on behalf of the offended party.

Although I understand and there has been some explanation on the part of the Ombudsman herself that they would not know who is the offended party in this particular case. But I think it's pretty **clear that the offended party is the government, the offended party is the agency involved, the institution involved which is the Armed Forces of the Philippines. And the Armed Forces of the Philippines can be duly represented or the executive department can be duly represented either by the Solicitor General or the Department of Justice.**

I understand that there have been occasions in the past where plea bargaining agreement would bear the consent of the government through the Solicitor General and/or the Department of Justice as represented by the Secretary of Justice. That was never done, I understand, in this particular case because the Ombudsman, **the prosecutors themselves assumed the role of the offended party.** That's one, Your Honors.

Secondly, if we are going to be technical really about the rules, **the rules are explicit about when the plea bargaining agreement is supposed to be – can be entertained.** And that is, strictly speaking, that should be **before arraignment.** Or if it is after arraignment or before arraignment or before trial, or can be after arraignment but before trial. So that is what the rules say although **I recognize that there has been several cases, jurisprudence which affirm the plea bargaining agreement even if it was entered into in the course of trial. But in those cases, Your Honors, there have been parameters established, guidelines, guideposts.** Among them is that – And it's very, very clear from **People versus Cayanan that the Rules allow such a plea only when the prosecution does not have sufficient evidence to establish guilt of the crime charged.** And in another case, it should also demonstrate or the **plea bargain should be able to demonstrate that it redounds to the benefit of the public and should not serve to trivialize the seriousness of the charges against them and send the wrong signal to potential grafters in public office that the penalties they are likely to face would be lighter than what their criminal acts would have merited or that the economic benefits they are likely to derive from their criminal activities far outweigh the risks they face in committing**

them. Thus setting to naught the deterrent value of the laws intended to curb graft and corruption in government. I'm quoting, Your Honors, from the Supreme Court's decision in *Daan versus Sandiganbayan* rendered in 2008.

So those are the guideposts and given all the circumstances already articulated in the Senate hearing and in the House of Representatives, those guideposts were blatantly violated.

Now, how can it redound to the benefit of the public? How can it serve as a deterrent? We're talking here about plunder, a very high crime. Now, it's an occasion for us to really send the signal that graft and corruption or crime for that matter does not pay.

Now I also expressed the view, Your Honors, before the House Committee that effectively when a plea bargaining agreement is trapped between the prosecution and the accused during the presentation of evidence already or worse after the presentation of the prosecution evidence, it is effectively demurrer to evidence in reverse. Because demurrer to evidence can be resorted to actually after the completion of the presentation of the prosecution evidence if an accused truly believes that the evidence is weak or the evidence is insufficient. And here, we cannot understand and it has not been adequately explained by anyone from the Office of the Ombudsman. How come the evidence which was supposed to be strong when the information was filed and in the course of during the bail application hearings, suddenly became weak when they presented the Motion for Approval of the Plea Bargaining Agreement. And they even submitted the Joint Motion for Approval of the Plea Bargaining Agreement; and then three days later, they opposed the Motion for Reconsideration of the Sandiganbayan's denial of bail application. Precisely, the bail application was denied because evidence of guilt was strong. So what triggered that? Why did it become suddenly weak, the evidence? So there are other circumstances, Your Honors, but the totality of it all really says, really shows that something really was very irregular in the whole thing.²⁸ (emphasis supplied)

THIRD, Sulit, *et al.* effectively counter, ignore, disregard and even abandon the favorable rulings made by the Sandiganbayan in its previous rulings in relation to the Garcia Plunder and Anti-Money Laundering cases.

To illustrate, let us take the issues one by one:

²⁸ TSN: Mhulep III-1 February 24, 2011 9:52 a.m. pp. 6-7; TSN: NGDizon IV-1 February 24, 2011 10:02 a.m., pp. 1-3.

A. THE ALLEGED DEFICIENCY OF THE INFORMATION

Sulit alleged that the Information filed was deficient to charge Major General Carlos Garcia with Plunder.²⁹

Regardless of Sulit's allegations, the Information for Plunder against Garcia is on its face sufficient in form and in substance. An Information requires only a recital of the ultimate facts constituting the elements of the offense charged. It need not discuss or mention evidentiary matters. "**A statement of the ultimate facts in the information is required only with respect to the elements of the offense being charged.**"³⁰

Section 6, Rule 110 of the Rules of Court simply provides:

Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The elements of Plunder are:

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;
2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion,

²⁹ TSN: CFDRIZ XIV-1 January 27, 2011 11:36 a.m. p. 5.

³⁰ *Montejo vs. Sandiganbayan*, G.R. Nos. 182625 & 182635-41, September 01, 2008.

misuse, or malversation of public funds or raids on the public treasury; (b) **by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer**; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (j) **by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines**; and,

3. That the aggregate amount or total value of the ill-gotten wealth, amassed, accumulated or acquired is at least P50,000,000.00.³¹ (emphasis supplied)

It cannot be gainsaid that the Information in this case clearly traces the language of the elements of Plunder as held by the Supreme Court in ***Estrada vs. Sandiganbayan***, as to be sufficient. The information alleged Garcia to be a public officer. The information also alleged that he amassed, accumulated or acquired ill-gotten wealth through a combination or series of receipt, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from various persons and/or entities in connection with any government contract or project or by reason of the office or position of the public officer, and that he took advantage of his official position, authority, relationship, connection or influence to unjustly enrich himself. Finally, the Information alleged an amount amassed beyond the threshold of P50 Million.

More importantly, the Information, both in form and substance, was already tested and found sufficient and valid by the Sandiganbayan. Maj. Gen.

³¹ ***Estrada vs. Sandiganbayan***, G.R. No. 148560, November 19, 2001.

Garcia earlier filed a Motion to Quash on June 30, 2005. This was denied by the Sandiganbayan in a Resolution promulgated on August 15, 2005. What is more, the continued prosecution of Maj. Gen. Garcia upon the same Information was allowed by the Sandiganbayan when it denied Garcia's application for bail. A denial for bail means only one thing: the evidence of guilt of the accused is strong.³²

B. ABSENCE OF COUNSEL IN THE STATEMENTS OF CLARITA GARCIA

The declarations of Clarita are admissible in evidence despite the alleged absence of counsel.³³ The right to counsel does not apply since at the time Clarita executed her statements, she was not under any investigation. In fact, she was not the one caught illegally transporting US\$100,000.00 into the United States – but her children. It was thus a voluntary statement made in an effort to help her children explain the provenance of the money, and to recover the same.

³² People vs. Garcia, Special Second Division, Sandiganbayan, Criminal Case No. 28107. Resolution, January 7, 2010.

³³ **THE CHAIRMAN:** Sandali po. Mayroon nagsabi na hindi daw valid 'yan sapagkat nu'ng ginawa ni Mrs. Clarita Garcia ay wala s'yang abugadong kasama?

MR. MARCELO: Iyang pong contention po na 'yan ay sinabi na rin po nila nu'ng in-oppose po ni Major Garcia – ay nung nagpetition for bail po si General Garcia at ang sabi nga po ng Sandiganbayan – at ako ay umaayon po du'n – ay **hindi na po kailangan ng assistance of counsel kasi sa Constitution po kailangan under custodial investigation ka para kailangan mo ng assistance of counsel. Dito po, unang-una, ang respondent po dito, doon sa proceedings na 'yun, ay yung dalawang anak ko po. Kasi ang nahulihan po ng pera 'yung dalawang anak, na hindi naman po si Mrs. Garcia.** At 'yun po tumutulong lang – nu'ng binigay po n'ya yung dalawang declarations n'ya, written declarations, eh tumutulong lang po s'ya sa mga anak n'ya para ma-recover 'yung pong P\$100,000 po.

THE CHAIRMAN: Ah, ganun. So ang abugado kailangan lang pag ikaw, either naka-aresto at iniimbistigahan ka. Pero in this case po, si Mrs. Garcia, nakakulong po o hindi?

MR. MARCELO: That time, hindi po s'ya nakakulong.

THE CHAIRMAN: Hindi, not at all. Was she under investigation?

MR. MARCELO: Hindi rin po.

More importantly, this issue has been raised and settled by the Sandiganbayan in its Resolution dated January 7, 2010, denying Garcia's bid for bail:

While this Sworn Statement is sought to be assailed as having been executed without the assistance of counsel or without Clarita Garcia being allegedly informed of her constitutional right to remain silent, **what deserves compelling consideration is the fact that she was neither an accused nor a respondent at the time that she voluntarily gave her statement.** In fact, even her children Juan Paolo and Ian Carl Garcia, from whom the money was seized, were not under investigation. **Agent Van Dyke indeed testified that when Clarita Garcia wrote those letters, she was not under investigation for the commission of an offense and that they were submitted in relation to the petition of the Garcias for the release of the US\$100,000.00 seized by the US Customs authorities from brothers Juan Paolo and Ian Carl Garcia.**

In this connection, it must be emphasized that the right to have competent and independent counsel preferably of his own choice is a right accorded under Section 12 (1) of Article III of the Constitution to any person under investigation for the commission of an offense. Likewise, the rights enshrined in Section 14 (1) of Article III for an accused to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, etc. are to be observed in all criminal prosecutions, which affiant Clarita Garcia was not undergoing or yet subjected to, at the time of the execution of her aforesaid Sworn Statement.

Consequently, no constitutional right is deemed to have been violated in the execution of that Sworn Statement and in fine, the admissions therein of how money or funds came into the hands of the accused provide substantial evidence that can reasonably thwart the petition for bail.³⁴ (emphasis supplied)

It is, thus, a source of wonder why the prosecutors would ignore and disregard a favorable ruling of the Sandiganbayan on this issue and raise a defense that should have been raised by the accused.

³⁴ *People vs. Garcia*, Sandigan Criminal Case No. 28107, Resolution, January 7, 2010.

C. SPOUSAL DISQUALIFICATION AND MARITAL PRIVILEGE

The rule on spousal disqualification does not apply. Section 22, Rule 130 of the Rules of Court provides:

Sec. 22. Disqualification by reason of marriage. — During their marriage, neither the husband nor the wife may **testify** for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (emphasis supplied)

Section 22, Rule 130 of the Rules of Court proscribes merely the use of **testimonial evidence** coming from one spouse against the other. In the instant case, the prosecution did not present the testimony of Clarita during the trial. What it did was to present her prior sworn declaration and handwritten statement admitting the receipt of bribes in numerous occasions.

Similarly, the rule on spousal privilege does not apply. Section 24, Rule 130 of the Rules of Court provides:

Sec. 24. Disqualification by reason of privileged communication. — The following persons **cannot testify** as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants; (emphasis supplied)

Again, Clarita is not being asked to testify in this case. What is more, the declaration or communication, i.e., the 2 letters, are not meant for the spouse, former Major General Garcia, but intended precisely to a third person in connection with an official and public proceeding for forfeiture of the US\$100,000.00. It was thus not meant to be privileged or confidential.

Again, it is important to note that this issue has been raised and settled by the Sandiganbayan in its Resolution dated January 7, 2010 denying Garcia's bid for bail:

This handwritten statement freely given by Clarita Garcia to Agent Van Dyke is accorded weight as proof of the sources of their money, and **the Court debunks the argument that they are inadmissible in evidence for allegedly constituting privileged marital communication. It must be greatly emphasized that for the spousal privilege rule to apply, the statement must relate to a proposed testimony in court by one spouse against the other. Of foremost consideration herein is the fact that when Clarita Garcia executed the handwritten admissions, her husband was not yet an accused in any court of law. Her act was only a conscious attempt to help her husband explain the sources of their money, as the latter himself wrote a letter dated January 12, 200 (Exhibit 'QQQQ' to the Fines and Penalties Forfeiture Office explaining the source of the money and the purpose for which it was brought to the USA. Furthermore, the revelations made by Clarita Garcia in her statements were not communications divulged to her by her husband, Major General Carlos F. Garcia, but were mere narrations made by her from her own personal knowledge and her perceptions about her husband's work and the sources of their income.**³⁵ (emphasis supplied)

It is, thus, again a source of wonder why the prosecutors would ignore and disregard this favorable ruling of the Sandiganbayan, to the prejudice of the prosecution.

FOURTH, Sulit *et al* has shown inconsistent positions in their manner of prosecuting the case. On March 19, 2010, **three days after** the Office of the State Prosecutor submitted to the Sandiganbayan their Joint Motion for the Approval of

³⁵ *Id.*

Garcia's Plea Bargaining Agreement on March 16, 2010, the same prosecutors filed an Opposition to Garcia's Motion for Reconsideration for the denial of the latter's Petition for Bail which was issued on January 7, 2010.

In sum, Sulit et al wavered between finding that the evidence is strong and the evidence is weak. By approving Garcia's plea bargaining agreement, Sulit et al deemed the evidence weak. But by subsequently opposing Garcia's petition for bail, Sulit et al deemed the evidence strong. This vacillation brings to light the ineptitude of the Office of the Special Prosecutor. A less charitable observer might say that they had deliberately lost the case.

Sulit *et al* argue that they entered into the plea bargaining agreement because the evidence for plunder is weak. However, when Garcia filed a Motion for Reconsideration for the denial of the latter's Petition for Bail which was issued on January 7, 2010, the same prosecutors opposed it. By opposing the motion, they believe that the evidence of guilt is strong. So, what is it? Is the evidence strong or is it weak?

Bakit pabago-bago ang isip nina Sulit? Ang kawalan ng consistency nina Sulit ay nagpapahiwatig ng kawalan ng integridad ng Office of the State Prosecutor.

This sudden and schizophrenic turn-around amounts not only to gross incompetence, but also obstruction of justice. *Itong doble-karang pakikitungo nina Sulit ay makakahantong sa kawalan ng hustisya.* The very institution that the public relies on to possess competence, professionalism and prosecutorial zeal in rallying the case of

the people against plunderers seem not to know what it is doing. Hence, this is betrayal of public trust.

Moreover, what kind of prosecutor would see a plea bargaining agreement as a win-win solution on the one hand then would claim that she is really protecting the interest of the State on the other? Only Special Prosecutor Wendell Barreras-Sulit who appears to be lawyering for the accused sees it that way. In fact, the Transcripts reveal that she is defending a Plea Bargaining Agreement that she may not even be well versed.

Her answers to the queries of Senator Drilon reveal:

SEN. DRILON. Why was there no restitution?

MS. BARRERAS-SULIT. Your Honors, at the time the information was filed, those amounts were already withdrawn. And even in the preliminary investigation and even in the fact-finding investigation, the team of then Ombudsman Marcelo never established a paper trail as to where those money went. So –

SEN. DRILON. But were they in fact withdrawn?

MS. BARRERAS-SULIT. They were in fact, withdrawn, Your Honors.

SEN. DRILON. So in other words, if you admit that it was in fact withdrawn, there was that amount floating somewhere.

MS. BARRERAS-SULIT. Floating somewhere, Your Honor.

SEN. DRILON. So why was it not included as part of the restitution?

MS. BARRERAS-SULIT. Your Honors, we may not have included it in the plea bargaining agreement but there is still a chance to get them back in the forfeiture cases filed in the Fourth Division of the Sandiganbayan.

SEN. DRILON. Wasn't it the best way to recover this, that you made it part of the plea bargain, that, that 50 million be restituted?

MS. BARRERAS-SULIT. Your Honor, in the plea bargaining, it is bargaining – win-win solution, you give, your get –

SEN. DRILON. My dear, you know this is not a collective bargaining agreement.

MS. BARRERAS-SULIT. This is not, Your Honor. But then –

SEN. DRILON. It is a question of public interest, public funds are involved. It is not a win-win solution.

MS. BARRERAS-SULIT. Your Honors –

SEN. DRILON. Come on, is that your attitude as a Prosecutor?

MS. BARRERAS-SULIT. No, Your Honors. Of course not, that is not our attitude.

SEN. DRILON. This is not a collective bargaining agreement...

MS. BARRERAS-SULIT. It is not, Your Honor.

SEN. DRILON....as held by the Supreme Court. In this case, this is not a matter of bargaining.

MS. BARRERAS-SULIT. We really wanted to protect the interest of the state, Your Honor.

SEN. DRILON. So what do you mean win-win situation? You mean, Garcia will win?

MS. BARRERAS-SULIT. No, Your Honors. Perhaps we even won if we get the conviction in two criminal cases and with the attendant – this perpetual disqualification to hold public office so he will have a criminal record and he will have to return all the properties that the prosecution has...

SEN. DRILON. So why did you not insist?

MS. BARRERAS-SULIT.... proven in court, Your Honor.

SEN. DRILON. Why did you not insist on the restitution of this 50 million which you knew was withdrawn?

MS. BARRERAS-SULIT. Perhaps, Your Honor, on the stage of the plea bargaining, you can get the answers from the prosecutors here who first handled or handled the –

SEN. DRILON. Why, did you not sign the plea bargaining agreement?

MS. BARRERAS-SULIT. I signed, Your Honors, but the, when we discussed –

SEN. DRILON. Are you not head of the team?

MS. BARRERAS-SULIT. I'm part of the team. I do not renege to that. But the, there must be other reason why we cannot get back that money anymore from General Garcia. So, what we've tried to get what we wanted to get are all the properties and all the monies, the bank accounts that we have proven in court and which we have documented and...

SEN. DRILON. Yes.

MS. BARRERAS-SULIT....testified (sic) upon by the witnesses of the prosecution.

SEN. DRILON. But Madam Prosecutor, you knew that 50 million was floating around somewhere. You could have insisted in the public interest that the 50 million should have been restituted, and that Mr. Garcia find ways and means of restituting that. But anyway, that's on the record...³⁶

FIFTH, the Plea Bargaining Agreement also amounts to a violation of Anti-Graft and Corrupt Practices Act (RA 3019) – Sections 3(e) and (g):

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby. (emphasis supplied)

During the first hearing, Senator Drilon himself confronted Special Prosecutor Sulit why they did not include in the restitution the millions of pesos that were earlier withdrawn by Garcia before his accounts were frozen by the Anti-Money Laundering Council (AMLC) - since the Plea Bargaining Agreement was the best time to have full restitution.³⁷ In fact, in the Plea Bargaining Agreement of the Office of the Ombudsman with Atong Ang, there was full restitution.³⁸

³⁶ TSN: ADMasicap X-1 January 27, 2011 10:56 a.m., pp. 2-6.

³⁷ TSN: ADMasicap X-1 January 27, 2011 10:56 a.m. p. 3.

³⁸ TSN: MHBALAGNE IX-1 FEBRUARY 3, 2011 10:59 A.M. p.1.

The answer of the Special Prosecutor is very telling. She said: "but there is still **a chance** to get them back in the forfeiture cases filed in the Fourth Division of the Sandiganbayan."³⁹ (emphasis supplied)

The forfeiture of Garcia's ill-gotten wealth that should have been a sure thing became a mere possibility. It is the duty of the Office of the Ombudsman, specifically, the Office of the Special Prosecutor, to make sure that the restitution to the state, the ultimate offended party, is certain.

By saying what Special Prosecutor Sulit said, it just meant that she did not put the best interest of the Republic in mind when they entered into the Plea Bargaining Agreement. Any prudent prosecutor would ask for complete restitution and not leave the recovery of ill-gotten wealth to chance in another proceeding. In a Plea Bargaining, the State is negotiating from a position of strength. Clearly, here, Special Prosecutor Sulit did not use that position of strength; instead, she sold the case to the defendant, Garcia.

What kind of prosecutor would allow the Republic to go through a tedious and uncertain forfeiture litigation when in truth and in fact the restitution could have been included in the Plea Bargaining Agreement? To the Committee's mind, such actions can only be motivated by either of these two possibilities: First possibility, the prosecutor is utterly ignorant and negligent; second, the prosecutor has been co-opted or corrupted by the accused so that the latter can eventually get away with his crime.

³⁹ TSN: ADMasicap X-1 January 27, 2011 10:56 a.m. p.3.

During the second hearing, the Anti-Money Laundering Council confirmed that in 2004, there were at least 124 bank accounts spread in about 10 financial institutions in the name of General Garcia and members of his family. Thus, the amount of monies of Garcia in 2004 was approximately Php77,161,979.29 in pesos, and the dollar accounts amounts to approximately US\$1,702,477.07. The total of which is approximately Php173 Million using the Php56.3 to a dollar conversion rate.⁴⁰

AMLC reveals that the bulk of the Garcia accounts were withdrawn by former Major General Garcia, his wife and children from October 5-8, 2004 prior to the issuance of the freeze order by the Court of Appeals.⁴¹

The total amount of the Garcia accounts that was withdrawn in four days time amounted to Php128 Million.

When the Ombudsman was asked if they looked for the Php128 Million, the Ombudsman asked Assistant Special Prosecutor II Jose M. Balmeo, Jr. to answer for the Office of the Ombudsman. The response reveals what kind of Ombudsman this country has:

SEN. DRILON. Now, did you look for these amounts, Madam Ombudsman, when you signed the plea agreement?

MS. GUTIERREZ. Mr. Chairman, may I ask Attorney – Prosecutor Balmeo to respond to that.

SEN. DRILON. Yes.

⁴⁰ TSN: Caturla XI-1 February 3, 20011 11:19 a.m. 2.

⁴¹ Id at pp. 2-3.

Can somebody please respond? Did you find out from General Garcia where these amounts went? This is 128 million more or less, as testified to by Atty. Aquino of the AMLC.

MR. BALMEO. Good morning, Mr. Chair, Your Honors.

We tried to ask accused on the whereabouts of this 128 that was already withdrawn, Your Honors, but we did not get any response.

SEN. DRILON. Okay.

Okay. You asked them, you did not get any response. **Did you ask him to retribute this amount?**

MR. BALMEO. **Yes, Your Honor.**

SEN. DRILON. And?

MR. BALMEO. **In fact – and that was, in fact, the very first condition that we asked him before we agreed to any plea bargaining agreement.**

SEN. DRILON. **And the condition was not complied with.**

MR. BALMEO. **Yes, your Honor.**

SEN. DRILON. **And notwithstanding the fact that the condition was not complied with, you proceeded to enter into the plea bargaining.**

MR. BALMEO. **Yes, Your Honor.**⁴²(emphasis supplied)

Thus, it is crystal clear by the responses of Mr. Balmeo himself that in spite of the fact that the condition of restitution of the Php128 Million was not complied with by Garcia, they still proceeded with the Plea Bargaining Agreement. This is not only an act of imprudence; this is clearly an act of prosecutorial treason. Undoubtedly, they have betrayed public trust.

Moreover, it is appalling to see the apparent over-valuation of the properties of Garcia. The dollar exchange rate used was very high: US \$1 = Php 56.41 while the

⁴² Id at pp. 3-4.

peso-dollar exchange rate on February 25, 2010 was only US \$1 = Php 46.153.⁴³

Clearly, in this case, the Republic was cheated by millions of pesos and this cheating was perpetuated by its own State agents.

SIXTH, Sulit, *et. al.* were grossly negligent in allowing Major General Garcia to plead guilty to a lesser offense without first asking the Sandiganbayan to approve the Plea Bargaining Agreement, granting their assertion that the Plea Bargaining Agreement's approval is still pending. In the alternative, if there is already an approval by the Sandiganbayan of the Plea Bargaining Agreement, then they are grossly ignorant of Court Procedures. Either way, they should be charged administratively.

The admissions of the prosecutors before the Senate prove this point:

THE SENATE PRESIDENT. So it will become a judgment of the Sandigan but what puzzles me is, why is there a need for the Sandigan to approve the plea bargaining agreement if this accused has already been-has already pleaded guilty? Did he plead guilty already?

MS. BARRERAS-SULIT. I think so, Your Honor.

THE SENATE PRESIDENT. Ha?

MS. BARRERAS-SULIT. He pleaded guilty to a lesser offense.

THE SENATE PRESIDENT. And what is the utility of the approval of the Sandigan if he pleaded guilty already? Suppose the Sandigan will say, we do not approve the plea bargain agreement, what happened to the plea of guilt?

MS. BARRERAS-SULIT. I don't know your, Your Honor, but I think the approval –

THE SENATE PRESIDENT. You do not know. What happened to the plea of guilt? Can you erase the plea of guilt from the record? Can the court change the plea of an accused? If I say guilty, can he make it guilty? If I say guilty, can the court make it not guilty?

MS. BARRERAS-SULIT. I don't think so, Your Honor.

⁴³ TSN: CGCastro IX-1 January 27, 2011 10:46 a.m. p.5.

THE SENATE PRESIDENT. Oh, so what is the utility of an approval of the plea bargain if the accused had already pleaded guilty? Why did not the prosecution object to the accused making a plea of guilt prior to the approval of the plea bargain?

MS. BARRERAS-SULIT. You Honor, that...

THE SENATE PRESIDENT. Answer.

SENATOR DRILON. Can you answer that? That's a very critical question.

MS. BARRERAS-SULIT. It will be appropriate if we call on the prosecutor who was there during the hearing of the plea bargaining.

THE CHAIRMAN (SEN. GUINGONA). Yes, please. Is he here?

MS. BARRERAS-SULIT. He is here, Your Honor.

THE CHAIRMAN (SEN. GUINGONA). Okay. Please identify.

MS. BARRERAS-SULIT. He is Prosecutor Jose Balmeo, Jr.

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MR. BALMEO. If your Honor please, one of the conditions of the plea bargain agreement was that we are asking or requiring the accused to plea to the—to offenses, Your Honor.

THE SENATE PRESIDENT. My question is, why did you not object to the effort of the accused to make a plea prior to the approval of the plea bargain agreement knowing that once a plea is made, jeopardy could set in?

MR. BALMEO. Mr. Chair, Your Honors, it was the discretion of the court to require the accused to –

THE SENATE PRESIDENT. It is the discretion of the court to allow or not allow a plea but it is the duty of the prosecution to object if indeed you are protecting the interest of the state.

MR. BALMEO. If Your Honors please, at that time, Your Honors, we felt that his entering to a plea would be part of the conditions that we are imposing, Your Honors.

THE SENATE PRESIDENT. Yeah, but – No, no, no, wait a minute. Did you not know that there was an approving portion of the plea bargain? Why did you go through the process of getting the approval of the court for that plea bargain if you are going to allow the accused to plead guilty for the lower crime pursuant to the plea bargain knowing that if he pleaded guilty, that's it. Why did you not think of it? You cannot reverse it, even if the court will disapprove your plea bargain. Why did you not think of it?

MR. BALMEO. Mr. Chair, Your Honors, other conditions – other than this plea, Your Honor, would be the transfer of the properties to the government which we have already complied, Your Honors.

THE SENATE PRESIDENT. He has already pleaded guilty, meaning that he agreed that the property will be given – covered by the agreement.

MR. BALMEO. Yes, Your Honors.

THE SENATE PRESIDENT. Hindi ba?

SENATOR DRILON. Answer the question, why did you not object?

MR. BALMEO. It was our view, Your Honors please, that this entering to plea would be part of the conditions that we imposed on him, Your Honor.

THE SENATE PRESIDENT. Yes, but there is an aspect of this that was the product of your gross negligence, and that is, that you allowed him to plead guilty so that he cannot be charged anymore for the higher offense because you know that double jeopardy would set in.

SENATOR DRILON. Tama nga.

MR. BALMEO. We have no intention on that, Your Honors please. We would like to manifest that.

THE SENATE PRESIDENT. Then, I would tell you that you have been grossly negligent if you did not understand the implication of what you were doing.

MR. BALMEO. We submit your Honor.⁴⁴ (emphasis supplied)

Thus, based on the answers of Sulit, *et. al.*, Senator Drilon even suggested that an administrative case be filed against the prosecutors.

The transcripts reveal:

SENATOR DRILON. Mr. Chairman, you know, when they're given the questions of our Senate President, don't you think it's about time that you have an administrative case against these prosecutors for having been grossly negligent in allowing this to happen? Senator Enrile said these prosecutors are grossly negligent. And under the law, that's a ground for disciplinary action. Are you going to take some action on this?

MS. BARRERAS-SULIT. Your Honor, it's very hard to answer that. They are part of the team. But, of course, Your Honors, if there will be grounds, then we will consider it, taking it from the Senate President.

SENATOR DRILON. Haven't you heard the Senate President?... The Senate President provided you with the grounds for some administrative case against the prosecutors.

MS. BARRERAS-SULIT. Your Honors, we will deliberate on that. There will be – can we get a formal –

SENATOR DRILON. Of course, you can't investigate – you cannot investigate your own people, especially that you signed all of this plea bargaining together, right?⁴⁵ (emphasis supplied)

⁴⁴ TSN: Ctsotto VII-2 February 24, 2011 12:32 a.m. p. 8; TSN: ASMasicap VIII-2 VIII-2 February 24, 2011 12:42 a.m. pp. 1-6.

⁴⁵ TSN: GUINHAWA X-2 February 24, 2011 1:02 p.m., p. 3.

3.2 THE OMBUDSMAN IS GUILTY OF NON-FEASANCE FOR LACKING PROSECUTORIAL ZEAL IN HANDLING GRAFT AND CORRUPTION CASES

The lexical definition of nonfeasance is the intentional failure to perform a required duty or obligation.⁴⁶

Ombudsman Merceditas Gutierrez clearly lacks prosecutorial zeal in running the Anti-Graft body of the country.

She admittedly resorted to a number of plea bargaining agreements with accused plunderers and corrupt government personnel just to dispose of their cases.⁴⁷ Her attitude in resolving cases is to resort to plea bargaining.

MS. GUTIERREZ. We believe that we are able to resolve. We receive 10,000 cases a year, Mr. Chairman. I think plea bargain agreements somehow help in resolving fast some of the cases pending before us.⁴⁸

Moreover, she even admitted that she has entered into a number of Plea Bargaining Agreements (PBA) without seeking the consent of the offended party. She even said that even former Ombudsman Marcelo resorted to several plea bargaining agreements.

MS. GUTIERREZ. Unang-una po nasabi dito ngayon, ang panintulot ng offended party dito sa plea bargain agreement. Mula pa po noong time ni Ombudsman Desierto hanggang sa panahon ko po, madami po kaming ipinapatupad na plea bargain

⁴⁶ <http://legal-dictionary.thefreedictionary.com/Nonfeasance> (last accessed on February 15, 2011)

⁴⁷ TSN: Sglrobles VII-1 February 3, 2011 10:39 a.m. p. 5. ; TSN: SNTUPAZ III-1 FEBRUARY 3, 2011 9:59 A.M. p. 4.

⁴⁸ TSN: Sglrobles VII-1 February 3, 2011 10:39 a.m. p. 5.

agreements na wala po kaming kinukuhang pahintulot kanino man. Dahil kami po, as prosecutors, kami po ang abogadong nagre-represent sa people of the Philippines...

Pangalawa po, noon pong panahon na nandiyan pa po sa aming opisina si former Special Prosecutor Dennis Villa-Ignacio, inirekomenda po niya sa akin ang plea bargaining agreement na aming i-e-enter with Mr. Atong Ang tungkol doon sa kasong plunder-doon sa plunder case tungkol po doon sa kaso ni former President Estrada. (emphasis supplied)⁴⁹

Her above-mentioned assertions have been rebutted by former Special Prosecutor Dennis Villa-Ignacio:

MR. VILLA-IGNACIO. Thank you, Your Honors.

I will be very direct and brief about these issues now. First, there is a statement coming from the good Ombudsman that, napakarami na naming na-aprubahang plea bargaining agreement so what is so special about the plea bargaining agreement involving General Garcia?

Frist, I cannot recall Ombudsman Marcelo entering into a plea bargaining agreement while he was still the incumbent Ombudsman. And on my part, I could only recall one instance na nag-agree kami sa plea bargaining agreement and this is with respect to Mr. Atong Ang. And that plea bargaining agreement has already been ruled by the Supreme Court to be one and accord with the Rules of Court and in adherence to the jurisprudence on the matter.

In fact, if I may be allowed, the court said, “The agreement provided” – referring to the plea bargaining agreement entered into between the Ombudsman and Mr. Atong Ang – **“The agreement provided that the accused undertakes to assist in the prosecution of the case and promises to return the amount of P25 million.” Doon po, meron undertaking yung involved doon sa plea bargaining agreement na tulungan ang gobyerno, and state in the prosecution of the plunder case.** Dito ho sa plea bargaining entered into by Ombudsman Gutierrez, ibang klase ho. Idi-dismiss lahat ang kaso ng plunder even as against those that did not participate at all in the plea bargaining agreement negotiation. I’m referring to the kids and the wife of General Garcia. Nabinipisuhan din ho doon.

And in the case of Mr. Atong Ang, there was a full restitution of the amount that the prosecution has identified na kinuha niya.⁵⁰(emphasis supplied)

She has clearly conveniently resorted to blaming the team of the former Ombudsman for failing to gather all the evidence they need in the prosecution of the Garcia case while her own team did not exercise any form of due diligence before

⁴⁹ TSN: SNTUPAZ III-1 FEBRUARY 3, 2011 9:59 A.M., pp. 4-5.

⁵⁰ TSN: MELNOVERO VIII-1 FEBRUARY 3, 2011 10:49 A.M., pp. 6–7; MHABALAGNE IX-1 FEBRUARY 3, 2011 10:59 A.M., p. 1.

saying that their case is weak. The responses of the Ombudsman's prosecutors to the queries of Senator Cayetano not only lacks diligence but reveals sloth and ignorance of the Rules of Court on the part of public servants from the Ombudsman.⁵¹

SEN. A. CAYETANO. Yes, before my follow-up question on that, ma'am, can I ask the question that Senator Arroyo asked on the floor. So what was the policy or what was the guiding vision of the prosecutors? Was it to put someone behind bars or was it to recover the money?

MS. SULIT. I think, we weighed both, Your Honor. This is it. We have to assess and reassess our evidence as we go along the prosecution of the case.

SEN. A. CAYETANO. Is it correct to say that you continue to believe that if there's no plea bargaining agreement you wouldn't have gotten a conviction for plunder?

MS. SULIT. We believe and we stick to that, Your Honor.

SEN. A. CAYETANO. Okay. So let me go to my follow-up question. You were talking about recovery of money, wala na yung paper trail pagkatapos makuha yung pera.

MS. SULIT. Opo.

SEN. A. CAYETANO. Okay. But the fact na nandun yung pera sa loob before i-withdraw, mayroon kayong paper trail?

MS. SULIT. Mayroon po sana. Pwede naming kunin.

SEN. A. CAYETANO. And hindi po ba, the mere fact that he had an official position, that his wife had this testimony na binibigyan sila and everything, and in the bank accounts you have more than 50 million, and it was several transactions, wouldn't that all constitute the elements of plunder? And wouldn't that all when you take a look at it, wouldn't you believe that there would be a good chance of conviction for plunder?

MS. SULIT. Your Honor, ang plunder po, what we have proven in court so far as yung mga dokumento naming naipakita can only prove possession and acquisition of those properties. Kasi ang plunder we have to prove yung manner ng pagkamkam o pandarabong dun sa mga pera na iyon. And what do we need? We have – we are tied by the allegation in the information na ito kinamkam nya sa pamamagitan ng kickback, komisyon, regalo – ano pa ba yun? – shopping money, gratitude money na binigay ng mga contractors and suppliers. So what do we need to present in court para mapatunayan ito? Suppliers and contractors and also we have to point out the specific AFP transactions na nagyari kung saan nagkaroon ng pagkakataon si General Garcia na ginamit ang posisyon niya para mangamkam ng pera na iyon.

SEN. A. CAYETANO. Okay. So two questions:

MS. SULIT. Yes, Your Honor.

SEN. A. CAYETANO. First, did you ask for help from the AFP and did they help you? Again, in fairness to Secretary Gazmin and his group now, this as the AFP seven years ago. And did the AFP provide you with the list of suppliers with the itinerary of

⁵¹ TSN: CFDRIZ XIV-1 January 27, 2011 11:36 a.m. pp. 4-8; BRHGonzales I-2 January 27, 2011 11L46 A.M., p. 1.

General Garcia with who they were dealing with? **So two questions: Did you ask and did they comply?**

MS. SULIT. Your Honor, pwede bang sumagot yung ating prosecutor?

SEN. A. CAYETANO. Yes, please.

MS. SULIT. At yung katotohanan lang po.

MR. BALMEO. Good morning, Your Honors.

At the time we took over, it was – investigation was already final. It was already on trial, Your Honors. Sir, we don't have to – we didn't have time to ask the AFP because that was not part of the investigation anymore, Your Honors.

SEN. A. CAYETANO. **Sir, even if it was already on trial, the charge sheet only contains the ultimate facts, right?**

MR. BALMEO. **Yes, Your Honor.**

SEN. A. CAYETANO. **So you could have still continued to talk to your client, to the AFP and continued to get the evidence, isn't that true?**

MR. BALMEO. Yes, Your Honor. But for one, Your Honor, there was no list of suppliers that was provided.

SEN. A. CAYETANO. **Yes, that's why my question is, did you ask the AFP for a list of suppliers?**

MR. BALMEO. **No, Your Honor.**

SEN. A. CAYETANO. Okay. So – the other thing, Your Honor, is that, ma'am, going back to your question. You said, this is what you have to prove: a, b, c, d. And I agree with you, unless you have an admission. But you do have an admission from the wife?

MS. SULIT. Yes, Your Honor. But that admission, first of all, it was not with the assistance of a counsel. If you can go by the documents that you have now, it is only entitled Sworn Statement, Your Honor, but I doubt if there is – it was subscribed and sworn to before a lawyer and that admission, Your Honors, I believe can – we can only prove the existence of that letter. As a matter of fact, we have presented the ICE agent from the US, from the United States... who testified in court that, that was given to him. So what have we proven? The existence of the letter. But as to the truth of the contents of that letter, we need more evidence, we need more witnesses to prove the contents of the letter.

SEN. A. CAYETANO. Ma'am, one question and I'll ask that Ombudsman Marcelo be recognized. How about the wife of General Garcia, was she asked to testify or did you interview her?

MS. SULIT. Your Honor, I want to put it on record that they were – the wife, Mrs. Clarita Garcia, and the children were never put under the jurisdiction of the Honorable Court because the summons served to them were – that was a wrong summons.

SEN. A. CAYETANO. Yes, as an accused...

MS. BARRERAS-SULIT. We could not, Your Honor, be a subject of an extradition petition filed by the Honorable Ombudsman Gutierrez. We were not.

SEN. A. CAYETANO. Yes. Ma'am the reason I questioned that is because as a lawyer, and if that's your legal opinion, I will respect that.

MS. BARRERAS-SULIT. Yes, Your Honor.

SEN. A. CAYETANO. But usually, the prosecutors take the aggressive side. Usually, the prosecutors are the ones who say that you do not need a lawyer because that was not a custodial investigation, she was not a suspect at that point in time...⁵²

It is worth noting that nothing in the Rules of Court prevents the Special Prosecutors from gathering further evidence and looking for other witnesses once the trial has started. In this case, there was no effort to look for additional evidence. No wonder they assert that their case is weak. It is weak because they deliberately made it so. Worst, the Ombudsman herself allowed and tolerated her Special Prosecutors to have this detestable prosecutorial attitude.

The Office of the Special Prosecutor is directly under the Ombudsman's control and supervision. She allowed her prosecutors to enter into a Plea Bargaining Agreement that is manifestly disadvantageous to the Republic while they did not exhaust all the pieces of evidence available to Special Prosecutor Atty. Wendell E. Barreras-Sulit, Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special Prosecutor Jesus A. Micael, Assistant Special Prosecutor Atty. Jose Balmeo Jr., and Assistant Special Prosecutor Atty. Joseph Capistrano.

They did not give much value to the testimony of the COA Auditor Heidi Mendoza,⁵³ they did not even seek the assistance of the AFP which clearly has most of the documentary evidence against Garcia;⁵⁴ and they did not fight for the full restitution of

⁵² Id.

⁵³ TSN: CGCastro VI-1 February 3, 2011 10:29 a.m. , pp. 4-7.

⁵⁴ TSN: CFDRIZ XIV-1 January 27, 2010 11:36 a.m. pp. 4-8.

the Php 303 Million while it was within their power to do so.⁵⁵ Ombudsman Gutierrez has clearly failed to show that she exercised due diligence in ensuring that the best interests of the Republic is protected.

In addition, as a result of the Plea Bargaining Agreement, Garcia may even walk a free man even if the Sandiganbayan would convict him with the lesser offenses of Direct Bribery and Facilitating Money Laundering, because he has already served time for both offenses. He has been detained for 6 years.⁵⁶

Clearly, the Ombudsman has command responsibility over the actions of her prosecutors. Thus, if Garcia is eventually freed and the rest of the plundered money is never recovered, it is clear from the statements of the Ombudsman and the team of the Special Prosecutor themselves that it is not because of the weakness of the evidence but due to their failure to prosecute. This indeed is the height of prosecutorial misconduct.

In fact, in the course of the investigations, it seems that the Office of the Ombudsman and Special Prosecutor has made prosecutorial misconduct a custom and this can be seen in the case of Lt. Gen. Jacinto C. Ligot.

⁵⁵ TSN: ADMasicap X-1 January 27, 2011 10:56 a.m., pp. 2-6.

⁵⁶ Former Major Gen. Garcia sets (sic) free. December 17, 2010. <http://www.allvoices.com/contributed-news/7654167-former-maj-gen-garcia-sets-free>. Last Accessed: February 18, 2011; GUILTY TO LESSER OFFENSES: EX-AFP GEN GARCIA IS NOW FREE ON P60,000 BAIL. December 18, 2010. <http://www.newsflash.org/2004/02/hl/hl110332.htm>. Last Accessed: February 18, 2011.

In the case of General Ligot whose alleged ill-gotten wealth amounts to at least Php740 Million, no graft or plunder case has been filed against him.⁵⁷ The only pending case against him is a civil case of forfeiture which does not include the alleged ill-gotten wealth that has been frozen by AMLC in spite of AMLC giving the Ombudsman a copy of the records since May 2008.⁵⁸

Thus, it seems that the Ombudsman has made it a habit not only to sit on cases, thereby delaying them; but also ignoring the presence of the grounds with which to file cases.

This is the height of betrayal of public trust!

3.3 THERE ARE LAWS TO HOLD THE OMBUDSMAN, THE SPECIAL PROSECUTOR AND THE PROSECUTORS ACCOUNTABLE

3.3.1 OMBUDSMAN

The possibility of impeachment is the remedy that can be resorted to in removing an incompetent Ombudsman. Considering the manifest disregard of the

⁵⁷ TSN: PLMANUEL V-2 February 18, 2011 1:03 pm. pp. 1-8.

⁵⁸ Id at p. 6.

Ombudsman to the rule of law and the perpetuation of a culture of lack of prosecutorial zeal that she has institutionalized in the Office of the Ombudsman, she has clearly betrayed public trust.

Section 2, Article XI of the Constitution enumerates the grounds by which the Ombudsman may be removed from office:

SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or **betrayal of public trust**. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (emphasis supplied)

3.3.2 THE SPECIAL PROSECUTOR AND PROSECUTORS

The Office of the President has the statutory authority and mechanism to discipline and remove Sulit, *et al.*

Under Section 8 of Republic Act (RA) No. 6670, otherwise known as the Ombudsman Act of 1989, the Special Prosecutor may be removed from office by the President of the Philippines for any of the grounds provided under the Constitution for the removal of the Ombudsman, and after due process:

SECTION 8. Removal; Filling of Vacancy. — (1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

(2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process... (emphasis supplied)

Based on the foregoing, it is submitted that the Office of the Special Prosecutor may be removed by the Office of the President on the grounds of culpable violation of the Constitution, bribery, graft and corruption, and betrayal of the public trust.

In this regard, **graft and corruption** is to be understood in the light of the prohibited acts enumerated in RA No. 3019 or the Anti-Graft and Corrupt Practices Act.⁵⁹ **Betrayal of public trust** is a new ground added by the Constitutional Commission as a catch-all to cover all manner of offenses unbecoming a public functionary but not punishable by the criminal statutes, like "inexcusable negligence of duty, tyrannical abuse of authority, breach of official duty by malfeasance or, misfeasance, cronyism, favoritism, obstruction of justice."⁶⁰

While it may be expected that there may be some reasonable divergence of opinion among lawyers and legal experts as to the appreciation of the sufficiency of evidence, which allegedly prompted the current prosecutors to enter into the Plea Bargaining Agreement, there are immutable norms and standards of legal conduct that have been violated which amount to no less than corruption or betrayal of public trust.

⁵⁹ Section 3 of Republic Act No. 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

⁶⁰ Records of the Constitutional Commission, Vol. 2, page 272.

Previously, under Executive Order No. 12, Series of 2001, it was the Presidential Anti-Graft Commission (“PAGC”) which had jurisdiction to investigate and hear all administrative cases against presidential appointees, such as the Special Prosecutor.

Thus, Sections 4(a) and (b) of Executive Order No. 12 states:

SECTION 4. Jurisdiction, Powers and Functions. — (a) The Commission, acting as a collegial body, shall, on its own or on complaint, have the power to investigate or hear administrative cases or complaints involving the possible violation of any of the following:

- (1) Republic Act No. 3019 as amended, otherwise known as the ‘Anti-Graft and Corrupt Practices Act;’
- (2) Republic Act No. 1379 on the unlawful acquisition of property by a public officer or employee;
- (3) Republic Act No. 6713, otherwise known as the ‘Code of Conduct and Ethical Standards for Public Officials and Employees;’
- (4) Presidential Decree No. 46, making it punishable for public officials and employees to receive gifts on any occasion, including Christmas;
- (5) Any provision under Title Seven, Book Two of the Revised Penal Code; and
- (6) Rules and regulations duly promulgated by competent authority to implement any of the foregoing laws or issuances.

(b) The Commission, acting as a collegial body, shall have the authority to investigate or hear administrative cases or complaints against **all presidential appointees in the government and any of its agencies or instrumentalities** (including members of the governing board of any instrumentality, regulatory agency, chartered institution and directors or officers appointed or nominated by the President to government-owned or controlled corporations or corporations where the government has a minority interest or who otherwise represent the interests of the government), **occupying the position of assistant regional director, or an equivalent rank, and higher**, otherwise classified as Salary Grade ‘26’ and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758). In the same manner, the Commission shall have jurisdiction to investigate a non-presidential appointee who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned in this subsection. The Commission shall have no jurisdiction over members of the Armed Forces of the Philippines and the Philippine National Police.” [Emphasis and underscoring supplied]

However, on 15 November 2010, Executive Order No. 132 was issued which abolished the PAGC and transferred its powers, duties and functions to the Investigative

and Adjudicatory Division of the Office of the Deputy Executive Secretary for Legal Affairs ("ODESLA") of the Office of the President. Thus, it is within the powers of the Executive to discipline the Special Prosecutor and her cabal.

4. RECOMMENDATIONS

We enjoin our colleagues in the House of Representatives to impeach Ombudsman Ma. Merceditas N. Gutierrez and transmit the Articles of Impeachment to the Senate so as to hold the Ombudsman accountable using Article XI of the 1987 Constitution on the Accountability of Public Officers.

Hinihikayat naming ang aming mga kasama sa mababang kapulungan na pausarin na ang proseso ng Impeachment at ibigay na dito sa amin sa Senado ang Articles of Impeachment ng Ombudsman. Nararapat lamang na harapin ng kasalukuyang Ombudsman, si Ombudsman Ma. Merceditas N. Gutierrez ang mga paratang sa kanyang pagtataksil sa bayan.

However, the Ombudsman can also resign. The Committee believes that any self-respecting lawyer with *delicadeza* will resign if he or she finds oneself in the position of the present Ombudsman. Her present occupancy of the Office of the Ombudsman has definitely tarnished the institution's reputation.

As for the case of the Ombudsman, the Committee appeals to her sense of patriotism and nationalism to save the Office of the Ombudsman as an institution and tender her resignation.

No less than ***The Philippine Human Development Report (2008/2009)***, published by the Human Development Network in cooperation with the United Nations Development Program and the New Zealand Agency for International Development, says that, "Public perception of the Ombudsman's sincerity in battling corruption last year nosedived from the high of +24 percent under Marcelo to +4 percent under Gutierrez, Social Weather Stations found."

The Human Development Report further provides:

... **Performance and trust have been further undermined by the OMB's action – or inaction – on high-profile cases.** These include the P2 billion purchase of automated counting machines by the Commission on Elections (Comelec) from Mega Pacific for the 2004 national elections, the \$2 million bribery case involving former Justice Secretary Hernando Perez, the P278 million fertilizer fund scam, and the multimillion-dollar NBN-ZTE deal.

The first was inexplicably resolved with two conflicting resolutions – one finding liability of at least one senior Comelec official (June 2006) and another finding no one liable (September 2006). This is in stark contrast to a Supreme Court decision on a case filed separately by private citizens: The High Tribunal found the contract null and void with the attendance procurement irregularities.

The second – involving Perez, the former boss of incumbent Ombudsman Merceditas Gutierrez – was said to be deliberately defective. A two-year wait in the filing of the case resulted in its dismissal due to technical lapses. Investigation findings and resolutions on the third and fourth cases, brought before the OMB in June 2004 and August 2007, respectively, have yet to be issued.⁶¹

In relation to the election counting machines contract of the COMELEC with Mega Pacific (Consortium), Ombudsman Gutierrez received recommendations from

⁶¹ Philippine Human Development Report (2008/2009): at pp. 45-46.

Maria Olivia Elena A. Roxas, Graft Investigator and Prosecutor II of the Field Investigation Office (FIO). Roxas ultimately recommended, "that all the sitting Comelec commissioners at the time the voided contract was signed, plus eight other Comelec officers, plus an official of the Department of Science and Technology and the six incorporators and stockholders of the private company involved (Mega Pacific Consortium or Mega Pacific e-Solutions Inc.), be held criminally, administratively and civilly liable in connection with the voided contract."⁶² It appears that Ombudsman Gutierrez completely disregarded, if not outrightly rejected the recommendations meticulously made by Roxas.

Furthermore, it would be noted that to date, the Ombudsman continuously remains unwilling and unable to act on the Recommendations of the Blue Ribbon Committee's Committee Reports that were transmitted to the Office of the Ombudsman regarding the Fertilizer Fund Scam (transmitted on March 17, 2009).

An Ombudsman who is calloused to the needs of the people is an Ombudsman that is inutile. *Walang silbi ang tanod ng bayan na manhid sa pangangailangan ng sambayanan.*

And once again, in the case of the Garcia Plea Bargaining Agreement, the present Ombudsman outdid herself in her previous acts of incompetence and betrayals of public trust.

Further, The Committee recommends to the Chief Executive, the President of the Philippines, through the Department of Justice (DOJ), to institute the appropriate

⁶² "Moment of Truth," Get Real Column of Solita Collas-Monsod, Philippine Daily Inquirer, September 30, 2006.

administrative and criminal proceedings against the Special Prosecutor Wendell E. Barreras-Sulit, Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special Prosecutor Jesus A. Micael, Assistant Special Prosecutor Jose Balmeo, Jr., Assistant Special Prosecutor Joseph Capistrano and the rest of the Prosecutors for betraying public trust.

Administrative Action against the abovementioned individuals would fall under Section 8⁶³ of Republic Act (RA) No. 6670, otherwise known as the Ombudsman Act of 1989.

Criminal Action against the abovementioned individuals would fall under Section 3 (e)⁶⁴ and (g)⁶⁵ of the RA 3019 or the Anti-Graft and Corrupt Practices Act.

AS A PENULTIMATE POINT, the following law reforms are hereby recommended by the Committee to ensure that this kind of prosecutorial treason will no longer be committed against the Republic:

⁶³ **Section 8. Removal; Filling of Vacancy. —**

(1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

(2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

(3) XXX

(4) XXX

⁶⁴ (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

⁶⁵ (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

4.1 Passage of the Freedom of Information Act

In this 15th Congress, no less than 12 Senators⁶⁶ filed their own versions of the Freedom of Information Act. In essence, these Senators assert the public's right to know. Citizen's participation is a major factor in preventing and discovering corruption. In fact, one of the main problems in the Garcia Plea Bargaining Agreement is the seeming "secrecy" behind the deal.

Mr. Jarius Bondoc, a journalist who was closely following the Garcia Plea Bargaining Agreement, in his Opening Statement even said:

... Perhaps my remaining contribution can be on the matter of the extreme secrecy on the part of the Ombudsman and the Sandiganbayan in conducting General Garcia's plea bargaining.

You see I wrote two offices last September 2010 for copies of the plea deal that I have heard and written about and both denied my request on the grounds of *sub judice* rule. We all learned from later events, of course, that the Ombudsman had signed the deal with General Garcia as far back as seven months prior in February of 2010. Also that the Sandiganbayan conditionally had approved it four months before in May 2010.

I know that prosecutors and defendants must be given reasonable time to plea bargain if need be behind closed doors. But there has to be reasonable time as well to reckon with the constitutional requirement of transparency. And perhaps this deal would not be viewed with such controversy today had it not been kept from disinfecting sunlight, sir. And I'm turning over our exchange of letters to the committee.⁶⁷ (emphasis supplied)

The secrecy was further affirmed by former Special Prosecutor Dennis Villa-Ignacio:

⁶⁶ Senator Trillanes – SBN 11; Senator Revilla – SBN 25; Senator Osmena III – SBN 126; Senator Pangilinan - SBN 149; Senator Guingona – SBN 158; Senator Zubiri – SBN 162; Senator Villar – SBN 1254; Senator Legarda-SBN 1440; Senator Escudero – SBN 2086; Senator Defensor Santiago – SBN 2283; Senator Honasan – SBN 2189; Senator Alan Cayetano – SBN 2354.

⁶⁷ TSN: MTCajandab I-2 February 3, 2011 11:59 A.M. p. 7'; Mhulep II-2 February 3, 2011 12:09 p.m. p. 1.

...Noong sumabog sa media iyong plea bargaining agreement entered into by the Ombudsman Gutierrez and General Garcia, at that time ho, **talagang sikretong-sikreto iyon.** The information that we are getting would come from various informants.⁶⁸

xxx

Your Honors, please. **Tinestipayan (testify) na rin po dito ni Jarius Bondoc na dalawang beses silang sumulat sa Ombudsman at sa Sandiganbayan, but could not get any information. Ang totoo ho, ini-interview pa si Special Prosecutor Sulit ng mga media kung totoo, at sinasabi niyang walang plea bargaining agreement.**⁶⁹ (emphasis supplied)

No less than the United Nations Convention against Corruption to which the Philippines is a State Party after having ratified it on November 8, 2006 provides:

Article 10. Public reporting

Taking into account the need to combat corruption, **each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration,** including with regard to its organization, functioning and decision making processes, where appropriate. Such measures may include, inter alia:

(a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;**

(b) Simplifying administrative procedures, where appropriate, in order to **facilitate public access to the competent decision-making authorities;** and

(c) **Publishing information,** which may include periodic reports on the risks of corruption in its public administration.

Combating corruption cannot be left to the government alone. And to be able to encourage citizen's participation and vigilance, a law should be immediately enacted.

⁶⁸ TSN: Jmbaisa IV-1 February 18, 2011 10:13 a.m. p.4.

⁶⁹ Id at page 5.

4.2 Passage of a law that requires all Plea Bargaining Agreements involving Graft and Corruption of Public Officers, Plunder and Money Laundering to be executed in the format of the Atong Ang Plea Bargaining Agreement where there is the participation of the Ombudsman, Solicitor General and Department of Justice

The Committee is proposing a law that will make it mandatory that any Plea Bargaining Agreement entered into by the Ombudsman involving violations of RA 3019, the Plunder Law and the Anti-Money Laundering Law should be executed with the participation of the Solicitor General and the Department of Justice.

4.3 As an alternative to the immediately preceding recommendation, passage of a law that would prohibit plea bargaining agreement under the Plunder Law

An accused entering into a plea bargaining agreement with the state is not a right but a privilege. On the one hand, The Dangerous Drugs Act of 2002⁷⁰ specifically prohibits plea bargaining agreement, as the policy of the state is an all-out war against illegal drugs.

On the other hand, the Plunder Law was enacted in response to the state policy of all-out war against thieves in government, who take advantage of their official position at the expense of the Republic of the Philippines and the Filipino people. The Constitutional principle that “public office is a public trust” is a cardinal tenet of paramount importance that should be given more teeth by prohibiting plea bargaining agreements under the Plunder Law.

⁷⁰ Republic Act 9195.

4.4 Passage of a law that designates the Department of Justice to have the concurrent jurisdiction to investigate and prosecute administrative and criminal cases against the employees of the Ombudsman

To ensure check and balance in government and to make sure that the employees of the Office of the Ombudsman cannot act with impunity, the DOJ will be given the concurrent jurisdiction to investigate them for administrative and criminal cases.

The possibility of collusion and impunity is best illustrated in the following exchange:

THE SENATE PRESIDENT. Then, I would tell you that you have been grossly negligent if you did not understand the implication of what you were doing.

MR. BALMEO. We submit your Honor.⁷¹ (emphasis supplied)

X X X X

SENATOR DRILON. Mr. Chairman, you know, when they're given the questions of our Senate President, don't you think it's about time that you have an administrative case against these prosecutors for having been grossly negligent in allowing this to happen? Senator Enrile said these prosecutors are grossly negligent. And under the law, that's a ground for disciplinary action. Are you going to take some action on this?

MS. BARRERAS-SULIT. Your Honor, it's very hard to answer that. They are part of the team. But, of course, Your Honors, if there will be grounds, then we will consider it, taking it from the Senate President.

SENATOR DRILON. Haven't you heard the Senate President?... The Senate President provided you with the grounds for some administrative case against the prosecutors.

MS. BARRERAS-SULIT. Your Honors, we will deliberate on that. There will be – can we get a formal –

SENATOR DRILON. Of course, you can't investigate – you cannot investigate your own people, especially that you signed all of this plea bargaining together, right?⁷² (emphasis supplied)

⁷¹ TSN: Ctsotto VII-2 February 24, 2011 12:32 a.m. p. 8; TSN: ASMasicap VIII-2 VIII-2 February 24, 2011 12:42 a.m. pp. 1-6.

⁷² TSN: GUINHAWA X-2 February 24, 2011 1:02 p.m., p. 3.

4.5 Passage of a law that would amend the Anti-Money Laundering Law⁷³ of the country

In the landmark case of REPUBLIC OF THE PHILIPPINES, Represented by THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) vs. HON. ANTONIO M. EUGENIO, JR., AS PRESIDING JUDGE OF RTC, MANILA[G.R. No. 174629, February 14, 2008]the Supreme Court of the Philippines, in effect restrained the initiatives of the Anti-Money Laundering Council (AMLC) by ruling that the AMLC cannot inquire into bank deposits of individuals *ex parte* or without the latter's permission.

The Supreme Court argued that since Congress specifically granted such *ex parte* power to the AMLC in Section 10 (Freezing of Monetary Instrument or Property) of Republic Act 9194, it's absence in Section 11 (Authority to inquire Into Bank Deposits) cannot now be construed as having been automatically granted by Congress.

To remedy this situation, the AMLC should be given the power to inquire into bank deposits *ex parte* upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3 (i) or a money laundering offense under Section 4 of the Anti-Money Laundering Act.

⁷³ R.A. 9160

4.6 Passage of a law that would amend the Ombudsman Act of 1989⁷⁴ by making the Office of the Special Prosecutor independent from the Office of the Ombudsman

Under the current law, the Office of the Special Prosecutor is an organic component of the Office of the Ombudsman and is also under the supervision and control of the latter.⁷⁵ The Office of the Special Prosecutor should have an independent determination of a case with neither fear nor concern of any interference from the Office of the Ombudsman.

SEN. DRILON. ... The third remedial legislation that I would suggest is, we take a second look at amending Republic Act 6770. This is the Ombudsman Act of 1989. The records, Mr. Chairman, of the Constitutional Commission will show that the Office of the Ombudsman was never intended to be given prosecutorial powers. It was envisioned – what was envisioned as a pure Ombudsman who will use the power and prestige of this office to investigate, on his own or upon complaint, government officials regarding any impropriety in their action. The proposal to grant and to include in the Constitution a direct grant to the Office of the Ombudsman the power to prosecute was in fact defeated. So, it was very clear that the intention is not to grant the Office of the Ombudsman the power to prosecute. The present power of the Ombudsman to prosecute is found in the Ombudsman's Act of 1989. We believe that is a power not derived from the Constitution but, in fact, is not consistent with the spirit and concept of the Constitution in providing for the creation of the Office of the Ombudsman. We would present to the Committee a proposal that the special prosecutor be made independent of the Ombudsman so that they can decide on their own.⁷⁶

FINALLY, since the Plea Bargaining Agreement is Null and Void, the Office of the Ombudsman should pursue the plunder case against Garcia.

⁷⁴ R.A. 6770.

⁷⁵ Section 11(3) R.A. 6770.

⁷⁶ TSN: ADMasicap VII-2 February 24, 2011 12:42 a.m., pp. 9-10; TSN: SNTUPAZ IX-2 February 24, 2011 12:52 p.m., p.1.

EPILOGUE

*QUIS CUSTODIET IPSOS CUSTODES?*⁷⁷ Who will guard the guardians? In posing this famous question, **Juvenal** was suggesting that wives cannot be trusted and keeping them under guard is not the solution since the guards cannot be trusted either.⁷⁸

Half a millennium later, **Plato**, used the same question in his **Republic** where he expressed optimism that guardians or rulers of the city-state, the ones that should be trusted should behave properly; that it was absurd to suppose that they should require oversight.⁷⁹ Alas, they have not met Ombudsman Merceditas Gutierrez and her Special Prosecutors.

The Ombudsman, also known as the Tanodbayan is supposed to protect the people. That is precisely the reason why the office is named *tanod ng bayan* otherwise known as guardian of the people. Unfortunately, in this case, the Ombudsman (Tanodbayan) neither is the *bantay* nor *tanod ng bayan*. Instead, what we have is a clear case of *bantay salakay*.

The Senate Blue Ribbon Committee has taken the responsibility to take up the cudgels for the Filipino people to tell the Ombudsman that it has betrayed public trust; that it has failed the Filipino people; and this time, instead of being the ones holding other public officers accountable for malfeasance, misfeasance and nonfeasance, they

⁷⁷ *Quis custodiet ipsos custodes?* is a [Latin phrase](#) from the Roman poet [Juvenal](#), which is literally translated as "Who will guard the guards themselves?" Also sometimes rendered as "Who watches the watchmen?", the phrase has other [idiomatic](#) translations and adaptations such as "Who will guard the guards?"

⁷⁸ <http://www.jstor.org/pss/29730087> (last accessed February 28, 2011).

⁷⁹ Id.

are the public officers who have violated exactly the same rules that they have sworn to respect, uphold and protect.

Indeed, this is the time of reckoning. And this is the time when the Senate shall take it upon themselves to become the Filipino people's protectors in demanding accountability from the people who have abused, wasted, and destroyed the trust that were reposed on them.

Respectfully Submitted:

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Committee on Accountability of Public Officers
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