


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

'11 MAR 23 P3:29

S E N A T E

RECEIVED BY: 

COMMITTEE REPORT NO. 27

Submitted by the Committee on Accountability of Public Officers and
Investigations (*Blue Ribbon*) on MAR 23 2011.

1 Re: Proposed Senate Resolution No. 337 and Privilege Speech of
2 Senator Jinggoy Ejercito Estrada delivered on January 19, 2011
3

4 Recommending its approval.

6 Sponsor: Senator Teofisto "TG" Guingona III
7

8
9 MR. PRESIDENT:

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

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

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

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

3
4 The Committee has the honor to submit its Partial Report in relation to
5 Proposed Senate Resolution No. 337, introduced by Senator Alan Peter
6 "Compañero" Cayetano, after conducting an inquiry, to the Senate.

7
8 Recommending the adoption of the recommendations contained herein.

9
10 **COMMITTEE REPORT**

11
12 **1. INTRODUCTION**

13 **1.1. PRELIMINARIES**

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

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

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26 *Kofi Anan*
27 *former UN Secretary-General*
28 *New York, 2004*
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¹ Feliciano Commission Report on the Oakwood Mutiny of July 2003



1 Commission's Report, "the Government and the AFP need to address the legitimate
2 grievances of the military against corrupt officers, officials, bureaucrats, and practices."
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4 The prosecution and arrest of former Major General Carlos F. Garcia in 2004 was
5 a hopeful step in the right direction. After building a solid case supported by solid
6 evidence, Forfeiture and Plunder cases were later filed by the Office of the Ombudsman
7 then under Simeon Marcelo and the Office of the Special Prosecutor, then under Dennis
8 Villa-Ignacio. The Republic was convinced that it was going to get a conviction.
9

10 This is the reason why the nation was deeply shocked and profoundly vexed
11 when it found out that the Office of the Ombudsman together with the Office of the
12 Special Prosecutor entered into a plea bargaining agreement with Garcia on February
13 25, 2010 which was later submitted to the Sandiganbayan for approval on March 16,
14 2010. On May 4, 2010, the Sandiganbayan practically approved this Agreement. Quite
15 interestingly enough, it was at the height of the 2010 presidential elections when this
16 plea bargaining deal was hatched and finalized.
17

18 On December 16, 2010, the Sandiganbayan granted former General Garcia's Plea
19 Bargaining Agreement subject only to the transfer of certain real and personal
20 properties to the Republic. According to General Garcia, the conditions have already
21 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)



1 Thus, the Senate, in aid of legislation, has decided to investigate the perceived,
2 irregularity, haste and secrecy surrounding the Garcia Plea Bargaining Agreement
3 (PBA).
4

5 This Committee Report is divided into four parts. The first part deals with the
6 Preliminaries; the second part is the Antecedent Facts; the third part is the Findings of
7 the Committee; and the final part contains the Committee's Recommendations.
8
9

10 **1.2. HEARINGS OF THE GARCIA PLEA BARGAINING AGREEMENT**

11
12

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

16 **1.2.1. THE HEARINGS**

17

18 January 27, 2011

19 Solicitor General Jose Anselmo I. Cadiz; Atty. Simeon V. Marcelo; Atty. Dennis
20 Villa-Ignacio; Atty. Jose Balmeo Jr., Asst. Special Prosecutor; Atty. Joseph Capistrano,
21 Asst. Special Prosecutor; Department of National Defense (DND) Secretary Voltaire T.
22 Gazmin; Lt. Gen. Reynaldo Mapagu, Acting COS, AFP; Gen. Angelo T. Reyes, Former
23 Secretary, DND; Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP;
24 Special Prosecutor Atty. Wendell E. Barreras-Sulit; Atty. Vicente S. Aquino, Anti-Money
25 Laundering Council (AMLC); Lt. Col. George Rabusa, Former Budget Officer, AFP; Atty.
26 Noel Malaya, Counsel of Lt. Col., George Rabusa; Lt. Gen. Jacinto C. Ligot (Ret.), AFP
27 Former Comptroller
28

29 February 3, 2011

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

1 Marcelo; Lt. Gen. Ricardo David Jr., Chief of Staff AFP; Atty. Joseph Capistrano, Asst.
2 Special Prosecutor; Atty. Dennis Villa-Ignacio; Mr. Jarius Bondoc, Philippine Star; Lt.
3 Col. George Rabusa, Former Budget Officer, AFP; Col. Antonio Ramon Lim PAF (GSC);
4 Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP; Lt. Gen. Jacinto C.
5 Ligot (Ret.), AFP Former Comptroller; Ms. Heidi Mendoza, Former COA Auditor; DND
6 Usec. Honorio Azcueta
7

8 February 7, 2011

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

19 February 18, 2011

20 DND Sec. Voltaire T. Gazmin; AFP Chief of Staff Gen. Ricardo David Jr.; BGen.
21 Benito De Leon, AFP, Chief AFP MFO; Col. Antonio Ramon Lim PAF (GSC), Former
22 Deputy Budget Manager; Col. Abraham B. Bagasin, Former Deputy Budget Officer;
23 Capt. Kenneth Paglinawan PN, Former Chief, ISAFP; Lt. Col. Romeo Mateo; Maj. Tomas
24 Donato, Comptroller, ISAFP; Capt. Emerson Angulo, Former Deputy Budget Officer;
25 Capt. Ernesto Paranes, Former Special Disbursing Officer, ISAFP; Atty. Wendell E.
26 Barreras-Sulit, Special Prosecutor; Atty. Reynaldo A. Villar, COA Chairman; Ms. Maribeth
27 F. De Jesus, Former COA Resident Auditor, DND; Mr. Lowell Jacob, Former COA
28 Resident Auditor, AFP; Atty. Vicente S. Aquino, Executive Director, AMLC; Ms. Alicia
29 Valderama-Torres, Bank Officer V; Mr. Prospero A. Pichay, Chairman, LWUA; Gen. Efren
30 L. Abu, Former AFP Chief of Staff; Gen. Roy Cimatu (PA Ret.), Former AFP Chief of
31 Staff; Gen. Diomedio Villanueva (PA Ret.), Former AFP Chief of Staff; Maj. Gen. Carlos
32 F. Garcia AFP (Ret.), Former Comptroller, AFP; MGen. Hilario A. Atendido; MGen.
33 Epenito Logico (PA Ret.); Lt. Gen. Jacinto C. Ligot (Ret.), Former Comptroller AFP; Col.
34 Gilbert I. Gapay, Former Budget Officer AFP; Col. Philip Vicencio, Former Finance
35 Operations Officer, AFP; Lt. Col. George Rabusa (AFP Ret.), Former Budget Officer,
36 AFP; Mr. Generoso R. Del Castillo Jr., Former Chief Accountant, AFP; Atty. Celso D.
37 Gangan, Former COA Chairman; Atty. Guillermo N. Carague, Former COA Chairman;
38 Ms. Heidi Mendoza, Former COA Auditor
39

40 February 24, 2011

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

1 Disbursing Officer, ISAFP; Atty. Edith Santos, Chief Accountant, AFP; Atty. Wendell E.
2 Barreras-Sulit, Special Prosecutor; Atty. Joffre Gil. C. Zapata, Division Clerk of Court, 4th
3 Division, Sandiganbayan; Atty. Reynaldo A. Villar, COA Chairman; Ms. Maribeth F. De
4 Jesus, Former COA Resident Auditor, DND; Mr. Noel Jacob, Former COA Resident
5 Auditor, AFP; Atty. Julia C. Bacay-Abad, Dep. Dir. Legal Services Group, AMLC; Ms.
6 Alicia Valderama-Torres, Bank Officer V; Atty. Celso D. Gangan, Former COA Chairman;
7 Atty. Simeon V. Marcelo; Asec. Zabiden M. Azis, DOJ; Gen. Efren L. Abu, Former AFP
8 Chief of Staff; Maj. Gen. Carlos F. Garcia AFP (Ret.), Former Comptroller, AFP; MGen.
9 Hilario A. Atendido; Lt. Gen. Jacinto C. Ligot (Ret.), Former Comptroller AFP; Col. Philip
10 Vicencio, Former Finance Operations Officer, AFP; Lt. Col. George Rabusa (AFP Ret.),
11 Former Budget Officer, AFP; Atty. Guillermo N. Carague, Former COA Chairman; Ms.
12 Heidi Mendoza, Former COA Auditor
13

14 March 3, 2011

15 Atty. Robert E. Kallos, Office of the Ombudsman; Atty. Jesus A. Micael, Office of
16 the Ombudsman; Atty. Rabindranath Uy, Office of the Ombudsman; Usec. Honorio S.
17 Azcueta, DND; Usec Pio Lorenzo Batino, DND; Col. Antonio Ramon Lim, AFP; Gen. Roy
18 Cimatú (Ret.); Gen. Diomedio Villanueva (Ret.); Maj. Gen. Carlos F. Garcia (Ret.); Lt.
19 Gen. Jacinto C. Ligot (Ret.); Col. Felipe P. Vicencio, AFP; Atty. Dennis Villa-Ignacio;
20 Atty. Francisco "Frank" I. Chavez; Mr. Edgardo T. Yambao; Ms. Erlinda Y. Ligot; Ms.
21 Heidi Mendoza
22

23 **2. ANTECEDENT FACTS**

24

25 The case of former Deputy Chief of Staff Carlos F. Garcia dates back to December
26 19, 2003 when **his sons Juan Paulo D. Garcia** and **Ian Carl D. Garcia** smuggled
27 into the United States US\$100,000. They pled guilty to the offense of **bulk cash**
28 **smuggling** in September 2010. Both sons are now reportedly out on bail and the
29 US\$100,000 has already been forfeited by the US authorities. In December 2010, the
30 Philippine Department of Justice through the Mutual Legal Assistance Treaty (MLAT)
31 has requested for the return of the US\$100,000, and that process is ongoing.
32

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

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

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

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9 My family's income is from four sources, two corporations, a daycare school and my
10 husband's job as a Two Star General in the Philippine Military. My family has an 80%
11 interest in the two corporations and we may earn a monthly income equivalent to US\$
12 8,000. The day care school brings in more money, perhaps \$10,000 per month.
13 However, based on the Philippine tax laws regarding both the corporations and day
14 care school, we are allowed to declare zero income. The income received from
15 these businesses was not reported as a basis for tax liability. The two corporations
16 IJT MANGO ORCHARD, INC. and IJT KATAMNAN CORP were incorporated on March
17 22, 2002.

18
19 My husband, Carlos Garcia (Two Star General in the Armed Forces) was assigned to the
20 Comptrollers Office until April 4, 2004. He receives a salary that is declared as income
21 for tax purposes. In addition, Carlos receives travel money and expenses in excess
22 of several thousands of dollars. I often travel with my husband on business and my
23 travel, expenses and shopping money in excess of US\$10,000 to US\$20,000 is
24 provided to me. He also receives cash for travel and expenses from the businesses
25 that are awarded contracts for military hardware. These businesses are in Europe
26 and Asia. He also receives gifts and gratitude money from several Philippine
27 companies that are awarded military contracts to build roads, bridges and military
28 housing.

29
30 As the comptroller, my husband handles all budgets for the armed forces. My husband
31 prepares for the armed forces based on the requests from each branch of the military.
32 The budget is sent to the Secretary of National Defense and it is sent to the Senate for
33 approval. The Armed Forces Committee reviews each contractor's bids. Once the bids
34 are approved and the review committee has checked out the companies, my husband is
35 the final signature for funding the contracts. The expense money, gratitude money and
36 shopping money is not declared as income.³

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39 The handwritten statement of Clarita Garcia given to Agent Van Dyke on April 6,
40 2004 contains more disturbing revelations such as:

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

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

4
5 Travel Allowances: As a Comptroller, J6, Assistant deputy Chief Of Staff for
6 Comptrollership, he is a member of the Management Team of Projects. For example: a
7 certain foreign company wins a bidding from the Bids & Awards Committee for selling
8 military hardware. This procurement is approved by the Secretary of National Defense
9 and Office of the President. Then a team committee is formed by the Armed Forces to
10 oversee the implementation of contracts. Since my husband's office is under the
11 Department of Budget and Management that holds the budget of the whole government,
12 his office is part of the inspection team. In one of the provisions of the contract, a team of
13 committee will oversee the implementation of the contract before, during and after. During
14 the before portion of the contract, my husband goes to inspect the site or location of the
15 plants of the contracted party. Then during portion of the contract, he goes back to the
16 contracted country to see the actual products. During the after portion of the contract, he
17 returns to the contracted country to accept the finished product. During these travels,
18 my husband always brings me along and we are each given travel allowances by
19 the proponents/host country. He is also (sic) by his office stipend and allowances
20 to be used at his discretion. As a wife, I am also given an envelope as they call
21 "shopping money" that I can use for my own discretion no receipt of how we use
22 the stipends are ever required. Business class airfare/First Class Hotel
23 accommodations and transportation are provided by the host/proponents and this
24 happens on every trip since 1993 to present. Our meals, purchase (sic) of souvenir
25 and cost of visiting sites are also paid for by our hosts. As a result, our allowances
26 are not used and we are allowed to bring them. I am unable to provide the exact
27 amount of each stipend/allowances because it varies from country to country we
28 are assigned to visit.

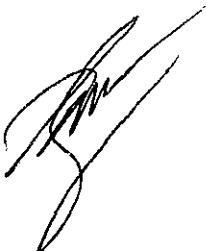
29
30 When my husband is assigned to travel domestically to the Philippine Islands to conduct
31 inspection on different military camps, he is also given stipend/allowances and also often
32 given gratuities.

33
34 With regards (sic) to expenses such as salaries for our drivers, security guards,
35 their wages are paid for by the government. My husband's office are (sic) provided
36 with government vehicle. Free gasolines (sic), housing allowances and cost of
37 gratuities, gifts receive from colleagues. This is again part of the PERKS that my
38 husband received from holding a key position in the Philippine Armed Forces.

39
40 Also when he was sent for schooling abroad, his salaries and allowances goes (sic) to his
41 savings. The counterpart country also give (sic) him stipend and housing allowance...⁴
42

43
44 Garcia was subsequently convicted of perjury in one of the cases filed against
45 him before the Sandiganbayan for falsifying his SALNs.
46

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



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

4
5 **REAL PROPERTIES**

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

13
14 It is also worth noting that Garcia's son, **Timothy Mark Garcia** also leased for
15 US \$ 3,000 or Php168, 123.30 a month,⁶ an apartment unit at The Anthem, 222 East
16 34th Street, New York in October 2004. For a General's son whose net worth is not
17 even P2 Million pesos, renting a US\$3,000 apartment per month is not only ostentatious
18 and extravagant but also highly scandalous and suspicious.

19
20 As of 2005, the Garcias also own the following motor vehicles:

- 21 1. 1997 Honda Civic
- 22 2. 1997 Mitsubishi Van De Luxe
- 23 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://cof.w.net/stats-and-facts/philippine-peso-us-dollar-exchange-rates-through-the-years/> (last accessed February 21, 2011).

1 4. 2001 Toyota RAV 4 Automatic

2 5. A Toyota Coaster Bus

3 6. An Isuzu Elf

4 7. 1993 Toyota Previa

5
6 Because of his unexplained wealth, frequent travels abroad, and the ostentatious
7 lifestyle of his family that obviously could not be justified on a General's salary, on April
8 6, 2005 cases of **PLUNDER** and **MONEY LAUNDERING** were filed against him, his
9 wife **Clarita D. Garcia** and his children **Ian Carl D. Garcia, Juan Paulo D. Garcia,**
10 and **Timothy Mark D. Garcia** for connivance /conspiracy in criminally, amassing,
11 accumulating and acquiring ill-gotten wealth in the form of funds, landholdings, and
12 other pieces of properties, in the aggregate amount of **THREE HUNDRED THREE**
13 **MILLION TWO HUNDRED SEVENTY-TWO THOUSAND FIVE AND 99/100**
14 **PESOS (Php303,272,005.99)** before the Sandiganbayan.

15
16 Consequently, on December 2, 2005, Garcia was found GUILTY by the General
17 Court Martial of the Armed Forces of the Philippines (AFP) for violating Articles 96 and
18 97 for not declaring his true assets and for enjoying permanent-resident status (with a
19 "green card") in the United States. He was dishonorably discharged from service, his
20 pay and allowances were forfeited and he was sentenced to two (2) years of hard
21 labor. It has been reported that the AFP Judge Advocate General's office confirmed
22 that the court martial conviction was not acted upon by then President Gloria
23 Macapagal-Arroyo.⁷

24

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).



1 Garcia applied for bail which was subsequently denied on January 7, 2010 by the
2 Sandiganbayan's 2nd Division.
3


4 What is very odd is that despite the denial of his bail, showing that the evidence
5 of guilt is strong, the day after the retirement of Special Prosecutor Dennis Villa-Ignacio
6 on February 24, 2010, the Office of the Ombudsman together with the Special
7 Prosecutor on February 25, 2010 executed a Joint Motion for Approval of the Plea
8 Bargaining Agreement with Garcia. This Motion was later filed on March 16, 2010 with
9 the Sandiganbayan.
10

11 The Joint Motion for Approval of the Plea Bargaining Agreement allowed Garcia
12 to plead to lesser offenses namely: INDIRECT BRIBERY under Article 211, par. 1 of the
13 Revised Penal Code and Section 4(b) of RA 9160 or the Anti-Money Laundering Law
14 which is Facilitating Money Laundering. Garcia also agreed to restitute Php
15 135,433,387.84 of ill-gotten wealth constituting pieces of real and personal property.
16 This amount is not even half of the money he has allegedly plundered.
17

18 Thereafter, on May 4, 2010, a week before the 2010 Presidential elections, the
19 Sandiganbayan issued a Resolution finding that the Plea Bargaining Agreement is
20 warranted since it is in compliance with Section 5, Rule 116 of the Rules of Court. This
21 in effect practically approves the plea bargaining agreement.⁸
22

23 The dispositive part of the Resolution reads:
24

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



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

13
14 Thereafter, on December 16, 2010, Major General Garcia was granted bail by the
15 Sandiganbayan right after he pled guilty to DIRECT BRIBERY and Section 4(b) of RA
16 9160 otherwise known as Facilitating Money Laundering.

17
18 On January 3, 2011, the Office of the Solicitor General filed an ***Urgent Motion***
19 ***for Leave to Intervention to (1) Nullify the Plea Bargaining Agreement***
20 ***Between Accused Maj. Gen. Carlos F. Garcia (Ret.) and the Office of the***
21 ***Special Prosecutor, (2) Set Aside the Honorable Court's Resolution***
22 ***promulgated on May 4, 2010 approving the said Plea Bargaining Agreement***
23 ***(3) Recall the Resolution of the Honorable Court promulgated on December***
24 ***16, 2010 which granted Accused Garcia's Motion for Bail.***

25
26 On January 4, 2011, the Solicitor General filed an ***Omnibus Motion-In-***
27 ***Intervention.*** Thereafter on January 13, 2011, the Solicitor General once again filed a
28 ***Motion for Leave to File and Admit attached Supplement to the Omnibus***
29 ***Motion for Intervention.***

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



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

3

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

6

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

8

9

10

11

12

13

- WHETHER OR NOT THE OFFICE OF THE SPECIAL PROSECUTOR SHOULD BE HELD ACCOUNTABLE OR SHOULD BE HELD RESPONSIBLE FOR BETRAYAL OF PUBLIC TRUST

14

15

16

- WHETHER OR NOT THE OMBUDSMAN SHOULD BE HELD ACCOUNTABLE FOR NON-FEASANCE

17

18

19

- WHETHER OR NOT THE LAWS THAT HOLD THE OMBUDSMAN AND OFFICE OF THE SPECIAL PROSECUTOR ACCOUNTABLE ARE SUFFICIENT. WHO WILL, "GUARD THE GUARDIANS?"

21

22

23

24 3. THE COMMITTEE'S FINDINGS

25

26

27

28

26 3.1 THE OFFICE OF THE SPECIAL PROSECUTOR BETRAYED PUBLIC TRUST BY 27 ENTERING INTO THE GARCIA PLEA BARGAINING AGREEMENT. THERE WAS 28 BETRAYAL OF PUBLIC TRUST THRU BREACH OF OFFICIAL DUTY.

29



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

9
10 What we have here, as admitted by the prosecutors themselves, is a
11 situation where **Special Prosecutor Wendell E. Barreras-Sulit** and her team
12 of prosecutors composed of **Deputy Special Prosecutor Robert E. Kallos,**
13 **Acting Deputy Special Prosecutor Jesus A. Micael,** **Assistant Special**
14 **Prosecutor II Jose M. Balmeo, Jr.,** and **Assistant Special Prosecutor II**
15 **Joseph F. Capistrano** (hereinafter Sulit, *et al.*) blame the previous officials of
16 the Office of the Ombudsman for the filing of a case which allegedly does not
17 have sufficient evidence to convict.¹¹

18
19 The Ombudsman herself reveals in her testimony on February 3, 2011:

20 MS. GUTIERREZ. Thank you. Thank you, Mr. Chairman.
21

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

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



1 Now, why did we enter into this plea bargaining agreement? You know,
2 with me here are the prosecutors and they told me, "Ma'am, we have a
3 weak evidence." I'm sorry that we have to tell this because whatever happens
4 in the plea bargaining agreement that is now with the Sandiganbayan – well,
5 what we're saying now – (emphasis supplied)¹²
6
7
8

9 This Committee disagrees with this assessment made by Sulit, *et al.*,
10 based on our evaluation of the records provided and our independent evaluation
11 of the submissions made by the resource persons called upon to testify.
12 However, what is most disturbing here is the lack of prosecutorial zeal and the
13 grave inexcusable negligence exhibited by Sulit, *et al.*
14

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

17 When the prosecution entered into the plea bargaining agreement, he was given a
18 room to maneuver for a legally questionable posting of bail for his temporary liberty.
19 Thus, considering the circumstances, the plea bargaining agreement is a
20 result of a reckless, cavalier and unpatriotic discharge of a solemn duty of the
21 prosecutors: to employ the full force of the law in the prosecution of an
22 accused who betrayed the public trust.¹³
23
24

26 There are at least **SIX GROUNDS** why Sulit, *et al.* betrayed public trust:
27

28 **FIRST**, Sulit, *et al.* failed to strengthen the evidence and case built at the
29 time of the filing of the Information for Plunder in 2005. By their own admission,
30 Sulit, *et al.* merely prosecuted the case based on the evidence collected by the
31 team of former Ombudsman Simeon Marcelo and the investigation started by
32 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.

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

4
5 Indeed, while laying blame for the alleged failure of former Ombudsman
6 Marcelo¹⁵ to provide a list of military contractors, prosecutor Balmeo himself,
7 when asked by the Hon. Senator Franklin Drilon, admitted that they (Sulit, *et al.*)
8 did not even seek the help of the Armed Forces of the Philippines (AFP) nor ask
9 for a list of military contractors, which obviously amounts to malfeasance or
10 misfeasance in office. The prosecutorial attitude and negligence thus displayed
11 by Sulit, *et al.* is utterly disappointing, to say the least. They also did not run
12 after the monies amounting to P 128 Million that former Major General Garcia
13 withdrew before a freeze order was issued. This failure was also admitted by the
14 cabal of Sulit, *et al.*¹⁶

15
16 **SECOND**, Sulit, *et al.* failed to abide by the requisites of the Rules of
17 Court with respect to plea bargaining agreements - making the agreement NULL
18 AND VOID.

19

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.



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

3 Section 2, Rule 116 states:

4 **Sec. 2. Plea of guilty to a lesser offense.** – At arraignment, the accused, with
5 the consent of the offended party and prosecutor, may be allowed by the trial
6 court to plead guilty to a lesser offense which is necessarily included in the
7 offense charged. After arraignment but before trial, the accused may still be
8 allowed to plead guilty to said lesser offense after withdrawing his plea of not
9 guilty. No amendment of the complaint or information is necessary.
10

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

14 Ombudsman Gutierrez was quoted as saying:

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

5 Ombudsman Gutierrez said further:

6 **MS. GUTIERREZ:** Mr. Chairman, as I said before, *plea bargaining agreements*
7 were approved by the court without seeking, as I said, the consent of the
8 offended parties. Ang dami po namang naaprubahan, ng korte, na plea
9 bargaining agreements.¹⁸
1

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.

1
2 Ombudsman Gutierrez was referring to Sub-paragraph b, Paragraph 4,
3 Section 11 of the Ombudsman Act of 1997,¹⁹ which merely states that: "The
4 Office of the Special Prosecutor shall, under the supervision and control and
5 upon the authority of the Ombudsman, have the power to enter into plea
6 bargaining agreements." However, this provision does not specifically give the
7 Office of the Ombudsman the power to enter into plea bargaining agreements
8 without the consent of the offended party.

9
10 Paragraph 2, Section 18 of the same law provides, in turn, that: "The
11 rules of procedure (promulgated by the Office of the Ombudsman) shall include
12 a provision whereby the Rules of Court are made supplementary."

13
14 Administrative Order No. 7, which provides the Rules of Procedure of the
15 Office of the Ombudsman pursuant to RA 6770, does not contain any provision
16 which specifically vests the Office of the Ombudsman with the authority to enter
17 into plea bargaining agreements without the consent of the offended party. In
18 accordance with the rules of statutory construction, in the absence of specific
19 rules, the general rules will prevail, in this case, the Rules of Court, which
20 expressly stipulates that the consent of the offended party and the prosecutor
21 are needed for the accused to plead guilty to a lesser offense.

22

¹⁹ Republic Act 6770

A handwritten signature in black ink, appearing to be the initials 'JG' or similar, written in a cursive style.

1 **Daan vs. Sandiganbayan**²⁰ reiterated the basic requirements of a plea

2 bargaining agreement:

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

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

11
12
13 **MS. GUTIERREZ:** Mr. Chairman, as I said before, plea bargaining agreements
14 were approved by the court without seeking, as I said, the consent of the
15 offended parties. Ang dami po naming naaprubahan, ng korte, na plea
16 bargaining agreements.²¹ (emphasis supplied)

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

24

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.



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

4
5 All things considered, the Office of the Solicitor General (OSG) is right
6 when it filed an **Urgent Motion for Leave to Intervene** with the
7 Sandiganbayan. The Supreme Court in **Gonzales vs. Chavez**²² held that:

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

16
17 The Supreme Court also ruled that the Solicitor General "is sought to be
18 compelled to appear before the different courts to ensure that the case of the
19 Republic of the Philippines against those who illegally amassed wealth at the
20 expense the people maybe (sic) made to account for their misdeeds and return
21 said wealth."²³

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

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

²³ Id.



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

3 The **Omnibus Motion-in-Intervention**²⁴ of the Office of the Solicitor

4 General states:

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

9
10 At the end of the day, the plea bargaining agreement entered into
11 between the Office of the Ombudsman and the camp of Maj. Gen. Carlos F.
12 Garcia is null and void in the absence of the element of **consent of the**
13 **offended party**. Consequently, all the actions undertaken by the Office of the
14 Special Prosecutor and Garcia *et al.* that follow as a result of the defective plea
15 bargaining agreement are also defective and of no legal effect. This is akin to
16 the Doctrine of the “Fruit of the Poisonous Tree,” which states in Article III,
17 Section 3 of the 1987 Philippine Constitution: “The privacy of communication and
18 correspondence shall be inviolable except upon lawful order of the court or when
19 public safety or order requires otherwise, as prescribed by law. Any evidence
20 obtained in violation of this or the preceding section shall be inadmissible for any
21 purpose in any proceeding.” This Constitutional doctrine pertains to evidence
22 obtained illegally. The doctrine essentially states that if the source of the
23 evidence is ‘tainted,’ (tree) then anything gained from it is also tainted (fruits),
24 and thereby inadmissible in evidence. Hence, with respect to Garcia’s Plea
25 Bargaining Agreement, since the agreement is null and void, the grant of bail
26 and everything else that follows are null and void as well.

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



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

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

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

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

23
24 As to Sulit *et al.*'s assertion that the Charlie "Atong" Ang plea bargain
25 substantiates or upholds the Garcia plea bargain, it must be emphasized that
26 contrary to the claims of Sulit, *et al.*, the Charlie "Atong" Ang plea bargain is not
27 comparable; nor can it be cited as basis to justify the Garcia Plea Bargaining
28 Agreement. There is no dispute that the offended party, the Republic of the
29 Philippines, whether through the AFP, the Office of the Solicitor General, or the
30 Department of Justice (DOJ) representing the Executive Department, was ever
31 consulted. It must be noted that, contrary to the claim of Ombudsman

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



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

3
4 No less than Dean Marvic Leonen of the UP College of Law agrees with
5 the Committee's position that the Plea Bargaining Agreement lacks the consent
6 of the offended party. In his letter to the Committee, he asserts:

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

15
16
17
18 Under DOJ Department Circular No. 55 (December 11, 1990) issued by
19 then Secretary (now Senator) Franklin Drilon, a Plea Bargaining Agreement
20 where the offense charged is punishable by at least *prision mayor* (or at least six
21 years and one day imprisonment) must bear the approval of the Chief State
22 Prosecutor. The "Atong" Ang Plea Bargaining Agreement complies with this rule.
23 Thus, it may be said the President of the Republic, through his *alter ego* the DOJ
24 Secretary (delegating the authority to the Chief State Prosecutor under
25 Department Circular No. 55) was actually involved and consented thereto. The
26 "Atong" Ang Plea Bargaining Agreement was approved by Ombudsman
27 Gutierrez. She also previously served as DOJ Acting Secretary. Surely, she must
28 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.



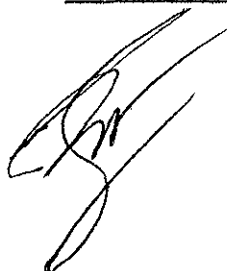
1 Finally, the Department of Justice itself when asked about their opinion on
2 the status of the Garcia Plea Bargaining Agreement, the Department of Justice
3 Secretary herself, Leila De Lima, gave their opinion similar to the Committee's
4 views:

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

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

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

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



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

5
6 So those are the guideposts and given all the circumstances already
7 articulated in the Senate hearing and in the House of Representatives,
8 those guideposts were blatantly violated.

9
10 Now, how can it redound to the benefit of the public? How can it serve as
11 a deterrent? We're talking here about plunder, a very high crime. Now,
12 it's an occasion for us to really send the signal that graft and corruption or
13 crime for that matter does not pay.

14
15 Now I also expressed the view, Your Honors, before the House
16 Committee that effectively when a plea bargaining agreement is trapped
17 between the prosecution and the accused during the presentation of
18 evidence already or worse after the presentation of the prosecution
19 evidence, it is effectively demurrer to evidence in reverse. Because
20 demurrer to evidence can be resorted to actually after the
21 completion of the presentation of the prosecution evidence if an
22 accused truly believes that the evidence is weak or the evidence is
23 insufficient. And here, we cannot understand and it has not been
24 adequately explained by anyone from the Office of the Ombudsman.
25 How come the evidence which was supposed to be strong when the
26 information was filed and in the course of during the bail application
27 hearings, suddenly became weak when they presented the Motion
28 for Approval of the Plea Bargaining Agreement. And they even
29 submitted the Joint Motion for Approval of the Plea Bargaining
30 Agreement; and then three days later, they opposed the Motion for
31 Reconsideration of the Sandiganbayan's denial of bail application.
32 Precisely, the bail application was denied because evidence of guilt
33 was strong. So what triggered that? Why did it become suddenly weak,
34 the evidence? So there are other circumstances, Your Honors, but the
35 totality of it all really says, really shows that something really was very
36 irregular in the whole thing.²⁸ (emphasis supplied)

37
38
39
40
41
42 **THIRD**, Sulit, *et al.* effectively counter, ignore, disregard and even
43 abandon the favorable rulings made by the Sandiganbayan in its previous rulings
44 in relation to the Garcia Plunder and Anti-Money Laundering cases.

45 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.



1 **A. THE ALLEGED DEFICIENCY OF THE INFORMATION**

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

4
5 Regardless of Sulit's allegations, the Information for Plunder against
6 Garcia is on its face sufficient in form and in substance. An Information requires
7 only a recital of the ultimate facts constituting the elements of the offense
8 charged. It need not discuss or mention evidentiary matters. "***A statement of
9 the ultimate facts in the information is required only with respect to
10 the elements of the offense being charged.***"³⁰

11
12 Section 6, Rule 110 of the Rules of Court simply provides:

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

18
19 When an offense is committed by more than one person, all of them shall be included in
20 the complaint or information.

21
22 The elements of Plunder are:

- 23 1. That the offender is a public officer who acts by himself or in connivance with members
24 of his family, relatives by affinity or consanguinity, business associates, subordinates or
25 other persons;
- 26 2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or
27 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.

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

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

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

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

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



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

7
8 ***B. ABSENCE OF COUNSEL IN THE STATEMENTS OF CLARITA GARCIA***

9
10 The declarations of Clarita are admissible in evidence despite the alleged
11 absence of counsel.³³ The right to counsel does not apply since at the time
12 Clarita executed her statements, she was not under any investigation. In fact,
13 she was not the one caught illegally transporting US\$100,000.00 into the United
14 States – but her children. It was thus a voluntary statement made in an effort to
15 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 inumbistigahan 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.

TSN: MPMendoza V-1 January 27, 2010 10:06 a.m. p2.



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

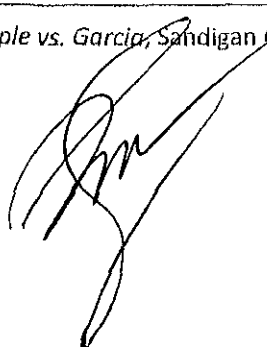
4 While this Sworn Statement is sought to be assailed as having been executed without the
5 assistance of counsel or without Clarita Garcia being allegedly informed of her
6 constitutional right to remain silent, what **deserves compelling consideration is the fact**
7 **that she was neither an accused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

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

23
24 Consequently, no constitutional right is deemed to have been violated in the
25 execution of that Sworn Statement and in fine, the admissions therein of how
26 money or funds came into the hands of the accused provide substantial evidence
27 that can reasonably thwart the petition for bail.³⁴ (emphasis supplied)

28
29 It is, thus, a source of wonder why the prosecutors would ignore and disregard a
30 favorable ruling of the Sandiganbayan on this issue and raise a defense that should
31 have been raised by the accused.
32
33
34
35
36

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



1 **C. SPOUSAL DISQUALIFICATION AND MARITAL PRIVILEGE**

2
3 The rule on spousal disqualification does not apply. Section 22, Rule 130
4 of the Rules of Court provides:

5
6 *Sec. 22. Disqualification by reason of marriage.* — During their marriage, neither the
7 husband nor the wife may testify for or against the other without the consent of the
8 affected spouse, except in a civil case by one against the other, or in a criminal case for a
9 crime committed by one against the other or the latter's direct descendants or ascendants.
10 (emphasis supplied)

11
12
13 Section 22, Rule 130 of the Rules of Court proscribes merely the use of
14 **testimonial evidence** coming from one spouse against the other. In the
15 instant case, the prosecution did not present the testimony of Clarita during the
16 trial. What it did was to present her prior sworn declaration and handwritten
17 statement admitting the receipt of bribes in numerous occasions.

18
19 Similarly, the rule on spousal privilege does not apply. Section 24, Rule
20 130 of the Rules of Court provides:

21
22 *Sec. 24. Disqualification by reason of privileged communication.* — The following
23 persons cannot testify as to matters learned in confidence in the following cases:

24
25 (a) The husband or the wife, during or after the marriage, cannot be examined without the
26 consent of the other as to any communication received in confidence by one from the
27 other during the marriage except in a civil case by one against the other, or in a criminal
28 case for a crime committed by one against the other or the latter's direct descendants or
29 ascendants; (emphasis supplied)

30
31
32


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

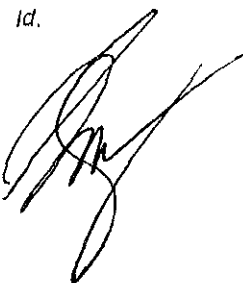
6
7 Again, it is important to note that this issue has been raised and settled by
8 the Sandiganbayan in its Resolution dated January 7, 2010 denying Garcia's bid
9 for bail:

10 This handwritten statement freely given by Clarita Garcia to Agent Van Dyke is accorded
11 weight as proof of the sources of their money, and the Court debunks the argument
12 that they are inadmissible in evidence for allegedly constituting privileged marital
13 communication. It must be greatly emphasized that for the spousal privilege rule to
14 apply, the statement must relate to a proposed testimony in court by one spouse
15 against the other. Of foremost consideration herein is the fact that when Clarita
16 Garcia executed the handwritten admissions, her husband was not yet an accused
17 in any court of law. Her act was only a conscious attempt to help her husband
18 explain the sources of their money, as the latter himself wrote a letter dated January
19 12, 2000 (*Exhibit 'QQQQ'*) to the Fines and Penalties Forfeiture Office explaining the source
20 of the money and the purpose for which it was brought to the USA. Furthermore, the
21 revelations made by Clarita Garcia in her statements were not communications
22 divulged to her by her husband, Major General Carlos F. Garcia, but were mere
23 narrations made by her from her own personal knowledge and her perceptions
24 about her husband's work and the sources of their income.³⁵ (emphasis supplied)

25
26 It is, thus, again a source of wonder why the prosecutors would ignore and
27 disregard this favorable ruling of the Sandiganbayan, to the prejudice of the
28 prosecution.

29
30 **FOURTH**, Sulit *et al* has shown inconsistent positions in their manner of
31 prosecuting the case. On March 19, 2010, three days after the Office of the State
32 Prosecutor submitted to the Sandiganbayan their Joint Motion for the Approval of

³⁵ *Id.*



1 Garcia's Plea Bargaining Agreement on March 16, 2010, the same prosecutors filed an
2 Opposition to Garcia's Motion for Reconsideration for the denial of the latter's Petition
3 for Bail which was issued on January 7, 2010.
4

5 In sum, Sulit et al wavered between finding that the evidence is strong and the
6 evidence is weak. By approving Garcia's plea bargaining agreement, Sulit et al deemed
7 the evidence weak. But by subsequently opposing Garcia's petition for bail, Sulit et al
8 deemed the evidence strong. This vacillation brings to light the ineptitude of the Office
9 of the Special Prosecutor. A less charitable observer might say that they had
10 deliberately lost the case.
11

12 Sulit *et al* argue that they entered into the plea bargaining agreement because
13 the evidence for plunder is weak. However, when Garcia filed a Motion for
14 Reconsideration for the denial of the latter's Petition for Bail which was issued on
15 January 7, 2010, the same prosecutors opposed it. By opposing the motion, they
16 believe that the evidence of guilt is strong. So, what is it? Is the evidence strong or is
17 it weak?
18

19 *Bakit pabago-bago ang isip nina Sulit? Ang kawalan ng consistency nina Sulit ay*
20 *nagpapahiwatig ng kawalan ng integridad ng Office of the State Prosecutor.*
21

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



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

3
4 Moreover, what kind of prosecutor would see a plea bargaining agreement as a
5 win-win solution on the one hand then would claim that she is really protecting the
6 interest of the State on the other? Only Special Prosecutor Wendell Barreras-Sulit who
7 appears to be lawyering for the accused sees it that way. In fact, the Transcripts reveal
8 that she is defending a Plea Bargaining Agreement that she may not even be well
9 versed.

10
11 Her answers to the queries of Senator Drilon reveal:

12 **SEN. DRILON.** Why was there no restitution?

13
14 **MS. BARRERAS-SULIT.** Your Honors, at the time the information was filed,
15 those amounts were already withdrawn. And even in the preliminary investigation
16 and even in the fact-finding investigation, the team of then Ombudsman Marcelo
17 never established a paper trail as to where those money went. So –

18
19 **SEN. DRILON.** But were they in fact withdrawn?

20
21 **MS. BARRERAS-SULIT.** They were in fact, withdrawn, Your Honors.

22
23 **SEN. DRILON.** So in other words, if you admit that it was in fact withdrawn, there
24 was that amount floating somewhere.

25
26 **MS. BARRERAS-SULIT.** Floating somewhere, Your Honor.

27
28 **SEN. DRILON.** So why was it not included as part of the restitution?

29
30 **MS. BARRERAS-SULIT.** Your Honors, we may not have included it in the plea
31 bargaining agreement but there is still a chance to get them back in the forfeiture
32 cases filed in the Fourth Division of the Sandiganbayan.

33
34 **SEN. DRILON.** Wasn't it the best way to recover this, that you made it part of
35 the plea bargain, that, that 50 million be restituted?

36
37 **MS. BARRERAS-SULIT.** Your Honor, in the plea bargaining, it is bargaining –
38 win-win solution, you give, your get –

39
40 **SEN. DRILON.** My dear, you know this is not a collective bargaining
41 agreement.
42



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

2
3 SEN. DRILON. It is a question of public interest, public funds are involved. It
4 is not a win-win solution.

5
6 MS. BARRERAS-SULIT. Your Honors –

7
8 SEN. DRILON. Come on, is that your attitude as a Prosecutor?

9
10 MS. BARRERAS-SULIT. No, Your Honors. Of course not, that is not our
11 attitude.

12
13 SEN. DRILON. This is not a collective bargaining agreement...

14
15 MS. BARRERAS-SULIT. It is not, Your Honor.

16
17 SEN. DRILON....as held by the Supreme Court. In this case, this is not a matter
18 of bargaining.

19
20 MS. BARRERAS-SULIT. We really wanted to protect the interest of the state,
21 Your Honor.

22
23 SEN. DRILON. So what do you mean win-win situation? You mean, Garcia
24 will win?

25
26 MS. BARRERAS-SULIT. No, Your Honors. Perhaps we even won if we get the
27 conviction in two criminal cases and with the attendant – this perpetual
28 disqualification to hold public office so he will have a criminal record and he will
29 have to return all the properties that the prosecution has...

30
31 SEN. DRILON. So why did you not insist?

32
33 MS. BARRERAS-SULIT.... proven in court, Your Honor.

34
35 SEN. DRILON. Why did you not insist on the restitution of this 50 million which you
36 knew was withdrawn?

37
38 MS. BARRERAS-SULIT. Perhaps, Your Honor, on the stage of the plea
39 baragaining, you can get the answers from the prosecutors here who first handled
40 or handled the –

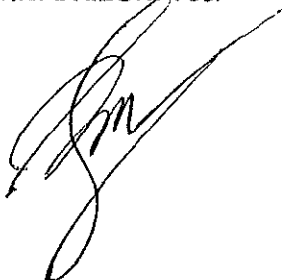
41
42 SEN. DRILON. Why, did you not sign the plea bargaining agreement?

43
44 MS. BARRERAS-SULIT. I signed, Your Honors, but the, when we discussed –

45
46 SEN. DRILON. Are you not head of the team?

47
48 MS. BARRERAS-SULIT. I'm part of the team. I do not renege to that. But the,
49 there must be other reason why we cannot get back that money anymore from
50 General Garcia. So, what we've tried to get what we wanted to get are all the
51 properties and all the monies, the bank accounts that we have proven in court and
52 which we have documented and...

53
54 SEN. DRILON. Yes.



1
2 MS. BARRERAS-SULIT...testified (sic) upon by the witnesses of the
3 prosecution.
4

5 SEN. DRILON. But Madam Prosecutor, you knew that 50 million was floating
6 around somewhere. You could have insisted in the public interest that the 50
7 million should have been restituted, and that Mr. Garcia find ways and means of
8 restituting that. But anyway, that's on the record...³⁶
9

10 **FIFTH**, the Plea Bargaining Agreement also amounts to a violation of Anti-Graft
11 and Corrupt Practices Act (RA 3019) – Sections 3(e) and (g):
12

13 (e) Causing any undue injury to any party, including the Government, or giving any private
14 party any unwarranted benefits, advantage or preference in the discharge of his official
15 administrative or judicial functions through manifest partiality, evident bad faith or gross
16 inexcusable negligence. This provision shall apply to officers and employees of offices or
17 government corporations charged with the grant of licenses or permits or other concessions.
18

18 XXX

19 (g) Entering, on behalf of the Government, into any contract or transaction manifestly and
20 grossly disadvantageous to the same, whether or not the public officer profited or will profit
21 thereby. (emphasis supplied)
22

23 During the first hearing, Senator Drilon himself confronted Special Prosecutor
24 Sulit why they did not include in the restitution the millions of pesos that were earlier
25 withdrawn by Garcia before his accounts were frozen by the Anti-Money Laundering
26 Council (AMLC) - since the Plea Bargaining Agreement was the best time to have full
27 restitution.³⁷ In fact, in the Plea Bargaining Agreement of the Office of the Ombudsman
28 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.



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

4
5 The forfeiture of Garcia's ill-gotten wealth that should have been a sure thing
6 became a mere possibility. It is the duty of the Office of the Ombudsman, specifically,
7 the Office of the Special Prosecutor, to make sure that the restitution to the state, the
8 ultimate offended party, is certain.

9
0 By saying what Special Prosecutor Sulit said, it just meant that she did not put
1 the best interest of the Republic in mind when they entered into the Plea Bargaining
2 Agreement. Any prudent prosecutor would ask for complete restitution and not leave
3 the recovery of ill-gotten wealth to chance in another proceeding. In a Plea Bargaining,
4 the State is negotiating from a position of strength. Clearly, here, Special Prosecutor
5 Sulit did not use that position of strength; instead, she sold the case to the defendant,
6 Garcia.

7
8 What kind of prosecutor would allow the Republic to go through a tedious and
9 uncertain forfeiture litigation when in truth and in fact the restitution could have been
0 included in the Plea Bargaining Agreement? To the Committee's mind, such actions can
1 only be motivated by either of these two possibilities: First possibility, the prosecutor is
2 utterly ignorant and negligent; second, the prosecutor has been co-opted or corrupted
3 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.



1 During the second hearing, the Anti-Money Laundering Council confirmed that in
2 2004, there were at least 124 bank accounts spread in about 10 financial institutions in
3 the name of General Garcia and members of his family. Thus, the amount of monies of
4 Garcia in 2004 was approximately Php77,161,979.29 in pesos, and the dollar accounts
5 amounts to approximately US\$1,702,477.07. The total of which is approximately
6 Php173 Million using the Php56.3 to a dollar conversion rate.⁴⁰

7

8 AMLC reveals that the bulk of the Garcia accounts were withdrawn by former
9 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

11

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

14

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

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

21
22 **MS. GUTIERREZ.** Mr. Chairman, may I ask Attorney – Prosecutor Balmeo to
23 respond to that.

24

25 **SEN. DRILON.** Yes.

26

⁴⁰ TSN: Caturla XI-1 February 3, 2001 11:19 a.m. 2.

⁴¹ Id at pp. 2-3.



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

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

5
6 We tried to ask accused on the whereabouts of this 128 that was already
7 withdrawn, Your Honors, but we did not get any response.

8
9 SEN. DRILON. Okay.

10
11 Okay. You asked them, you did not get any response. Did you ask him to
12 restitute this amount?

13
14 MR. BALMEO. Yes, Your Honor.

15
16 SEN. DRILON. And?

17
18 MR. BALMEO. In fact – and that was, in fact, the very first condition that
19 we asked him before we agreed to any plea bargaining agreement.

20
21 SEN. DRILON. And the condition was not complied with.

22
23 MR. BALMEO. Yes, your Honor.

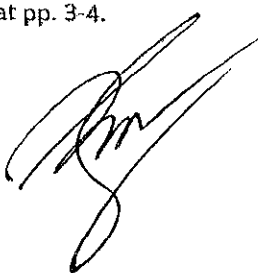
24
25 SEN. DRILON. And notwithstanding the fact that the condition was not
26 complied with, you proceeded to enter into the plea bargaining.

27
28 MR. BALMEO. Yes, Your Honor.⁴²(emphasis supplied)

29
30
31
32
33 Thus, it is crystal clear by the responses of Mr. Balmeo himself that in spite of
34 the fact that the condition of restitution of the Php128 Million was not complied with by
35 Garcia, they still proceeded with the Plea Bargaining Agreement. This is not only an act
36 of imprudence; this is clearly an act of prosecutorial treason. Undoubtedly, they have
37 betrayed public trust:

38
39 Moreover, it is appalling to see the apparent over-valuation of the properties of
40 Garcia. The dollar exchange rate used was very high: US \$1 = Php 56.41 while the

⁴² Id at pp. 3-4.



1 peso-dollar exchange rate on February 25, 2010 was only US \$1 = Php 46.153.⁴³
2 Clearly, in this case, the Republic was cheated by millions of pesos and this cheating
3 was perpetuated by its own State agents.
4

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

11
12 The admissions of the prosecutors before the Senate prove this point:

13 **THE SENATE PRESIDENT.** So it will become a judgment of the Sandigan but
14 what puzzles me is, why is there a need for the Sandigan to approve the plea
15 bargaining agreement if this accused has already been-has already pleaded
16 guilty? Did he plead guilty already?
17

18 **MS. BARRERAS-SULIT.** I think so, Your Honor.
19

20 **THE SENATE PRESIDENT.** Ha?
21

22 **MS. BARRERAS-SULIT.** He pleaded guilty to a lesser offense.
23

24 **THE SENATE PRESIDENT.** And what is the utility of the approval of the
25 Sandigan if he pleaded guilty already? Suppose the Sandigan will say, we do
26 not approve the plea bargain agreement, what happened to the plea of guilt?
27

28 **MS. BARRERAS-SULIT.** I don't know your, Your Honor, but I think the approval
29
30

31 **THE SENATE PRESIDENT.** You do not know. What happened to the plea of
32 guilt? Can you erase the plea of guilt from the record? Can the court change the
33 plea of an accused? If I say guilty, can he make it guilty? If I say guilty, can the
34 court make it not guilty?
35

36 **MS. BARRERAS-SULIT.** I don't think so, Your Honor.
37

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



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

5
6 MS. BARRERAS-SULIT. You Honor, that..

7
8 THE SENATE PRESIDENT. Answer.

9
10 SENATOR DRILON. Can you answer that? That's a very critical question.

11
12 MS. BARRERAS-SULIT. It will be appropriate if we call on the prosecutor
13 who was there during the hearing of the plea bargaining.

14
15 THE CHAIRMAN (SEN. GUINGONA). Yes, please. Is he here?

16
17 MS. BARRERAS-SULIT. He is here, Your Honor.

18
19 THE CHAIRMAN (SEN. GUINGONA). Okay. Please identify.

20
21 MS. BARRERAS-SULIT. He is Prosecutor Jose Balmeo, Jr.

22 XXX

23
24 MR. BALMEO. If your Honor please, one of the conditions of the plea bargain
25 agreement was that we are asking or requiring the accused to plea to the—to
26 offenses, Your Honor.

27
28 THE SENATE PRESIDENT. My question is, why did you not object to the
29 effort of the accused to make a plea prior to the approval of the plea
30 bargain agreement knowing that once a plea is made, jeopardy could set
31 in?

32
33 MR. BALMEO. Mr. Chair, Your Honors, it was the discretion of the court to
34 require the accused to –

35
36 THE SENATE PRESIDENT. It is the discretion of the court to allow or not
37 allow a plea but it is the duty of the prosecution to object if indeed you are
38 protecting the interest of the state.

39
40 MR. BALMEO. If Your Honors please, at that time, Your Honors, we felt that his
41 entering to a plea would be part of the conditions that we are imposing, Your
42 Honors.

43
44 THE SENATE PRESIDENT. Yeah, but – No, no, no, wait a minute. Did you not
45 know that there was an approving portion of the plea bargain? Why did you go
46 through the process of getting the approval of the court for that plea bargain if
47 you are going to allow the accused to plead guilty for the lower crime pursuant to
48 the plea bargain knowing that if he pleaded guilty, that's it. Why did you not think
49 of it? You cannot reverse it, even if the court will disapprove your plea bargain.
50 Why did you not think of it?

51
52 MR. BALMEO. Mr. Chair, Your Honors, other conditions – other than this plea,
53 Your Honor, would be the transfer of the properties to the government which we
54 have already complied, Your Honors.

55
56 THE SENATE PRESIDENT. He has already pleaded guilty, meaning that he
57 agreed that the property will be given – covered by the agreement.

58
59 MR. BALMEO. Yes, Your Honors.



1 THE SENATE PRESIDENT. Hindi ba?

2
3 SENATOR DRILON. Answer the question, why did you not object?

4
5 MR. BALMEO. It was our view, Your Honors please, that this entering to
6 plea would be part of the conditions that we imposed on him, Your Honor.

7
8 THE SENATE PRESIDENT. Yes, but there is an aspect of this that was the
9 product of your gross negligence, and that is, that you allowed him to
10 plead guilty so that he cannot be charged anymore for the higher offense
11 because you know that double jeopardy would set in.

12
13 SENATOR DRILON. Tama nga.

14
15 MR. BALMEO. We have no intention on that, Your Honors please. We would
16 like to manifest that.

17
18 THE SENATE PRESIDENT. Then, I would tell you that you have been
19 grossly negligent if you did not understand the implication of what you
20 were doing.

21
22 MR. BALMEO. We submit your Honor.⁴⁴ (emphasis supplied)

23
24
25 Thus, based on the answers of Sulit, *et. al.*, Senator Drilon even suggested that
26 an administrative case be filed against the prosecutors.

27 The transcripts reveal:

28
29 SENATOR DRILON. Mr. Chairman, you know, when they're given the questions
30 of our Senate President, don't you think it's about time that you have an
31 administrative case against these prosecutors for having been grossly
32 negligent in allowing this to happen? Senator Enrile said these
33 prosecutors are grossly negligent. And under the law, that's a ground for
34 disciplinary action. Are you going to take some action on this?

35
36 MS. BARRERAS-SULIT. Your Honor, it's very hard to answer that. They are
37 part of the team. But, of course, Your Honors, if there will be grounds, then we
38 will consider it, taking it from the Senate President.

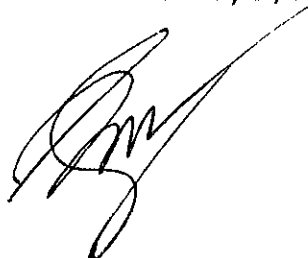
39
40 SENATOR DRILON. Haven't you heard the Senate President?... The Senate
41 President provided you with the grounds for some administrative case against
42 the prosecutors.

43
44 MS. BARRERAS-SULIT. Your Honors, we will deliberate on that. There will be
45 -- can we get a formal --

46
47 SENATOR DRILON. Of course, you can't investigate - you cannot
48 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.



1 **3.2 THE OMBUDSMAN IS GUILTY OF NON-FEASANCE FOR LACKING**
2 **PROSECUTORIAL ZEAL IN HANDLING GRAFT AND CORRUPTION**
3 **CASES**
4

5 The lexical definition of nonfeasance is the intentional failure to perform a required
6 *duty or obligation.*⁴⁶
7

8 Ombudsman Merceditas Gutierrez clearly lacks prosecutorial zeal in running the Anti-
9 Graft body of the country.
10

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

14 **MS. GUTIERREZ.** We believe that we are able to resolve. We receive 10,000 cases
15 a year, Mr. Chairman. I think plea bargain agreements somehow help in resolving
16 fast some of the cases pending before us.⁴⁸
17

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

22 **MS. GUTIERREZ.** Unang-una po nasabi dito ngayon, ang panintulot ng offended party
23 dito sa plea bargain agreement. Mula pa po noong time ni Ombudsman Desierto
24 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: SgIrobles 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: SgIrobles VII-1 February 3, 2011 10:39 a.m. p. 5.



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

3
4 Pangalawa po, noon pong panahon na nandiyan pa po sa aming opisina si former Special
5 Prosecutor Dennis Villa-Ignacio, inirekomenda po niya sa akin ang plea bargaining
6 agreement na aming i-e-enter with Mr. Atong Ang tungkol doon sa kasong plunder-doon
7 sa plunder case tungkol po doon sa kaso ni former President Estrada. (emphasis
8 supplied)⁴⁹

9
10
11 Her above-mentioned assertions have been rebutted by former Special
12 Prosecutor Dennis Villa-Ignacio:

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

14
15 I will be very direct and brief about these issues now. First, there is a statement coming
16 from the good Ombudsman that, napakarami na naming na-aprubahang plea bargaining
17 agreement so what is so special about the plea bargaining agreement involving General
18 Garcia?

19
20 Frist, I cannot recall Ombudsman Marcelo entering into a plea bargaining
21 agreement while he was still the incumbent Ombudsman. And on my part, I could
22 only recall one instance na nag-agree kami sa plea bargaining agreement and this
23 is with respect to Mr. Atong Ang. And that plea bargaining agreement has already
24 been ruled by the Supreme Court to be one and accord with the Rules of Court and
25 in adherence to the jurisprudence on the matter.

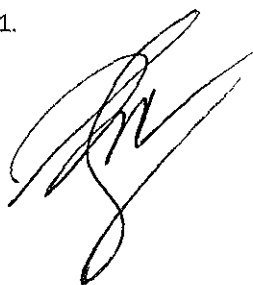
26
27 In fact, if I may be allowed, the court said, "The agreement provided" – referring to the
28 plea bargaining agreement entered into between the Ombudsman and Mr. Atong Ang –
29 "The agreement provided that the accused undertakes to assist in the prosecution
30 of the case and promises to return the amount of P25 million." Doon po, meron
31 undertaking yung involved doon sa plea bargaining agreement na tulungan ang
32 gobyerno, and state in the prosecution of the plunder case. Dito ho sa plea
33 bargaining entered into by Ombudsman Gutierrez, ibang klase ho. Idi-dismiss lahat ang
34 kaso ng plunder even as against those that did not participate at all in the plea bargaining
35 agreement negotiation. I'm referring to the kids and the wife of General Garcia.
36 Nabinipisyuhan din ho doon.

37
38 And in the case of Mr. Atong Ang, there was a full restitution of the amount that the
39 prosecution has identified na kinuha niya.⁵⁰(emphasis supplied)

40
41 She has clearly conveniently resorted to blaming the team of the former
42 Ombudsman for failing to gather all the evidence they need in the prosecution of the
43 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.



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

4 SEN. A. CAYETANO. Yes, before my follow-up question on that, ma'am, can I ask
5 the question that Senator Arroyo asked on the floor. So what was the policy or what was
6 the guiding vision of the prosecutors? Was it to put someone behind bars or was it to
7 recover the money?
8

9 MS. SULIT. I think, we weighed both, Your Honor. This is it. We have to assess and
10 reassess our evidence as we go along the prosecution of the case.
11

12 SEN. A. CAYETANO. Is it correct to say that you continue to believe that if there's
13 no plea bargaining agreement you wouldn't have gotten a conviction for plunder?
14

15 MS. SULIT. We believe and we stick to that, Your Honor.
16

17 SEN. A. CAYETANO. Okay. So let me go to my follow-up question. You were talking
18 about recovery of money, wala na yung paper trail pagkatapos makuha yung pera.
19

20 MS. SULIT. Opo.
21

22 SEN. A. CAYETANO. Okay. But the fact na nandun yung pera sa loob before i-
23 withdraw, mayroon kayong paper trail?
24

25 MS. SULIT. Mayroon po sana. Pwede naming kunin.
26

27 SEN. A. CAYETANO. And hindi po ba, the mere fact that he had an official position, that
28 his wife had this testimony na binibigyan sila and everything, and in the bank accounts
29 you have more than 50 million, and it was several transactions, wouldn't that all constitute
30 the elements of plunder? And wouldn't that all when you take a look at it, wouldn't you
31 believe that there would be a good chance of conviction for plunder?
32

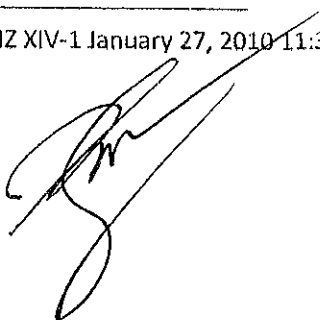
33 MS. SULIT. Your Honor, ang plunder po, what we have proven in court so far as yung
34 mga dokumento naming naipakita can only prove possession and acquisition of those
35 properties. Kasi ang plunder we have to prove yung manner ng pagkamkam o
36 pandarambong dun sa mga pera na iyon. And what do we need? We have – we are tied
37 by the allegation in the information na ito kinamkam nya sa pamamagitan ng kickback,
38 komisyon, regalo – ano pa ba yun? – shopping money, gratitude money na binigay ng
39 mga contractors and suppliers. So what do we need to present in court para
40 mapatunayan ito? Suppliers and contractors and also we have to point out the specific
41 AFP transactions na nagyari kung saan nagkaroon ng pagkakataon si General Garcia na
42 ginamit ang posisyon niya para mangamkam ng pera na iyon.
43

44 SEN. A. CAYETANO. Okay. So two questions:
45

46 MS. SULIT. Yes, Your Honor.
47

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

⁵¹ TSN: CFDRIZ XIV-1 January 27, 2010 11:36 a.m. pp. 4-8; BRHGonzales I-2 January 27, 2011 11:46 A.M., p. 1.



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

3
4 MS. SULIT. Your Honor, pwede bang sumagot yung aling prosecutor?

5
6 SEN. A. CAYETANO. Yes, please.

7
8 MS. SULIT. At yung katotohanan lang po.

9
10 MR. BALMEO. Good morning, Your Honors.

11
12 At the time we took over, it was – investigation was already final. It was already on
13 trial, Your Honors. Sir, we don't have to – we didn't have time to ask the AFP
14 because that was not part of the investigation anymore, Your Honors.

15
16 SEN. A. CAYETANO. Sir, even if it was already on trial, the charge sheet only
17 contains the ultimate facts, right?

18
19 MR. BALMEO. Yes, Your Honor.

20
21 SEN. A. CAYETANO. So you could have still continued to talk to your client, to the AFP
22 and continued to get the evidence, isn't that true?

23
24 MR. BALMEO. Yes, Your Honor. But for one, Your Honor, there was no list of suppliers that
25 was provided.

26
27 SEN. A. CAYETANO. Yes, that's why my question is, did you ask the AFP for a list
28 of suppliers?

29
30 MR. BALMEO. No, Your Honor.

31
32 SEN. A. CAYETANO. Okay. So – the other thing, Your Honor, is that, ma'am, going back
33 to your question. You said, this is what you have to prove: a, b, c, d. And I agree with
34 you, unless you have an admission. But you do have an admission from the wife?

35
36 MS. SULIT. Yes, Your Honor. But that admission, first of all, it was not with the
37 assistance of a counsel. If you can go by the documents that you have now, it is only
38 entitled Sworn Statement, Your Honor, but I doubt if there is – it was subscribed and
39 sworn to before a lawyer and that admission, Your Honors, I believe can – we can only
40 prove the existence of that letter. As a matter of fact, we have presented the ICE agent
41 from the US, from the United States... who testified in court that, that was given to him.
42 So what have we proven? The existence of the letter. But as to the truth of the contents
43 of that letter, we need more evidence, we need more witnesses to prove the contents of
44 the letter.

45
46 SEN. A. CAYETANO. Ma'am, one question and I'll ask that Ombudsman Marcelo be
47 recognized. How about the wife of General Garcia, was she asked to testify or did you
48 interview her?

49
50 MS. SULIT. Your Honor, I want to put it on record that they were – the wife, Mrs. Clarita
51 Garcia, and the children were never put under the jurisdiction of the Honorable Court
52 because the summons served to them were – that was a wrong summons.

53
54 SEN. A. CAYETANO. Yes, as an accused...

55
56 MS. BARRERAS-SULIT. We could not, Your Honor, be a subject of an extradition
57 petition filed by the Honorable Ombudsman Gutierrez. We were not.

58
59 SEN. A. CAYETANO. Yes. Ma'am the reason I questioned that is because as a lawyer,
60 and if that's your legal opinion, I will respect that.



1 MS. BARRERAS-SULIT. Yes, Your Honor.

2
3 SEN. A. CAYETANO. But usually, the prosecutors take the aggressive side.
4 Usually, the prosecutors are the ones who say that you do not need a lawyer
5 because that was not a custodial investigation, she was not a suspect at that point
6 in time...⁵²
7
8
9

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

16
17
18 The Office of the Special Prosecutor is directly under the Ombudsman's control and
19 supervision. She allowed her prosecutors to enter into a Plea Bargaining Agreement
20 that is manifestly disadvantageous to the Republic while they did not exhaust all the
21 pieces of evidence available to Special Prosecutor Atty. Wendell E. Barreras-Sulit,
22 Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special Prosecutor Jesus A.
23 Micael, Assistant Special Prosecutor Atty. Jose Balmeo Jr., and Assistant Special
24 Prosecutor Atty. Joseph Capistrano.

25
26 They did not give much value to the testimony of the COA Auditor Heidi Mendoza;⁵³
27 they did not even seek the assistance of the AFP which clearly has most of the
28 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.



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

4
5 In addition, as a result of the Plea Bargaining Agreement, Garcia may even walk a
6 free man even if the Sandiganbayan would convict him with the lesser offenses of
7 Direct Bribery and Facilitating Money Laundering, because he has already served time
8 for both offenses. He has been detained for 6 years.⁵⁶

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

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

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/h/h110332.htm>. Last Accessed: February 18, 2011.



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

4
5 In the case of General Ligot whose alleged ill-gotten wealth amounts to at least
6 Php740 Million, no graft or plunder case has been filed against him.⁵⁷ The only pending
7 case against him is a civil case of forfeiture which does not include the alleged ill-gotten
8 wealth that has been frozen by AMLC in spite of AMLC giving the Ombudsman a copy of
9 the records since May 2008.⁵⁸

10
11 Thus, it seems that the Ombudsman has made it a habit not only to sit on cases,
12 thereby delaying them; but also ignoring the presence of the grounds with which to file
13 cases.

14
15 This is the height of betrayal of public trust!

16
17
18

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

⁵⁸ Id at p. 6.



1 **3.3 THERE ARE LAWS TO HOLD THE OMBUDSMAN, THE SPECIAL PROSECUTOR**
2 **AND THE PROSECUTORS ACCOUNTABLE**

3
4
5 **3.3.1 OMBUDSMAN**
6

7
8 The possibility of impeachment is the remedy that can be resorted to in
9 removing an incompetent Ombudsman. Considering the manifest disregard of the
10 Ombudsman to the rule of law and the perpetuation of a culture of lack of prosecutorial
11 zeal that she has institutionalized in the Office of the Ombudsman, she has clearly
12 betrayed public trust.
13

14 Section 2, Article XI of the Constitution enumerates the grounds by which the
15 Ombudsman may be removed from office:
16

17 SECTION 2. The President, the Vice-President, the Members of the Supreme
18 Court, the Members of the Constitutional Commissions, and the Ombudsman may
19 be removed from office, on impeachment for, and conviction of, culpable violation
20 of the Constitution, treason, bribery, graft and corruption, other high crimes, or
21 betrayal of public trust. All other public officers and employees may be removed
22 from office as provided by law, but not by impeachment. (emphasis supplied)
23

24
25 **3.3.2 THE SPECIAL PROSECUTOR AND PROSECUTORS**
26

27 The Office of the President has the statutory authority and mechanism to
28 discipline and remove Sulit, *et al.*
29

30 Under Section 8 of Republic Act (RA) No. 6670, otherwise known as the
31 Ombudsman Act of 1989, the Special Prosecutor may be removed from office by the



1 President of the Philippines for any of the grounds provided under the Constitution for
2 the removal of the Ombudsman, and after due process:

3
4 SECTION 8. Removal; Filling of Vacancy. — (1) In accordance with the provisions
5 of Article XI of the Constitution, the Ombudsman may be removed from office on
6 impeachment for, and conviction of, culpable violation of the Constitution, treason,
7 bribery, graft and corruption, other high crimes, or betrayal of public trust.

8
9 (2) **A Deputy or the Special Prosecutor, may be removed from office by the**
10 **President for any of the grounds provided for the removal of the**
11 **Ombudsman, and after due process...** (emphasis supplied)

12
13
14
15
16 Based on the foregoing, it is submitted that the Office of the Special Prosecutor
17 may be removed by the Office of the President on the grounds of culpable violation of
18 the Constitution, bribery, graft and corruption, and betrayal of the public trust.

19
20 In this regard, **graft and corruption** is to be understood in the light of the
21 prohibited acts enumerated in RA No. 3019 or the Anti-Graft and Corrupt Practices
22 Act.⁵⁹ **Betrayal of public trust** is a new ground added by the Constitutional
23 Commission as a catch-all to cover all manner of offenses unbecoming a public
24 functionary but not punishable by the criminal statutes, like "inexcusable negligence of
25 duty, tyrannical abuse of authority, breach of official duty by malfeasance or,
26 misfeasance, cronyism, favoritism, obstruction of justice."⁶⁰

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.



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

6
7 Previously, under Executive Order No. 12, Series of 2001, it was the Presidential
8 Anti-Graft Commission ("PAGC") which had jurisdiction to investigate and hear all
9 administrative cases against presidential appointees, such as the Special Prosecutor.
10 Thus, Sections 4(a) and (b) of Executive Order No. 12 states:

11
12 SECTION 4. Jurisdiction, Powers and Functions. — (a) The Commission, acting as a collegial
13 body, shall, on its own or on complaint, have the power to investigate or hear administrative
14 cases or complaints involving the possible violation of any of the following:

15
16 (1) Republic Act No. 3019 as amended, otherwise known as the 'Anti-Graft and
17 Corrupt Practices Act;'

18
19 (2) Republic Act No. 1379 on the unlawful acquisition of property by a public
20 officer or employee;

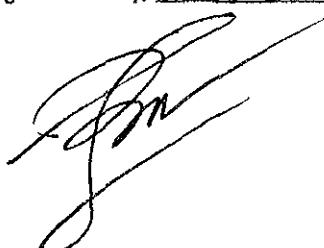
21
22 (3) Republic Act No. 6713, otherwise known as the 'Code of Conduct and Ethical
23 Standards for Public Officials and Employees;'

24
25 (4) Presidential Decree No. 46, making it punishable for public officials and
26 employees to receive gifts on any occasion, including Christmas;

27
28 (5) Any provision under Title Seven, Book Two of the Revised Penal Code; and

29
30 (6) Rules and regulations duly promulgated by competent authority to implement
31 any of the foregoing laws or issuances.

32
33 (b) The Commission, acting as a collegial body, shall have the authority to investigate or hear
34 administrative cases or complaints against all presidential appointees in the government and
35 any of its agencies or instrumentalities (including members of the governing board of any
36 instrumentality, regulatory agency, chartered institution and directors or officers appointed or
37 nominated by the President to government-owned or controlled corporations or corporations
38 where the government has a minority interest or who otherwise represent the interests of the
39 government), occupying the position of assistant regional director, or an equivalent rank,



1 and higher, otherwise classified as Salary Grade '26' and higher, of the Compensation and
2 Position Classification Act of 1989 (Republic Act No. 6758). In the same manner, the
3 Commission shall have jurisdiction to investigate a non-presidential appointee who may have
4 acted in conspiracy or may have been involved with a presidential appointee or ranking officer
5 mentioned in this subsection. The Commission shall have no jurisdiction over members of the
6 Armed Forces of the Philippines and the Philippine National Police." [Emphasis and
7 underscoring supplied]

8
9 However, on 15 November 2010, Executive Order No. 132 was issued which
10 abolished the PAGC and transferred its powers, duties and functions to the Investigative
11 and Adjudicatory Division of the Office of the Deputy Executive Secretary for Legal
12 Affairs ("ODESLA") of the Office of the President. Thus, it is within the powers of the
13 Executive to discipline the Special Prosecutor and her cabal.

14 15 16 **4. RECOMMENDATIONS**

17
18 We enjoin our colleagues in the House of Representatives to impeach
19 Ombudsman Ma. Merceditas N. Gutierrez and transmit the Articles of Impeachment to
20 the Senate so as to hold the Ombudsman accountable using Article XI of the 1987
21 Constitution on the Accountability of Public Officers.

22
23 *Hinihikayat naming ang aming mga kasama sa mababang kapulungan na*
24 *pausarin na ang proseso ng Impeachment at ibigay na dito sa amin sa Senado ang*
25 *Articles of Impeachment ng Ombudsman. Nararapat lamang na harapin ng*
26 *kasalukuyang Ombudsman, si Ombudsman Ma. Merceditas N. Gutierrez ang mga*
27 *paratang sa kanyang pagtataksil sa bayan.*

28


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

5
6 As for the case of the Ombudsman, the Committee appeals to her sense of
7 patriotism and nationalism to save the Office of the Ombudsman as an institution and
8 tender her resignation.

9
10 No less than *The Philippine Human Development Report (2008/2009)*,
11 published by the Human Development Network in cooperation with the United Nations
12 Development Program and the New Zealand Agency for International Development,
13 says that, "Public perception of the Ombudsman's sincerity in battling corruption last
14 year nosedived from the high of +24 percent under Marcelo to +4 percent under
15 Gutierrez, Social Weather Stations found."

16
17 The Human Development Report further provides:

18
19 ... **Performance and trust have been further undermined by the OMB's action – or inaction –**
20 **on high-profile cases.** These include the P2 billion purchase of automated counting machines by
21 the Commission on Elections (Comelec) from Mega Pacific for the 2004 national elections, the \$2
22 million bribery case involving former Justice Secretary Hernando Perez, the P278 million fertilizer
23 fund scam, and the multimillion-dollar NBN-ZTE deal.

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

28 The second – involving Perez, the former boss of incumbent Ombudsman Merceditas Gutierrez –
29 was said to be deliberately defective. A two-year wait in the filing of the case resulted in its
30 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 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.*

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

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



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

4
5 **Further,** The Committee recommends to the Chief Executive, the President of
6 the Philippines, through the Department of Justice (DOJ), to institute the appropriate
7 administrative and criminal proceedings against the Special Prosecutor Wendell E.
8 Barreras-Sulit, Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special
9 Prosecutor Jesus A. Micael, Assistant Special Prosecutor Jose Balmeo, Jr., Assistant
10 Special Prosecutor Joseph Capistrano and the rest of the Prosecutors for betraying
11 public trust.

12
13 Administrative Action against the abovementioned individuals would fall under
14 Section 8⁶³ of Republic Act (RA) No. 6670, otherwise known as the Ombudsman Act of
15 1989.

16
17 Criminal Action against the abovementioned individuals would fall under Section
18 3 (e)⁶⁴ and (g)⁶⁵ of the RA 3019 or the Anti-Graft and Corrupt Practices Act.

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

1 AS A PENULTIMATE POINT, the following law reforms are hereby recommended by
2 the Committee to ensure that this kind of prosecutorial treason will no longer be
3 committed against the Republic:
4

5 4.1 Passage of the Freedom of Information Act 6

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

13 Mr. Jarius Bondoc, a journalist who was closely following the Garcia Plea
14 Bargaining Agreement, in his Opening Statement even said:
15

16 ... Perhaps my remaining contribution can be on the matter of the extreme secrecy
17 on the part of the Ombudsman and the Sandiganbayan in conducting General
18 Garcia's plea bargaining.
19

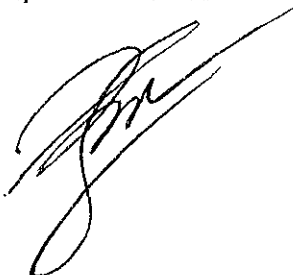
20 You see I wrote two offices last September 2010 for copies of the plea deal that I have
21 heard and written about and both denied my request on the grounds of *sub judice* rule.
22 We all learned from later events, of course, that the Ombudsman had signed the deal with
23 General Garcia as far back as seven months prior in February of 2010. Also that the
24 Sandiganbayan conditionally had approved it four months before in May 2010.
25

26 I know that prosecutors and defendants must be given reasonable time to plea
27 bargain if need be behind closed doors. But there has to be reasonable time as

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.

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.



1 well to reckon with the constitutional requirement of transparency. And perhaps
2 this deal would not be viewed with such controversy today had it not been kept
3 from disinfecting sunlight, sir. And I'm turning over our exchange of letters to the
4 committee.⁶⁷ (emphasis supplied)
5
6

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

8 Ignacio:

9 ...Noong sumabog sa media iyong plea bargaining agreement entered into by the
10 Ombudsman Gutierrez and General Garcia, at that time ho, talagang sikretong-sikreto
11 iyon.The information that we are getting would come from various informants.⁶⁸
12

13 xxx

14
15 Your Honors, please. Tinestipayan (testify) na rin po dito ni Jarius Bondoc na
16 dalawang beses silang sumulat sa Ombudsman at sa Sandiganbayan, but could not
17 get any information. Ang totoo ho, ini-interview pa si Special Prosecutor Sulit ng
18 mga media kung totoo, at sinasabi niyang walang plea bargaining agreement.⁶⁹
19 (emphasis supplied)
20
21
22
23
24

25 No less than the United Nations Convention against Corruption to which the
26 Philippines is a State Party after having ratified it on November 8, 2006 provides:
27

28 *Article 10. Public reporting*

29
30 Taking into account the need to combat corruption, each State Party
31 shall, in accordance with the fundamental principles of its domestic law,
32 take such measures as may be necessary to enhance transparency
33 in its public administration, including with regard to its organization,
34 functioning and decision making processes, where appropriate. Such
35 measures may include, inter alia:
36

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

43 (b) Simplifying administrative procedures, where appropriate, in order to

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.

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

⁶⁹ Id at page 5.



1 facilitate public access to the competent decision-making
2 authorities; and
3 (c) Publishing information, which may include periodic reports on the
4 risks of corruption in its public administration.
5
6

7 Combating corruption cannot be left to the government alone. And to be able to
8 encourage citizen's participation and vigilance, a law should be immediately enacted.
9

10 **4.2 Passage of a law that requires all Plea Bargaining Agreements**
11 **involving Graft and Corruption of Public Officers, Plunder and**
12 **Money Laundering to be executed in the format of the Atong Ang**
13 **Plea Bargaining Agreement where there is the participation of**
14 **the Ombudsman, Solicitor General and Department of Justice**
15
16
17

18
19 The Committee is proposing a law that will make it mandatory that any Plea
20 Bargaining Agreement entered into by the Ombudsman involving violations of RA 3019,
21 the Plunder Law and the Anti-Money Laundering Law should be executed with the
22 participation of the Solicitor General and the Department of Justice.
23
24

25
26 **4.3 As an alternative to the immediately preceding recommendation,**
27 **passage of a law that would prohibit plea bargaining agreement**
28 **under the Plunder Law**
29
30

31 An accused entering into a plea bargaining agreement with the state is not a right
32 but a privilege. On the one hand, The Dangerous Drugs Act of 2002⁷⁰ specifically
33 prohibits plea bargaining agreement, as the policy of the state is an all-out war against
34 illegal drugs.
35

⁷⁰ Republic Act 9195.



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

7

8 **4.4 Passage of a law that designates the Department of Justice to have**
9 **the concurrent jurisdiction to investigate and prosecute**
10 **administrative and criminal cases against the employees of the**
11 **Ombudsman**

12

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

16

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

18

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

22

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

24

25 x x x x

26

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

33

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

37

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.



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

4
5 MS. BARRERAS-SULIT. Your Honors, we will deliberate on that. There will be
6 – can we get a formal –

7
8 SENATOR DRILON. Of course, you can't investigate – you cannot
9 investigate your own people, especially that you signed all of this plea
10 bargaining together, right?⁷² (emphasis supplied)

11
12
13
14
15 **4.5 Passage of a law that would amend the Anti-Money Laundering**
16 **Law⁷³ of the country**

17
18 In the landmark case of REPUBLIC OF THE PHILIPPINES, Represented by THE
19 ANTI-MONEY LAUNDERING COUNCIL (AMLC) vs. HON. ANTONIO M. EUGENIO, JR., AS
20 PRESIDING JUDGE OF RTC, MANILA [G.R. No. 174629, February 14, 2008] the Supreme
21 Court of the Philippines, in effect restrained the initiatives of the Anti-Money Laundering
22 Council (AMLC) by ruling that the AMLC cannot inquire into bank deposits of individuals
23 ex parte or without the latter's permission.

24
25 The Supreme Court argued that since Congress specifically granted such ex parte
26 power to the AMLC in Section 10 (Freezing of Monetary Instrument or Property) of
27 Republic Act 9194, its absence in Section 11 (Authority to inquire Into Bank Deposits)
28 cannot now be construed as having been automatically granted by Congress.

29
30 To remedy this situation, the AMLC should be given the power to inquire into
31 bank deposits *ex parte* upon order of any competent court in cases of violation of this

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

⁷³ R.A. 9160



1 Act when it has been established that there is probable cause that the deposits or
2 investments are related to an unlawful activity as defined in Section 3 (i) or a money
3 laundering offense under Section 4 of the Anti-Money Laundering Act.

4
5

6 **4.6 Passage of a law that would amend the Ombudsman Act of**
7 **1989⁷⁴ by making the Office of the Special Prosecutor**
8 **independent from the Office of the Ombudsman**

9

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

15

16 **SEN. DRILON.** ... The third remedial legislation that I would suggest is, we take a
17 second look at amending Republic Act 6770. This is the Ombudsman Act of
18 1989. The records, Mr. Chairman, of the Constitutional Commission will show
19 that the Office of the Ombudsman was never intended to be given prosecutorial
20 powers. It was envisioned – what was envisioned as a pure Ombudsman who
21 will use the power and prestige of this office to investigate, on his own or upon
22 complaint, government officials regarding any impropriety in their action. The
23 proposal to grant and to include in the Constitution a direct grant to the Office of
24 the Ombudsman the power to prosecute was in fact defeated. So, it was very
25 clear that the intention is not to grant the Office of the Ombudsman the power to
26 prosecute. The present power of the Ombudsman to prosecute is found in
27 the Ombudsman's Act of 1989. We believe that is a power not derived from
28 the Constitution but, in fact, is not consistent with the spirit and concept of
29 the Constitution in providing for the creation of the Office of the
30 Ombudsman. We would present to the Committee a proposal that the
31 special prosecutor be made independent of the Ombudsman so that they
32 can decide on their own.⁷⁶

33
34
35

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.



1
2 **FINALLY**, since the Plea Bargaining Agreement is Null and Void, the Office of the
3 Ombudsman should pursue the plunder case against Garcia.
4

5
6 **EPILOGUE**

7 *QUIS CUSTODIET IPSOS CUSTODES?*⁷⁷ Who will guard the guardians? In
8 posing this famous question, *Juvenal* was suggesting that wives cannot be trusted and
9 keeping them under guard is not the solution since the guards cannot be trusted
10 either.⁷⁸
11

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

17 The Ombudsman, also known as the Tanodbayan is supposed to protect the
18 people. That is precisely the reason why the office is named *tanod ng bayan* otherwise
19 known as guardian of the people. Unfortunately, in this case, the Ombudsman

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.*

A handwritten signature in black ink, appearing to be 'SM' or similar, located at the bottom left of the page.

1 (Tanodbayan) neither is the *bantay* nor *tanod ng bayan*. Instead, what we have is a
2 clear case of *bantay salakay*.

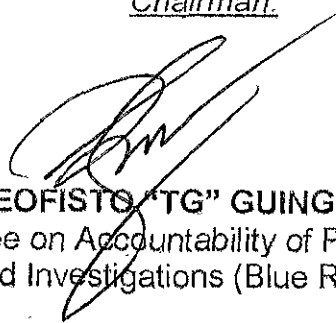
3 The Senate Blue Ribbon Committee has taken the responsibility to take up the
4 cudgels for the Filipino people to tell the Ombudsman that it has betrayed public trust;
5 that it has failed the Filipino people; and this time, instead of being the ones holding
6 other public officers accountable for malfeasance, misfeasance and nonfeasance, they
7 are the public officers who have violated exactly the same rules that they have sworn to
8 respect, uphold and protect.

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

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Respectfully Submitted:

Chairman:



TEOFISTO "TG" GUINGONA III
Committee on Accountability of Public Officers
and Investigations (Blue Ribbon)

Members:

I concur with the
regret, with the exception of
EDGARDO J. ANGARA
concurring and dissenting
but the impeachment should
be reserved for appropriate proceeding.
MIRIAM DEFENSOR SANTIAGO

to impeach over which
I reserve my vote
I concur with all
the findings, but
FRANKLIN M. DRILON express no opinion
on that portion of the Report
on p. 49, para 1, + p. 52,
para 1 + 2 on the impeach
ment of

FRANCIS "CHIZ" G. ESCUDERO
of express my reservation
& no part/opinion re: mem.
impeachment as it might
reach us and constitute
prejudgment
PANFILO M. LACSON

GREGORIO B. HONASAN II

LOREN B. LEGARDA

SERGIO R. OSMENA III

FRANCIS N. PANGILINAN

RALPH G. RECTO

RAMON "BONG" REVILLA

ANTONIO "SONNY" F. TRILLANES IV

MANNY VILLAR

JUAN MIGUEL F. ZUBIRI

JOKER P. ARROYO

COMPAÑERA PIA S. CAYETANO

I did not participate in
the proceedings as to enable
me to make any kind of
judgment.

same reservations
as Sec. Alan Cayetano

w/ RESERVATIONS &
WITHOUT PREJUDICE
TO MY NEUTRALITY AS
IMPEACHMENT JUDGE.
TAKE NO PART IN THE
JUDGMENT.

I concur except
on the first item
of the recommendation
on the ombudsman
as it will
affect my impartiality
when the proper
time comes and
the senate is convened
as an impeachment
court.

Members:

EDGARDO J. ANGARA

I concur with all the findings, but express no opinion on that portion of the Report on p. 49, para 1, & p. 52, para 1 & 2 on the impeachment of

MIRIAM DEFENSOR SANTIAGO

of express my reservation the Ambrose & no part/opinion re: mem. impeachment as it might reach us and constitute judgment

GREGORIO B. HONASAN II

PANFILO M. LACSON

with reservation and in participating re: from with for impeachment as it would be what

LOREN B. LEGARDA

SERGIO R. OSMENA III

FRANCIS N. PANGILINAN

RALPH G. RECTO

w/RESERVATIONS & WITHOUT PREJUDICE TO MY IMPARTIALITY AS IMPEACHMENT JUDGE. TAKE NO PART IN THE JUDGMENT.

RAMON "BONG" REVILLA

ANTONIO "SONNY" F. TRILLANES IV

MANNY VILLAR

JUAN MIGUEL F. ZUBIRI

I concur except on the first item of the recommendation on the ombudsman since it will affect my impartiality when the proper time comes and the senate is convened as an impeachment court.

JOKER P. ARROYO

COMPANERA PIA S. CAYETANO

I did not participate in the proceedings as to enable me to make any kind of judgment.

same reservation as Sen. Alan Cayetano

Members:

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EDGARDO J. ANGARA

FRANKLIN M. DRILON

MIRIAM DEFENSOR SANTIAGO

FRANCIS "CHIZ" G. ESCUDERO

GREGORIO B. HONASAN II

PANFILO M. LACSON

LOREN B. LEGARDA

SERGIO R. OSMENA III

FRANCIS N. PANGILINAN

RALPH G. RECTO

RAMON "BONG" REVILLA JR.

ANTONIO "SONNY" F. TRILLANES IV

MANNY VILLARDO

JUAN MIGUEL F. ZUBIRI

JOKER P. ARROYO

COMPAÑERA PIA S. CAYETANO

*W/ reservation. He
impeachment process must
not be obstructed. Also I did
not participate in the
hearing, so as to make
definitive conclusions.*

Ex-Officio Members:

*w/ amendments and
serious reservations!*

Vicente C. Sotto III

JINGGOY EJERCITO ESTRADA
President Pro-Tempore

VICENTE C. SOTTO III
Majority Floor Leader

[Signature]

*w/ reservations please see attached explanation of
reservations concerning the partial/interim report.*

ALAN PETER "COMPAÑERO" S. CAYETANO
Minority Floor Leader

HON. JUAN PONCE ENRILE
President
Senate of the Philippines
Pasay City



SENATOR ALAN PETER S. CAYETANO

RE: PARTIAL COMMITTEE REPORT IN RELATION TO PSR NO. 337

I am affixing my signature to manifest my observations and reservations on the Committee Report released by the Committee on Accountability of Public Officers and Investigations regarding Proposed Resolution No. 337, which is authored by the undersigned. We commend the Committee for its patience and determination in the conduct of its inquiry into this anomaly

I concur with the antecedent facts as narrated in the Committee Report, the same being based upon the records. I likewise support the Committee in its findings that the plea bargaining agreement between the Office of the Ombudsman together with the Special Prosecutor and with former Major General Carlos F. Garcia should be set aside for the reasons already stated in the committee report. The said plea bargaining is patently void and illegal and against sound public policy.

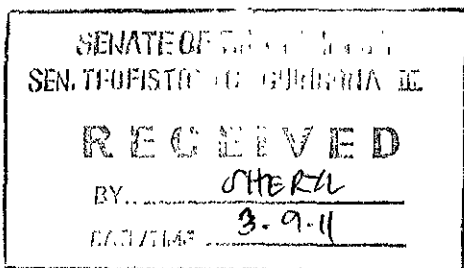
The recommendation for the immediate enactment of the Freedom of Information Act by the Committee should be underscored and emphasized. I join the Committee in its endeavor to have the same passed into law as it would have solved and perhaps even prevented the execution of agreements grossly disadvantageous to the Filipino people, especially those entered into in a clandestine manner. The Senate should expeditiously act and pass the Freedom of Information Act, notwithstanding its non-inclusion in the list of priority bills of Malacañang

Having agreed with the findings of the committee, prudence, however, dictates that as regards the conclusions as to the liability or the issue of accountability of impeachable officers such as the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman, the assessment, findings and conclusion should be done by the House of Representatives so that the Senators will not be placed in a compromising position if and when the articles of impeachment is finally transmitted to the Senate.

By no means should the Committee consider this report as the be all and end all of all inquiries and investigations insofar as unearthing all relevant facts that will bring to light the liability of all those involved in this plea bargain agreement much less, the likelihood of the existence of a conspiracy which may be deemed to protect other top officials.

I understand that this report is partial and only covers the potential liability of certain individuals after due consideration of the pieces of evidence that have been presented before the Committee. However, the Committee should not stop from pursuing further investigation to determine the liability of other personalities concerning the plea bargain agreement and to recommend reforms that will prevent abuses in plea bargaining agreements.

Subject to these reservations and the possibility of submitting a separate/supplemental opinion/report, I hereby affix my signature.




SEN. ALAN PETER S. CAYETANO

Annex A

SWORN STATEMENT
OF
Clarita D. Garcia

all

I, Clarita D. Garcia, date of birth December 3, 1950, swear that the following statements are true and correct to the best of my knowledge.

① On or about December 19, 2003, I instructed my sons Juan Paulo D. Garcia and Ian Carl D. Garcia to bring cash in the amount of \$100,000 into the U.S. from our home in the Philippines. I told both my sons to declare the money when entering the U.S. The money was to be used as earnest money toward a down payment for a condominium in New York City where my son Timothy would live while going to school. Timothy was paying rent in the amount of \$3,000 per month to rent an apartment. My son Juan ^{Paulo} ~~Carlos~~ _{also} told me he didn't declare the money because, "It was too much hassle." I always declare the money when I bring it into the U.S. I declared the money in 1993, in 1995 when I had a medical operation. I declared \$100,000 on December 17, 2003. I also declared \$200,000 in January 2003. My son Juan ^{Paulo} ~~Carlos~~ _{also} is a risk taker and is very spoiled.

Source of Funds:

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

all

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Military. My family has an 80% interest in the two corporations and we may earn a monthly income equivalent to US\$8,000. The daycare school brings in more money, perhaps \$10,000 per month. However, based on the Philippine tax laws regarding both the corporations and daycare 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 Officer until April 4, 2004. He receives a salary that is declared as income for tax purposes. *(2)* In addition, ~~my husband receives~~ *to his salary* 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 \$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.

air

As the comptroller, my husband handles all budgets for the armed forces. My husband prepared the budget 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 the 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.

(B) My husband will always thank the person that provides the gratitude.

If someone stops by the house with a gift or gratitude, my husband insists that their name and telephone number be taken so they may be called and personally thanked. As the wife of a general, I am afforded several privileges including a 4,000-gallon per month gasoline allowance, security detail and five drivers. I have a military cook that also provides piano music upon request.

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My husband's position in the Armed Forces is one of privilege. The gratitude monies that he receives is common and unsolicited.

Contracted companies and personnel from the different branches of the armed services are grateful for my husband's assistance and timely payments for contracted work. In addition, I provided Agent Van Dyke with a four page handwritten statement that explains my husbands job and our additional source of funds.

Clarita D. Garcia Date: *4/06/04*
Clarita D. Garcia

Arcelia L. Barrios Date: *4-6-04*
Witness

Matthew C. Van Dyke Date: *4/6/04*
Witness

clw

14 pts

Annex B

Provided to Agent Vandyke on 7/06/00

This statement is in addition to justify how we were able to accumulate the \$100,000.00. On the papers submitted by my husband, he showed his income tax return from his salary which showed insufficient funds to account the amount brought by our two sons. As from my husband's declared income, he not mention his other income from his travel & schooling allowances, honorariums a gratified given to him due to his added duties and functions designated for his position a Major General in the Philippine Armed Forces.

For Example:

Honorarium benefits: My husband hold different chairmanship and directorship in different Armed Forces Institutions and he received money allowance for every meet that he attend merely,

Travel Allowance: As a Comptroller, Assistant Deputy Chief of Staff for Comptrollership, he is a member of the management of Projects. For example: A certain foreign company wins a bidding from the Bid & Award Committee for selling military hardware. This procurement is approved by the Secretary of National Defense and Office of the President. Then a team committee formed in the Armed Forces to oversee the

implementation of contract. Since my husband's office is under the Department of Budget Management that holds the budget of the whole government, his office is part inspection team. As 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 plant the contracted party. Then during the during portion of the contract, he goes back to the contracted country to see the actual product. During the after portion of the contract, he returns to the contracted country to assess the finished product. During these travels my husband always bring me along and we are each given travel allowances in the proposed host country. He is also by his office stipend & allowance to be used at his discretion. As a wife I am also given an envelope as they called "shopping money" that I can use for my own discretion no receipt of how we use the stipend is ever required. Business Class Airfare / First Class Hotel accommodations and transportation are provided by the host/proponent. This happens on every trip since 1993 to present. Our meals, purchased of souvenirs and cost of visiting sites are also paid for by our

best. As a result, our allowances are not used and we are allowed to keep them. I am unable to provide the exact amount of each stipend allowance because it varies from country to country we are assigned to visit.

When my husband is assigned to travel domestically in the Philippine Islands, to conduct inspection on different military camps, he is also given stipend allowance and also given gratification.

With regards to expenses such as salary for our drivers, security guards, their wages are paid for by the government. My husband's office are provided with government vehicle for gasoline, housing allowance and lots of gratification given received 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 go to his savings. The counterpart country also give him stipend and housing allowance. For example; when he took his Master's Degree at Monterey Post Naval Graduate School, CA in 1945, for those period he was given allowance from his country and counterpart country.

Since I am a license registered nurse in Calif, I was able to work for 2 years as a nurse that also contribute to our income.

This money was not only accumulated for 1-2 yrs but this is our accumulated savings for the past years.

With regards to my income from the resort and orchard, that came from my father's inheritance, Philippine laws allow reporting of income, for the first to two years of operations, as a loss. Thus even though operations made profits since its start operations, we reported a loss the first to years of operations.

As an American given an accumulated funds, I always change them just from to dollar money, including all the profits of our corporation; that accumulates the the year.

Assacia
CHRISTA O. BARRA
4/6/04

Provided to Agent Vandyke on 4/06/04

This statement is in addition to justify how we were able to accumulate the \$100,000.00. As on the papers submitted by my husband, he just showed his income tax return from his earnings which showed insufficient funds to accumulate the amount brought by our two sons. Aside from my husband's declared income, he did not mention his other income from his travel and schooling allowances, honorariums and gratuities given to him due to his added duties and functions designated for his position as Major General in the Philippine Armed Forces.

For example:

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 in the Armed Forces to oversee the implementation of contract. Since my husband's office is under the Department of Budget & 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 plant of the contracted party. Then during the 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 (given) by his office stipend and allowances to be used at his discretion. As a wife I am also given an envelope as they called "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 of souvenirs and cost of visiting sites are also paid for by our host. As a result, our allowances are not used and we are allowed to keep 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 in the Philippine Islands to conduct inspection on different military camps, he is also given stipend/allowances and also often given gratuities.

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

Also, when he was sent for schooling abroad, his salaries and allowances goes to his savings. The counterpart country also gives him stipend and housing allowance. For example: when he took his Master's Degree at Monterrey Post Naval Graduate School, Ca 1993-1995; for those period he was given allowances from his country and counterpart country. Since I am a license registered nurse in Calif., I was able to work for 2 years as a nurse that also contributes to our income.

This money was not only accumulated for 1-2 years but this is our accumulated savings for the past years.

With regards to my income from the resort and orchard that came from my parents inheritance, Philippine laws allow the reporting of income, for the first to two years of operation, as a loss. Then even though the corporation made profits since its start of operations, we reported a loss the first two years of operations.

As an American given or accumulating peso funds, I always change these peso funds to dollar money, including all the profits of our corporations that accumulated through the years.

(Sgd)

CLARITA D. GARCIA

4/6/04

Annex C

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL DIVISION

PEOPLE OF THE
PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASE NO. 26558

JOSEPH EJERCITO
ESTRADA, ET AL.,
Accused.

X-----X

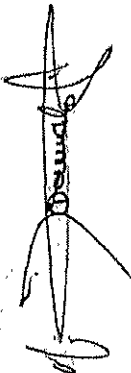
PLEA BARGAINING AGREEMENT

COME NOW the PROSECUTION through the OFFICE OF THE OMBUDSMAN and accused CHARLIE "ATONG" ANG, assisted by his counsel of choice, and unto the Honorable Court, most respectfully submit the following Plea Bargaining Agreement for the Honorable Court's approval:

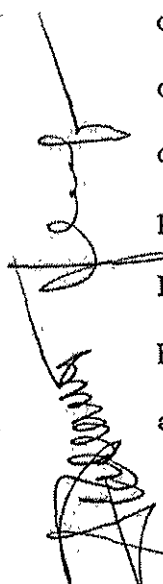
1. Pursuant to Section 2, Rule 116 of the Rules of Court, accused Charlie "Atong" Ang withdraws the plea of *Not Guilty* entered for him by the Honorable Court, in view of his

plea of guilty to a lesser offense subject of this Plea Bargaining Agreement.

2. Accused Charlie "Atong" Ang hereby admits the facts upon which the charge of Plunder under the Amended Information dated 18 April 2001 in Crim. Case No. 26558 has been made, as well as the allegations therein.



3. Pursuant to Section 2, Rule 116 and Section 1, Rule 118 of the Rules of Court, accused Charlie "Atong" Ang, recognizing the privilege of pleading guilty to a lesser offense as provided by law and the Rules of Court, duly assisted by counsel of his choice, and after having been informed of the consequences and meaning of a plea of guilty to the lesser offense named herein, hereby makes an offer to the prosecution for his plea of guilty to the crime of **Corruption of Public Officials** defined and penalized under Article 212 of the Revised Penal Code, in relation to **Indirect Bribery** defined and penalized under Article 211 of the Revised Penal Code.



4. Pursuant to Section 2, Rule 116 and Section 1, Rule 118 of the Rules of Court, the Office of the Ombudsman, as the office constitutionally mandated to prosecute the instant case, and finding:

(a) the offer to be sustained by the provisions of the Rules of Court;

(b) the **Corruption of Public Officials** defined and penalized under Article 212 of the Revised Penal Code, in relation to **Indirect Bribery** defined and penalized under Article 211 of the Revised Penal Code, to be an offense necessarily included in the corrupt acts charged and constituting the predicate acts under the Amended Information dated 18 April 2001 in Crim. Case No. 26558;

(c) the right to enter into plea bargaining to be within the ambit of prosecutorial discretion; and

(d) the plea bargain as consistent with the interest of the State since justice will be served proceeding from an assured and agreed conviction for the lesser offense, while conserving the scarce prosecutorial resources of the State.

HEREBY interposes NO OBJECTION and CONSENTS to the accused Charlie "Atong" Ang's entering a plea of guilty to the offense of Corruption of Public Officials, as defined and penalized under Article 212 of the Revised Penal Code, in relation to Indirect Bribery, as defined and penalized under Article 211 of the Revised Penal Code, **subject to the terms and conditions hereinafter following.**

5. As a condition to the State's conformity to accused Charlie "Atong" Ang's entering a plea of guilty to the lesser offense of Corruption of Public Officials, as defined and penalized under Article 212, in relation Article 211 of the Revised Penal Code, accused Charlie "Atong" Ang undertakes to assist in the prosecution of, and testify, whenever proper, in cases being prosecuted by the government in which he has personal knowledge.

6. As a further condition to consenting to his offer of plea of guilty to the stated lesser offense, accused Charlie "Atong" Ang, by way of restitution, hereby promises to return the amount of Twenty Five Million Pesos (P25,000,000.00), or its equivalent in value, he personally took and enjoyed from the amount of One Hundred Thirty Million Pesos

(P130,000,000.00) he conspired with accused Joseph Estrada to divert under the second specification/predicate act charged under the Amended Information dated 18 April 2001 in Crim. Case No. 26558. In lieu of cash, therefore, and as a proceed or effect of the offense, accused Charlie "Atong" Ang hereby waives, in favor of the State, any and all rights and interests which he may have over the property consisting of a parcel of land, and the house erected thereon, situated at No. 18 Manansala Street, Corinthian Gardens, Quezon City, which is presently the subject of a writ of attachment issued by this Honorable Court in connection with the instant case. Transfer of the same to the government shall, therefore, be decreed with the judgment emanating from this Plea Bargaining Agreement. In any event, accused Charlie "Atong" Ang shall, as a further condition, execute any and all documents and papers consistent with the purposes of this Plea Bargaining Agreement and to fulfill such purposes.


7. Accused Charlie "Atong" Ang hereby warrants that he understands, and his counsel of choice has explained to him, all the particulars hereof, the consequences of his acts, as well as the fact that non-fulfillment by him of any of the conditions herein stated shall void and render of without effect, and cause the withdrawal of, the consent of the State to

his plea bargain, while his admissions herein shall remain as evidence against him. In such a case, accused Charlie "Atong" Ang understands that he shall be prosecuted to the full extent under the Amended Information dated 18 April 2001.

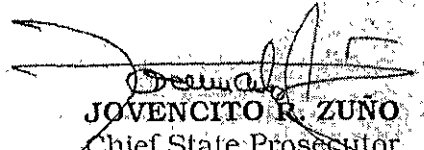
RESPECTFULLY SUBMITTED FOR THE HONORABLE
COURT'S FINAL DISPOSITION OF ACCUSED CHARLIE
"ATONG" ANG.

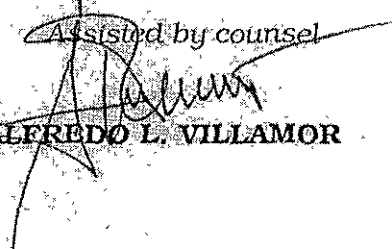
24 January 2007, Quezon City, Metro Manila.

Recommending Approval:


DENNIS M. VILLA-IGNACIO
The Special Prosecutor
Office of the Ombudsman


CHARLIE "ATONG" ANG
Accused


JOVENCITO R. ZUNO
Chief State Prosecutor
DOJ Panel of Prosecutors

Assisted by counsel

ALFREDO L. VILLAMOR

Approved:


MA. MERCEDITAS N. GUTIERREZ
Tanodbayan