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SECOND REGULAR SESSION)

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SENATE

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COMMITTEE REPORT NO. 69

Submitted by the Sub-Committee II of the Committee on Justice and Human Rights and the Committee on Public Services on March 21, 2006.

Re: **P.S. Res. No. 461 (the alleged moves of the government to take over erring media establishments pursuant to Proclamation No. 1017)** introduced by Senators Franklin M. Drilon, Francis N. Pangilinan, Mar A. Roxas II, Rodolfo G. Biazon and Compañera Pia S. Cayetano

Sponsors: Senators Joker P. Arroyo, Chairman; Compañera Pia S. Cayetano, Panfilo M. Lacson, Sergio R. Osmeña III and Ralph G. Recto, members of the Sub-Committee II of the Committee on Justice and Human Rights and the Committee on Public Services

Mr. President:

Without prejudice to an extended resolution, if need be, the sub-Committee is constrained to submit with scrupulous urgency its findings in light of the current situation.

On February 24, 2006 the President of the Philippines issued Proclamation No. 1017 declaring a state of national emergency and an accompanying General Order No. 5 which are both incorporated herewith by reference.

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The presidential issuances provoked the introduction of P.S. Resolution No. 461 which was referred to the Committee on Justice and Human Rights and to the Committee on Public Services and is incorporated herewith by reference. Considering the wide coverage of the resolution, the inquiry was subdivided so that violations of the constitutional right to freedom of the press was assigned to this subcommittee of five members, two from the majority, and two from the minority and chaired by the chairman of the referred committees.

Hearings were held on March 9 and 14, 2006.

A. PRINT MEDIA

Daily Tribune

The subcommittee invited Ms Ninez Cacho Olivares, publisher and editor-in-chief of the *Daily Tribune*, a metropolitan broadsheet, whose paper was raided by the Philippine National Police (PNP) to report what happened to her paper.

Culled from Mrs. Olivares' recital, elements of the PNP, specifically from the CIDG, Pedro Bulaong, Station 5, WPD, swooped down in the dead of night of February 24, 2006, more precisely at 12:45 a.m. of February 25, 2006, on the offices of the *Daily Tribune*.

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The police tossed and shoved the lone security guard on duty, padlocked the printing press which the newspaper did not even own, stormed the editorial offices, walked thru the offices and took certain documents and CDs which are encoded and confidential, photographs and video.

No search warrant or any written authority for them to raid premises was shown.

Thereafter, the raiding team bugged the landline phones. The police stayed in the *Daily Tribune* premises for one week.

The raid could have been worst were it not for the collective support of media, many of whom went to the *Daily Tribune* to lend its support.

Because of the raid, the editorial staff and the reporters were affected and their reports initially grew tamer. Fortunately, the intimidation did not affect the editor-in-chief, Ninez Cacho Olivares, an experienced press freedom fighter during the martial law days who propped up her editorial staff and reporters and asked them to continue their reporting the same way as before the raid.

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The police even asked for the keys of the office because they had to "take over" the *Daily Tribune*. The police harassed the drivers, asked the route of the deliveries.

When the police left, they had the gall to ask for a certification from Ms Olivares that nothing was stolen, when in fact the first team had ransacked the offices and had taken some documents, pictures, press clippings, without issuing any receipts which is required by law even in regularly issued search warrants.

General Arturo C. Lomibao, PNP Director General, was invited to explain the government and more particularly, the police side. In the first hearing, he excused himself because on that date he would be in Tawi-Tawi, Sulu, and Zamboanga. In the second hearing, he invoked the notorious E.O. 464.

What is paradoxical is that General Lomibao attended an MOPC affair where he was the guest speaker and proudly answered questions on the very subject of the subcommittee's inquiry. In short, he could honor an MOPC affair but could not honor an official invitation for him to explain officially the government side in a legislative inquiry.

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In any event, witness the following exchange:

SEN. BIAZON. All right. x x x Because somehow, somebody must be held responsible for this and that is why I have asked Director General Lomibao in one budget hearing, if all of these acts taken by his men were his own initiative or he was ordered by somebody else. And he admitted that x x x the order [came] from the cabinet security cluster created x x x I will ask him x x x if ever he comes.

THE CHAIRMAN. If ever he comes.

SEN. BIAZON. Yes.

MS CACHO-OLIVAREZ. Excuse me. During the MOPC, that day, I was watching the tape of the MOPC meeting where Lomibao was the guest speaker. He did say categorically that they were meeting in Malacañang up to three o'clock in the morning with the security committee cluster and that it was decided then and there to take over the Daily Tribune. That one, he stated very clearly.¹

x x x

MR. DIOKNO. Mr. Chairman.

THE CHAIRMAN. Go ahead, Atty. Diokno.

MR. DIOKNO. It would appear that the PNP was relying solely and exclusively on the general order and the proclamation. So, I have the transcript of the press conference of General Lomibao and he said very clearly – he was asked, "Aside from *Tribune*, are there other newspapers targeted for take over?" And he answered, "Well, it will depend if they do not follow the standards and the standards are: if they will contribute to instability in government; if they do not subscribe to what is in General Order No. 5 and Presidential Proclamation 1017, that will be left to the judgment of the Philippine National Police and other agencies that are empowered to implement the General Order."

Then he was asked, "Ibig sabihin lahat ng lumalabas sa media strictly monitored ng PNP?" And he answered, "As I said, we have standards. If they do not conform to the standards, then we will evaluate. And if in our judgment they do not subscribe to the standards, then we will recommend."

By the way, we have taken over the *Daily Tribune*. We have temporarily taken over the *Daily Tribune*. The operations will continue but, as I have said, we will review the content and the substance of the intended publication."

Now it is very clear what they wanted to do and there was no legal basis for that, Mr. Chairman.

THE CHAIRMAN. Quite frankly, I did not expect that this is – this is as worse as this, you know. This is worst than what happened during martial law.²

B. PRINT MEDIA

¹ TSN, ADMasicap, V-1, March 14, 2006, 2:10 p.m., pp. 4-5.

² TSN, LDGalapon, VI-1, March 14, 2006, 2:20 p.m., pp. 1-2.

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Philippine Center for Investigative Journalism (PCIJ)

The following is the prepared testimony of Ms Shiela Coronel,
editor of the PCIJ:

"Yesterday afternoon, three members of the Central Police District, accompanied by sound engineer Jonathan Tiongco, who is also a police asset, asked a Quezon City judge to issue a warrant that will allow the police to search the office of the Philippine Center for Investigative Journalism apparently in connection with the charge of inciting to sedition.

The PCIJ received confirmation of the application from well-placed sources in the Quezon City Regional Trial Court (RTC) and the Quezon City Police. These sources say that last week, Tiongco and the police had already asked a Quezon City judge to issue the warrant but were turned down last Friday. Yesterday, they tried their luck with another judge, Alan Balot of Quezon City RTC, Branch 76. Judge Balot conducted an *ex-parte* hearing from about 4:00 p.m. to 5:30 p.m. yesterday. It was reported that the Judge did not issue the warrant then and that he was surprised by the presence of reporters outside his sala.

The PCIJ does not know when and if a search warrant will be issued. What we do know is that there is no basis for such a warrant. We were told that the Quezon City police is preparing to charge five PCIJ journalists with inciting to sedition, apparently for posting on the PCIJ blog the 'Hello, Garci' recording containing the allegedly wiretapped conversations between former elections commissioner Virgilio Garcillano and several officials, including possibly President Gloria Macapagal Arroyo.

Jonathan Tiongco, who has filed several lawsuits against the PCIJ since the last quarter of 2005, appears to be the main complainant. Last year, Tiongco already filed a complaint before the Department of Justice, saying that the PCIJ was guilty of inciting sedition because the recording on its blog prompted the opposition to call for the President's resignation and the impeachment and encouraged civil society groups to hold rallies against the President.

Tiongco has been linked to Presidential Chief of Staff Michael Defensor, who presented the sound engineer in a press conference last August 12, in a bid to question the authenticity of the 'Hello, Garci' recording.

Contacted by telephone yesterday, Defensor denied any knowledge of the search warrant against us. He said that lawsuits were being planned against several media personalities but the list did not include any one from the PCIJ.

We are wondering why the courts and the police appeared to be taking Tiongco's allegation seriously when even Secretary Defensor told us that he is "crazy". But we also wonder whether there is something more insidious in all of these. Jonathan Tiongco after all is a police intelligence agent.

In the petitions she filed at the Quezon City court, Mrs. Rona Tiongco presented a photocopy, the I.D. of her husband that shows him. It says, I.D. No. 054, Jonathan Tiongco is a member of the Intelligence Division Monitoring Group of the Philippine National Police, Special Operations Group, Jerico. Is Jonathan Tiongco filing these cases as a private individual or as an agent of the police? We don't know.

It must be said that the Supreme Court had turned down Tiongco last year when he asked for an injunction and a temporary restraining order that would prevent the PCIJ from posting the 'Hello, Garci' recording on line.

In an October 11, 2005 ruling, the Supreme Court asserted that the constitutional right to free expression was paramount. 'Free expression is

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guaranteed by the Constitution', the Supreme Court said. 'Any deviation from this rule through judicial restraint can only be had after a proper trial of facts'.

The Supreme Court also described Tiongco's petition as 'barely comprehensible' and 'bereft of merit'. It also rather pointedly said that Tiongco should have sought professional legal advice before filing the motion. Despite this rebuff, Tiongco and his wife Rona have filed two libel cases against the PCIJ for publishing the extracts of a police dossier that lists a string of criminal cases filed against him.

Rona Tiongco has also sued the PCIJ for violation of her right to privacy. In addition, Jonathan Tiongco has filed a falsification charge against the Center. He has sued ABS-CBN for libel, wiretapping and falsification as well.

On November 4, Quezon City Judge Ralph S. Lee issued a 20-day temporary restraining order on the PCIJ blog on the request of Rona Tiongco who said that the August 12, 2005 post on her husband violated her privacy and that of her children. Mrs. Tiongco, however, was never even mentioned by name in that post. It is obvious that Jonathan Tiongco has made it his career to harass and intimidate the PCIJ with a string of lawsuits. But why did the police and the courts now appear to be supporting the outrageous allegations of a man with an unsavory reputation and questionable credibility?

If a search warrant is issued in the PCIJ, it will send a signal that it is open season for legitimate journalists. If we cannot rely on the police and the courts to defend our rights to report freely and to provide citizens with timely information, who can we rely on?"³

Like the *Daily Tribune*, the subcommittee could not get the side of the government and/or the police because General Lomibao took refuge in E.O. 464.

C. TELEVISION

After Proclamation 1017 was issued, National Telecommunications Commission (NTC) on the same day called a meeting of broadcast media attended by their Commissioners.

MS RESSA. Yes. We went to the meeting and we brought up a lot of questions. The first questions were –

SEN. CAYETANO. Was this conducted by the commissioners?

MS RESSA. Yes. Commissioners –

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³ TSN, LDGalapon, VI-1, March 14, 2006, 2:20 p.m., pp. 3-7.

MS VALDEZ. There were three, the three of them.

MS RESSA. Jun was also there.

SEN. CAYETANO. And no other government agency to your recollection were present?

MS RESSA. No, no other government agency present. But a lot of issues that were brought up were, you know, guidelines, were there guidelines. Because our first instinct as journalist is to say, "What does this mean?" You know, we wanted clarity. There was no clarity. In fact, that was effectively thrown back to us. After the NTC – then on that Saturday, the PNP Chief Lomibao gave a press conference which we also carried live. And in that press conference, he talked about the PNP's powers to shut down any media facilities including print and broadcast.

That was never challenged by anyone except the journalists who mumbled on the background which again I was able to – So, that Saturday –

SEN. CAYETANO. So on the spot when you had the presscon, there was no Q & A, they didn't open the floor to questions or?

MS RESSA. For the NTC, it was a open forum.

SEN. CAYETANO. No. For the one with General Lomibao?

MS RESSA. It was also a Q & A.⁴

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THE SENATE PRESIDENT. Again, what did NTC say, can you repeat?

MS RESSA. The NTC asked us to – they basically said, "We are here to implement this General Order No. 5 and Proclamation 1017."

THE SENATE PRESIDENT. And what did implementation mean?

Luchi.

THE CHAIRMAN. go ahead, sit down, sit down. Take your time.

MS VALDEZ. They were basically co-opting us, sir, to come up with guidelines which was to us a strange thing to do. So, we were insisting that we already had guidelines in the form of our Code of Ethics and each station had it and that the KBP already had it. But they were insistent on meeting with us. In fact, they were kind of forcing us to a series of meetings to draft guidelines and this is was internally KBP and all its members had some sort of argument over that because ABS' stand at that point was that we didn't need to draw up a separate set of guidelines for this 1017 because our code covers virtually all situations that we would possibly face as journalists.⁵

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MS RESSA. No. It's the journalists wanting to know what exactly this means. And what we found was extremely amorphous and what they were trying to do was to actually co-opt us to help them draft these guidelines. It did cause a lot of debate internally between ABS-CBN and KBP. Jun was very patient with us.

⁴ TSN, Mhulep, I-3, March 9, 2006, 11:38 a.m., pp. 2-3.

⁵ *Id.*, p. 4.

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But part of that debate centers on that, you know – why will we submit ourselves to a regulatory body.

THE CHAIRMAN. But the long and the short of it is that they were interfering already on the contents of the reporting.

MS RESSA. Attempting to, sir. I think –

THE CHAIRMAN. Attempting, yes. They were interfering already with what you have to say or what you have to do in broadcast –

MS RESSA. Sir, I think you can look at the headlines from after Proclamation 1017 from those – that week that was there and you can see the split in the headlines both in print and in television.

THE CHAIRMAN. No, we are talking...we only hear about television. What do you mean, "they were interfering already with the contents" I mean, that's what we are interested in.

MS RESSA. Sir, not interfering. What is immediate is, definitely it's very strong to call it an intimidation tactic but it's a chilling effect at the very instance. Did we submit ourselves to it? No. But the very fact that we were called to a meeting with government who has the power under Proclamation 1017 to allegedly close us down automatically puts a sword of Damocles, a Damocles sword over our heads. So, our first instinct was to say, what exactly – and up until – I was one of the panelists at MOPC with General Lomibao and until that point, we never got any clarity. And in fact, General Lomibao kept saying that the standards he wanted was for the media to exercise self-censorship. For us, censorship in any form is anathema. We are against any form of censorship and self-censorship is the worst of that. I mean, that's intimidation already. So, did it go that far? That's why it is so right for all journalists and I believe this is for the first time since martial law that a broad group of journalists filed this petition.

THE CHAIRMAN. Okay, this much I can tell you, because I have gone over all the laws. The NTC doesn't have the power at whatsoever, okay?⁶

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MS SOHO. Your Honor, may I speak in behalf of her station?

We attended the same NTC meeting, but in contrast we did not feel any pressure. If anything we relate to the NTC that we already have our own manual for ethics and editorial policies that we did not need any further regulation, Your Honors.⁷

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SEN. CAYETANO. In other words, the feedback you've gotten from people is that you've covered it very fairly.

MS SOHO. Yes.

SEN. CAYETANO. Okay.

MS SOHO. In fact, we were even first to air dispersal of – no, Channel 2 also was airing it, but they had helicopter shots, while we had ground shots of the

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⁶ *Id.*, pp. 6-7.

⁷ TSN, RPAIger, II-3, March 9, 2006, 11:48 a.m., p. 1

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dispersal of the rallies on that Friday, February 24. And we were even first to air video of the arrest of Professor Randy David.

SEN. CAYETANO. It's also that there's other incident where I personally wasn't glued to the t.v. and I am not sure if that was the afternoon of Friday or Sunday in the marine standoff in Fort Bonifacio where – I am not sure what day it was. Well, I just got information that Channel 7 went back to normal broadcasting.

MS SOHO. Yes.

SEN. CAYETANO. And I know that's a judgment call. So, I am not questioning that.

MS SOHO. Like Channel 2 did when Sharon's show came on the air, Your Honor. But we were continuously covering...

SEN. CAYETANO. Siyempre si Sharon 'yon.

MS SOHO. ...on QTV. Yeah. Well, but we have the same – we were continuous for S-Files. For S-Files, we were continuously covering the standoff at the marine headquarters. Unfortunately, the Star Struck survivor four finals were coming up. And that was when we tuned out. But we were still coming in with updates every time the story was developing, like when it was already over, then we broke into the regular program on GMA again. But on QTV we covered the standoff from beginning to end, Your Honor.

SEN. CAYETANO. Okay. I just wanted to clarify that because aside from getting your point of view and I also want to put on record that I do respect the judgment calls made by these stations on what to air and what not to air or how extensively the coverage should be. I also wanted to check if you were in tune with the public's reaction on what was being covered, which you already answered. So, that was the purpose of my...

MS SOHO. The difficulty now, Your Honor, is society is so polarized that perception is influenced by, you know, all of these things, but we've always maintained that we're covering all the events as much as possible. We do compare our stories with competition and so far, we haven't seen any – except, of course, for their scoops and their exclusives, we haven't seen anything, any protest action, major or minor for that matter that we have not covered. We have covered the Batasan 5. Yesterday we covered that rally where Congresswoman Baraquel was invited for questioning. So, if you're asking about whether we're covering protest rallies as much as we should, I maintain that we have, Your Honor.

SEN. CAYETANO. Okay. Thank you.

Yes, Maria.

MS RESSA. Senator Cayetano, the only difference I think that we had and we have been covering the same events was, on the day that the state of emergency was declared, ABS preempted all programming going down through the evening. And this was the time when there was most uncertainty. And I believe Channel 7 went back to regular programming at noon.

But I think the other thing...⁸

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MS RESSA. It wasn't a building up – I guess, the thing is that we were all moving forward business as usual but there was a building outrage. And outrage really didn't happen until days later strangely enough mostly because we just wouldn't expect moves like this from a democratic state. On Sunday during the

⁸ *Id.*, pp. 5-7.

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Fort stand off, we did receive phone call from the administration asking us to stop airing.

SEN. CAYETANO. This is the Fort Bonifacio marine stand?

MS RESSA. Yes. And our position there was that, I felt personally that if we did, it would cause far more panic among people because they would wanna see what's going on. And that's again information in times of crisis becomes more critical. We did not listen to it and a public appeal was made by Secretary Defensor asking the media to stop covering it, even that public appeal I questioned because it again goes against the freedom of the press, there is a legitimate conflict that was going on, whether internal or external, it had national repercussions for the Filipino public and we continued airing as is. On Monday, MOPC, Gen. Lomibao, face the MOPC panel, I was one of the five journalists to question him and he continued to make the same statements about the power of the PNP.

SEN. CAYETANO. Let me just go back to your statements on the Sunday stand off. So there was a general appeal to journalists, which offended your senses as a journalist?

MS RESSA. No, there was a specific phone call made to ABS.

SEN. CAYETANO. Yes, I was gonna go back to that but subsequently there was an appeal to the public but also directed to the journalists, actually, to the media not to air. But prior to that, you received a phone call and this is to you, specifically.

MS RESSA. No, it was not.

SEN. CAYETANO. Can you elaborate what you do know about that phone call?

MS RESSA. One of our officers received the phone call and... should I be saying that? Only because, sir, I would like not to be made – I wouldn't want this to be taken in a personal manner. I would like to give you our impressions. It would like to take it out of personalities, if that is possible. It was, I think for me just the fact that, first, there was a private call. And again given the state of emergency, that private call, if we had been scared, again made us take attention away from coverage to have to deal with that. And then secondly, there was a public call for journalists to stop covering the stand off.

THE CHAIRMAN. The first, what we want to know is, was there an attempt or was there – what do you call that, not an appeal, but – any kind of action that ask Channel 2 to stop the coverage or the broadcast?

MS RESSA. Both. And let me put it in this context. Every single action taken was not – it was merely amorphous in the same way that the guidelines were handed out in an amorphous manner. Everything was kind of half aside of "pakiusap" but not really because it carries government authority. An that exactly the type of things, I think, should be brought to the line of day one.

THE SENATE PRESIDENT. Who made the call and what was the substance of the call? I mean, not – you're saying you would rather not have your executive name revealed – but can you reveal the name of the public official and what was the substance if you cannot recall the exact words that was uttered?

MS RESSA. Sir, given the highly politicized environment I'd like to, as a journalist, keep that as a confidential source, mostly because again...

THE SENATE PRESIDENT. What was the substance...⁹

THE SENATE PRESIDENT. ... what was the substance of the call? I mean, not – you were saying, you would rather not have your executive name revealed. But can you reveal the name of the public official and what was the substance if you cannot recall the exact words that was uttered?

⁹ TSN, CFDRIZ, III-3, March 9, 2006, 11:58 a.m., pp. 5-7.

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MS RESSA. Sir, given the highly-politicized environment, I'd like to, as a journalist, keep that as a confidential source. Mostly because again –

THE SENATE PRESIDENT. What was the substance of the call?

SEN. CAYETANO. Or at least, if this was with the enforcement agency or with Malacañang? I mean, if you're comfortable saying it.

MS RESSA. Again, please, we do not want to take sides politically as any divide.

SEN. CAYETANO. No problem, it's just that we're trying to, you know, I'm trying to see it from which angle. But go ahead, just go ahead.

MS RESSA. So after—the phone call was, "Please stop broadcasting this."

THE SENATE PRESIDENT. Can you just continue that? Was that the phone call which was made?

MS RESSA. It was very short, it was "Please stop broadcasting." And then when it was relayed to me, I just said, "No, we can't, we can't stop broadcasting this." And then we went ahead.

SEN. PANGILINAN. Was it a high ranking government official?

MS RESSA. Fair enough, yes, high ranking government official.

SEN. LACSON. You already mentioned, it was Mike Defensor who called the station, right?

MS RESSA. Public. He called the public. Secretary Defensor asked and that was aired on all the networks also including the radio stations.

Sir, I think –

THE SENATE PRESIDENT. Consider designed.

SEN. CAYETANO. Go ahead, so finish your story. So it was a short phone call --

MS RESSA. And then we went back and then – Again I see –

SEN. CAYETANO. And on the spot, did the officer who was on the phone relay an immediate response from ABS or did he or she have to confer with whoever else?

MS RESSA. It was an immediate response.

SEN. CAYETANO. That you were going to continue to air and then that's it?

MS RESSA. Yes, ma'am.

Keep in mind there were several key decisions that had to be made that day given Proclamation 1017. The first one was, do we air Querubin's statement? That's a key decision and we actually – Luchi can give you more of the – because she was – You know, our decision-making tried very hard to balance everything because again there is freedom of the speech for anyone. He is a player. And at the same time, there are the interest of the state and the Filipino public. So we were balancing everything.

But that was only one of the series of judgment calls that needed to be made on that day,

I think the key thing for me here is that these wasn't – aside from the actual implementation of 1017, the statements, the words of Lomibao and

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Commissioner Solis, the move against the *Tribune* which in the end wasn't really a move, you have to ask what was the purpose of that, of the police coming in to the *Tribune*. They didn't shut it down, they didn't really raid it. These are all intimidation moves.

SEN. CAYETANO. Actually, that's my follow-up question. I know the answer but I want to put it on record. When government goes to media and with charm and with kind words using the word "please," "could you," does it take away the pressure and the intimidation?

MS RESSA. Absolutely not. No. Because again it's the public domain that has the right to this information. And the government has a right to say it, to give that information or we go to them for that information.

For me as a professional journalist, in our organization, there's no need to even do "pakiusap." We'll get on air. And as you know on *ANC*, we're on 24-hour news network. So I believe even in our coverage, every single military spokesman, the first few hours of coverage, we have them on air, we wanted to give the government position because that's a relevant view for the public to get, an important view.

SEN. CAYETANO. So, after the public statement of Secretary Mike Defensor, is there anything else communication-wise between *ABS* and government?

MS RESSA. Just when I was at the MOPC panel with General Lomibao. And again, the message --

SEN. CAYETANO. When was this?

MS RESSA. This was MOPC, Monday night, I believe. And the message that he sent out really was that he wanted journalists to exercise "self-censorship." That was the statement made three times that night. And that PNP had the power --

SEN. CAYETANO. So perhaps General Lomibao could have signed this NTC circular as well since they embody the same policies now of government.

MS RESSA. Well I asked the same question and I asked this of IO earlier, the PNP even under General Order No. 5 does not have those powers and IO can go into it more. Even under Proclamation 1017 and General Order No. 5, the President has granted to the PNP only the power to -- can you go over that part where -- in General Order No. 5, what are the powers of the PNP?

Here, it is: "It has no reference at all to controlling the media for the PNP". It says, "to prevent and suppress acts of terrorism and lawless violence in the country." That's the clause in General Order No. 5, is that --

THE CHAIRMAN. You know, you mentioned about the MOPC affair. Mr. President and members of the Committee, we find it surprising that General Lomibao attended the MOPC affair, answered all questions but he's reluctant to appear here. Commissioner Solis was also interviewed live during that MOPC affair and he answered questions.

Now, why is it that they appeared in this MOPC affair but they don't want to appear before a Senate inquiry? I just want to put that on record.

Okay. Pia, thank you.

SEN. CAYETANO. Okay. So you did say that, and that was it after the MOPC affair. So --

And then I want to go to Channel 7 --

The participation of government in terms of -- I mean, the influence of government or their interference if any, in terms of physical presence in *ABS*. So, we talked about phone calls, we talked about public airing. What about physical

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presence? As I said, I heard that there was this liaison officer who is going to go around. Do you have a special liaison officer assigned to you?

MS RESSA. No, we didn't. No, he did not – Luch, did he ever show up at ABS? No, that didn't happen.

And then the other point that everyone asked us and asked me about where the troops outside ABS-

SEN. CAYETANO. And if you can add to that about the red alert.

MS RESSA. Yes, ma'am.

On the troops, my position on that has always – I've covered every single coup attempt in this country and it is really standard operating procedure during a time of emergency like that where the military will send troops to military installations and public broadcast.

SEN. CAYETANO. As a protective measure.

MS RESSA. As a protective measure. In fact, I was one of the ones who was held hostage – Well, we were stuck in the third floor of Channel 4 in 1987 when it was taken over. Channel 7 was also taken over at that point.

I think that, in normal times without Proclamation 1017, would have been standard operating procedure. But given the heightened atmosphere at that time and the intimidation against the media, it can be interpreted in numerous ways. So, that's part of, I think, the amorphous environment that was created.

In terms of why we had signs of red alert, ABS-CBN has in place, we have an emergency broadcast protocol. And in that, we have different alert status because it triggers an entire organization shift.

SEN. CAYETANO. So this alert is for internal purposes to let your reporters, your people know that this is how tense the situation, the news is, or if it's read, "24-hour shift tayo," ganun ba 'yon?"

MS RESSA. Not so much the mood, ma'am, but more so that everybody knows what they are supposed to do like, we're on 24-7 – on alert level 2, we're on 24-7, the news kicks in to a special coverage. An in fact, one of the things I like about it is that news takes over programming.

It's one of the – I think one of the things ..¹⁰

MS RESSA. ...It's one of the – I think one of the things that Senator Arroyo did trigger in my mind is just on this Section 5, the part of the clause in our franchise. Under this, technically if say, there was a pandemic in the country like bird flu or something where it can cause mass panic, then the government does have the right under Section 5.

Now, I would also question whether that something that the government should have, the President should have the right to determine. We're journalists for a reason. We're experiencing situations like this We know when to editorially do the right thing. It's in our code of ethics. Our code of ethics is very lengthy. It's 115 pages long. So, in that sense, I would still ask this body to look at trying to take Section 5 out.

SEN. CAYETANO. And I'll move ton to Channel 7.

Jessica, can you give us like chronological series of what happened since the proclamation on Friday.

MS SOHO. Yes, Your Honor.

SEN. CAYETANO. Jessica, I'll get back to you later because there are other members in the panel who gave way to me. So, I'll ask you...

¹⁰ TSN, Mhulep, I-4, March 9, 2006, 12:08 p.m., pp. 1-7.

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DIRECTOR, LBIS, SENATE**

MS SOHO. Can I just mention, Your Honor, that we did not get any phone call or any intimidation whatsoever from...¹¹

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THE CHAIRMAN. Majority Leader.

SEN. PANGILINAN. Just a few follow-up questions.

With respect to the position paper of NTC – it's unfortunate that they are not here this morning. But this was made clear to ABS-CBN and KBP that in that February 24 afternoon meeting at the NTC building in Diliman, this was made clear to those who attended – may we know again who were in attendance? Perhaps, Mr. Nicdao can tell us.

MR. NICDAO. Yeah. Well, the KBP members who attended, we called as many – because it was a short notice. Your Honor, we called as many of our members to attend the NTC meeting. There were also members of the cable associations, both the PCT and the PCAP. And of course, GMA was there because GMA was not a KBP member. Those were...

SEN. PANGILINAN. So, all television stations were present? All national television stations were present?

MR. NICDAO. They were present or represented by KBP.

SEN. PANGILINAN. Yes. And radio stations were also present?

MR. NICDAO. As well, yes.

SEN. PANGILINAN. Okay. And this was made clear during that meeting that you were reminded by the NTC that there are provisions of law for the national government to take over operations of the media in times of national emergency. So, this was categorical.

MR. NICDAO. In fact, it was the opening statement of the commission during...

SEN. PANGILINAN. And they cited these Memorandum Circulars 1112-85 and 2289...

MR. NICDAO. That's correct.

SEN. PANGILINAN. ... as basis.

So, that was pretty clear. It was categorical that they had the power to take over operations of media.

I think si – Mr. Chairman, I think Atty. Diokno is here representing the Free Legal Assistance Group. And you have filed the petition in court questioning the issuances, that is my understanding.

Would you care to comment on that categorical statement given by the NTC on that afternoon of February 24, please?

MR. DIOKNO. Thank you, Mr. Senator and Mr. Chairman.

There are actually four circulars that were issued by the NTC which we have very serious objections to.

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¹¹ TSN, RPAIger, II-4, March 9, 2006, 12:18 p.m., p. 1.

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The first one was issued in 1985, that's 1112-85; Second in 1989, that's Circular 22-89; the third, in 2001 and the fourth earlier, a few days ago.

All four of them in one form or another prohibit certain things which we feel are illegal. First, is they claimed to prohibit subversive information. You cannot air subversive information. The problem is the Anti-Subversion Law was repealed in 1991, that's 14 years ago. How can the NTC prohibits something that is perfectly lawful.

Second, the NTC has prohibited the airing of rebellious or terrorist propaganda, comments, interviews and information. But there is no definition to that. What is a rebellious propaganda? What would be a rebellious comment?

The press would have no way...¹²

MR. DIOKNO. ...the press would have no way of knowing what that means.

The third, is that the NTC said that no broadcast radio station can air anything that tends to propose or incite sedition or rebellion. But what is tendency? A leaning, a disposition, an inclination. Does that now mean that we are prohibited from being left leaning or right leaning or having some form of expression or opinion. We believe that NTC has really gone over ... They shouldn't ever have that kind of power. It's too dangerous.

SEN. PANGILINAN. Thank you, I have no other questions.

THE CHAIRMAN. To wrap this up, I think we have discussed this matter – unless you want to say something, sir, before we wrap it up.

Jessica, you have anything? Atty. Perez? Mayo? Maria? How about you Luchi?

Atty. Jularbal.

ATTY. JULARBAL. Your Honor, we just want to put on record that the KBP has always been of the position that NTC has only jurisdiction over technical matters, never programming (?) matters. There are also issues of commercial concerns in the industry over which we also say that NTC has no authority over.¹³

FINDINGS

NTC Commissioner Solis and PNP Director General Lomibao both did not appear at the hearings because according to them, they were not given the clearance by the President pursuant to E.O. 464, a wretched display of arbitrary presidential power.

¹² *Id.*, pp. 4-7.

¹³ TSN, CFDRIZ, III-4, March 9, 2006, 12:28 p.m., p. 1.

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At issue was whether the President in enforcing thru her subordinate officials Proclamation 1017 in relation to the constitutional guarantee of freedom of the press, acted properly.

The two subordinate officials who implemented her Proclamation 1017 and the supporting General Order No. 5 were General Lomibao and Commissioner Solis. They could and should have explained the rationale for their actuations. But in a demonstration of presidential arrogance, they were forbidden from doing so, as if to explicitly demonstrate that the President does not owe the Senate or the people an explanation for her actions.

Yet these two officials attended press conferences, including the MOPC affair where they unabashedly proclaimed their actuations. They were allowed by the President to use unofficial forums to air the President's position but disallowed them from performing their official duties in an official forum like the Senate subcommittee hearing.

A. The *Daily Tribune* raid

Why was the raid of the *Daily Tribune* carried out in the dead of night when even regular search warrants are carried out during daytime?

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Ten policemen swooped down on the *Daily Tribune* offices who had one solitary security guard. The raiders even knew what to hit first – the printing press. Reporters and editors can write tons of articles but that would amount to nothing if there is no printing press to print them.

The police collected assorted press-related items from the offices and issued no receipt of what they got. Yet, the law is clear that a receipt must be issued for articles taken even with a valid search warrant.

The police bugged the landline phones as if they haven't heard that there is law that forbids bugging phones without a court order.

The police even asked for the keys of the offices and the routes that the drivers would take in distributing the *Daily Tribune*.

The police posted themselves in the *Daily Tribune* offices for one week.

Was there an intention to take-over the *Daily Tribune*?

The positive answer came from General Lomibao at the MOPC who said that the take over was decided by the security committee

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cluster of the Cabinet at the ungodly hour of three o'clock in the morning.

In a press conference, General Lomibao categorically stated –

“Aside from *Tribune*, are there other newspapers targeted for take over?” And he answered, “Well, it will depend if they do not follow the standards and the standards are: if they will contribute to instability in government; if they do not subscribe to what is in General Order No. 5 and Presidential Proclamation 1017, that will be left to the judgment of the Philippine National Police and other agencies that are empowered to implement the General Order.”

Then he was asked, “Ibig sabihin lahat ng lumalabas sa media strictly monitored ng PNP?” And he answered, “As I said, we have standards. If they do not conform to the standards, then we will evaluate. And if in our judgment they do not subscribe to the standards, then we will recommend.

By the way, we have taken over the *Daily Tribune*. We have temporarily taken over the *Daily Tribune*. The operations will continue but, as I have said, we will review the content and the substance of the intended publication.”¹⁴

It was thus planned not only to take over newspapers and periodicals but that the government wanted to engage in censorship.

The constitutional guaranty of freedom of the press was introduced to the Philippines at the turn of the 20th century when the United States occupied our country.

¹⁴ TSN, LDGalapon, VI-1, March 14, 2006, 2:20 p.m., pp. 1-2.

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The guaranty referred to press because at that time there was yet no electronic media, that is, radio or television. For over a century up to the present, the Philippines has no law whatsoever regulating newspaper, magazines, or periodicals, except during the Japanese occupation and the martial law years.

If a person or entity would like to put up a newspaper or a magazine, all he has to do is to register his tradename, pay the corresponding fees for the business side, and he can publish his periodical.

We do not have press licensing laws, that is, one need not get a government license to publish a newspaper. Nor can Congress enact a law that amounts to prior restraint on what should and would be published, or censorship of what has been published.

That is anathema to freedom of the press.

Of course the press is liable if they libel individuals, or incite the people to commit sedition, or rebellion, or subversion. There are laws to that effect.

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The individual press people responsible for that, individually or collectively, can be so charged, and after due hearing, convicted.

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However, for the personal, isolated, and unlawful acts of one, two, or more reporters or editors cannot give the government reason to close down or take over the entire newspaper where the offending article was published.

B. Philippine Center for Investigative Journalism (PCIJ)

The case of the PCIJ is a different attempt to curtail press freedom.

Jonathan Tiongco is an intelligence operative of the PNP. Sometime in October of 2005, he asked the Supreme Court for a Temporary Restraining Order (TRO) to restrain the PCIJ from posting the "Hello, Garci" recording on line. The high court preemptorily turned him down.

His wife, Mrs. Rona Tiongco, had also sued PCIJ for violation of her right to privacy and a Quezon City judge entered a 20-day TRO on the PCIJ blog.

Mr. and Mrs. Tiongco have filed a series of harassment cases against PCIJ.

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After Proclamation 1017 was issued, Jonathan Tiongco shopped around among Quezon City judges to get a warrant to search the premises of the of the PCIJ purportedly for inciting to sedition.

The question arises. How in the world can Mr. Tiongco have the standing to apply for a search warrant based on an action for alleged inciting to sedition, a crime against the state and the government? What personality did Tiongco have to take such action on behalf of the government?

To the credit of the Quezon City judges, none ultimately entertained Tiongco's application. Yet what taints the incident is that there appears to be no record of the application. Subsequently, Tiongco claimed in news reports that he did no such thing.

All these could have been explained by General Lomibao. But he opted to hide under the skirt of EO 464.

What this exercise tells us is that 1) the police could allow an agent to harass media, and if discovered or unsuccessful, disclaim responsibility thereon, that it was not an official police action but a private move of the individual, 2) successful or not, discovered or not, the exercise can and does intimidate the press.

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While the police openly raided without a search warrant the *Daily Tribune* and attempted to close it down, the police underhandedly tried to get a search warrant for the PCIJ thru a police operative and after it was discovered, there was no trace of the application.

As poignantly expressed by Senator Ralph G. Recto, the series of reports of the PCIJ were among the most damaging indictments against President Estrada in his impeachment trial which ultimately catapulted President Gloria Macapagal-Arroyo to the presidency. Now that the shoe is on the other foot, the President has unleashed her police to hunt down the same PCIJ that helped her once upon a time.

C. Television

Unlike print media which practically has no constraints whatsoever, broadcast media does labor under certain business constraints; but not in the news which it broadcasts.

To begin with, a television or radio station is required to apply for a legislative franchise in order to operate because it must be assigned a frequency which no other station can use. For such use, it has to pay a fee to the State which owns the airwaves.

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The government agency that implements this is the National Telecommunications Commission (NTC). Its job is two-fold, namely, assign the frequency and collect the fees due the government. This is the extent of its regulatory powers over broadcast media. Beyond that, it has no power because of the constitutional protection that no law shall be passed abridging freedom of the press. To begin with, it is essentially a regulatory body designed for the telecommunications industry, namely, telephones and related businesses, telegraph; and cable; and only incidentally for broadcast media.

Yet, right after Proclamation 1017 was issued, the NTC immediately called a meeting of broadcast media. Commissioner Solis presided and the two other Commissioners attended. The NTC declared that "We are here to implement this General Order No. 5 and Proclamation 1017".

The Sub-Committee deploras the NTC's action as untenable and without authority. One can search in vain from the plethora of statutes, starting from the colonial days thru the Commonwealth period, and presently under the Republic, that would indicate an iota of power granting the NTC the power to regulate the broadcast media.

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To begin with, there is no existing law whatsoever that grants to any government agency the power to control or regulate the contents

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of what could be broadcast because such a law would be patently unconstitutional.

There was the attempt of NTC for the broadcast industry to draw up guidelines which, in effect, would be the standards of what could be broadcast and what could not be broadcast. The move amounts to prior censorship, which is anathema to press freedom.

Guidelines are synonymous to censorship which cannot be allowed. Yet, by what authority did NTC have of calling a meeting that was designed to impose, under the guise of guidelines, censorship?

When the Marine standoff took place in Fort Bonifacio, Malacañang made two appeals to stop the coverage of the incident; one public thru Secretary Mike Defensor aired on all the networks, and the other private.

There was a chilling effect on the broadcast industry, that there was a definite government move to make broadcasters toe the government line.

While the government was making moves to control broadcast media, it did not, in a bizarre twist, ever invoke section 5, a standard provision in television and franchise bills, to wit:

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"SEC. 5. Right of Government. A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, to temporarily take over and operate the stations or facilities of the grantee, to temporarily suspend the operation of any station or facility in the interest of public safety, security and public welfare, or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of said stations or facilities during the period when they shall be so operated.

The radio spectrum is a finite resource that is a part of the national patrimony and the use thereof is a privilege conferred upon the grantee by the State and may be withdrawn anytime, after due process."

To clear the air, the undersigned chairman pointedly asked NTC Commissioner Solis by telephone whether the government would cite the aforesaid provision, and he answered "yes", if it is necessary.

Section 5 is clearly of doubtful constitutional validity and therefore, unenforceable and void. How it got into TV-radio franchise bills is not clear. It is fair to deduce that in light of the 1986, 1987 and 1989 coup attempts, where among the first targets of the rebels was to gain control of television stations to enable them to have a vehicle for propaganda, Congress incorporated such a provision which, at that time, was apparently acceptable.

Article XII, section 17 of the Constitution provides –

"Sec. 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest."

The Constitution delineates that in a national emergency, the State may temporarily take over privately owned public utility or

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business with public interest, not the President. The Congress has yet to enact the appropriate law under what conditions the government may exercise such powers.

Public utilities such as air, sea and land transportation; the communications industry; electricity, gasoline and other business may be temporarily taken over by the State in a national emergency and for public interest under reasonable terms. But media whose operation is constitutionally guaranteed and protected as a public necessity under the Bill of Rights is not covered in the same manner as public utilities and other businesses.

As between stopping the coverage of the Marine stand-off as Malacañang had urged, and airing it so that the public would know what was going on, subsequent events vindicated open coverage because it was better that the public knew what was going on rather than the people being kept in the dark about it. Indeed, the public knew immediately that the government had won, rather than leaving the people to speculate whether the government had survived or not.

There is thus a need for a full-blown re-examination of section 5 so that remedial legislation can be introduced in order that the constitutional guaranty of freedom of the press is maintained and not impaired by the strictures on national emergency.

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We would like to express its gratitude to former Senator Rene A.V. Saguisag, whose intellectually edifying analysis has helped the Sub-Committee in crafting this Report.

CONCLUSION

The Sub-Committee bewails:

- a. the high-handed and brazen raid by the PNP of the *Daily Tribune* without any search warrant, occupying its premises for one week, with initial intention of padlocking its offices and printing press;
- b. the attempt of the PNP in an underhanded manner to shop around for a judge who would issue a search warrant against the Philippine Center for Investigative Journalism (PCIJ);
- c. the move of the NTC to enforce Proclamation 1017 and General Order No. 5 against broadcast media, to impose censorship thru the subterfuge of imposing guidelines, and the attempt to stop the coverage of the Marine stand-off.

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- II. In the coup attempt in 1986, 1987, and 1989, among the first moves of the government was to protect and guard media from falling into the hands of the rebels, particularly television stations so that it could relay impact news to the public of what was happening.


On the other hand, this government has done the opposite. Among its first moves was to control and muzzle media and close it if possible. Only news approved by the government can be given out, was the plan.

- III. The non-appearance of PNP Director General Lomibao and NTC Commissioner Solis, the President's point men against media exposes in full the mischief that is E.O. 464. The Congress has the duty to check abuses, if any, of the Executive Department, but the President has short-circuited it by issuing E.O. 464.
- IV. The President is not the State when it is mentioned in the Constitution. But Malacañang, in the manner of Louis XIV equates the State as the President. Hence the unbridled disregard of constitutional limitations on the Presidency.
- V. There is need for remedial legislation on the standard section 5 in TV-radio franchise bills.

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Respectfully submitted,



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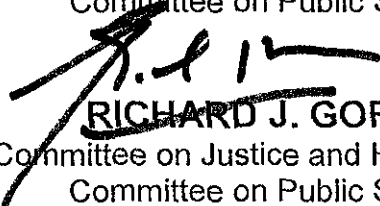
COMMITTEE CONCURRENCE


Pursuant to section 24, second paragraph of the Rules of the Senate, the undersigned members of the Committee on Justice and Human Rights and the Committee on Public Services who are not members of the Sub-Committee II hereby give their concurrence to the herein Committee Report for submission to the Senate for approval.


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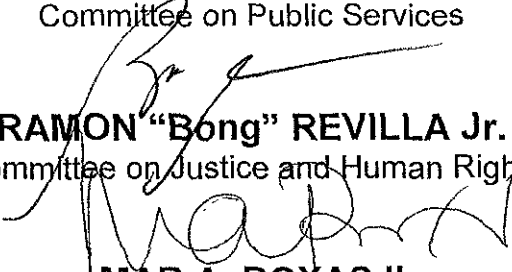
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