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REPUBLIC OF THE PHILIPPINES)
First Regular Session)

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S E N A T E

COMMITTEE REPORT NO. 46

Submitted jointly by the Committees on Public Order and Dangerous
Drugs *and* Justice and Human Rights on MAR 07 2017

Re: Manifestation and Motion made by the Majority Leader Vicente C. Sotto III on 07 November 2016, tasking the Committees on Public Order and Dangerous Drugs *and* Justice and Human Rights to investigate and inquire, in aid of legislation, into the killing of Mayor Rolando Espinosa, Sr. of Albuera, Leyte


Recommending the Adoption of this Report and the Implementation of its Recommendations

Sponsor: Senator Lacson

MR. PRESIDENT:

The Committees on Public Order and Dangerous Drugs *and* Justice and Human Rights, to which was referred the Manifestation and Motion made by the Majority Leader Vicente C. Sotto III on 07 November 2016, tasking the Committees on Public Order and Dangerous Drugs *and* Justice and Human Rights to investigate and inquire, in aid of legislation, into the killing of Mayor Rolando Espinosa, Sr. of Albuera, Leyte, have considered the same and have the honor to submit this Report to the Senate.

Respectfully submitted:


SEN. PANFILO M. LACSON
Chairman, Ctte. on Public Order and Dangerous Drugs
Vice Chairman, Ctte. on Justice and Human Rights




SEN. RICHARD J. GORDON
Chairman, Ctte. on Justice and Human Rights

VICE CHAIRPERSONS



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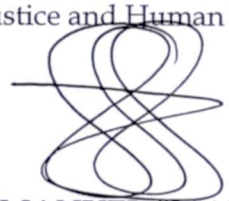


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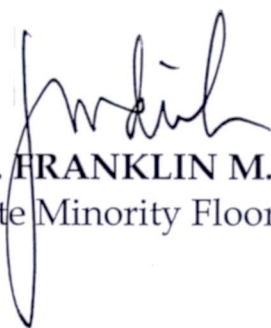
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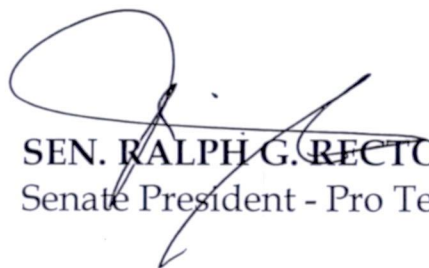
Ex-Officio Members:



SEN. FRANKLIN M. DRILON
Senate Minority Floor Leader



SEN. VICENTE C. SOTTO III
Senate Majority Floor Leader



SEN. RALPH G. RECTO
Senate President - Pro Tempore

HON. AQUILINO "KOKO" PIMENTEL III
Senate President
Senate of the Philippines
Pasay City

“Three can keep a secret, if two of them are dead.”

- Benjamin Franklin

BACKGROUND

A 2016 survey commissioned by the Dangerous Drugs Board (DDB)¹ showed that out of a population of 100.98 million, 1.8 million Filipinos used illegal drugs in 2015. This translates to our current drug use prevalence of 2.3%. Of this number, 859,150 were thought to be users of *shabu* or crystal methamphetamine – the drug of particular concern in the country.

PRESIDENT RODRIGO DUTERTE, in his inaugural State of the Nation Address², cited a different set of data of three million drug addicts in the last two to three years based on the study of the Philippine Drug Enforcement Agency (PDEA).³ Given the liberal addition, according to him, the number has markedly increased to 3.7 million drug addicts to this day.

The reported prevalence of illegal drug problem supposedly supports the assertions of the President that the country has turned into a “narco-state”. It has since become the worst crisis issue the Administration vowed to resolve.

The roll out of Philippine National Police’s (PNP) Project *Double Barrel* marked the aggressive law enforcement campaign of the government to eradicate illegal drugs in the country in a six-month frame. The project involved two approaches namely, *Oplan Tokhang* and Project High Value Target/Low Value Target (HVT/LVT). *Tokhang* is a coined term from Cebuano words *toktok* and *hangyo* or to *knock* and *plead*, respectively. This was first introduced in Davao City, with policemen literally knocking on the doors

¹ Gavila, J. (September 19, 2016) DDB: Philippines has 1.8 million current drug users. Retrieved from <http://www.rappler.com/nation/146654-drug-use-survey-results-dangerous-drugs-board-philippines-2015>

² The 2016 State of the Nation Address (July 26, 2016) Retrieved from <http://www.gov.ph/2016/07/26/the-2016-state-of-the-nation-address/>

³ Presence of Drug Addicts Gives Pinoys a Scare. (October 15, 2016) Retrieved from <http://pdea.gov.ph/images/PressRelease/2016PR/Oct2016/PR4842016.pdf>

of suspected drug personalities and persuading them to stop using and peddling drugs. It was adopted at a national scale under the present administration. On the other hand, Project HVT/LVT focused on the conduct of illegal drug operations targeting big time and small time drug personalities at the national down to the barangay level including their protectors in government.

In August 2016, the President presented a roster of politicians, judges and policemen reportedly involved in the drug trade. Included in the controversial list was then incumbent Albura **MAYOR ROLANDO ESPINOSA, SR.**

Prior to naming **MAYOR ESPINOSA** in the drug list, a buy-bust operation was conducted on July 28 at the tennis court near his house at Sitio Tinago, Barangay Benolho, Albura, where five of his employees were arrested and 237 grams of suspected *shabu* worth P1.9 million was reportedly recovered.

On August 01, **PRESIDENT DUTERTE** demanded the voluntary surrender of **MAYOR ESPINOSA** and his son, **ROLANDO "KERWIN" ESPINOSA, JR.** within 24 hours on the grounds of drug-trafficking and coddling. Otherwise, an order of "shoot-on-sight" would be given if they resisted arrest.

Even before the 24-hour ultimatum lapsed, **MAYOR ESPINOSA** surrendered to PNP Chief **RONALD DELA ROSA** with an admission that his son, **KERWIN**, was indeed a top drug trafficker in the region and received drug supply from a certain **PETER CO**, a detainee inside the New Bilibid Prison.

KERWIN reportedly left for Malaysia on June 21, 2016 and was then still at large.

PNP CHIEF DELA ROSA called for **KERWIN** to surrender with threats that his family would be put in jeopardy. The Espinosas – **MAYOR ESPINOSA**, his daughter, and common-law wife – found refuge in the "White House", the residence of the PNP Chief inside Camp Crame, amid fear of death threats in his hometown. He gave **KERWIN** an ultimatum to surrender until the night of August 05.

DELA ROSA was quoted as saying, "*Ayaw nilang [Espinosas] umalis hanggang di ka raw dumating. Kung di ka dumating ngayon, di ka pa mag-surrender, then your family will be put in jeopardy. Paalisin ko na sa White House, pauuwiin ko sa inyo, then bahala na sila sa buhay nila.*"⁴

With **KERWIN**'s failure to surrender, the Espinosas were made to vacate the PNP headquarters early morning of the following day.

Barely a week had lapsed when the joint teams of the local police and PDEA raided **MAYOR ESPINOSA**'s home at Sitio Tinago Dos, Barangay Benolho after receiving positive information that large quantities of *shabu* were being stored inside the compound. The police reportedly seized 11 kilograms of suspected *shabu* worth eighty eight million pesos (Php88,000,000.00) and ingredients for bomb-making in the raid.

⁴ 'Magdasal ka na' Bato Dela Rosa to Kerwin Espinosa: Surrender or your family will be put in jeopardy (2016, August 5) Retrieved from <http://www.gmanetwork.com/news/story/576471/news/nation/bato-dela-rosa-to-kerwin-espinosa-surrender-or-your-family-will-be-put-in-jeopardy>

In August 2016, three cases of summary killings⁵ alleged to have some connections with the Espinosas were reported:

JULITO PRAK, allegedly the right-hand man of Kerwin and ranked fourth on the watchlist of PDEA Region VII, was killed in Cebu City on August 04. Authorities recovered a .38 caliber revolver and seven sachets of suspected *shabu* from the site;

EDGAR ALLAN ALVAREZ, alleged to be one of Kerwin's drug sources, was killed inside the Abuyog Penal Colony in Leyte on August 11; and

ATTY. ROGELIO BATO, Espinosa's lawyer, and his 15-year-old companion were killed in an ambush in Tacloban City on August 23.

Following the death of **ATTY. BATO**, **MAYOR ESPINOSA** sought police custody. He went to **ALBUERA CHIEF OF POLICE PCI JOVIE ESPENIDO** to request for protection in exchange for information about **KERWIN** and the latter's powerful connections in government. Said request was approved upon submission of his affidavit that named officials involved in drug trade in Eastern Visayas. The PNP took custody of him on August 27.

Three days later, **MAYOR ESPINOSA** publicly revealed a few details contained in his affidavit, including names of police officials, congressmen and a senator as **KERWIN**'s cohorts.

At least three persons were consequently taken under police custody to corroborate Espinosa's statements. Meanwhile, **MAX MERO**, alleged right-hand of **KERWIN**, and **JUNE CANIN**, an ally in his operations in Eastern Visayas, surrendered on September 23 and 26, respectively. On the other hand, **KERWIN**'s ex-wife, **ANNALOU LLAGUNO** was shot dead in Cebu City on September 30.

On October 05, **MAYOR ESPINOSA** was arrested for illegal possession of drugs and firearms recovered during the raid in his house in August. His son, **KERWIN**, was also charged with the same offense.

On October 17, **KERWIN** was arrested in the United Arab Emirates (UAE). He was under the custody of UAE police until his return to Manila on November 18.

MAYOR ESPINOSA pleaded not to be taken to the Baybay Sub-Provincial Jail as he feared for his life. Believing that he was safer in the hands of **PCI ESPENIDO**, he filed a motion on October 02, 2016 before **PRESIDING JUDGE CARLOS ARGUELLES** of RTC Branch 14, Baybay City, Leyte, requesting for transfer to Albuera Police Station. **JUDGE ARGUELLES** conducted his ocular inspection inside the jail premises only on October 26 and still failed to act on the aforementioned motion.

PCSUPT ELMER BELTEJAR, the Police Regional Director of Region VIII, instructed his provincial director to make a threat assessment of the area and thereafter ordered the jail to be augmented with four public safety officers.⁶

⁵ From the Arrest to the Killing of Albuera Mayor Rolando Espinosa (2016, November 5) Retrieved from <http://www.gmanetwork.com/news/story/587653/news/nation/from-the-arrest-to-the-killing-of-albuera-mayor-rolando-espinosa>

⁶ TSN dated November 10, 2016, p. 93.

On October 15, PNP CHIEF DELA ROSA ordered the relief and transfer to CIDG Region IX of the following CIDG Region VIII (CIDG-8) officers: Regional Director **SUPT MARVIN WYNN MARCOS**, **PSUPT NOEL SANTI MATIRA**, and **PCI LEO LARAGA**, due to their alleged involvement in the Espinosa drug operations within the region. However, upon the intervention of a "high official", later on identified as **PRESIDENT RODRIGO ROA DUTERTE** by PNP CHIEF DELA ROSA,⁷ said relief order was rescinded on the same day; hence, the officials were reinstated to CIDG-8

In the morning of November 05, 2016, several CIDG-8 personnel under the leadership of **PSUPT MARCOS**, conducted an operation at the Baybay City Sub-Provincial Jail purportedly to serve a search warrant against **MAYOR ESPINOSA** for violation of Republic Act No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act. He was alleged to be in the possession of a gun and *shabu* inside his prison cell. They also had with them a search warrant against detainee **RAUL YAP** for violation of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act.

In the course of the said service of warrant, both **MAYOR ESPINOSA** and **YAP** were killed inside their jail cells in an alleged shootout with CIDG operatives.

As a response to the incident, the Committee on Public Order and Dangerous Drugs was directed by the Senate, upon motion of **SENATOR VICENTE C. SOTTO III**, to conduct an inquiry, in aid of legislation, on the killing of **ESPINOSA** and **YAP**.⁸ It was further moved that the hearing be conducted jointly with the Committee on Justice and Human Rights. The Committees conducted three public hearings on November 10, 23, and December 05 and an executive session on December 14, 2016.

THE FACTS AS REPORTED BY THE CIDG PERSONNEL⁹

In the morning of November 04, 2016, **PCI LEO LARAGA**, Team Leader of Northern Leyte CIDG-8, together with his witnesses **PO3 NORMAN ABELLANOSA** and **PAUL G. OLENDAN**, proceeded to Basey, Samar to file an application for search warrant¹⁰ against **MAYOR ESPINOSA**, and **RAUL YAP** at Baybay Sub-Provincial Jail, Baybay City, Leyte on the basis of intelligence reports that there were illegal drugs and unlicensed firearms kept and concealed inside their respective cells. That same day, Presiding Judge **HON. TARCELO SABARRE, JR.** issued Search Warrant Nos. 2016-11-19¹¹ and 2016-11-20¹² against **MAYOR ESPINOSA** and **RAUL YAP**, respectively.

Later that day at around 6:00 p.m., **PSUPT MARCOS** had an initial meeting with **PCI LARAGA** and **PSUPT MATIRA** to discuss the details of **OPLAN BIG BERTHA** (Campaign against Illegal Drugs) and **OPLAN PAGLALANSAG OMEGA** (Campaign against Illegal Possession of Loose Firearms). Around midnight of November 05, 2016, the team, comprising of 24 members, held a briefing and proceeded to Baybay Sub-Provincial Jail at 1:45 a.m. to implement the search warrants.

⁷ TSN dated 05 December 2016, p. 206.

⁸ Philippine Senate Journal, Session No. 37, November 7, 2016, p. 640.

⁹ TSN dated November 10, 2016, pp. 13-17.

¹⁰ Application for Search Warrant of Leo Diao Laraga dated November 4, 2016.

¹¹ Search Warrant No. 2016-11-19 dated November 4, 2016.

¹² Search Warrant No. 2016-11-20 dated November 4, 2016.

The following are the CIDG personnel present during said operation:

PSUPT MARVIN WYNN MARCOS
PSUPT SANTI NOEL MATIRA
PCI LEO DAIO LARAGA
SENIOR INSP. ERIC CONSTANTINO
SENIOR INSP. DEOGRACIAS DIAZ
SENIOR INSP. FRITZ BLANCO
SPO4 JUANITO DUARTE
SPO4 MELVIN CAYOBIT
SPO1 BENJAMIN DACALLOS
SPO2 ALPHINOR SERRANO JR.
PO3 JOHNNY IBAÑEZ
PO3 NORMAN ABELLANOSA
PO2 NEIL CENTINO
PO1 BHERNARD ORPILLA
PO3 LLOYD ORTIGUEZA
PO1 JERLAN CABIYAAN
PO1 CRISTAL JANE GISMA
PO1 DIVINE GRACE SONGALIA

The raiding team was augmented by the following personnel of the Regional Maritime Unit 8, Port Area, Tacloban City, for their perimeter cover:

PCI CALIXTO CANILLAS, JR.
PINSP LUCRECITO CANDELOSAS
SPO2 ANTONIO DOCIL
SPO1 MARK CHRISTIAN CADILO
PO2 JOHN RUEL DOCULAN
PO2 JAIME BACSAL

PSUPT MARCOS narrated what transpired prior the team's entry inside the jail premises:

"At about 2:51 a.m., as per recorded on the official cellular phone of the CIDG-8, as recorded, 2:51 a.m., pre-jump-off text report was sent to the chief operation, chief intel, chief investigation, the national operation center of the PNP. At 2:53 a.m., pre-jump-off text report was sent to the CDS; DDO (Deputy Director for Operation), director for administration; and director, CIDG. At 3:03 a.m., pre-jump-off text was sent to the RTOC of PRO-8, RTOC of Leyte PPO. At 3:13 a.m., pre-jump-off text was sent to the cell phone recorded on the official cell phone of CIDG to RD, PRO-8."¹³

During the final briefing, the coordination form was received at 3:43 a.m. by **PO3 NOEL ARANAS** at the Baybay City Police Office. At 4:05 a.m., the PDEA received the pre-operations and coordination forms.

The team reached the main gate of the jail at 4:10 a.m. Upon arrival, they asked for the jail warden and informed the guards of their official business. Their entry was slightly delayed because the guards intentionally broke the key to the main gate's padlock. As a result, they were forced to break the chain using a bolt cutter and hammered the padlock open. When they entered the premises at 4:30 a.m., they

¹³ TSN dated November 10 2016, pp. 14-15.

instructed the jail guards to temporarily surrender their firearms. According to **PSUPT MARCOS**, it was necessary to disarm the jail guards present because they received information that the jail guards were tolerating and were in cohorts with **MAYOR ESPINOSA** in his continued drug trade from inside the Baybay Sub-Provincial Jail.

PCI LARAGA, together with two team members, proceeded to **MAYOR ESPINOSA's** cell (Cell 1). When they were about to implement the search warrant, they were fired upon by **MAYOR ESPINOSA**, which prompted **PCI LARAGA** to fire back. Meanwhile in Cell 7, when **YAP** heard the gunshots coming from **MAYOR ESPINOSA's** cell, he took his firearm from his bed, ran towards the latrine and fired upon the raiding team of **SPO4 JUANITO DUARTE**. The raiding team was left with no choice but to retaliate. **MAYOR ESPINOSA** and **YAP** were killed inside their respective cells. The team thereafter contacted the Scene of the Crime Operatives (SOCO) and requested their assistance inside the premises to process the scene.

The search yielded a Super .38 Colt with Serial Number 288282-0, chamber loaded, and magazine with six live ammunition in Cell 1 and a caliber .45 Colt MK IV series with Serial No. 418572 in Cell 7. The hands of both **MAYOR ESPINOSA** and **YAP** contained gunpowder nitrates while the firearms recovered contained gunpowder residue.

The team noted that the search was witnessed by Barangay Kagawad **ALFREDO GITGITIN**, Barangay Kagawad **WILFREDO REL**, and **BYRON ALCOBA** of GMA 7.

DISCUSSION

Ideally, the conduct of the implementation of the search warrant on November 05, 2016 is entitled to be accorded with the presumption of regularity as specifically provided in the Rules of Court. However, jurisprudence tells us that the presumption is disputable and may be rebutted by affirmative evidence of irregularity. The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.¹⁴

This portion of the report will thoroughly discuss the evidence presented to determine whether the death of **MAYOR ESPINOSA** was a result of a legitimate police operation or a case of premeditated murder. To arrive at a conclusion, the Committees will look into the following:

- a. Narration of facts based on the Judicial Affidavits submitted by the jail guards, PNP personnel, and inmates;
- b. Compliance with established procedures of the PNP and the chain of command;
- c. Regularity in the application, issuance and implementation of the search warrants;
- d. Evidence recovered inside Cells 1 and 7 following the deaths of Espinosa and Yap;
- e. PCI Laraga's narration on how Espinosa was killed;
- f. Timeline of events;
- g. The missing Closed Circuit Television (CCTV) hard drive;
- h. Testimony of Kerwin Espinosa; and,
- i. Deaths connected to the killing of Mayor Espinosa

¹⁴ People v. Mendoza, G.R. No. 192432, June 23, 2014.

*Narration of Facts Based on the
Judicial Affidavits Submitted by the
Jail Guards, PNP Personnel, and
Inmates*

The following are the jail guards and PNP personnel present during the incident:

1. PJG JULITO G. RETANA;
2. PJG ROGER R. RAZAGA;
3. PJG RONILLO L. PADILLA;
4. PJG RODERICK M. PRADO;
5. PJG NARCISO ORTEGA
6. PO2 RAYMOND V. VILLOTE
7. PO1 STEPHEN C. REPASA
8. PO1 JOSHUA D. VICENTE
9. PO1 JEFFREY ANGELO S. MORRERO

At around 3:00 a.m. of November 05, 2016, **JULITO RETANA**,¹⁵ one of the prison guards on duty at Baybay City Sub-Provincial Jail noticed in the CCTV monitors that there were three vehicles with blinkers coming towards the main entrance gate. When he approached the gate, the men outside presented themselves as CIDG tasked to implement search warrants. However, the warrants were not presented when **RETANA** requested to see them.

The raiding team's refusal to present the search warrant led to an altercation. In order to enter the premises, the team forced the padlock open using a bolt cutter. The guards were prevented to witness the service of the warrant. In fact, all jail guards and PNP personnel on duty were directed to kneel down and face the wall with their hands up. Moreover, their bodies were searched, and their mobile phones and firearms were confiscated.

According to **JUNREY CASIL**, an inmate inside Cell 2, the CIDG operatives entered the premises at around 3:10 a.m. Since his cell was beside **MAYOR ESPINOSA**'s, he overheard the following:

MAYOR ESPINOSA: "Magandang gabi sir."
CIDG OPERATIVE : "Magandang gabi din mayor."
: "Mayroon ka bang baril diyan?"
MAYOR ESPINOSA: "Wala po akong baril dito sir. Kahit kutsilyo wala nga ako sir."
: "Paki sara nalang po ng gate sir kasi iili muna ako."
CIDG OPERATIVE : "Huwag na!"

This conversation was followed by four gunshots inside Cell 1.¹⁶

DONALD A. PALERMO, an inmate inside Cell 2, said that he saw the operatives approach their cell but stopped upon sight of the CCTV camera installed near the cell. The operatives went back to the lobby for a short while. When they returned, two operatives went to Cell 1 and forced open its padlock. Similar to the account of **CASIL**,

¹⁵ Judicial Affidavit of Julito G. Retana dated November 8, 2016.

¹⁶ Judicial Affidavit of Junrey C. Casil dated November 8, 2016.

he heard MAYOR ESPINOSA's plea: "*Wag niyo akong lagyan maawa kayo sir wala akong ganyan.*"¹⁷

PALERMO likewise saw one CIDG operative standing in between Cells 2 and 3. The operative raised his right hand and made a thumbs down. Immediately thereafter, shots were fired from inside Cells 1 and 7.¹⁸

PALERMO categorically stated that a CIDG operative stood outside Cells 1 and 2, and directed and fired his gun inside ESPINOSA's cell. Immediately thereafter, another operative who was wearing rubber gloves entered Cell 1 with a handgun. He later observed that when said operative left the cell, he was no longer holding the gun.

Meanwhile, inmate OLIVER CABILING stated in his affidavit that he was inside Cell 7 together with fellow inmates ROMIL PAISANO, DOMINGO NAPOLES, DOMINGO GORIANO and RAUL YAP when the CIDG operatives arrived. According to CABILING, the padlock of Cell 7 was forced open and they were told to transfer to the *quarantinas*. When YAP was about to step out, the operatives asked for his name and the nature of his case. YAP introduced himself and mentioned that he was detained for "drugs", referring to his being charged for violation of R.A. No. 9165. He was then instructed to return inside his cell and to face the wall. When the other inmates were already inside the *quarantinas*, they were asked to sit and bow their heads. They then heard five gunshots.¹⁹

*Compliance with Established
Procedures of the PNP and the Chain
of Command*

A run-through of the events and the personalities involved in the implementation of the search warrants showed an **intentional and deliberate disregard** for the chain of command in PNP-CIDG. In case of highly sensitive information regarding an upcoming operation, the Regional Director, as well as the Director of the CIDG, must be informed.

Considering that the Espinosa case was highly sensationalized and should be dealt with caution, it was **erroneous**, intentional or not, on the part of PSUPT MARCOS not to sufficiently inform PCSUPT BELTEJAR or his Director of the said operation. In this case, PSUPT MARCOS not only hid this operation from his immediate superior, PCSUPT ELMER BELTEJAR, he also did not notify CIDG DIRECTOR ROEL OBUSAN.

His withholding of sensitive information regarding this operation became more apparent when he responded to the query of SENATOR FRANKLIN DRILON on the necessity of his presence in the said operation. PSUPT MARCOS said that his presence was optional but he felt that he needed to be with his men in case an attack would be made by the ESPINOSA group. He added that they had information that the group was in possession of two hundred (200) high-powered and short firearms. Thus, with his knowledge of the danger of the operation, it was illogical and contrary to PNP standard operating procedures and to ordinary human experience not to inform higher authorities

¹⁷ Judicial Affidavit of Donald A. Palermo dated November 8, 2016.

¹⁸ Ibid.

¹⁹ Judicial Affidavit of Oliver M. Cabiling dated November 8, 2016, p 5.

of the matter at hand.²⁰

In the testimony of PCSUPT BELTEJAR made before the Committees, he said that there was no direct coordination made with him. In fact, the only coordination made was through a text message received by the **Regional Technical Operations Center (RTOC)** at **4:26 a.m.** which disclosed the pre-jump off text report of the CIDG.²¹

It was established that the raiding team was inside the premises of the Baybay Sub-Provincial Jail as early as **3:20 a.m.** and that **MAYOR ESPINOSA** and **YAP** were already killed before **3:49 a.m.** when **SUPT MATIRA** made the call requesting for SOCO. With **MAYOR ESPINOSA** and **YAP** already dead, the pre-jump off report was **irregular and untruthful.**²²

Another irregularity observed during the conduct of the implementation of the search warrant was the involvement and participation of **PCI LARAGA**. Being the second in command out of all the operatives present during the raid, ideally, he should be giving out orders from the perimeter. Instead, he joined the team tasked to serve the warrant in **ESPINOSA's** cell. What was more unusual was the fact that **PCI LARAGA** was the one who shot and killed **MAYOR ESPINOSA**. In the ordinary course of an operation, the team leader should not expose himself to peril as **PCI LARAGA** did because should the team leader die while implementing the warrant, then command and control is lost.

Regularity in the Application, Issuance and Implementation of the Search Warrants

a. Necessity of Search Warrant

A controversial question was raised with respect to the necessity of securing a search warrant against **MAYOR ESPINOSA** and **YAP** considering that they were **detainees** inside the Baybay Sub-Provincial Jail, a facility under the control of the government. When it comes to the right against unreasonable search, such prohibition applies only when the person seeking to invoke its protection has exhibited a **subjective expectation of privacy** that society is willing to recognize as reasonable.

In this regard, US jurisprudence instructs that there is **no need to secure a search warrant** when the subject of the search is locked up in a prison/detention facility. The US Court has held that society is **not prepared to recognize that a prisoner has any legitimate expectation of privacy** in his prison cell. Accordingly, the constitutional proscription against unreasonable searches and seizures is **inapplicable in that context.**

²³

In the celebrated case of *Hudson vs. Palmer*,²⁴ the Court said:

²⁰ TSN dated November 10, 2016, pp. 212-213.

²¹ Ibid, p. 147.

²² Ibid, pp.146-147.

²³ 104 S. Ct. 3194 (1984).

²⁴ Ibid.

"The Court gave great weight to statistics of violent crime in the nation's prisons, concluding that prisoners have demonstrated an inability to control and conform their behavior to society's standards by normal self-restraint. Prisons must be conducted to assure the safety of prison personnel, of visitors, and of the inmates themselves. A sanitary prison environment must also be maintained. To effectively meet these objectives, the Court concluded that the prison officials must be able to prevent attempts to introduce drugs, weapons, and other contraband into the prison. They must also diligently attempt to detect escape plots, involving drugs or weapons, before the schemes materialize.

Using the balancing approach of *Wolff v. McDonnell*, the Court concluded that it would be **"literally impossible" to attain these prison objectives if inmates retained a right to privacy in their cells. Society would insist that the balance between the prisoner's interest in privacy and society's interest in security always tip in favor of the paramount interest in institutional security.** A right to privacy, according to Chief Justice Burger, is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure internal order and security." (Emphasis supplied)

The right against unreasonable search mainly **applies to our respective homes and private establishments.** Said constitutional provisions are **safeguards** against reckless, malicious and unreasonable invasion of privacy and liberty. The Court, in *Villanueva vs. Querubin*²⁵, underscored their importance:

"What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus, is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life. In the same vein, *Landynski* in his authoritative work could fitly characterize this constitutional right as the embodiment of a spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed **except in case of overriding social need, and then only under stringent procedural safeguards**" ²⁶(Emphasis supplied)

In recognition of the absence of a reasonable expectation of privacy inside our jails, **PCI LARAGA** should have known that a **search warrant was unnecessary** to confiscate any firearm and illegal dugs allegedly inside the respective cells of **MAYOR ESPINOSA** and **YAP**. Moreover, had he exercised due diligence and inquired from the guards of the Baybay Sub-Provincial Jail on the information supplied to him by his witness, **PAUL OLENDAN**, he would have known that on October 30, the jail guards in said penal institution had conducted an *Oplan Galugad*

²⁵ G.R. No. L-26177, December 27, 1972.

²⁶ *Ibid.*

and only found cellphones and chargers. No drugs nor firearms were found inside the prisons cells.

What was more apparent based on the circumstances surrounding the operation, was **PCI LARAGA**'s application for search warrants with a friendly court outside the jurisdiction of Leyte, in order to clothe their planned "operation" with a semblance of legitimacy.

b. Time of Conduct of Search

The rule governing the time of service of search warrants is Section 8 of Rule 126 of the Rules of Court, which provides:

Sec. 8. Time of making search. The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.

The policy behind the prohibition of nighttime searches in the absence of specific judicial authorization is to protect the public from the abrasiveness of official intrusions. **A nighttime search is a serious violation of privacy.**²⁷

In the instant case, the search warrant issued by **JUDGE SABARRE** dated November 04, 2016 specifically allowed the conduct of an immediate search at any time of the day or night. Notwithstanding said authority to conduct the operation at night time, this body finds the necessity to conduct the search at **4:30 a.m.**²⁸ based on the account of **PSUPT MARCOS** **questionable** and **suspicious**.

Granting that the Baybay Sub-Provincial Jail is a government installation that can be easily controlled by the CIDG-8, with the assistance of the jail wardens, the Committees find no reason why the team opted not to serve the warrant during daytime. During the inquiry made by this body, no one from the raiding team was able to justify why it was necessary to take advantage of the darkness of the night in order to effectively serve the search warrant. Further, the element of surprise was unnecessary considering that **MAYOR ESPINOSA** and **YAP** were **locked up inside** their respective cells, with no chance of escaping during the conduct of the search.

c. Deposition of PAUL GRANADOS OLENDAN

According to the rules, a search warrant shall not be issued except upon probable cause in connection with one specific offense to be **determined personally** by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.²⁹ In the application for search warrant before **JUDGE SABARRE**, **PCI LARAGA** brought with him his witnesses, **PO3 NORMAN ABELLANOSA** and **PAUL OLENDAN**.

²⁷ People vs. Ortiz, G.R. No. 117412, December 8, 2000.

²⁸ Note that it has been established by the Joint Committee that the raiding team was in the Baybay Sub-Provincial Jail as early as 3:20 a.m.

²⁹ Rules of Court, Rule 126, Section 4.

In **OLENDAN**'s deposition,³⁰ he stated that he was a former inmate of Tacloban City Jail and that he became a big time drug pusher under the leadership of **EDGAR ALVAREZ** during the period of his incarceration.

On October 27, 2016, a certain "**JOJO**", a known drug pusher, approached and told him that a certain **RAUL YAP** was requesting him to visit. Despite acceding to the request, he immediately informed the incident to the CIDG-8 thru **PCI LARAGA**. The next day, he went with "**JOJO**" to Baybay Sub-Provincial Jail and proceeded to Cell 2 where he was introduced to **YAP**. At that moment, he saw several persons repacking *shabu*. **YAP** told him that **MAYOR ESPINOSA** was looking for a person who could carry out the plan to dispose the remaining illegal drugs in his possession.

He was later instructed to proceed to Cell 1 where he met **MAYOR ESPINOSA**. When he reached Cell 1, he immediately noticed a caliber .45 handgun placed beside the pillow. **ESPINOSA** asked him if he agreed to the plan **YAP** told him about. **OLENDAN** was indirectly threatened when **MAYOR ESPINOSA** pointed out that he still had control of the police and other authorities. Out of fear for his life, as well as the safety of his family, **OLENDAN** agreed to act as distributor of illegal drugs. After leaving the jail premises, he proceeded to the CIDG to report the incident.

Upon reporting said incident, **PCI LARAGA** tasked **PO3 ABELLANOSA** to confirm the veracity of **OLENDAN**'s report. After conducting an investigation, **ABELLANOSA** confirmed and subsequently agreed to be a witness in the application for search warrants.³¹

On the basis of the depositions executed by **ABELLANOSA** and **OLENDAN**, the application for search warrants filed by **PCI LARAGA** was acted upon favorably on the same day it was filed.

During the Joint Committee hearing, an invitation was sent out to **OLENDAN** to no avail. According to reports, **OLENDAN** could no longer be found. Hence, there was no way for the Committees to examine him and verify the facts contained in his deposition. In relation to this, the Committees received documents from the National Bureau of Investigation (NBI) that disproved **OLENDAN**'s statement that he was at the Baybay Sub-Provincial Jail on October 28, 2016.

Among the persons interviewed during the investigation was **MR. ANTONIO DE LA CRUZ**³², Assistant Principal and immediate supervisor of all contract job employees of Leyte National High School (LNHS), Tacloban City. According to him, **OLENDAN** used to be one of their contract job employees tasked to perform masonry, construction work, and janitorial services. He further added that he **personally saw OLENDAN in the morning of October 28, 2016 at around 7:30 a.m.** performing janitorial work near his office.

DE LA CRUZ also presented **OLENDAN**'s daily time record³³ and the raw data³⁴ of the LNHS' biometrics machine. A perusal of the daily time record showed that, on October 28, 2016, **OLENDAN** came in for work at **5:16 a.m.** and timed out at **11:02 a.m.** In the afternoon, there was no entry on the arrival (time in) slot yet it showed that he

³⁰ Deposition of Paul G. Olendan dated November 4, 2016.

³¹ Deposition of PO3 Norman T. Abellanosa dated November 4, 2016.

³² Judicial Affidavit of Antonio S. Dela Cruz dated November 18, 2016.

³³ Daily Time Record of Paul Olendan for the Month of October 2016.

³⁴ Raw Data of LNHS Biometrics Machine.

departed at 18:06 p.m.

According to **DE LA CRUZ**, the fact that there was no entry for **OLENDAN**'s arrival in the afternoon did not necessarily mean that he was absent for that particular period. He clarified that the raw data from the biometrics machine proved that he clocked in at 11:03 a.m.

It was possible that the lack of entry was caused by the erroneous pressing of the key of the biometrics machine. Notwithstanding said error, the raw data proved that he personally "pressed the biometrics" at 11:03 a.m., as the machine could not read the fingerprints of other employees other than his own. Although there was no entry in his daily time record, the raw data was sufficient to prove that **OLENDAN** was present at **LNHS** in the morning and afternoon of October 28, 2016. Hence, it was impossible for him to be at the Baybay Sub-Provincial Jail which is 103 kilometers away.

When **DELA CRUZ** was asked about the whereabouts of **OLENDAN**, the only information obtained was that he stopped reporting for work since November 11, 2016.

In addition to the statement of **DE LA CRUZ**, the Committees also took into consideration the joint affidavit of **EPINDIMIO CASINGINAN**, **FERDINAND VILLAMOR**, **ROMEO AY-AY** and **DOMELITO CANETE**, fellow employees of **OLENDAN** at **LNHS**. On said affidavit, they categorically stated that **OLENDAN** was working with them in repairing the conference room on October 27 and 28, 2016.³⁵

In support of the theory that **OLENDAN** never went to the Baybay Sub-Provincial Jail, the Committees also noted the entries contained in the logbook³⁶ of all visitors on October 28, 2016:

1. Rhoda Magale;
2. Romulo Alcala;
3. Faustino Villamayor;
4. Domingo Torres;
5. Doroteo Marayon;
6. Chona Milan;
7. Alberto Sumalang;
8. Maricel Espinosa;
9. Celyn Largo;
10. Pacita Polangcor;
11. Shaznie Espinosa;
12. Valiant Batingal;
13. Daisy Cosep;
14. Candice Osau; and
15. Charlie Osau

With the confirmation of **OLENDAN**'s presence at work on October 28, 2016 backed up by documentary proof, it was impossible for him to be physically present at the Baybay Sub-Provincial Jail that day to meet **YAP** and **MAYOR ESPINOSA**. The foregoing showed that the deposition of **PO3 ABELLANOSA** was baseless.

³⁵ Joint Affidavit of Epidemio Casinginan, Ferdinand Villamor, Romeo Ay-ay and Domelito Canete dated November 18, 2016.

³⁶ Baybay Sub-Provincial Jail Visitors Logbook, October 28, 2016 entry.

d. **Legality of the Search**

Assuming but without admitting that a search warrant was required in order to secure the firearms and illegal drugs allegedly inside the respective cells of **MAYOR ESPINOSA** and **YAP**, the Committees find its implementation illegal as the team overreached the terms of the place to be searched.

A **search warrant** is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and to bring it before the court.³⁷ The issuance of a search warrant is governed by Rule 126 of the Rules of Court, the relevant sections of which provide:

Section 4. *Requisites for issuing search warrant.* A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and **particularly describing the place to be searched** and the things to be seized which may be anywhere in the Philippines. (Emphasis supplied)

Section 5. *Examination of complainant; record.* The judge must, before issuing the warrant, **personally examine in the form of searching questions and answers**, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with the affidavits submitted.

A perusal of the SW No. 2016-11-20 dated November 04, 2016 issued by **JUDGE SABARRE** particularly described the place to be searched:

“xxx that there is probable cause and a reason to believe that Raul Yap, even in his status as an inmate/prisoner has in his possession, control and custody of undetermined quantity of dangerous drugs otherwise known as “Shabu” kept and concealed in his bed inside his cell at **Cell no. 2** Baybay Sub-Provincial Jail, Baybay City, Leyte.

You are hereby commanded to make an immediate search at any time of the day or night **in the premises above-described** of Raul Yap xxx” (Emphasis supplied)

Referring to the testimonies of the CIDG-8 operatives and the affidavits submitted by the jail guards and inmates, it is undisputed that the search was conducted in Cells 1 and 7 where **MAYOR ESPINOSA** and **YAP** were detained, respectively. Based on the specific description of the place to be searched in the warrant, they had no business and should not have entered and searched Cell 7, notwithstanding the fact that **YAP** was inside.

Apart from the testimonies and affidavits previously mentioned, both the Application for Search Warrant filed by **PCI LARAGA** and Deposition of Witness supporting said application signed by **PO3 ABELLANOSA** and confidential informant **OLENDAN** categorically stated that **YAP** was a detainee of Cell 2 where he was seen repacking *shabu*.

³⁷ Rules of Court, Rule 126, Section 1.

No less than the Supreme Court declared illegal any deviation from the place specifically stated in the search warrant. The rationale for said prohibition was made clear in its ruling in *People vs. Court of Appeals*³⁸ in this wise:

“It is neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched - although not that specified in the warrant - is exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence. **What is material in determining the validity of a search is the place stated in the warrant itself**, not what the applicants had in their thought, or had represented in the proofs they submitted to the court issuing the warrant.

The place to be searched, as set out in the warrant cannot be amplified or modified by the officers’ own personal knowledge of the premises, or the evidence they adduced in support of their application for the warrant. xxx The Particularization of the description of the place to be searched may properly be done only by the judge and only in the warrant itself, it cannot be left to the discretion of the police officers conducting the search.” (Emphasis supplied)

Granting that the team of **PCI LARAGA** wantonly disregarded the limitation set forth in the search warrant, particularly with respect to the place to be searched, the **presumption of regularity can no longer be invoked**. The search was therefore malicious, illegal and highly suspicious.

Evidence Recovered Inside Cells 1 and 7 Following the Deaths of Espinosa and Yap

Based on the Accomplishment Report³⁹ on *Oplan Big Bertha* and *Oplan Paglalansag Omega* dated November 05, 2016 submitted and signed by **PSUPT MARCOS** to the Director of CIDG, the following items were confiscated:

ESPINOSA (Cell No. 1)	YAP (Cell No. 7)
One (1) unit firearm with serial number 288282-0 (chamber loaded) with six (6) live ammos	One (1) unit .45 (chamber loaded with empty shell) with six (6) live ammos with Serial No. 418572
Six (6) fired cartridge cases	Two (2) empty shells
One (1) deformed bullet	Two (2) fired bullets
One (1) fragmented bullet.	Two (2) deformed bullets
	Three (3) empty shells

³⁸ G.R. 126379, June 28, 1998.

³⁹ Regional Chief, CIDG Region 8 Accomplishment Report dated November 5, 2016.

Also seized in plain view/incidentally found during the search were the following:

ESPINOSA (Cell No. 1)	YAP (Cell No. 7)
1 pc heat-sealed transparent cellophane containing suspected shabu marked as "RRE" 11-5-16 and signature	1 pc canister (tin can) marked as heat-sealed transparent cellophane containing suspected shabu marked as "PRE" 11-5-16 and signature
1 pc improvised water tooter marked as "RRE-1" 11-5-16 and signature	1 pc improvised water tooter marked as "RRE-1" 11-5-16 and signature
1 pc plastic straw used as scoop marked as "RRE-2" 11-5-16 and signature	1 pc plastic straw used as scoop marked as "RRE-2" 11-5-16 and signature
1 pc tinfoil marked as "RRA-3" 11-5-15 and signature	1 pc tinfoil marked as "RRE-3" 11-5-16 and signature
1 pc pencil case containing plastic cellophanes marked as "RRE-4" 11-5-16 and signature	1 pc pencil case containing plastic cellophanes marked as "RRE-4" 11-5-16 and signature
4 pcs lighter with assorted color marked as "RRE-5" 11-5-16 and signature.	4 pcs lighter with assorted color marked as "RRE-5" 11-5-16 and signature.

To start off with the discussion on the items seized, it must be recalled that this operation started with the information received from **OLENDAN**. The Committees give emphasis on his allegation that he was present at the Baybay Sub-Provincial Jail on **October 28, 2016** and saw the firearms and illegal drugs inside the cells of **MAYOR ESPINOSA** and **YAP**.

It is hard to believe that the items allegedly seen by **OLENDAN** on October 28, 2016 were the exact items, among others, found and seized during the raid held on November 05, 2016. This is due to the fact that the jail guards conducted a thorough *Oplan Galugad* on **October 30, 2016**. Assuming that there was really an unlicensed firearm and illegal drugs as alleged by **OLENDAN**, the same should have already been found and confiscated by the jail guards.

According to **PJG PRADO**, it is impossible for a gun to be found in **MAYOR ESPINOSA** and **YAP**'s cells because they just recently conducted an *Oplan Galugad* on October 30, 2016 and they did not find any gun. The only items seized were five cellular phones with chargers.⁴⁰

During said *Oplan Galugad*, inmate **DOMINGO GORTIANO** said that there were no items seized inside Cell 7 and that **YAP** never had any illegal or prohibited items in his possession.⁴¹ Inmate **CABILING** also gave a similar statement.⁴²

Based on the foregoing, even assuming that **OLENDAN** was actually in the jail premises on October 28, 2016, which was already disproven, it is impossible to believe

⁴⁰ Judicial Affidavit of Roderick M. Prado, November 8, 2016.

⁴¹ Judicial Affidavit of Domingo B. Gortiano, November 8, 2016.

⁴² Ibid.

that he saw firearms and illegal drugs as these items should have been found during the recently conducted *Oplan Galugad* held two days after his alleged visit in the said jail facility. Moreover, there was no way to reconcile or justify the seizure of similar items contained in the deposition on November 05, 2016.

To corroborate the theory that the items seized were merely planted, the Committees once again refer to the previously mentioned statements contained in the Judicial Affidavits executed by inmates **CASIL** and **PALERMO**. They stated that they heard **MAYOR ESPINOSA** telling the CIDG operatives that he did not have any firearm in his possession and pleaded them not to plant the same inside his cell.

PCI Laraga's Narration on How Espinosa was Killed

The autopsy report on the body of **MAYOR ESPINOSA** showed that the deceased sustained four gunshot wounds. When inquired as to the circumstances surrounding the death of **MAYOR ESPINOSA**, **PCI LARAGA** said that he was not able to see where **MAYOR ESPINOSA** was positioned during the exchange of fire because the cell was totally dark. When they were allegedly shot at, he was able to retaliate and fire his gun six times, four of which went through the body of **MAYOR ESPINOSA** causing his instantaneous death.

It is unconvincing that **PCI LARAGA** was able to shoot **MAYOR ESPINOSA** four times notwithstanding his earlier claim that it was completely dark. In his attempt to clear the incident from malice, he said that he was able to aim his gun properly after taking advantage of the spark coming from **MAYOR ESPINOSA**'s gun when he initially fired at his team.⁴³

GENERAL BENJAMIN MAGALONG, PNP's Deputy Director for Operations, explained that **PCI LARAGA**'s statement could possibly be a case of *panic burst*. However, **GEN. MAGALONG** further explained that this was only possible if the shooter had a special counter-terrorism course, which was not among the credentials of **PCI LARAGA**.⁴⁴

Another issue raised was the trajectory of a bullet found inside the body of **MAYOR ESPINOSA**. Based on the autopsy report, all four points of entry were in front of the body of the victim, except for one, which had an upward trajectory. In this case, there were two possible positions for **MAYOR ESPINOSA** and **PCI LARAGA**. First, the victim could be in a vertical position whereby he was standing while the assailant or the tip of the barrel of the gun was at a point lower than the point of entry on the body of **MAYOR ESPINOSA**. This would mean that **MAYOR ESPINOSA** was on an elevated position relative to **PCI LARAGA**. The second possible scenario, which appeared to be more logical and believable considering the floor layout of the jail premises, was that **PCI LARAGA** was standing while **MAYOR ESPINOSA** was lying down.⁴⁵

Also prior to the autopsy, **ESPINOSA**'s upper garment was submitted to the Ormoc City Crime Laboratory Office for examination. The test yielded positive for

⁴³ TSN dated November 10, 2016, p. 311.

⁴⁴ Ibid, p. 314.

⁴⁵ Ibid, pp. 199-200.

gunpowder residue, which meant that the tip of the barrel of the gun was at a maximum distance of seven inches away from the point of entry on **MAYOR ESPINOSA**'s body.

With the gunshot made from an intermediate range already established, said fact could not be reconciled with **PCI LARAGA**'s statement that he was at the door of the cell when he fired at **MAYOR ESPINOSA**. When asked to clarify, **PCI LARAGA** was uncertain, blaming the darkness once again. It was no surprise that **PCI LARAGA** could not give a clear response because there was no safe answer that would be consistent with facts presented.

CIDG-7 Medico Legal **DR. BENJAMIN LARA**⁴⁶ testified that "considering that the upper garment was positive for gunpowder residue, it could mean that the [barrel] of the gun was at a distance of maximum of seven (7) inches away from the point of entry on the body of the victim..." This testimony disproved the possibility that **PCI LARAGA** was one foot away from the gate of the cell, as it was equally improbable for the tip of the barrel of his gun to be more than seven inches away from the body of **MAYOR ESPINOSA**.

Since it was established that the distance between the tip of the barrel of **PCI LARAGA**'s gun was not more than seven inches away from **MAYOR ESPINOSA**, it is impossible to believe his claim that the darkness prevented him from seeing **MAYOR ESPINOSA** during the exchange of fire.

Timeline of Events

Based on the Accomplishment Report on *Oplan Paglalansag Omega* and *Oplan Big Bertha* signed and submitted by **PSUPT MARCOS**, he indicated that the time of the operation was at 4:10 a.m. **PSUPT MARCOS** reiterated this detail when he affirmed that the raiding team was only able to enter the jail premises at around 4:30 a.m.

The timeline presented by **PSUPT MARCOS** was belied by the affidavit⁴⁷ of **PO2 JENNIFER MONGE**. She is a member of the PNP RTOC Regional Office 8 who was on her 24-hour duty from 8:00 a.m. of November 04 to 8:00 a.m. of November 05, 2016.

According to her, at around 3:49 a.m. of November 05, 2016, their office phone received a call from an unregistered number, 09175209113. The caller introduced himself as **SUPT MATIRA** and informed her that they needed SOCO at the Baybay Sub-Provincial Jail. Immediately thereafter, she called the Regional Crime Laboratory Office (RCLO-8) to inform them about the request. She was advised by the satellite office of SOCO, located in Ormoc City, that the same request had already been made prior to her call. In fact, a team from Ormoc SOCO was already en-route to Baybay Sub-Provincial Jail.

The call log that appeared on the official phone of RTOC-8 was undisputed. Considering the call made by **SUPT MATIRA** at 3:49 a.m., it was either **ESPINOSA** and **YAP** were already killed at such time or there was an anticipation that someone would be killed in the conduct of operation.

⁴⁶ TSN dated November 23, 2016, p. 266

⁴⁷ Affidavit of PO2 Jennifer G. Monge dated November 8, 2016.

With MAYOR ESPINOSA and YAP already dead before 3:49 a.m., it showed that PSUPT MARCOS deliberately presented an erroneous timeline of events. PSUPT MARCOS made it appear that they arrived at the gate at 4:10 a.m. and entered the jail premises only at 4:30 a.m. to be consistent and compliant with the requirement of prior coordination with the PDEA which they actually did at 4:05 a.m. Pursuant to RA 9165 and the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigations, PNP Units, prior to any anti-illegal drugs operations shall, as far as practicable, coordinate with the PDEA.⁴⁸

In preparing his timeline of events presented before the Committees, PSUPT MARCOS overlooked the fact that the actual time of the call requesting for SOCO could be used and presented as vital piece of information sufficient to contradict his narration of events.

In addition, the jail guards on duty, through their affidavits, testified that they saw the arrival of the vehicles of the raiding team on their CCTV monitor at around 3:15 a.m. thereby debunking conclusively the claim of PSUPT MARCOS.

The CCTV Hard Drive That Went Missing in the Course of the Implementation of the Search Warrant

Undeniably, there were glaring differences between the testimonies of the members of the raiding team and the affidavits submitted by the jail guards and inmates with respect to the time and circumstances of the search. The truth could have been easily known had the jail's CCTV recording been retrieved and presented. However, when the same was looked into by the investigators, the hard drive was reportedly missing.

During the presentation made by PDIR OBUSAN during the public hearing,⁴⁹ he took notice of entry no. 145 of the logbook dated November 05, 2016 stating that the network video recorder 16 channels and the Sea Gate SV 35-Series hard drive were under repair. It was established that prior to the entry of the CIDG raiding team, the CCTV cameras were still working.

Excerpts from the Judicial Affidavit of PJG RETANA⁵⁰

- T- *Maaari mo bang isalaysay ang mga pangyayari?*
- S- *May pasado alas 3 na ng medaling araw mg ika-05 ng Nobyembre 2016, kasalukuyan po akong naka duty at nasa loob ako ng opisina namin at nakita ko lang sa CCTV monitor namin na may dumating na tatlong (3) patrol cars sa labas ng gate namin. Ang ginawa ko po ay nag zoom in po ako sa CCTV camera at nakita ko po na parang mga otoridad garwa ng sinasakyan nilang mga patrol car. Inutusan ko po si Prison Guard Ortega xxx "*

⁴⁸ Section 2-2, Chapter 2, Revised PNP Manual on Anti-Illegal Drugs Operations and Investigations.

⁴⁹ November 10, 2016.

⁵⁰ Judicial Affidavit of Julito G. Retana dated November 7, 2016.

- T- *Gumagana ba ng video recorder na iyon at mga monitor nito nang pasukin kayo ng taga CIDG?*
- S- *Opo, bali siyam (9) na cameras ang gumagana noon.*

Excerpts from the Judicial Affidavit of **PJG RAZAGA**⁵¹

- T- *Maaari mo bang e-detalye and pangyayari ito?*
- S- *Ang una po kasing nangyari noon ay habang nasa loob kami ng opisina namin, nakita namin sa monitor ng CCTV na mayroon pong isang patrol car na dumating sa gate. Dahil dito pinuntahan po ng kasama namin na sa PG NARCISO M. ORTEGA and main gate xxx"*

Based on the confirmations made by the jail guards, the Committees are inclined to accept as fact that the **CCTV cameras were working prior to the entry** of the raiding team inside the sub-provincial jail. Moreover, the truthfulness and integrity of logbook entry no. 145 is highly questionable. No less than **PROVINCIAL JAIL WARDEN HOMOBONO BARDILLON** denied that any of the prison guards wrote the said entry because the CCTV was not under repair. In fact, it was unlikely to be malfunctioning considering that the unit was brand new and only a week had lapsed from its acquisition. Moreover, he added that he was unfamiliar with the handwriting on said entry and that the same was different from previous entries.⁵²

In addition, **WARDEN BARDILLON**, who arrived while the processing of the scene was ongoing, went to his office to secure the video recorder but only the monitor was left. When he asked the CIDG personnel about it, one answered "*Mamaya na, sir.*"⁵³ When the CIDG left the premises, they neither showed nor left a copy of the inventory of seized items.

After establishing that the CCTV camera and recorder were properly functioning prior to the raid, it can be inferred that the recorder was taken by the CIDG operatives incidental to the raid. At that time, the jail wardens, PNP personnel and inmates were immobilized, and **PSI LARAGA's** team had full control over the entire premises from 3 a.m to 11 a.m. Under Section 3 (e), Rule 131 of the Revised Rules of Court, evidence willfully suppressed would be adverse if produced. Applying this Rule, there arises a presumption that the missing CCTV hard drive contains recording incriminating the CIDG raiding team.

A summation of the facts would give us the impression that the team wanted nobody to witness the conduct of the search which led to the death of **MAYOR ESPINOSA** and **YAP**. Assuming that everything was in order, the CCTV recording would be the best evidence to support the claims of the CIDG-8. Correspondingly, if the intention of the CIDG-8 was really to kill and silence **MAYOR ESPINOSA** and **YAP**, the first thing to do was to dispose of any recording that could be used as evidence against them and feign ignorance on how it conveniently went missing.

⁵¹ Judicial Affidavit of Roger R. Razaga dated November 7, 2016.

⁵² TSN dated November 10, 2016, p 383.

⁵³ Ibid, p. 384.

*Testimony of Kerwin Espinosa*⁵⁴

In the Judicial Affidavit of **KERWIN ESPINOSA** dated November 22, 2016, he thoroughly narrated how he was able to expand his business of selling illegal drugs in Region VIII. He said that he was able to distribute around 10 kilograms of shabu in 40 days earning him roughly **five million pesos (P5,000,000.00)** gross income. However, said earnings were subject to deductions for operational expenses and "**SOP**" or *payola* that served as protection money in order for him to continuously pursue his trade.

In his affidavit, he identified the names of his protectors in the PNP who received his "**SOP**". Among them was **PCI LARAGA** who served as point person or middle man receiving the monthly "**SOP**" in the amount of **one hundred twenty thousand pesos (P120,000.00)** in behalf of then **GENERAL VICENTE LOOT**. Aside from **PCI LARAGA**, **SUPT MATIRA** was also identified and was said to be accepting **fifteen thousand pesos (P15,000.00)** weekly which later on increased to **twenty-five thousand pesos (P25,000.00)** when his trade further expanded.

In the recent May 2016 Elections, **PSUPT MARCOS** allegedly contacted **KERWIN** through **PCI WILFREDO ABORDO**. At that time, **PSUPT MARCOS** was among the hundreds of policemen assigned in Albueria, which was then identified as an election "hotspot". **KERWIN** initially spoke on the phone with **PSUPT MARCOS** who demanded **three million pesos (P3,000,000.00)** in exchange for protection. The said amount would fund the candidacy of **PSUPT MARCOS'** wife for Vice Mayor of Pastrana, Leyte.

KERWIN initially agreed to give the amount of **one million five hundred thousand pesos (P1,500,000.00)**. A meeting was arranged on May 07, 2016 at Zeelan Hotel for him to personally give the said amount to **PSUPT MARCOS**. In fact, it was **MAYOR ESPINOSA** who stepped out of the vehicle and handed **PSUPT MARCOS** the money.⁵⁵

The following day, **KERWIN** again met with **PSUPT MARCOS** in the same hotel upon the latter's demand for the delivery of the remaining **one million pesos (P1,000,000.00)** which the former committed.⁵⁶ When **KERWIN's** father won in the mayoral race in Albueria, **PSUPT MARCOS** received an additional bonus of **five hundred thousand pesos (P500,000.00)**. In total, **PSUPT MARCOS** received **three million pesos (P3,000,000.00)** from the **ESPINOSAs**.⁵⁷

Deaths Connected to the Killing of Mayor Espinosa

While the Committees were conducting public hearings, the joint body was also informed of the possible connection of the deaths of the following personalities to the killing of **MAYOR ESPINOSA**.

⁵⁴ Judicial Affidavit of Rolan "Kerwin" E. Espinosa dated November 22, 2016.

⁵⁵ TSN dated November 23, 2016, pp. 97-98.

⁵⁶ Ibid, p. 99.

⁵⁷ TSN dated November 23, 2016, pp. 101-103

A. The Case of PCI JESUS NAPOLES SON

On December 01, 2016, **MRS. MYLENE SON**, wife of the murdered **PCI JESUS NAPOLES SON**, sent a message⁵⁸ to the official e-mail address of the Office of Senator Panfilo M. Lacson, revealing the possible motive behind the killing of her husband.

As a brief background, **PCI SON** was formerly assigned to the PNP 8th Regional Command as an intelligence operative and later on, to the Anti-Illegal Drugs Special Operation Task Force. On September 16, 2016, **PCI SON** was gunned down by unidentified men in Sta. Fe, Leyte while he was driving on his way to work.

MRS. SON, in her testimony during the public hearing on December 05, 2016, narrated the conflict between her husband, **PCI SON** and **PSUPT MARCOS**, which started when the latter's wife lost in the recent local election against the father-in-law of **PCI SON**.

After some time, the relationship of the two police officers eventually improved. **MRS. SON** later learned from her husband that **PSUPT MARCOS** offered **PCI SON** five hundred thousand pesos (P500,000.00) to kill **MAYOR ESPINOSA**.⁵⁹

PCI SON initially considered the offer but eventually turned it down after consulting some trusted family and friends. His decision was reinforced after learning that **MAYOR ESPINOSA** was under the Witness Protection Program.

According to **MRS. SON**, her husband posted a status in their joint Facebook account on September 15, 2016, to wit: "*Pulis sa pulis.... Putangina mo!!! Offer ka nga, naka-witness protection program naman.... Tapos double cross mo kami... ala ka bayag... subukin mo ako hamunin nang harapan... I'm sure may mamamatay sa atin!!! Wag mo akong traidurin!!! Di kita uurungan!!!!*" While the post did not name anyone, **MRS. SON** testified that her husband was referring to **PSUPT MARCOS**.⁶⁰

In the report prepared by the Provincial Director to the Regional Director of PRO 8, the following facts were stated: that at 9:45 a.m. of September 16, 2016, while **PCI SON** was travelling along the National Highway of Brgy. Piit, Sta. Fe, Leyte heading to Pastrana while boarding his Isuzu Crosswind (with plate number **HAP 151**), an unidentified assailant on board a maroon utility vehicle travelling in the same direction successively fired their firearms towards the victim's vehicle where the latter sustained one gunshot wound at the temple that caused his instantaneous death. The victim was brought to the Leyte Provincial Hospital where he was declared dead on arrival.⁶¹

During the processing of the crime scene by the SOCO led by **PCI DARWIN A. MORALLOS**, the team recovered one empty shell for caliber 5.56 ammunition; one unit caliber .45 pistol M1911 US Army, United States property no. 734880 with serial no. 7790314, loaded with one live ammunition for caliber .45; one unit of nine millimeter Luger Intratec Tec-KG9 with serial number 373169 inserted with one magazine loaded with 16 pieces live ammunition; two pieces magazine assembly; and one silencer/flash suppressor.⁶²

⁵⁸ Email dated November 16, 2016.

⁵⁹ TSN dated December 5, 2016, p. 122.

⁶⁰ Ibid, p. 131.

⁶¹ Initial Report on Shooting Incident in Brgy. Pilit, Sta. Fe Leyte of the PNP Leyte Police Provincial Office, Kuta Kankabato, San Jose, Tacloban, dated September 22, 2016.

⁶² Ibid.

These articles were recovered inside the victim's vehicle. In addition, nine empty shells for caliber 5.56 recovered from the crime scene were turned-over to the PNP Crime Laboratory VIII for ballistic examinations and firearms verification.⁶³

Based on the initial firearm's holder verification, the caliber .45 M1911 pistol bearing the serial no. 7790314 recovered inside the victim's vehicle was registered to the following firearms holders: **FERNANDO NAJARRO Y LEYSON** of Poblacion, Koronadal City, South Cotabato with expiry date of July 15, 1998; **EPHRAIM PAMATIAN Y TORRE** of 2147 P. Binay St., Bangkal Makati City, registered on July 29, 2009 with August 22, 2011 as its expiry date; and most significantly, under the name of the **PNP** at Camp Crame, Quezon City registered on October 29, 2009 with an expiry date of March 31, 2015.⁶⁴

B. The Case of EDGAR ALLAN "EGAY" ALVAREZ

EDGAR ALLAN "EGAY" ALVAREZ, an inmate at the Abuyog Penal Colony, was detained due to his alleged involvement with illegal drug activities. According to intelligence reports, **ALVAREZ** was **KERWIN**'s source of the illegal drugs.

The application for search warrant⁶⁵ was made by **PSUPT MATIRA**, Deputy Chief, CIDG-8, before **JUDGE JANET CABALONA** of RTC Branch 33 Calbiga, Samar. Said application for search warrant was subscribed and sworn to by **PCI LARAGA**.

The application was based on the testimony of **MR. SHERMAN MARTIJA ENCESO**, a former inmate at the Abuyog Penal Colony. He narrated that he was a former inmate at Cell 5, building 1, maximum security of the Abuyog Penal Colony from June 26, 2012 to June 26, 2014; that he and **ALVAREZ** became close and that he even served as his cook and trustee inside the colony; that he was aware of the illegal drugs activities inside **ALVAREZ**' *kobol*; and that he became a courier of **ALVAREZ** in distributing illegal drugs, i.e. *shabu*, both inside and outside prison.

Allegedly, **ENCESO** voluntarily appeared before CIDG-8 and provided information on the illegal activities involving **ALVAREZ**. According to him, he surrendered after learning of the government's policy against personalities involved in illegal drugs. The information he disclosed to **SUPT MATIRA** was evaluated by **PO3 NORMAN T. ABELLANOSA**. Convinced of the credibility of the statement, **PO3 ABELLANOSA** applied for the issuance of the Search Warrant.

After examining **PO3 ABELLANOSA** (applicant) and the witness, **JUDGE CABALONA** issued SW NO. 2016-074⁶⁶ on August 09, 2016 which was received by **PCI LARAGA** on the same date.

In a Memorandum dated August 29, 2016, an Investigation Report on the Alvarez killing was prepared by the CIDG Regional Director to CIDG Acting Director. In said report, it was stated that on August 11, 2016 at around 4:30 a.m., a composite team of CIDG-8 detectives led by **SUPT MATIRA** (Team 1), Regional Maritime Unit led by **PSI**

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Application for Search Warrant dated August 8, 2016.

⁶⁶ Search Warrant No. 2016-074 dated August 9, 2016.

MICHAEL GLENN AMOYEN (Team 2), Regional Anti Illegal Drugs Special Operation Task Force 8 (RAIDSOTF 8) led by **PSI DINO GOLEZ** (Team 3) and Regional Public Safety Battalion 8 (RPSB 8) led by **PSI TROBIN TROY CASTRO** and **PSI MARVAL DIAZ** (Team 4 & 5) in coordination with PDEA 8, and as over-all supervisor, **PSUPT MARCOS**, armed with Search Warrant No. 2016-074 arrived at the gate of the Leyte Regional Prison (LRP) (formerly the Abuyog Penal Colony).

In their Joint Affidavit, **SPO4 JUANITO AMPADO DUARTE** and **PO2 NEIL PATRIMONIO CENTINO** stated that they were with their invited media representative, **MR. EUL CAORTE**.

According to the report, when the team was about to enter the subject's room, a man, covered with a blanket, hopped from his bed towards the door of the comfort room and moved in a ducking position. The team allegedly heard a metal clank similar to a sound of a gun chamber loading. **SPO4 DUARTE** then ran towards **ALVAREZ** with his pistol drawn and informed the latter that they were police officers. Allegedly not heeding the warning, **ALVAREZ** aimed his gun at **SPO4 DUARTE** which prompted the latter to shoot. The team added that they saw **ALVAREZ** holding a hand grenade causing **SPO4 DUARTE** to immediately neutralize the subject.

The operatives justified their act of killing **ALVAREZ**, invoking self-defense. Said report stated that there were no lapses in operational procedure in the service of the search warrant and deemed the case closed. It even recommended the granting of appropriate Medals, Recognition or Award to the PNP personnel participating in said raid.

C. The Case of **FERNANDO "INTOY" MEJIA BALAGBIS**

FERNANDO BALAGBIS Y MEJIA was incarcerated inside the Baybay City Jail, Leyte due to his involvement in illegal drug activities. According to reports, **BALAGBIS** was among **KERWIN**'s drug distributors.

In his Sworn Affidavit, **PSI J. RALE O PAALISBO**, Team Leader of the RAIDSOTF 8 of Camp Ruperto Kangleon, Campetic, Palo, Leyte, attested that their office received numerous information regarding the alleged illegal drug activities of **BALAGBIS** inside the jail. To validate this information, **PSI PAALISBO** started a case build up against the subject and directed **PO2 RANDY MERELOS** to conduct the same and start surveillance of the subject.

PO2 MERELOS carried out a successful buy bust operation against **BALAGBIS** inside the Baybay City Jail. **PO2 MERELOS** narrated that the **five hundred peso (P500.00)** worth of *shabu* purchased from **BALAGBIS** tested positive when submitted to PNP Crime Laboratory.

After examination of the applicant and the witnesses, **JUDGE JANET CABALONA** of RTC Branch 33, Calbiga, Samar, issued SW App No. 2016-089 dated October 25, 2016 to **PSI PAALSIBO**.

Based on the report dated November 03, 2016 of the Provincial Director of Leyte with the Regional Director of PRO8, a joint composite team of RAIDSOTF 8 led by **PSUPT HARRY V. SUCAYRE**, Action Officer and **PSI PAALISBO** together with Regional Public

Safety Battalion-8 led by **PCI SHYRILLE TAN**, Leyte Provincial Public Safety Company led by **PSUPT MARIBEN M. ORDONIA** and Baybay City Police Station led by its chief, **PSUPT RAMIL NGUJO AMODIA**, was formed to conduct a police anti-illegal drug operation against **BALAGBIS**.

Based on the same report, at around 2:55 a.m. of October 28, 2016, the team carried out the operation at Cell 3 where **BALAGBIS** was detained. Said operation resulted in the neutralization of the subject drug personality after he allegedly resisted, assaulted and fired his hand gun towards the raiding team while positioning himself at the comfort room of his cell. The SOCO team later marked the discovered *shabu* and cash in **BALAGBIS'** possession as evidence which were turned over to **JAIL OFFICER JIMMY TOPIA**, OIC Jail Warden of Baybay City Jail.

D. The Case of ATTY. ROGELIO BATO and ANNALOU LLAGUNO

On August 23, 2016, **ATTY. ROGELIO BATO**, lawyer of **MAYOR ESPINOSA**, together with a 15-year old fourth year high school student, was ambushed. Both died due to multiple gunshot wounds.

On October 01, 2016, **KERWIN's** former wife, **ANNALOU LLAGUNO**, was shot and killed by an unknown attacker.

CONCLUSION

Based on thorough consideration of established procedures, jurisprudence, ordinary human experience as well as testimonies offered and documents submitted during the joint public hearings conducted by the Committee on Public Order and Dangerous Drugs and the Committee on Justice and Human Rights, the Joint Committee has reached the conclusion that the killing of **MAYOR ESPINOSA** was **premeditated** and with **abuse of authority** on the part of the operatives of CIDG-8.

Although the Committees recognize and give due respect to the authority of the courts to determine the guilt of the police officers involved in the operation, the Committees are convinced that the circumstances point out to a systematic "clean up" made on any living trace that may reveal their involvement in the Espinosa drug trade.

The deaths of **MAYOR ESPINOSA**, **ALVAREZ** and **BALAGBIS** were all made under similar circumstances. **The odds of being killed by the PNP while detained inside a government detention facility seemed to be very unlikely, until now. Further, it is unbelievable that such similar fate would befall on personalities involved in KERWIN ESPINOSA's drug trade.**

The Committees question not only the necessity but also the intention of CIDG-8 in applying for and implementing the search warrants. More so, the place of application was suspicious.

Assuming without granting that **MAYOR ESPINOSA** and **RAUL YAP** were in possession of firearms and illegal drugs while inside prison, **PCI LARAGA** should not have wasted government resources in applying for a search warrant in Basey, Samar

considering that the place sought to be searched is a jail facility, which is not a private dwelling that comes under the protection of the right to privacy.

The same was made clear by the Supreme Court when it emphatically said that “a citizen’s privacy right is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned.”⁶⁷ Being a pronouncement of the Honorable Supreme Court, the same becomes part of the law of the land pursuant to the provisions of the Civil Code of the Philippines, to wit: judicial decisions form part of the law of the land.⁶⁸ With that pronouncement, the fact that inmates are not accorded the right to privacy is presumed to be known by everyone including **PCI LARAGA**.

Having established the fact that a search warrant is not needed, we now turn our attention to the issue on why **PCI LARAGA** disregarded and bypassed the courts having jurisdiction in Baybay, Leyte and instead filed the application at Basey, Samar. Both **PSUPT MARCOS** and **PCI LARAGA** justified the necessity to file the application in the Province of Samar because they did not trust the courts in Leyte and that **MAYOR ESPINOSA** remained influential in the area. However, the Committees treat their justification as exaggerated and without basis.

It is on record that **MAYOR ESPINOSA** expressed fear for his life and even filed a motion, through counsel, for him to be transferred to Albuera Police Station before **PRESIDING JUDGE CARLOS ARGUELLES** of RTC Branch 14, Baybay City, who either incidentally or intentionally, sat on his motion until **MAYOR ESPINOSA**’s demise. If it is in fact true that **MAYOR ESPINOSA** can influence the courts in Leyte, then logic dictates that his motion to be transferred would have been expeditiously granted. If he could really control the judges in Leyte, **MAYOR ESPINOSA** would most likely be safe and alive under the custody of **PCI ESPENIDO**.

Further, malice can be imputed on the part of the raiding team with regard to the fraudulent and perjurious deposition made by the informant **PAUL OLENDAN**. It is fraudulent in the sense that the allegations made therein were merely devised to serve the purpose of the CIDG-8 who wanted to silence **MAYOR ESPINOSA**. Based on the overwhelming testimonial and documentary evidence presented, it was shown that it was physically impossible for **OLENDAN** to have met and spoken with **MAYOR ESPINOSA** and **YAP** at the Baybay Sub-Provincial Jail contrary to the representations he made in his deposition. Moreover, **OLENDAN** was reported to have mysteriously disappeared the day after the Committees announced that they would issue an invitation for him to attend the succeeding public hearing to testify and subject himself to scrutiny with respect to his deposition.

On the actual implementation of the search warrants, noticeable in this operation was the use of overwhelming force by the authorities serving the warrants. Not only did it involve 18 CIDG-8 personnel, the team was also augmented by six members of the Regional Maritime Unit as perimeter defense, just for the purpose of searching for one firearm and a certain amount of illegal drugs in a government detention facility.

Perhaps the Committees may have accepted **PSUPT MARCOS**’ explanation that said amount of force is necessary because of the number of firearms reportedly carried by **ESPINOSA**’s men that are still at large. However, the explanation does not justify the fact that higher authorities such as the Regional Director, **PCSUPT BELTEJAR** and **PDIR**

⁶⁷ Alejano vs. Cabuay, G.R. No. 160792, August 25, 2005.

⁶⁸ Article 8, Civil Code of the Philippines.

OBUSAN were not informed of said operation. Should an operation involve a high value target like **MAYOR ESPINOSA**, the matter should be referred to the sound discretion of **PCSUPT BELTEJAR**, at the very least. Instead, the team decided to keep everyone in the dark and proceeded as they wished.

Another thing peculiar about the operation was the fact that nobody, aside from the CIDG-8 operatives, themselves, was able to witness what transpired inside Cells 1 and 7. In fact, based on the affidavits submitted, a witness in the person of **MR. EUL CAORTE** was present only at the time when the CIDG-8 were still outside the main gate demanding that they be allowed to enter. The other witnesses were present only when their signatures were needed for the inventory of the items seized. Neither were they present during the alleged shootout nor during the gathering of the items seized from Cells 1 and 7.

What is more appalling was the fact that the jail guards as well as the PNP personnel, assigned to ensure the safety of **MAYOR ESPINOSA**, were disarmed and made to kneel down and face the wall for the entire duration of the operation even after **MAYOR ESPINOSA** and **YAP** were killed. **PSUPT MARCOS** even said that the prison guards were in cahoots with **MAYOR ESPINOSA**. In all public hearings conducted by the Committees, such fact was neither proven nor substantiated by any concrete evidence. That fact alone merits strong denouncement and condemnation as it disrespects and disregards the authority of the jail guards and police officers present, who are supposed to be accorded with respect as fellow public servants.

The Committees take note of and accept the fact that there was resistance during the altercation at the gate of the detention facility. However, the same could have been avoided had the CIDG-8 complied with the request to present the search warrants. The refusal to show the search warrants was never denied based on records and testimonies presented.

The CIDG-8 operatives managed to justify the death of **MAYOR ESPINOSA** and **YAP** by planting evidence, namely, the firearms and illegal drugs allegedly found inside Cells 1 and 7.

In resolving to deny credence to **OLENDAN**'s deposition, the Committees are convinced that **MAYOR ESPINOSA** and **YAP** had no firearms and illegal drugs in their possession. To bolster this finding, it can be stressed that the jail guards conducted *Oplan Galugad* a few days before the raid but merely found cell phones and chargers and none of the alleged articles mentioned in the application for search warrants. Moreover, the affidavits of the inmates proved that the *galugad* was thorough and that none of them had ever seen **MAYOR ESPINOSA** and **YAP** with any of said prohibited items. But what is most convincing are the accounts of the inmates who heard **MAYOR ESPINOSA** pleading with the CIDG-8 operatives not to plant evidence inside his cell.

On the actual killing of **MAYOR ESPINOSA**, the Committees once again, reiterate the thoughts of the Chairman of the Committee on Public Order and Dangerous Drugs in his opening statement:

"Why would Mayor Espinosa even attempt to put up a fight while he was trapped inside a prison cell with nowhere to go? Not to mention that he had

surrendered and was fully cooperating, hoping to become a state witness? Nothing makes sense.”⁶⁹

MAYOR ESPINOSA, in his possible willingness to cooperate and provide information on the personalities involved in his son’s drug trade, was silenced by individuals who wanted their participation concealed. It just so happened that these individuals had access and means to do so through abuse of their authority. Moreover, **MAYOR ESPINOSA**’s death posed a clear threat to his son, **KERWIN ESPINOSA**, who was already captured and was on his way back to the Philippines at that time. The death of **ALVAREZ**, **BALAGBIS** and even his father while inside the Baybay Sub-Provincial Jail is a statement that he is not safe anywhere and that the same fate awaits him should he decide to speak up and provide the information that will aid the PNP in its war against illegal drugs.

With the spotlight focused on **PSUPT MARCOS** and his men, and in his will to seek justice for the death of his father, **KERWIN ESPINOSA** identified **PSUPT MARCOS**, **PCI LARAGA** and **PSUPT MATIRA** as among those receiving money in exchange for protection. Such positive identification gives sense to all that has happened and explains why **MAYOR ESPINOSA** was murdered.

It is also worth noting that **PSUPT MARCOS** and his men from CIDG-8 could have been prevented from doing their dastardly deed as they had been relieved by **PNP CHIEF DELA ROSA** prior to November 05, 2016. Yet, as borne by the record and the testimony of the PNP Chief, his order was rescinded and **PSUPT MARCOS**’ team was reinstated by **PRESIDENT DUTERTE**.

The perpetrators of the murders of **MAYOR ESPINOSA** and **YAP** took advantage of their official position as members of our police force. They thought they could do away with Espinosa by feigning a legitimate operation. To ensure absolute concealment of what actually transpired early morning of November 05, 2016, they made sure that the incident caught by the CCTV cameras could no longer be accessed should an investigation be launched. Since the jail guards positively confirmed that the CCTV cameras were functioning and recording before the CIDG personnel entered the jail premises, a presumption is created that they took the hard drive having full control of the premises before it was reported missing. Assuming that the operation was properly conducted and taking into consideration that the cells to be searched contained a high profile detainee, the CIDG-8 had more reasons to make sure that the CCTV cameras were properly functioning should regularity be questioned.

Ultimately, the Committees strongly condemn the killing of **MAYOR ROLANDO ESPINOSA, SR.** and **RAUL YAP**. Though they may have committed violations of our existing laws, the same is to be determined by our Courts. **Granting that certain freedoms are denied to detainees, including the right to privacy, they are still entitled to the fundamental right to life as guaranteed by the Constitution.**

RECOMMENDATIONS

Let us be reminded that the public hearings conducted by the Committees do not in any way intend to overstep the authority and jurisdiction of our courts in the

⁶⁹ TSN 10 November 2016, p. 8.

determination of the **ESPINOSA** and **YAP** case. However, as co-equal branch, may we request the Judiciary to expedite its determination as to the propriety and liabilities or sanctions, if any, of the following:

1. **JUDGE CARLOS ARGULLES**, for his failure to act upon the motion of **MAYOR ESPINOSA** to be transferred to a safer prison facility, notwithstanding the fact that the deceased has expressed his intention to fully cooperate with the government and provide vital information relevant and of value to the Administration's war against illegal drugs;
2. **JUDGE TARCELO SABARRE, JR.** of RTC Branch 30 Basey, Samar for issuing search warrants upon persons detained in a government detention facility located outside his Court's jurisdiction; and,
3. **JUDGE JANET CABALONA** of RTC Branch 33, Calbiga, Samar, also for issuing search warrants upon persons detained in a government detention facility located outside her Court's jurisdiction.

Moreover, the Supreme Court should remind lower courts to exercise caution in issuing search warrants. Strict adherence to the policy that "judges should personally examine the applicant and the witnesses he may produce," with underlying emphasis on the words "personally examine", should be observed. In the instant case, there is no need to issue search warrants because there is no reasonable expectation of privacy inside Baybay Sub-Provincial Jail. Applications such as the ones made by **PCI LARAGA** should have been denied because the proper action in this case should have been coordination with the jail guards or the PNP personnel augmented inside the jail premises.

We understand that the Espinosa case was filed before the Department of Justice (DOJ) as early as December 07, 2016. Two months had passed and no resolution yet is forthcoming on the preliminary investigation being conducted by the Department. Considering the time, not to mention the overwhelming testimonial and documentary evidence presented before the five-man panel conducting the preliminary investigation, they should have already resolved this matter with urgency. As such, we respectfully request the DOJ to expedite its proceedings given that this case is impressed with public interest.

Among the intricacies that arose out of this case was the recall of **PNP CHIEF DELA ROSA's** order relieving **PSUPT MARCOS** and his men from CIDG-8 by no less than the President himself. The Committees are of the opinion that the President should not be micro-managing the affairs of the government and should place his trust in the sound discretion of all his appointees, including **PNP CHIEF DELA ROSA**. In so far as the organizational and operational aspect of the PNP is concerned, the Chief should be given full authority and control on how he will manage the day-to-day affairs of the organization subject to limitations set by law. He should be given a free hand to decide on how to run the PNP and his decisions should be recognized and respected and should be countermanded or reversed only by the Chief Executive in case of a clear showing of grave abuse of discretion on the part of the Chief, PNP.

Finally, we proceed to the following proposed legislative measures, the *raison d'être* of this entire inquiry.

Notwithstanding the fact that **OLENDAN's** deposition is already moot by the lack of necessity of the search warrants obtained, it is worth channeling our attention to the fact of misrepresentation as the same can have grave consequences in other cases. Should

a false deposition similar to **OLENDAN**'s be made basis of issuance of a valid search warrant, not only will the time of the court be wasted, but also the resources of our government. In any case, a false affidavit or deposition may ignite a chain of events that will impute liability to innocent individuals.

We are of the opinion that the damage or injury caused by perjury upon an innocent person is no less similar to that of planting of evidence. Apart from the possibility of being charged and erroneously convicted, we also have to consider its effect on the reputation of the victim and his or her family. With that in mind, the Committees humbly recommend that **Article 183 of the Revised Penal Code should be amended to increase the penalty for false testimony or perjury.**

Next issue to be dealt with is the concern of our penal institutions on the chronic presence of illegal or prohibited items inside jails. Despite stringent inspection, and eminent police presence inside the national penitentiary, they are unable to do away with the temerity and boldness of inmates in hoarding, using and generating lots of money in contrabands.

The seeming continued proliferation of contraband in prison is an appalling show of contempt for our justice system, whose main purpose is to reform and rehabilitate inmates for their eventual return to society. A convicted criminal resists reformation when he is still exposed to the very objects that had caused his incarceration.

As response thereto, an "**Anti-Contraband in Prison Act**" should be passed penalizing those who would provide, assist, aid or abet in the introduction of any prohibited object or contraband inside a prison facility, along with the inmate who makes, possesses or obtains or attempts to make or obtain the same inside the prison facility; and imposing a stiff penalty for its commission.

A stiff penalty is required in this circumstance in order to instill fear and be an effective deterrence to those contemplating of doing this crime in the future. More importantly, said penalty should also be made to apply to government officials or employees who cooperate or co-opt with the inmate or other private persons involved therein.

Not only will the government officials and employees suffer the same penalty, they shall likewise suffer the additional punishment of perpetual absolute disqualification from holding a public office and forfeiture of all retirement benefits and all accrued leave credits. Thus, these people will have to rethink of getting involved in the said crime or desist from doing it.

On a different note, we look into possible legislative measures to address the concerns of the PNP. Since the perpetrators of the murders of **MAYOR ESPINOSA** and **YAP** are uniformed personnel of the PNP, we see the need to instill discipline and integrity among the police in the conduct of their duties, effective disciplinary rules and mechanisms shall be institutionalized at all levels of its command. In the course of the public hearings, we invited representatives from the Internal Affairs Service (IAS) only to discover the lapses and delays in the investigation process.

All things considered, it is recommended that **the functions and mandate of the IAS being the institutional watchdog of the PNP, be strengthened to make the disciplinary system more timely, transparent and efficient.**

There is a compelling need to expand the *motu proprio* investigation powers of the IAS to cover all acts and omissions, which tend to discredit or subvert the achievements of the institution. More so, all internal affairs investigations should be conducted within a mandatory period not exceeding 30 days after the case has commenced, and immediately thereafter, appropriate case/s shall be filed. Accordingly, the IAS should reach the resolution of the case within 30 days at most after the same has been filed.

To add conviction to the authority of the IAS, all decisions rendered within its jurisdiction shall be final and executory. To bolster its fiscal independence, the IAS shall have an automatic, direct, full and regular release of funds based on the approved annual general appropriations.

Finally, we observed the fast-growing number of scalawags over the years. These individuals are responsible for the public's mistrust on the PNP which demoralizes other personnel who are upholding their noble mandate of serving and protecting the people. Apart from strengthening the IAS, there is a need to review and assess the very foundation of police training.

At present, the Philippine Public Safety College (PPSC) has administrative supervision and operational control over the Philippine Police Academy, the Police National Training Institute, the National Police College and the National Forensic Science Training Institute. So as not to waste the resources of the government in re-training and re-orienting erring police officers and to instill the right culture, values and discipline expected from our uniformed personnel, it is incumbent for us to review and amend the law creating the PPSC either by strengthening it or by transferring control over training from the PPSC to the PNP. Should there be a determination of such need to transfer the same to the PNP, then it will have closer supervision, control and accountability with respect to the actions of their personnel.

EPILOGUE

This war against drugs has reached unparalleled heights that will be remembered as part of our nation's history. What we have at the moment is a race against time, where we either succeed or fail in exposing the truth. Though it seems that the end is nowhere in sight, today we emerge victorious for exposing these rogue uniformed personnel. We may have won the battle today, yet we still have a war to emerge triumphant. Let today be a testament that **"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity."**⁷⁰

⁷⁰ United States vs. Lee, 106 U.S. 196 (1882)