Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

13th Congress

2nd Regular Session

COMMITTEE REPORT 1653 (28 March 2006)

Re: Privilege Speech of Rep. Francis G. Escudero, dated 8 June 2005, on the "Tale of Two Tapes"

Informing the House of Representatives of the actions taken and the Joint Committee's Recommendations thereon

Sponsors: Reps. Emmylou Taliño-Santos, Amado T. Espino, Jr., Jose G. Solis, Simeon L. Kintanar, and Teodoro L. Locsin, Jr.

Mr. Speaker:

The Committees on Public Information, Public Order and Safety, National Defense and Security, Information Communications Technology, and Suffrage and Electoral Reforms, to which was referred the

PRIVILEGE SPEECH OF REP. FRANCIS G. ESCUDERO, DATED 8 JUNE 2005, ON THE "TALE OF THE TWO TAPES,"

have considered the same and have the honor to submit to the House of Representatives the attached report:

REPORT ON THE ACTION TAKEN AND RECOMMENDATIONS OF THE COMMITTEES ON PUBLIC INFORMATION, PUBLIC ORDER AND SAFETY, NATIONAL DEFENSE AND SECURITY, INFORMATION COMMUNICATIONS TECHNOLOGY, AND SUFFRAGE AND ELECTORAL REFORMS
RE:

Privilege Speech of Rep. Francis G. Escudero, dated 8 June 2005, on "The Tale of Two Tapes"

INTRODUCTION / BACKGROUND

On 6 June 2005, Press Secretary Ignacio Bunye[1] called a press conference with the Malacañang Press Corps to present and play to them two compact discs (CDs). Bunye held that one CD was an "original" and the other "altered." According to him, the original CD contained conversations between President Gloria Macapagal Arroyo (PGMA) and a certain "Gary."[2] The altered CD contained conversations between former Commission on Elections (COMELEC) Commissioner Virgilio Garcillano and PGMA during the presidential elections in Y2004. Bunye blamed a segment of the opposition for the wiretapping of the conversations and speculated on a destabilization plot.

On 8 June 2005, Atty. Allan Paguia, former lawyer of President Joseph Estrada, released to the media a 32-minute CD containing alleged conversations between Garcillano and PGMA on the 2004 presidential elections. Paguia claimed his CDs are authentic.

Department of Justice Secretary (DOJ) Raul Gonzalez issued a warning that those who possess the CDs are liable under Republic Act 4200 or the wiretapping law. The National Telecommunications Commission (NTC) issued the same warning.

In another press conference on 8 June 2005, Bunye claimed that the female voice on the tape is PGMA's. He later backtracked and said that he cannot be sure whose voice it is. At the House of Representatives (HoR), Minority Leader Rep. Francis G. Escudero delivered a privilege speech on the floor scoring Bunye for his allegations that the opposition, meaning, in particular, the minority in the House, is engaged in a destabilization plot against the government. Escudero also recommended an inquiry into the alleged wiretapped tapes, which were by then circulating in media and widely in the public. During interpellation of Escudero, several issues relevant to Bunye's statement and the contents of the tapes were brought up which prompted several Representatives to request for the referral of the speech to five (5) standing Committees: Public Information, Public Order and Safety, National Defense and Security, Information Communications Technology, and Suffrage and Electoral Reforms.

On 10 June 2005, former National Bureau of Investigation (NBI) Deputy Director Atty. Samuel Ong presented in a media conference what he termed "the mother of all tapes." He did not play the tapes for the media but played a videotape of an Intelligence Service of the Armed Forces of the Philippines (ISAFP) agent admitting to the wiretapping. The agent, who was later identified as Technical Sergeant Vidal Doble, later denied Ong's claims. Ong subsequently went into hiding.

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1 Parties will subsequently be referred to by last name only, for purposes of simplifying the document.

2 According to some media reports, Edgar Ruado, chief of staff of Rep. Iggy Arroyo, is allegedly the Gary in one of the Bunye CDs

The Committee on Public Information, as lead Committee, called for a meeting on 15 June 2005. An executive meeting was conducted in the morning to discuss procedural guidelines on the conduct of the meeting. The agreed guidelines were manifested and formally adopted in open meeting in the afternoon. The Joint Committee conducted a total of fourteen (14) public hearings on 15, 21, 22, 23, 29, and 30 June 2005, on 5, 6, 7 and 13 July 2005, on 3 August 2005, on 7 and 13 December 2005 and on 25 January 2006. A total of seven (7) executive meetings were also conducted.

On 14 July 2005, news services reported the departure of Garcillano via Subic International Air, Inc. to Singapore and subsequently to the United Kingdom. The entry of Garcillano in Singapore on said date was confirmed by the Department of Foreign Affairs (DFA). The Joint Committee requested for additional details on the flight of Garcillano but information have not been easily forthcoming either from the DFA, Bureau of Immigration (BI), Ninoy Aquino International Airport (NAIA) management, Aviation Security Group (ASG), Air Transportation Office (ATO). In the meantime, Garcillano's case was referred to the DOJ.

The following witnesses and resource persons were called and appeared in the hearings to testify and/or provide their inputs on the issues raised in the privilege speech/public hearings:

1. Secretary Ignacio Bunye – Press Secretary
2. General Reynaldo Wycoco – Director General, NBI
3. R/Adm Tirso Danga – Deputy Chief of Staff for Intelligence, Armed Forces of the Philippines (AFP)
4. BGen Marlu Quevedo – Chief, ISAFP
5. T/Sgt. Vidal Doble – ISAFP
6. Atty. Alan Paguia – source of the 32-minute CD
7. Dean Pacifico Agabin – Dean, Lyceum of the Philippines College of Law
8. Dean Amado Valdez – Dean, University of the East College of Law
9. Mr. Francisco Kit Tatad – Former Senator
10. Commissioner Ronald Solis – NTC
11. Atty. Rodolfo Salalima – Legal, Globe Telecommunications, Inc.
12. Atty. Enrico Español – Legal, Smart Communications, Inc.
13. Atty. Carlos Saunar – former Director, NBI
14. Ms. Marietta Santos – live-in partner of T/Sgt Doble

The following were also invited to the public hearings but failed or were unable to attend:

1. DOJ Sec. Raul Gonzalez – 15 June 2005
2. Chairman Benjamin Abalos, Jr., COMELEC - 15 June 2005, 25 January 2006*
3. Former Comm. Virgilio Garcillano, COMELEC - 15 June 2005, 7 July 2005, 13 July 2005, 3 August 2005
4. Ms Ellen Peralta, Secretary of Comm. Garcillano - 15 June 2005
5. Atty. Samuel Ong – 29 June 2005, 5 July 2005
6. Atty. Edgar Ruado, Chief of Staff, Iggy Arroyo – 15 June 2005
7. Sr.Supt.Tom Bañas, OIC Police Anti-Crime Emergency Response (PACER) – 15 June 2005*
8. Lt. Col. Pedro Sumayo, Jr., Group Commander, MIG 21, ISAFP – 23 June 2005, 30 June 2005, 6 July 2005, 25 January 2006*
9. Lt. Col Allen Capuyan, Chief of Operations and Intelligence Division, ISAFP – 23 June 2005, 6 July 2005, 25 January 2006*
10. Sgt. Willie Gayo – 6 July 2005, 13 July 2005
11. MSgt Villedo – 6 July 2005

12. MSgt Callos – 6 July 2005
13. Sgt. Nelson Abando – 6 July 2005
14. Sgt. Tabang – 6 July 2005
15. Sgt. Abe – 6 July 2005
16. Sgt. Biton – 6 July 2005
17. Sgt. Ollero – 6 July 2005
18. Sgt. Gavellano – 6 July 2005
19. Mr. Ruben Reyes – ISAFP asset, 6 July 2005
20. Fr. Joaquin Bernas, Ateneo Law – 29 June 2005*
21. Dean Raul Pangalangan, UP Law – 29 June 2005*

** with prior notice of his/her unavailability to attend the public hearing*

ISSUES RAISED IN THE PRIVILEGE SPEECH AND IN THE PUBLIC HEARINGS

The following issues were raised:

1. Verify whether the Opposition in the HoR had been engaged in destabilization activities against the present government leadership;

2. Revisit the Anti-Wiretapping Law (R.A. 4200) for potential revision or other remedial legislation to prevent its subversive use and to find a balance between the public's interest in the truth and the right of privacy. Evaluate the truth of the substance of the tapes; and

3. Revisit the Omnibus Election Code (Batas Pambansa Bilang 881) for potential revision or other remedial legislation particularly on the propriety or legality of candidates being able to talk to an election officer during election periods and determine other measures to prevent election fraud.

CHRONOLOGY OF EVENTS[3]

6 June 2005	Bunye presents and plays to the Malacañang Press Corps two (2) CDs of alleged conversations between PGMA and COMELEC Commissioner Virgilio Garcillano on rigging election results, and between PGMA and a certain Gary. Bunye declares that one CD is authentic and the other fake. Major news networks begin broadcasting the tapes.
7 June	Paguia releases a 32-minute CD of alleged conversations between Garcillano and a roster of individuals that include PGMA, Atty. Jose Miguel Arroyo and former Sen. Robert Barbers. Bunye blames "a small segment of the opposition" for the wiretapping.

[3] Some of the information contained in the chronology of events were culled from the Philippine Daily Inquirer (Issues from June 6, 2005; June 7, 2005; June 14, 2005; June 15, 2005; June 16, 2005), Malaya Newspaper (August 18, 2005 issue), iReport Magazine (Special Ed., "*The Queens' Gambits*"), The Manila Times (June 30, 2005 issue), "*Timeline of 2005 Philippine Electoral Crisis*," available at www.wikipedia.org, and relevant documents from the House of Representatives Committee on Public Information.

8 June	Bunye says that the (female) voice on the CDs was PGMA's. DOJ Secretary Gonzalez says that those who have copies of the CDs are liable under Republic Act No. 4200 (the "Anti-Wiretapping Law").
	Rep. Francis G. Escudero, House of Representatives Minority Leader, makes a Privilege Speech on the Floor on the "Tale of Two Tapes" decrying Bunye's presumption that the opposition was responsible for the wiretapping. The privilege speech is referred to the HoR Committees on Public Information, Public Order and Safety, National Defense and Security, Information Communications Technology and Suffrage and Electoral Reforms for further investigation and resolution.
9 June	Bunye retracts his statement that it was PGMA's voice in the tape. The Committee on Public Information schedules a preliminary meeting for 15 June 2005 to discuss issues in Escudero's speech.
10 June	Ong conducts a press conference presenting the "mother of all tapes" to the media. Ong claims to be the source of the audio tapes/CDs that have been circulating, having been given to him by an ISAFP agent. He later names Army Intelligence Officer Doble as the source of the tapes.
11 June	Ong goes to San Carlos Seminary and is given refuge.
	The Office of the President formally denies allegations of electoral fraud. Ong denies allegations of being an opposition lackey and asserts his nonpartisanship.
12 June	The NTC issues a warning that any network airing the CDs would be violating the anti-wiretapping law and could be subject to closure.
13 June	The Kapisanan ng mga Brodkaster sa Pilipinas (KBP) challenges the NTC's declaration as a violation of the constitutional right to free speech and freedom of the press. The KBP additionally points out that the government's renunciation of the tapes precludes application of the anti-wiretapping law, which only affects actual, private, illegally recorded conversations.
15 June	Doble denies Ong's claims that he is the source of the recordings.
	The Joint Committee convenes in executive session to discuss procedural guidelines on the conduct of the public hearings. Later in the afternoon, the Joint Committee conducts the first public hearing on the issue where several recommendations on procedural guidelines were adopted. Next meeting is scheduled for 21 June 2005.
	The NBI charges Ong with "inciting to sedition." Ong leaves the seminary and disappears.
21 June	The Joint Committee conducts a hearing at the HoR Plenary Hall with Bunye and NBI Director Reynaldo Wycoco as witnesses/resource persons. Bunye testifies.

22 June	The Joint Committee conducts a hearing to continue discussions on issues. Bunye continues his testimony. Paguia submits a 32-minute CD to the Joint Committee.
23 June	The Joint Committee conducts a hearing. Wycoco testifies.
27 June	PGMA addresses the country in a televised broadcast in which she apologizes to the nation for placing phone calls to and conversing with a COMELEC official during the 2004 elections. She characterizes her act as a "lapse in judgment" and explains that the conversations only pertain to her request for a count in Mindanao. Atty. Oliver Lozano, former lawyer of Imelda Marcos, files an impeachment case against PGMA based on her alleged "betrayal of public trust."
29 June	The Joint Committee conducts a hearing. Legal experts Professor Pacifico Agabin of Lyceum of the Philippines and Justice Amado Valdez of the University of the East opine that playing the CDs in session would not be unconstitutional and the use would aid legislation. The House of Representatives Legislative Counseling Bureau agrees. Fr. Joaquin Bernas (Dean of Ateneo School of Law) and Justice Raul Pangalangan (Dean of the University of the Philippines College of Law) submit position papers agreeing with those of Agabin and Valdez. Rep. Roilo Golez resigns from PGMA's political party and inhibits self from chairing the Defense Committee. Paguia testifies.
30 June	The Joint Committee conducts a hearing. The Committee votes to play the 32-minute CD in open session. Paguia testifies. The Committee Chairpersons signs a *subpoena* for Garcillano to appear and testify and *subpoenae duces tecum* for the two (2) audiocassette tapes which were the source of the Paguia CD, the Bunye CDs and the Ong tapes.
5 July	The Joint Committee conducts a hearing. Paguia continues his testimony. Paguia submits two audiocassette tapes as the source tapes of the 32-minute CD. The Committee plays the 3-hour cassette tapes in open session. Wycoco submits the two (2) CDs turned over by Bunye and two (2) CDs of copies of the same that the NBI made.
6 July	The Joint Committee conducts a hearing. AFP Deputy Chief of Staff for Intelligence – J2 R/Adm Tirso Danga and Doble testify in executive session. Paguia admits that former Senator Francisco "Kit" Tatad gave the two audiocassette tapes to him.
7 July	The Joint Committee conducts a hearing. Wycoco and Tatad testify. In a radio address, PGMA refuses to yield to calls for her resignation. However, she simultaneously asks for her entire cabinet's resignation in order to allow for reorganization.
8 July	Ten appointed government officials (later dubbed as the "Hyatt 10") resign and calls for PGMA's resignation.

10 July	The CBCP announces that they will not petition for PGMA's resignation but expresses support for an independent "Truth Commission" to investigate the allegations.
13 July	The Joint Committee conducts a hearing. The Chairpersons sign second set of *subpoenae* for Garcillano to appear and testify before the Joint Committee. The Joint Committee temporarily suspends the hearings and sets the next hearing on 3 August.
14 July	Garcillano allegedly leaves the country reportedly by Subic International Air, Charter, Inc. for Singapore and then UK.
25 July	The second regular session of the 13th Congress opens. PGMA delivers her annual State of the Nation Address, advocating for institutional reforms. The main opposition contingent files a second, revised complaint appealing for PGMA's impeachment.
3 August	The Joint Committee conducts a hearing and cites Garcillano in contempt. The NTC, Globe Telecommunications, Inc., and Smart Communications representatives testify. Doble and Ms. Marietta Santos testify. Atty. Carlos Saunar of the NBI submits, under oath, his affidavit on the issue of the allegedly "lemon" wiretapping equipment of the NBI. The Joint Committee temporarily suspends public hearings. The House issues a Warrant of Arrest for Garcillano. The Joint Committee writes the Department of Foreign Affairs (DFA) requesting for assistance from Singapore and United Kingdom immigration offices for information on Garcillano's alleged entry into said countries.
8 August	The Joint Committee requests the DFA for the cancellation of Garcillano's passport and the Bureau of Immigration (BI) for the issuance of a Hold Departure Order on Garcillano.
15 August	DFA replies that the Singapore Government confirms entry of Garcillano in Singapore on 14 July.
22 August	The Joint Committee requests DFA for additional details on Garcillano's entry in Singapore. The Joint Committee signs second set of *subpoena ad testificandum* and *subpoena duces tecum* for Ong.
5 September	The DFA informs the Joint Committee that all queries on Garcillano's case be addressed to the DOJ.
8 September	The DOJ transmits to the Joint Committee the Singapore Government's *note verbale* stating that Garcillano transited Singapore via Learjet 35 with Registration Number RP-C1426 on 14 July 2005 and left the following day on Singapore Airlines flight SQ 320.
16 November	The Joint Committee conducts an executive meeting to deliberate on the proposed committee report

28 November	Garcillano reappears and grants an interview with ABS-CBN. Garcillano denies rigging the 2005 elections
30 November	The Joint Committee, in executive session resumes deliberations on the draft committee report. It decides to resume public hearings and issues an invitation to Garcillano to appear before the Joint Committee.
7 December	The Joint Committee resumes public hearings. Garcillano testifies and submits a list of persons who talked to him during the 2004 election period.
13 December	The Joint Committee conducts a hearing. Garcillano continues with his testimony. The Joint Committee receives a copy of the Petition filed by Garcillano with the Supreme Court to stop the Joint Committee to come out with a report.
14 December	Garcillano submits his Philippine passports to the Joint Committee. The passports do not contain any entries at all.
25 January 2006	The Joint Committee conducts a hearing. Garcillano continues with his testimony. COMELEC Commissioner Florentrino Tuason, Jr. testifies. The Joint Committee terminates the public hearings.
31 January	The Joint Committee submits its comment on the Garcillano Petition to the Supreme Court

HIGHLIGHTS OF TESTIMONIES OF WITNESSES

1. Press Secretary Ignacio Bunye (21 and 22 June 2005)

   a. He apologized to members of the opposition who may have felt alluded to by some of his remarks. There was no derogatory intent on his part when he mentioned the opposition in his press conference. The press conference at 2:00 P.M. was a "defensive move,"[4] triggered by intervening circumstances that necessitated a "judgment call"[5] on his part to diffuse a potentially damaging situation. His action, borne out of immediacy, was in response to what he then perceived as moves from some quarters in the opposition to sow upheaval and disorder to ultimately destabilize the administration and unseat PGMA.[6]

   b. His press conference was held not to preempt the alleged planned move by the opposition to go public with the tapes. Rather, it was to inform and forewarn the public of the existence of such a tape and the possibility that there is more than one version of it circulating.[7] There is no way of knowing which of the circulating tapes/CDs are genuine; he was not pointing to a particular opposition group/camp as the perpetrator of the CDs.[8]

   c. He was not the first to come out and play the CDs as one version had been broadcast over a major commercial radio station (DZMM) at 1:00 P.M. on 6 June 2005[9]; He did not make any copy of the CDs[10] and could not recall having given explicit permission to any person to have the tapes copied/recopied or burned[11]. He did not initiate the playing of the tapes but he played them upon the insistence of the members of the Press Corps.[12]

   d. He admitted that he was the one who initiated the playing of the tapes because he was prompted by the earlier broadcast (of the tapes) by DZMM and that he was informed that the conversations may be similar to the one contained in the CDs.[13] Some members of the press corps began taping the CDs.[14]

   e. He had no intention to go public with the CDs.[15] The DZMM broadcast prompted him to reveal to the Malacañang Press Corps the existence of the CDs.[16] Otherwise the CDs would have gone directly to the NBI for analysis.[17]

   f. Weeks prior to his 6 June 2005 press conference, he was informed that a tape of this nature was already circulating among certain groups which claimed that their source is an official of the United States government. A US Embassy contact confirmed the circulation of such material but categorically denied allegations that a US Embassy official is the source.[18]

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4 22 June 2005 Transcript of Stenographic Notes (TSN) p. 98, LCLV/XXVI-4 and p. 124, TJAS/XXXI-1
5 Ibid, p. 28, ESB/X-1 and p. 133, GCC/XXXIII-3
6 21 June 2005 TSN p. 98, LCLV/XXVIII-2
7 22 June 2005 TSN p. 134, GCC/XXXIII-4 and p. 138, ALAVT/XXXV-1
8 21 June 2005 TSN p. 90, EBGV/XXVI-2
9 Ibid, p.92, EBGV/XXVI-4 and p. 107, JMB/XXX-1; also in 22 June 2005 TSN p. 114, CAB/XXVIII-2
10 21 June TSN p. 114, TJAS/XXXIII-1
11 Ibid, p.110, EMA/XXXII-1.
12 Ibid, p. 103-106, CAB/XXX-1 to 4
13 22 June 2005 TSN p. 129, ESB/XXXII-3
14 21 June 2005 TSN, p. 109, JMB/XXX-3 and 22 June TSN p. 111, APM/XXVII-3
15 22 June 2005 TSN, p. 99, APM/XXVII-1 and p. 111, XXVII-3
16 Ibid, p. 27, JMB/VII-2, p. 52, ALAVT/XIII-3 and p. 35, TJAS/IX-2
17 21 June 2005 TSN, p. 114, TJAS/XXXIII-1
18 Ibid, p. 97, LCLV/XXVIII-1 and 22 June 2005 pp. 21-22, EMA/XXX-2-3; p. 61, BBR/XVI-1

g. The CDs simply arrived in his office from an unknown source.[19] The CDs were among the papers and documents brought by his aide from his Alabang home to his office in Malacañang on the morning of 6 June 2005.[20]

h. Except for the "CONFIDENTIAL" label on the brown envelope that contained the two CDs, there were no peculiar markings that could link it to the source. The CDs were also marked separately as "original" and "altered."[21] This is how he based his initial judgment regarding its authenticity as he is not technically competent to determine which of the CDs was "authentic" and "fabricated."[22]

i. Upon receipt of the tapes, he immediately listened to them alone in his office.[23] The conversations lasted approximately 30 minutes. The possibility that PGMA must have been wiretapped crossed his mind.[24] The content or subject matter and the voices in the CDs did not surprise him because talks/rumors of these have been going around prior to 6 June 2005.[25]

j. After fully listening to the CDs, he informed and advised PGMA over the telephone that he will task the NBI to make its analysis of the voices.[26] His telephone exchange with PGMA was short. He did not find it necessary to show the CDs to PGMA as she was in the middle of a meeting with the members of the Liberal Party. He did not consult PGMA about his decision to go public with the CDs. It was a "judgment call" on his part.[27] He informed PGMA what transpired during the press conference, taking full responsibility for his action.[28]

k. As of hearing date (22 June 2005) he has not received an official status report from the NBI regarding their analysis of the CDs.

l. He had the impression that everything was orchestrated.[29] Many were taking advantage of the situation especially at a time when PGMA's rating had gone to an all-time low and the country was faced with serious problems, such as the increasing cost of the price of oil and other petroleum products. He quoted Tatad as saying, "The time is right for a take-over," which led him to suspect the motives of the persons or groups behind the CDs, and to conclude that the use of these CDs was to cast doubts on the credibility of the present administration.[30]

m. The female voice, which he said during the 6 June press conference as that of PGMA's, may not actually be that of PGMA "although it sounded like the President's voice."[31] In fact, he could not be sure about the identity of all the voices in the CDs; he could not in all certainty confirm that the female voice in the CDs belongs to PGMA. In fact, he could not

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19 Ibid, p. 93, MTGA/XXVII-1; 22 June 2005, p. 24, CAB/VI-3; p.30, EMA/VIII-1; p.63, BBR/XVI-3
20 22 June 2005, p. 125, TJAS/XXXI-2
21 Ibid, p. 125, TJAS/XXXI-2; p. 136, ADJO/XXXIV-2; p.112, APM/XXVII-4; p. 113, CAB/XXVIII-1
22 Ibid, p. 44, GCC/XI-2; p. 79, EPT/XXI-2
23 Ibid, p. 99, APM/XXVII-1
24 Ibid, p. 118, JMB/XXIX-3
25 Ibid, p. 128, ADJO/XXXVI-3
26 Ibid, p. 31, EMA/VIII-2; p. 64, BBR/XVI-4; p. 118, JMB/XXIX-3
27 Ibid, p. 70, DMTD/XVIII-3
28 Ibid, p. 38, ESB/X-1;
29 Ibid, p. 79, EPT/XXI-2
30 Ibid
31 Ibid, p. 132 GCC/XXXIII-2

say 100% that he could identify his own voice, especially because the CDs are already copies of copies many times over.[32]

n. His opinions on whose voice it was did not matter as he echoes only the statements of the President. For the moment, it was sufficient that PGMA has issued an official stand that she will not dignify a trivial matter especially when the CDs could have come from dubious origins.[33] The "no comment" and "will make pronouncements at the appropriate time" stance of PGMA was no cover-up and that there is no attempt to the effect.[34] PGMA is busy addressing our fiscal/economic problems.

o. He said that accusations on the commission of fraud in the last elections should be backed by solid evidence. The proper time to raise issues on election fraud would have been during the canvassing when these materials were reported to have been available.[35]

p. Statements and reports of reputable international and local observers of the Philippine elections declared that the elections were generally clean and credible. He pointed to the results of the pre-poll surveys and the exit surveys of the ABS-CBN, DZRH, AMA University, Pulse Asia, and the Social Weather Station that not only predicted GMA's electoral victory, but also had actually confirmed it. PGMA did not only not commit any irregularity and/or fraud during the last elections; she, in fact, won "fair and square" in the presidential race.[36]

q. He firmly believed that the issue has nothing to do with electoral fraud; rather it is about destabilization, and attempts to cast doubts on the integrity of PGMA and the credibility of her administration.[37]

r. He refused to comment on the propriety of a public official running for a political post consulting or talking with a ranking COMELEC official during the canvassing period.[38]

s. In the CDs that he listened to, he could not recall any mention of the rigging of elections in Cebu.[39]

t. He denied receiving the CDs from an official of the NBI. He does not know and has not met any person in the name of Esmeralda,[40] allegedly an assistant director in the NBI.

u. He disagreed that our society is now in decay owing to the administration's failed promise of moral recovery, economic prosperity, and focused leadership. He disagrees with the assessment that PGMA's administration has been continually hounded by scandal after scandal, controversy upon controversy, and issues of grave mis-governance, all of which contributed to a loss of credibility and legitimacy of all our societal institutions.[41] The stock market may have reacted a little negatively but the fundamental economic indicators are

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32 Ibid, p. 59, TMR/XV-3; p. 70, , DTMD/XVIII-3p. 93, MTGA/XXV-3; p. 99, APM/XXVII-1; and 21 June 2005, p. 98-99, LCLV/XXVIII-2-3; p. 100, APM/XXIX-1

33 Ibid, p. 31, EMA/VIII-2; and 21 June 2005 p. 101, APM/XXiX-2

34 Ibid, pp. 96-97, LCLV/XXVI-2-3

35 Ibid, p. 130, ALAVT/XXXVII-1

36 21 June 2005 TSN, p. 101-102, APM/XXIX-2-3; 22 June 2005, p. 94, MTGA/XXV-4

37 22 June 2005 TSN, p. 92, MTGA/XXV-1-2; p. 130, ALAVT/XXXVII-1

38 21 June 2005 TSN, p. 102, APM/XXIX-3; p. 103, CAB/XXX-1; 22 June 2005, pp. 92-93, MTGA/XXV-2-3

39 22 June 2005, pp. 136-137 ADJO/XXXIV-2-3; p. 138, ALAVT/XXXV-1

40 Ibid, p. 30, EMA/VIII-1

41 Ibid, p. 97, LCLV/XXVI-3

stable. There was no major setback that can lead to an economic crisis and/or political crisis.[42]

v. He had no idea about a certain "voice identification group" which purportedly conducted an authentication of the contents of the CDs.[43]

w. He recommended a review of the Constitution in order to amend certain items in the law, including the Anti-Wiretapping Law.[44]

x. He is not open to playing of the CDs during the public hearings as he is articulating the personal sentiment of PGMA, which is not to dignify the tapes.[45]

2. NBI Director Reynaldo Wycoco (23 June 2005 and 7 July 2005)

a. He has never mentioned the opposition in his press conferences as he is "always very careful in indulging in political statements." Neither has he mentioned anything about destabilization in his press conferences.[46]

b. He did not ask Malacañang to submit an official letter to the NBI confirming that it was the President's voice in the tapes.[47]

c. Upon receipt of a *subpoena duces tecum*, he will submit the (Bunye) CDs to the Joint Committee.[48]

d. The NBI had difficulty in determining which CDs were the original due to claims of Ong and Tatad that they had the originals. It seems that there are four (4) originals.[49] The NBI is looking for the original tapes and the person who conducted the wiretap. The NBI cannot make a determination whether or not the material is a wiretapped material until it gets the original.[50] The NBI did not investigate on who brought the CDs to Bunye. Things happened so fast in the next few days that the NBI was "overtaken" by events.

e. He invited Bunye to his NBI office for the latter to explain where the CDs came from. Bunye did not say whether or not he talked to the President about the CDs or that they contained alleged wiretapped conversations.[51] The NBI tried to look for the original tapes because the analysis was that the CDs were tampered.[52]

f. Upon receipt of the CDs from Bunye, he called a meeting with NBI senior officials to study how to conduct the investigation on the matter and also sent the CDs to the NBI Electronics Communication Division (ECD) for initial analysis. The initial finding of the NBI is that both tapes are tampered.[53] It is obvious that the tapes have been edited as shown by the sequencing of the conversations and the voice-over.

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42 Ibid, p. 47, ADJO/XIII-1; pp. 88-89, NAB/XXIV-1-2
43 Ibid, pp. 66-67, RCN/XVII-2-3
44 Ibid, p. 45, GCC/XI-3; p. 131, GCC/XXXIII-1
45 Ibid, p. 94, MTGA/XXV-4; p. 135, ADJO/XXXIV-1
46 23 June 2005 TSN p. 22, NAB/VI-3
47 Ibid, p. 23, NAB/VI-4; p. 24, MTGA/VII-1
48 Ibid, p. 34, CAB/X-1
49 Ibid, p. 48-49, ESB/XIV-1; p. 71, DMTD/XX-1
50 Ibid, p. 63, PVB/XVIII-1
51 Ibid, p. 55, GCC/XV-3
52 Ibid, p. 48, TJAS/XIII-3
53 Ibid, p. 60,ALAVT/XVII-1; p. 130, EMA/XXXIV-2

g. The report also states that the two female persons speaking are one and the same person and the two male persons she was talking to are different persons.[54] It is difficult to distinguish the age of the speaker through his voice.[55]

h. He agrees that in the Rules on Electronic Evidence in Philippine Jurisdiction, there cannot be any valid authentication of the tapes if no one admits to the manufacture or the wiretap of the same.[56]

i. The report of the Voice Identification, Inc. (VII) addressed to the Saguisag-Carao Law Offices dated 9 June 2005 is not conclusive. He is not sure of the authenticity of the document from the VII and suggested that said document be compared to the document held by Tatad.[57]

j. The NBI does not conduct wiretapping activities.[58] Under his leadership, the NBI has not conducted any wiretapping or applied for a court order for the purpose.[59]

k. The NBI will also investigate the tapes if these were submitted by any ordinary person. The NBI does not investigate based on perception but on evidence and rule of law.[60] He does not believe that students are responsible for the reproduction and distribution of the tapes because these cost money.[61] When Bunye submitted the tapes to the NBI, he was the source of the evidence and, therefore, became either a witness or informant. He had not committed any crime at that time as far as the NBI was concerned.[62]

l. The NBI had raided a printing press, which had an order of one million "valentina" posters, which depicted the president as a snake woman, costing about seven to ten pesos each. He believes that that there is a group financing all these activities.[63] The NBI applied for a search warrant before the raid on the printing press. The posters confiscated from the raid had no real printer's name as required under Section 4, Article 154 of the Revised Penal Code (RVP).[64]

m. The basis for the raid and subsequent confiscation of the "valentina" posters was a search warrant issued by the Honorable Executive Judge Natividad Geron-Dizon of Quezon City. The crime to have been committed was violation of Article 154 (RVP) or Unlawful Use of Means of Publication and Unlawful Utterances. A concerned citizen who also submitted a sample of the poster, which did not bear the real printer's name or address, reported this case.[65]

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54 Ibid, p. 66, PUB/XVII-4; p. 142, ADJO/XXXVIII-1-2
55 Ibid, p. 117, APM/XXXI-1
56 Ibid, p. 50, ESB/XIV-2
57 Ibid, pp. 53-54, GCC/XV-1-2; p. 57, ADJO/XVI-2
58 Ibid, p. 61, ALAVT/XVII-2; p. 144, ADJO/XXXVIII-3
59 Ibid, p. 119, APM/XXXI-3
60 7 July 2005 TSN, p. 113, RCN/XXXIII-1; p. 135, RCR/XXXIX-3
61 23 July 2005 TSN, p. 72, DMTD/XX-2
62 Ibid, p. 95, RCR/XXV-4; p. 96, EBGV/XXVI-1
63 Ibid, p. 72-73, DMTD/XX-2-3
64 Art. 154. (Unlawful use of means of publication and unlawful utterances) - Section 4. Any person who shall print, publish, or distribute or cause to be printed, published or distributed books, pamphlets, and periodicals or leaflets which do not bear the real printer's name, or which are classified as anonymous. (*as amended by Com Act. No. 202*)
65 Ibid, pp.126-128, JMB/XXXIII-2-4; p. 129, EMA, XXXIV-1; and 7 July 2005, pp. 124-125, DMTD/XXXVI-1-2

n. Mr. Ruado went to the NBI on his own volition because when he listened to news reports he felt that one of the voices on the tapes sounded like his voice. The NBI did not take his voiceprint.[66]

o. The NBI is investigating the CDs, not the wiretapping.[67] The NBI is not capable of authenticating the tapes/CDs. It cannot conclude that the conversations in the tape are products of wiretapping.

p. The NBI did not play the (whole) CD before media, but only a portion to show the spectrographic comparison.[68]

q. The NBI does "not at the moment," have the capacity to wiretap or the technical capability to prevent wiretapping.[69]

r. The NBI did not have any equipment to wiretap but it can purchase equipment if directed.[70]

s. He did not lie when he said that he NBI had no wiretapping capability. He did not tell the committee that they had equipment as he was responding to the question: "Do you have the capability?" Since the equipment that was in the possession of the NBI was not working, he answered: "*now wala kaming capability*."[71] During the period of the wiretapped conversations in the tapes/CDs, the equipment was in the possession of the NBI-ECD and was not being used. NBI records will show that the equipment is with the ECD. A court order is necessary before the NBI can use the equipment in the event that it shall be repaired. (italics supplied)

t. He has, in his possession, the following documents relating to wiretapping equipment of the NBI:[72]

    1. Letter of Acting Director Opinion, dated 10 May 2000, requesting from then President Estrada approval to purchase wiretapping equipment which the President approved on 29 May 2000;
    2. Letter from the Office of the President dated 27 March 200, signed by a Mr. Ric Tan Legarda also requesting for the purchase of interceptor equipment;
    3. Document dated 20 December 2000 indicating the receipt of the equipment by Atty. Carlos Saunar, NBI agent;
    4. Schedule of equipment that the NBI has in its possession.

u. At the time that the NBI was investigating the case of Mr. Salvador Bobby Dacer, Ong requested permission to use a Global System for Mobile (GSM) cellular phone interceptor that was in the inventory of the NBI. As the new Director of the NBI then, he gave the permission.[73] It turned out that the equipment was in the possession of Saunar. Ong was given permission to ask for the recall of the equipment and it took Saunar four or five months to return it. Eventually Ong was able to get the equipment.[74]

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66 Ibid, p. 77, BBR/XXI-4
67 Ibid, p. 111, MTGA/XXIX-5
68 Ibid, p. 113, LCLV/XXX-2
69 Ibid, p. 79-80, RCN/XXII-1-2; and pp 143-144 ADJO/XXXVIII-2
70 Ibid, TSN p. 118, APM/XXXI-2; This statement was argued by Rep. Aguja noting that Wycoco said "…hindi po kami nagkaroon ng instruments to wiretap." See also 7 July 2005 TSN, pp. 92-93 LBL/ XXVII-2 and p. 94, ACV/XXVIII-1
71 7 July 2005 TSN pp. 92 – 93, LBL/XXVII-2/3 and p. 94, ACV/XXVIII-1
72 See also Annex F5
73 Ibid, p. 65-66, EPT/XIX-4
74 Ibid, pp. 60-61, ALAVT/XVIII-2-3; p. 71, JMB/XXI-2

v. Ong tried to use the equipment but complained that he could not use it. According to the reports of the NBI-ECD, the equipment is a "lemon."[75] The NBI tried to use the equipment in some kidnapping cases but it really cannot be used.[76] Because of the other priorities of the NBI, they were not able to return the equipment to France for evaluation.[77]

w. When the NBI found that the equipment did not work, it tried to locate the dealer, Setcom Incorporated headed by a Francisco Bernardo, but they could not locate the office, which had long vacated its previous address, or the person.[78] There is no written order for the agents to locate the dealer. As in the AFP, verbal orders of the Commanding Officer have the same directorial effect as a written order.[79]

x. Because of the secrecy of the acquisition of the equipment, there was no demonstration on how it worked when it was delivered. The training component, which should have accompanied the purchase, was not done. It turned out that the equipment can only be used in France and not in the Philippines. There was no operations manual either.[80]

y. The equipment that the NBI has in its possession "standing alone,' cannot perform wiretapping operations. It has to be used with other parts and components, which the NBI does not possess. He cannot make an opinion on whether the NBI equipment, with the use of other components, could have been used to wiretap the conversations in the tapes/CDs.[81]

z. It is normal to take into custody any evidence seen at a crime scene.[82]

aa. It is the PNP and not the NBI which was investigating the case of Doble.[83] The PNP and the NBI are the two primary law enforcement agencies of the Philippines. The NBI is under the Department of Justice and the PNP is under the Department of Interior and Local Government. Both PNP and NBI are mandated to investigate any or all violations of existing laws in the country.[84] The NBI or PNP takes custody of witnesses or violators depending on the order of the court.

bb. The NBI's legal department recommended that the NBI defer its investigation on the tapes/CDs until the House of the Representatives has come out with its findings.[85] The NBI has not yet initiated any effort to locate Garcillano. It did not take Doble into custody as the PNP had acquired original jurisdiction over the case. The NBI is not coordinating with the PNP on the case of Doble.[86]

3. Atty. Alan Paguia (29 & 30 June and 5 & 6 July 2005)

a. His action regarding the tapes/CDs is his recognition of his duty as a good citizen to inform the citizenry about the cheating in the last elections.[87]

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75 See also, Annex F9
76 Ibid, pp. 65-66, EPT/XIX-4-5
77 Ibid, pp. 72-72, JMB/XXI-3-4; p. 120, MSSSA/XXXV-1
78 Ibid, pp. 68-69, EBGV/XX-2-3
79 Ibid, pp. 75-76, NAB/XXII-2-3
80 Ibid, p. 69, EBGV/XX-3; p. 70, JMB/XXI-1; pp. 87-88, WBC/XXVI-2-2
81 Ibid, p. 144-145, CAB/XLII-3-4; p. 146, EMA/XLII-1
82 Ibid, pp. 85-86, ETB/XXV-3-4; p. 87, WBC, XXVI-1
83 Ibid, p. 85, ETB/XXV-3; p. 117, EBV/XXXIV-2
84 Ibid, p. 89, WBC/XXVI-3
85 Ibid, p. 90, WBC/XXVI-4; p. 91, LBL/XXVII-1; p. 107, TJAS, XXXI-4; p. 114, RCN/XXXIII-2; p. 121, MSSSA/XXXV-2
86 Ibid, pp. 91-92, LBL/XXVII-1-2
87 29 June 2005 TSN, p. 48, MTGA/XV-1; 30 June 2005, pp. 179-180, ACV/LVI-1-2; 5 July 2005, p. 115MLMF/XXXIII-1

b. A client, he promised not to name gave him the two audiocassette tapes for legal study on 15 May 2005. He cannot reveal where he hid the audiocassette tapes. He does not know where the person got the tapes.[88]

c. He did not edit the tapes as he did not change anything; he only selected conversations that he thought should be heard by the public. He had no other motives. He produced a 32-minute CD out of chosen conversations in the cassette tapes. He believed that the Filipino people ought to hear the contents of the tape. He chose the digital form to facilitate the playing and put in a 4 and 1/2-minute introduction so that there would not be any doubt where the tape came from. He recorded the CD in a commercial studio. He made five copies of the CD and asked some of his lawyer friends to listen to the tape so that he could have a validation that the voices in the tape were of PGMA and Garcillano.[89]

d. He had some people listen to the tape and was advised to have it broadcast for the information of the general public. He only released the CD after Bunye's press conference because he had no resources. He knows that Bunye doctored the CDs because they did not match the tapes in his possession. He does not know why the tapes were given to him only on 15 May 2005 and not when the late Fernando Poe Jr. was still alive.[90]

e. He was thankful Bunye came out with his two (2) CDs because it gave him the opportunity to publicly contradict Bunye's version of the CDs. He believes that the Bunye CDs were doctored – Gary's voice was superimposed on Garcillano's voice.[91]

f. He is turning over (to the Joint Committee) what to his mind are authentic tapes because these were the ones he received. He cannot say whether the tapes are the master tapes since he has no expertise on the matter but that the conversations in the tape are original.[92]

g. He did not know or have anything to do about a reported press conference by the opposition to air some tapes, which would implicate PGMA. His links with former Estrada has no bearing (in this issue) and he denies that he is part of the opposition. He is not making a crusade or fight for the opposition.[93] He only wants the public to know the truth. He cannot forgive himself if, when he had a chance to show the truth to the Filipino public, he did not avail of that chance.[94]

h. He cannot say that his 32-minute CD is designed only to create suspicion in the minds of the public because the public would not be able to hear the complete tapes. He chose the portions with PGMA as she holds the highest position among those (persons conversing) in the tapes. If the CD is spliced, tampered or altered, the conversations would have been changed. His CD is shortened in the sense that he chose conversations to include but did not change them. All conversations included in the CD are complete and the 3-hour tapes will validate that there are no alterations.[95]

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88 29 June 2005 TSN, pp. 70-71, ESB/XXI-3; pp. 78-79, ADJO/XXIII-2-3; p. 81, AMC/XXIV-2; and 5 July 2005, p. 96, NAB/XXVII-3; p. 135, EBV/XXXIX-2

89 29 June 2005 TSN, pp. 80-83, AMC/XXIV-1-4; pp. 84-85, ALAVT/XXV—1-2

90 Ibid, p. 87, EBTM/XXVI-1; p. 144, MTGA/XLII-2

91 5 July 2005 TSN, pp. 173-174, ADJO/L-2-3

92 Ibid, p. 78, GCC/XXII-3

93 Ibid, pp. 99-100, TMR/XXVIII-2-3

94 Ibid, p. 83, EPT/XXIV-1; p. 115, MLMF/XXXIII-1

95 Ibid, p. 82, ADJO/XXXIII-3; pp. 83-85, EPT/XXIV-1-3; p. 86, EBGV/XXV-1; p. 99, TMR/XXVIII-2; p. 134, EBV/XXXIX-1; p. 137, DMTD/XL-1

i. The CD may not be original but the recordings are. The fact in issue in this inquiry is not something in writing, or the CD itself, but the sounds that make up the conversation. The tape is only a part of the act of recording. Recording includes the tape or CD, the taping machine and the sounds that are played.[96]

j. In his legal study, he concluded that there were criminal acts committed such as the betrayal of public trust because election results should be counted and not manufactured; and that Mrs. Arroyo, based on one conversation, agreed with Garcillano to use the military in Basilan to increase her vote count.[97]

k. Lapse in judgment can be criminal. The laws involved in the Gloria-Garci conversations are the Omnibus Election Code and Anti-Graft and Corrupt Practices Act, which are both special laws. In the case of special laws, the intention is not important because these are *"malum prohibitum."*[98]

l. He does not know Barbers personally but can identify his voice since he was a well-known senator. He knows that Barbers lost in the last elections; he does not know the reason why. He does not know that Barbers was a victim of "dagdag-bawas." He knows that Barbers was a member of the Lower House before he became senator. He did not know that in the 1992 elections, Barbers ran against a veteran politician in Surigao del Norte and that in 1995 he ran unopposed. He knows that Barbers was chosen by then Speaker De Venecia and President Ramos as DILG Secretary; he did not know that he was for five times named the most popular and the most effective Secretary or that this was the basis for his running for the Senate, or that he was number five in the total count of votes. He does not know a lot of things about Barbers including his character as a person.[99]

m. Mrs. Arroyo violated the Omnibus Election Code and the Anti-Graft and Corrupt Practices Act when she allowed the military to be used to increase her vote count in Mindanao. Barbers also violated laws as shown during his conversations with Garcillano that "he was able to use the mayor and governor in Ligao and that Mike Arroyo will take care of Garcillano after the proclamation."[100]

n. He said that in the conversation between Garcillano and Mrs. Arroyo where she agreed to Garcillano's statement that "*medyo mahina iyung military. Di pa masyadong marunong gumawa*," he interprets the agreement of Mrs. Arroyo as tacit admission.[101] (Italics supplied)

o. The conversation between Garcillano and one man believed to be Mike Arroyo where they had an agreement that the latter shall bring 1.5 million pesos to the office of Garcillano and give it to his secretary Ellen Peralta, is a violation of Article 210 (Revised Penal Code) on direct bribery.[102]

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96 Ibid, pp. 127-128, RCN/XXXVII-1

97 Ibid, p. 87, EBGV/XXV-2; p.90, JMB/XXVI-1; pp. 100-101, TMR/XXVIII-3-4; p. 138, DMTD/XL-2

98 "Bad because prohibited by law"; 5 July 2005 TSN, p. 90, JMB/XXVI-1; p. 140, EHM/XLI-1; p.181, EBGV/LII-3

99 5 July 2005 TSN, pp. 91-93, JMB/XXVI-2-4; pp. 94-95, NAB/XXVII-1-2

100 Ibid, p. 100, TMR/XXVIII-3, pp.101-103, BGB/XXIX-1-3, p. 104, ETB/XXX-1; pp. 115-116, MLMF/XXXIII-1-2

101 Ibid, p. 116, MLMF/XXXIII-2

102 Ibid, p. 116, MLMF/XXXIII-2; p. 138 DMTD/XL-2

Art. 210. Direct bribery. – Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* it its medium and minimum periods and a fine of not the than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said

p. The conversation between Garcillano and Mrs. Arroyo when he said that *"itatago muna niya iyong isang election officer para hindi makatestigo at iyong ipadadampot iyong mga testigo laban sa mga kandidato upang maging bargaining chip laban sa pagsasalita ng mga testigo,"* is a violation of the rights of persons.[103] (Italics supplied)

q. In the last elections, he left the portion (in the ballot) for the presidential candidate blank because his position is that the last presidential elections was unconstitutional because the term of the last elected President (Estrada) has not yet validly expired. He was suspended from his law practice on 25 November 2003 because he is insisting that Chief Justice Davide's administration of the oath to Mrs. Arroyo during EDSA 2 had no basis in law. He does not believe that the Arroyo administration is legitimate. It is possible that he was given the tape because of his feelings about the administration.[104]

r. There are three (3) kinds of evidence under the rules (of evidence): 1) testimonial, which refers to the *viva voce* testimony of a witness who should be the victim, culprit or eyewitness. 2) documentary, which is anything in writing and the best evidence rule applies to this; and 3) object, which is an object addressed to the senses of the Court. The original of object evidence is the object itself. The best evidence rule does not apply to object evidence and in the case of the tapes, does not apply. Even if the CD is a copy of a copy as long as there is no alteration or splicing, the evidence as object evidence is acceptable. This is specified in the Rules on Electronic Evidence (Sections 1 and 2, Rule 11).[105] Under the Rules, there are "two conditions in order that a recording of a telephone conversation may be admissible: 1) it must be presented for examination of the court or the hearing body; and 2) it must be identified by the person who made the recording."[106]

s. He is aware of the provisions of RA 4200. The conversations might have been illegally tapped. He knows that the Supreme Court has declared that once the primary source (The Tree) is shown to have been illegally obtained, any secondary or derivative evidence is derived from an illegal source.[107]

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act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of not less than twice the value of the gift.

If the object for which the gift was receives or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of the gift.

In addition to the penalties provided in the preceding paragraph, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in these paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

103 Ibid, p. 118, NCS/XXXIV-1

104 Ibid, p. 84, EPT/XXIV-2; p. 123, TJAS/XXXV-3

105 Rule 11 AUDIO, PHOTOGRAPHIC, VIDEO AND EPHEMERAL EVIDENCE

Section 1. Audio, video and similar evidence – Audio photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof.

Sec. 2. Ephemeral electronic communications. – Ephemeral electronic communications shall be proven by a testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

If the foregoing communications are recorded or embodied in an electronic document, then the provisions of Rule 5 shall apply.

106 5 July 2005 TSN p. 126-127, RCN/XXXVII-1-2

107 Ibid, pp. 128-129, RCN/XXXVII-2-3; p. 130, MSSSA/XXXVIII-1

t. COMELEC Chairman Abalos mentioned in one TV program that the male voice was Garcillano's but he (Abalos) had some reservations because the dates did not match. Former COMELEC Chairman Monsod also confirmed Garcillano's voice. His (Paguia's) relative who knows and is a friend of Garcillano also confirmed the voice.[108]

u. The wiretapping act has no definition for "private communication." If communication is public, this does not necessarily immediately constitute a violation of the law because the law protects the citizen against the powers of the government. (Even) If the conversations are made by public officials, the law cannot be immediately invoked; however, there is no definition in the law itself on what shall be the basis for determining a "public" or "private" conversation. In this case Mrs. Arroyo and Garcillano participated in a conversation in their capacity as public officials and the subject matter was a public matter because it concerns election matters, thus their conversations cannot be considered private.[109]

v. Under our constitution, there are four bases wherein the Chief Justice may swear in Mrs. Arroyo and remove Estrada: 1) death, but Estrada did not die; 2) removal after conviction in an impeachment case, but Estrada's case was presented to the Sandiganbayan which is a clear violation of the process; 3) permanent disability, which can only be invoked if the person is disabled or by the majority of his Cabinet declaring in writing his permanent disability; the declaration should also be transmitted to the Legislature – none of which was made or done -- but Mrs. Arroyo was sworn in on the ground of permanent disability; and 4) constructive resignation, which should exist at the time of swearing in, but did not.[110]

w. Under the Constitution once a President is removed legally, the successor serves the remainder of his unexpired term. If the removal is not constitutional, the constitutional clock for his 6-year term stops. The successor serves not the remainder of the constitutional term but merely usurps mechanical time. If the usurper steps down, there is still a balance in the constitutional clock that the rule of law requires us to observe, and that clock has to run again in order that we will go back to the rule of law. The Vice-President, in case the President steps down, would not be authorized to succeed to the presidency because there is no vacancy. It is not vacant because the president who was duly elected and who has presidential authority is still in Tanay (Rizal). Mrs. Arroyo has presidential power but has no presidential authority because she was never elected by the Filipino people.[111]

x. The best evidence of cheating in the last elections is the admission of Mrs. Arroyo that it was her voice in the tapes. He also listened to the tapes with a friend from Iligan who knows and can identify Garcillano's voice but will not name him because the friend is afraid.[112]

y. Even if the system (of governance) is rotten, it is the only system we have and we have to make it work. Between the three branches of government, it is in the legislative where the greatest hope lies that changes can be made. The majority in Congress is only exercising its rights in invoking legal grounds under the rules (of the House) to express its opinions regarding how this inquiry should proceed. If there is any intention to delay, it is the people who will judge us.[113]

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108 Ibid, p. 139, DMTD/XL-3
109 Ibid, pp. 140-141, EHM/XLI-1-2; p. 144, MTGA/XLII-2
110 Ibid, p. 145, MTGA/XLII-2; pp. 146-147, RGR/XLIII-1-2
111 Ibid, pp. 172-173, ADJO/L-1-2; pp. 184-185, JMB/LIII-2-3; p. 152, LCLV/XLIV-3
112 Ibid, p. 113, LBL/XXXII-3
113 Ibid, pp. 163-164, EMA/XLVIII-2-3; p. 165, ESB/XLVIII-1

z. He agrees that there may be a possible violation of Section 231 of the Omnibus Election Code[114] based on the conversation which says: *"Hello, hindi kaya puwedeng ma-delay iyong senatorial canvassing until after the voting on the rules tonight?*" and reply of *"On the rules, o sige po."* He also agrees that there may be a violation of Section 3 of the Anti-Graft and Corrupt Practices Act[115] because Mrs. Arroyo influenced Garcillano to violate the Election Code. (Italics supplied)

aa. He has no personal knowledge on the recording device used in the source tapes, or whether the one who wiretapped is competent, or whether additions, changes or deletions have been made on the 3-hour tapes; or how evidence was preserved from the time it was taken. He

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[114] Batas Pambansa 881. – Omnibus Election Code. Sec. 231 - Canvass by the board. - The board of canvassers shall meet not later than six o'clock in the afternoon of election day at the place designated by the Commission to receive the election returns and to immediately canvass those that may have already been received. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns from other polling places within its jurisdiction. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to the mass media and other interested parties. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.

The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay. Failure to comply with this requirement shall constitute an election offense.

Subject to reasonable exceptions, the board of canvassers must complete their canvass within thirty-six hours in municipalities, forty-eight hours in cities and seventy-two hours in provinces. Violation hereof shall be an election offense punishable under Section 264 hereof.

With respect to the election for President and Vice-President, the provincial and city boards of canvassers shall prepare in quintuplicate a certificate of canvass supported by a statement of votes received by each candidate in each polling place and transmit the first copy thereof to the Speaker of the Batasang Pambansa. The second copy shall be transmitted to the Commission, the third copy shall be kept by the provincial election supervisor or city election registrar; the fourth and the fifth copies to each of the two accredited political parties.

[115] RA 3019. Anti-Graft And Corrupt Practices Act. - Sec. 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) x x x

(e) x x x.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(g) x x x.

(h) x x x

(i) x x x

(j) x x x.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

does not know all the voices in the tapes or that testimonies elicited from the tapes were voluntary or made without any kind of inducement.[116]

bb. The transcripts (of the conversations) he holds are those that were downloaded from the internet site of PCIJ.

cc. He believes that the military has the capability to wiretap.[117]

dd. He did not give a tape/CD to DZMM.[118]

4. T/Sgt. Vidal Doble – (6 July and 3 August 2005)

a. His present assignment is with the ISAFP Military Intelligence Group 21 (MIG21). Between 15 May and 30 June 2004,[119] he was under the MIG 21 of the ISAFP. He would not describe the nature of his job, as this would imperil national security.[120]

b. He denied he is the ISAFP agent who conducted wiretapping activities as alleged by Ong. He denied that he gave the original tapes to the driver and bodyguard of Ong. He denied the article in the Time Magazine dated 11 June 2005 entitled "Tale of the Tape, He Said, She Said" wherein he admitted to taping the phone calls as part of his duties at the ISAFP.[121]

c. He first met Ong in Borromeo Grill Restaurant in Timog, Quezon City, through a certain Lito Santiago, a former agent of the Presidential Anti-Organized Crime Task Force (PAOCTF) and who is now connected with the NBI. He met Santiago in 1998 at the PAOCTF (now defunct) then headed by now Senator Panfilo Lacson. He and Santiago were having breakfast and Ong joined them later. According to Santiago, Ong was, at that time, the NBI Deputy Director.[122] He and Santiago were invited to have lunch with Ong at the Imperial Palace Hotel.

d. It was during this meeting when Ong said that he and his group have plans for the government, which is heavily ridden with graft and corruption. He said Ong mentioned a "Committee of Elders" composed of Bro. Eddie Villanueva, former AFP Chief of Staff General Jocelyn Nazareno, former General Jimmy delos Santos and Mayor Binay.[123]

e. He was forced into admitting to the wiretapping because of the threat to his family. He was afraid of what Ong's men might do to them. He did not know that he was going to be given two million pesos (Php 2M) after the videotaping. He said the money he received was not payment for his admission; it was given to him. [124]

f. He confirmed that he was the person speaking in the videotape. He was given the Php 2M by Ong for admitting he is the person speaking in the tapes. He had no idea why Ong gave his trust to him when they have just met. He assumed that his friend Santiago must be a

116 5 July 2005 TSN, pp. 181-182, EBGV/LII-3-4; p. 183, JMB/LIII-1
117 Ibid, p. 112 LBL/XXXII-2
118 Ibid, p. 157, APM/XLV-4
119 3 Aug 2005 TSN, p. 188, RGR/XXIX-7
120 6 July 2005, TSN, pp. 132-133, WBC/XXXVII-1-2; p. 142, LBL/XXXIX-2
121 Ibid, p. 66, MTGA/XX-2; p. 107, DMTD/XXIX-4; pp. 148-149, MLMF/XLI-1-2
122 Ibid, p. 71, RGR/XXI-3, pp. 74-75, LCLV/XXII-1-2; p. 106, DMTD/XXIX-3; pp. 119-121 JMB, XXXIII-1-3
123 Ibid, p. 120, JMB/XXXII-2
124 Ibid, pp. 66-68, MTGA/XX-2-4; pp. 70-71, RGR/XXI-2-3

good friend of Ong. He did not know the motive of Santiago for introducing him to Ong. If not for Santiago, he would not have met Ong.[125]

g. He was surprised about the Php 2M when it was handed to him by Ong who personally handed two bundles of bills in one-thousand-peso denomination contained in a red plastic shopping bag. Ong informed him that the money was from Laarni Enriquez. The transaction happened on the 3rd or 4th week of April 2005 inside a 5th floor room at the Imperial Palace Hotel in Timog, Quezon City. For two months after the Imperial Palace incident, communication with Santiago was only through text messaging and telephone calls.[126]

h. At first, he refused to take the money; but at the insistence of his friend Santiago, he decided to accept it. He was not told what the video footage was for. He was assured that the taping was to be held in utmost secrecy.[127]

i. Aside from Ong, Santiago and Reynaldo Doble, two other persons were there to witness the exchange. They had Chinese features. No one offered to explain the reason for the money, except that it was intended for him. He could not recall having done any favors for them.[128]

j. He divided the money as follows: 200 thousand pesos to Santiago; 100 thousand deposited by his sister in the Air Materiel Wing Savings and Loan Association, Inc. (AMWSLAI) located in 18th Avenue, Cubao, Quezon City (still intact as of date); 100 thousand deposited by his sister in the ACDI Villamor branch (still intact as of date); 200 thousand to his brother Rey Doble; some amount was spent shopping at the Robinson's; some amount was given to his wife; and the rest of the money was distributed among his siblings. He agreed to submit a photocopy of his two (bank) savings passbook containing the deposited amounts.[129]

k. He and Ong were not acquainted as friends. He hypothesized that the money may be in payment of the videotaping he consented to make with Ong. He did not find it necessary to ask Ong for an explanation other than what he thought was the reason. [130]

l. Ong explained to Doble that the money came from Ms Laarni Enriquez. However, he and Enriquez were not friends; he had not done any favors for her either.[131]

m. He denied that the Php 2M was the price of the "Garci tapes" he sold to Ong. He was threatened and cowed into accepting the money. He denied Marietta Santos' allegation that the money was in fact payment for the "tapes" he got from the ISAFP. He said that Santos is entitled to her own beliefs and opinion. [132]

n. He said that in Ong's script, he (Doble) would declare that the Arroyo administration is corrupt. The script did not mention anything about PGMA's rigging the last presidential elections.[133]

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125 Ibid, pp. 67-68, MTGA/XX-3-4; p. 140, XXXVIII-4; p. 141, LBL/XXXIX-1; and 3 Aug 2005, pp. 183-184, RGR/XXIX-2-3; pp. 188-189, RGR/XXIX-7; p. 190, EHM/XXX-1

126 Ibid, pp. 111-113, EPT/XXXI-1-3; p. 125, NAB/XXXIV-4; p. 126, TMR/XXXV-1; pp. 142-143, LBL/XXXIX-2-3; and 5 Aug 2005 p. 180, TJAS/XXVIII-9

127 Ibid, p. 126, TMR/XXXV-1; and 5 Aug 2005 p. 163, AMC/XXVI-7; p. 164, XXVII-1

128 3 Aug 2005 TSN, pp. 185-`865, RGR/XXIX-4-5

129 6 July 2005 TSN, p. 108, ALAVT/XXX-1; p. 112 & 114 EPT/XXX-2 &4; pp. 115-116, EBGV/XXXII-1-2

130 3 Aug 2005 TSN, pp. 183-184, RGR/XXIX-2-3

131 Ibid, p. 184, RGR/XXIX-3; and 6 July 2005, pp. 108-109, ALAVT/XXX-1-2

132 Ibid, p. 189, RGR/XXIX-8; pp. 198-199, GCC/XXXI-2

133 Ibid, p. 192, EHM/XXX-3

o. He did not report the videotaping to his superiors because he was promised that his identity will be kept secret. He did not think that his actions would destabilize the government or cause anarchy in the system. He had no idea why he was chosen as the spokesperson for Ong's group.[134]

p. When he went to the Sto. Domingo Church on 8 June 2005, there he found with Ong, Rez Cortez and another person who was introduced to him by Santiago as an agent of the NBI. It was dark in the church hallway so he had difficulty identifying or remembering the person.[135]

q. He voluntarily went with Santiago to the San Carlos Seminary on 10 June 2005, contrary to reports that he was kidnapped. He stayed inside his room during most of his stay in the seminary, and from 10 – 13 June 2005, he was transferred from one room to another. He did not know the reason for this. It was Santiago who brought his food to his room. Marietta Santos was with him during his stay in the San Carlos Seminary.[136]

r. Prior to 10 June 2005, he or his family received no threats to their lives. He had no knowledge as to who was responsible for transporting his family from Kidapawan, North Cotabato to Manila; he did not know that his estranged wife Arlene was fetched from her home in Kidapawan, North Cotabato by a MIG 11 agent.[137]

s. He asked his wife, through text message, to rescue him because he was forced to admit publicly through media that he participated in the videotaping and that everything was hatched by the ISAFP. He was "rescued" from the San Carlos Seminary on 13 June 2005.[138]

t. Bishop Bacani, who told media that he (Doble) was not under threat inside the seminary, had no way of knowing the real situation. Armed people were guarding the door to his room.[139]

u. He confirmed PAOCTF's capability to wiretap. However, he was not part of the group who was into this kind of operations. He identified a certain Magtanggol Gatdula as the PAOCTF deputy when Lacson was still the head of the agency.[140]

v. For reasons involving national security, he could not divulge any information with regard to the structure and/or operations of the military intelligence establishment, including the military personnel in it. He refuses to identify Lt. Col. Pedro Sumayo and Col. Allen Capuyan. ISAFP does not conduct any recording (wiretapping) of any sort. His office is not involved in any kind of recording.[141]

w. He confirmed that he is under investigation by the PNP, but does not know why. No case has been filed against him in violation of the National Security Code and his oath as a sworn soldier of the Philippines.[142]

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134 Ibid, pp. 191-193, EHM/XXX-2-4
135 6 July 2005 TSN, pp. 126-127, TMR/XXXV-1-2
136 Ibid, p. 69, RGR/XXI-1; p. 128, TMR/XXXV-3; p. 129, BGB/XXXVI-1
137 Ibid, pp. 71-72, RGR/XXI-3-4
138 Ibid, p. 122, NAB/XXXIV-1
139 ibid, pp. 69-70, RGR/XXI-1-2; pp. 122-123, NAB/XXXIV-1-2
140 Ibid, pp. 75-76, LCLV/XXII-2-3; p. 110, ALAVT/XXX-3; P. 111, EPT/XXXI-1
141 Ibid, pp. 134-136, WBC/XXXVII-3-5
142 Ibid, pp. 139-140, ETB/XXXVIII-3-4; and 5 Aug 2005, p. 190, EHM/XXX-1

x. Santos could not know about the threat to their lives because she was not privy to pressures he felt then and cannot feel them because she was not part of the concerned parties. She was not among those involved.[143]

y. Santos could not have known what he was going through with Ong because during the times he talked with Ong, she was somewhere else. She was in the 5th floor room of the hotel while he was talking with Ong at the lobby of the Imperial Palace Hotel.[144]

5. Mr. Francisco "Kit" Tatad – (7 and 13 July 2005)

a. He confirms Paguia's statement on July 6 that he is the source of the two audiocassette tapes that Paguia submitted to the Joint Committee. He was interviewed by Time Magazine. There he admitted that he was the source of the Paguia tapes. He does not know the source of the two tapes.[145]

b. The tapes, which were ordinary transparent plastic cassette tapes, "landed" on his desk on or about 1 or 2 April, in a Manila envelope, sealed and addressed to him as Chairman of the Citizens Against Corruption Task Force. There was no letter accompanying the tapes. There was no indication of the contents of the tape. It is not unusual for him to receive documents from anonymous persons providing potential evidence for alleged scams and corrupt activities. [146]

c. A few days along in May 2005, he saw a note among his unread mail that stated: "*have you listened to/heard the tapes?*" He then played the tapes and decided that they should be authenticated.[147] (italics supplied)

d. He asked a lawyer friend, Atty. Carao to help contact some correspondents in the United States of America. He made a copy of the tapes and gave them to Carao. Carao informed him that he had contacted a lawyer friend in the USA who facilitated contact with the Voice Identification, Incorporated (VII) in New Jersey. The VII analyzed and authenticated the tapes and came back with reports on 3 June and 9 June 2005.[148]

e. He gave the tapes to Paguia and requested him to make a legal study on the contents of the tape. He had not authorized Paguia to release the tapes to the public. He asked Paguia to highlight the more significant portions of the tape for his (Tatad) use.[149] He needed Paguia's counsel on what crimes were committed and how to handle the release of the tapes without running into legal tangles.[150]

f. He does not have any copies of the tapes as he gave Paguia the ones he received.[151]

g. When Paguia released the tapes, the authentication reports had not yet arrived. He thought about requesting an academic or a person from the church to release the tapes so that it

143 3 Aug 2005 TSN, pp. 159-160, AMC/XXVI-3-4
144 Ibid, p. 160, AMC/XXVI-4; p. 198, GCC/XXXI-2
145 7 July 2005 TSN, p. 154-155 GCC/XLV-2-3; p. 156, ADJO/XLVI-1; and 13 July 2005, p. 35, ADJO/IX-2
146 7 July 2005 TSN, pp. 159-161, ALAVT/XLVII-1-3; p. 162, EPT/XLVIII-1
147 Ibid, p. 162, APT/XLVIII-1
148 Ibid, pp162-164, EPT/XLVIII-1-3; p. 170, JMB/L-1
149 Ibid, p. 38, ALAVT/X-1
150 Ibid, pp. 164-165, EPT/XLVIII-3-4, pp. 166, EBGV/XLIX-1
151 Ibid, p. 167, EBGV/XLIX-2

would not be political. He instructed Paguia to hold the release but Paguia came out with his (32-minute) CD after Bunye released the two (one original and one altered) CDs. He and Paguia were not able to talk after the latter's release of the CD.[152]

h. The VII reported that they had studied the tapes through critical listening and spectrographic prints. The tapes were authentic, and that the conversations appear to be contiguous, unaltered and legitimate reproductions of original telephone calls.[153]

i. The technical report of the VII stated that: *"a voice print analysis is comprised of an aural or listening portion and a spectrographic portion. The spectrographic portion involves the visual comparison of the patterns produced by the speech sounds from the known and the questioned speaker. These patterns are produced on paper by an instrument called the sounds spectrograph and represent a three-dimensional display of speech sounds present in the examined voice. The pattern matching is done by two certified voice analysts working independently. Words chosen for comparison must be common to both the questioned and known recording spoken in a similar manner, contain a sufficient frequency response and have a sufficient enough signal to know its ratio that the patterns are not obscured. An aural comparison involves critical listening by the examiners who seek to determine whether the sounds of the voices are similar or different. Characteristics such as pitch, pronunciation, accent, rate of speech, breathing patterns and speech impediments are use by the examiner in arriving at a decision on the aural comparison.*[154]**"** (italics supplied)

j. He thought to have the tapes authenticated because of his experience in the last elections where he believed he was cheated.[155]

k. He did not change anything in the tapes. If the tapes were altered, the alteration would show in the analysis/authentication. Paguia's CD is a condensed version of a group of conversations (in the tapes).[156]

l. He is sure that anyone who has managed to get hold of the tapes would give it to the opposition. If not, the tape would have been sold to the administration. He speculates that citizens who desire change for our country are the source of the tapes. It is the primary duty, not only of the opposition, but also of any citizen to reveal information about violation of laws and morality.[157]

m. Mrs. Arroyo has never had a confirmed legitimate position to be president and this is also reflected in Justice Artemio Panganiban's book.[158]

n. He has not heard the Samuel Ong tapes. He does not know when Carao became the lawyer of Ong.[159]

o. He has no present plans of running for an elective office but he wants to help in putting in a system that will work because our political system is no longer working. He did not win all elections he ran in; he lost three times.[160]

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152 13 July 2005 TSN, pp. 40-41, ALAVT/X-3-4; p. 42, EPT/XI-1
153 7 July 2005 TSN, p. 170, JMB/L-1
154 Ibid, p. 171, JMB/L-2; See also Annexes F6 and F7
155 Ibid, pp. 177-178, TMR/LII-2-3; p. 179, BGB/LIII-3
156 Ibid, p. 179, BGB/LII-3; p. 202, TJAS/LX-2; and 13 July 2005, p. 52, NAB/XIV-3
157 Ibid, p. 180-181, BGB/LIII-2-3
158 Ibid; p. 182, ETB/LIV-1; p. 184, ETB/LIV-3; p. 208, RCN/LXII-1
159 Ibid, pp. 187-188, WBC/LV-2-3
160 Ibid, pp. 195-`96, MLMF/LVIII-2-2, p. 197, NCS/LIX-1

p. We should use terms other than "destabilization." Dissent is a more popular term and legitimate dissent has very wide latitude. The term "destabilization" has been used by government propagandists, officials and the media but is something that he has never understood. Rallies or expose' of major crimes committed by a high government official are already called destabilization.[161]

q. It was clear (to him) that it was PGMA talking in the tapes; he did not ask anybody else to listen and validate his observation.[162]

r. Wiretapping of a president is a serious offense and should not happen. He believes it was Garcillano who was the center of the conversations. He perceived that the crimes committed in the conversations were committed against the Filipino people. There should be a hierarchy of crimes as there should be a hierarchy of virtues, and a crime against the people is far more serious than any possible offense against any officer of government. A president wiretapped having a private affair would be different from a president being wiretapped while committing a very serious high crime against the people he/she is supposed to serve.[163]

s. Elections are won honestly, without kidnapping, bribery, obstruction of justice, and massive cheating. Laws should be followed, first of all, by the officers and enforcers of the law. [164]

t. The relationship between the President and Garcillano, as reflected in the tape shows one of very close coordination, which is prohibited by law. All problems that the President has encountered during the elections were thrown to Garcillano for resolution and he agreed to do so. There are also specific cases of threatened kidnappings; Garcillano uses the word "kidnapping" a number of times.[165]

u. Under the Constitution the military cannot meddle in elections but names of military men were mentioned in the conversations.[166]

v. One of the conversations in the tapes was about "*itatago ang Election Officer*" of Pangutaran so that he will not be able to testify; another conversation was of adding 70,000 votes and "*one five to two*" referring to 1.5 to 2 million pesos which was to be delivered to a Mrs. Ellen Peralta, the secretary of Garcillano;[167] and another conversation was about the planned kidnapping of a family.[168] (italics supplied)

w. He and Paguia have the same view that the rule of law in the country was destroyed in 2001. He published Paguia's book – "Rule of Law, Rule of Force."[169]

x. The tapes serve as an additional impetus for the anti-corruption organization to work for the prevention of corruption.[170]

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161 Ibid, p. 197, NCSLIX-1, p. 200, NCS/LIX-4, p. 201, TJAS/LX-1
162 13 July 2005 TSN, p. 36, ADJO/IX-3
163 7 July 2005 TSN, pp. 206-207, BBR/LXI-2-3
164 Ibid, p. 208, RCN/LXII-1
165 Ibid, pp. 219-220, DMTD/LXV-2-3; p. 221, EHM/LXVI-1
166 Ibid, p. 218, DMTD/LXV-1
167 Ibid, pp. 219-220, DMTD/LXV-2-3; p. 221, EHM/LXVI-1
168 13 July TSN, p. 33, GCC/VIII-3; p. 34, ADJO/IX-1
169 Ibid, p. 43, EPT/XI-2
170 Ibid, p. 67, LBL/XIX-1

y. He did not recognize the voices of COMELEC Commissioners Javier, Sadain, Borra, Tuason or Chairman Abalos in the tapes.[171]

z. Nobody said that all that was mentioned in the tape happened; however, there was a request by PGMA. And between PGMA and Garcillano, all requests were granted.[172]

6. BGen Marlu Quevedo (13 July 2005)

a. There is no Sgt. Gayo in the ISAFP. But there is a Gayo with a different rank and first name. Colonel Sumayo is in the field (Cotabato); Colonel Capuyan is undergoing the General Staff Course. Col. Capuyan is the Chief of Operations and Intelligence of ISAFP. He (Quevedo) does not have access to a much higher authority outside the AFP. He is not aware that a colonel in ISAFP may be dealing directly with Malacañang.[173]

b. ISAFP has custody of Doble's wife (Arlene) and two children. The other persons (such as Marietta Santos) are not in the custody of ISAFP. He does not know any Josephine (allegedly another common law wife of Doble). He does not know Marietta Santos.[174]

c. ISAFP has the capability to tap landlines. It only taps upon authority of the court. ISAFP has no capability to tap cell phones. There are personnel in ISAFP trained for wiretapping landlines. The ISAFP did not do the wiretapping (in the tapes).[175]

d. The investigation on Doble is ongoing. He has no personal knowledge that Doble was detailed in PAOCTF in 1998-2001. He knew that Ong was detailed in the PAOCTF.[176]

e. He does not have any idea about a scanner as stated by Wycoco in his testimony. He has no technical knowledge whether or not a phone can be tapped through a service provider, or of any other method to tap a cellular phone.[177]

f. He does not know that the NBI had acquired, during the Estrada Administration, some wiretapping equipment. He cannot talk about operational capabilities because he is prohibited by law.[178]

g. The ISAFP has heard about the CDs but these did not appear to be important to them. The ISAFP was surprised about the CDs that were presented to the media. They did not know that it was the president and that the CDs were a wiretap. All they know that it was a tape[179]

7. Ms. Marietta Santos (3 August 2005)

a. She confirmed she is the live-in partner of Doble, whom she calls "Jeff"[180] and with whom she has had relations since October 2004. She met him while working as a guest relations officer in the Vizcarra Videoke Bar. He courted her and he became her boyfriend.[181]

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171 Ibid, p. 69, LBL/XIX-3
172 Ibid, p. 80, NCS/XXII-2
173 Ibid, p. 84, BBR/XXIII-3; P. 85, RCN/XXIV-1; p. 87, RCN/XXIV-3; pp. 88-89, EBV/XXV-1-2
174 Ibid, p. 86, RCN/XXIV-2; p. 89, EBV/XXV-2; p. 186, RGR/XXIX-5
175 Ibid, p. 86, RCN/XXIV-2; p. 93, MSSSA/XXVI-3; p. 171, APM/XXVIII-8; p. 172, TJAS/XXVIII-1
176 Ibid, pp. 86-87, RCN/XXIV-2-3; pp. 94-95, DMTD/XXVII-1-2
177 Ibid, p. 90, EBV/XXV-3; pp. 91-93, MSSSA/XXVI-1-3
178 Ibid, p. 93, MSSSA/XXVI-3; pp. 94-95, DMTD/XXVII-1-2
179 Ibid, pp. 97-98, EHM/XXVIII-1-2
180 3 Aug 2005 TSN, p. 137, RGR/XXIII-5; p. 170 APM/XXVII-7

b. She and Doble were seven months into their relationship when they met Ong sometime in April 2005 at the Borromeo Grill, a restaurant in Timog, Quezon City where they were having breakfast with Doble's friend Santiago. It was Santiago who arranged for the meeting with Ong.[182]

c. After breakfast, they proceeded to a room on the 5th floor of the Imperial Palace Hotel. She described the hotel room as big, complete with a living room with TV, a small dining area and kitchen with a round table, and an inner bedroom with a toilet/bathroom.[183]

d. It was in the Imperial Palace Hotel where Doble and Ong talked, followed by the 30-minute question and answer video recording, after which Ong handed Php 2M to Doble.[184]

e. She described the atmosphere during this meeting as relaxed; she felt no pressure; there was no intimidation. No person was forced or scared into the deal. The Php 2M transaction was entered into voluntarily and willingly; there was no threat.[185]

f. She did not hear what Ong and Doble were talking about prior to the taping. She had no idea what the transaction was all about. It only became clear to her when they were already inside the San Carlos Seminary.[186]

g. As told to her by Doble in the seminary, the Php 2M Doble received from Ong was payment for the tape supplied by Doble. [187]

h. Of the Php 2M, she was given Php 70,000.00 plus.[188]

i. En route to the San Carlos Seminary that was to be their home from June 10 to 13, 2005, she and Doble saw Ong again; this time at the Sto. Domingo Church. It was also here that they met Rez Cortez. When they arrived in the seminary, Bishop Bacani was already there.[189]

j. Since the Imperial Palace Hotel incident up to the time they were inside the San Carlos Seminary, they have not received any threat or intimidation from any person;[190] they could freely move around. They went to the seminary on their own volition. It was their personal decision.[191] Inside the seminary, she had no recollection as to anybody or anything curtailing their freedom to move around. Their daily routine consisted mainly of eating and sleeping.[192]

k. She understood that she and Doble had to stay in the seminary for their own safety and protection from the ISAFP.[193] During their stay at the seminary, she saw Doble getting anxious when he realized that his ISAFP group would be blamed for the turmoil.[194]

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181 Ibid, p. 128, TJAS/XXII-3; p. 130, TJAS, XXII-5
182 Ibid, p. 131, TJAS/XXII-6
183 Ibid, p. 131-132; TJAS/XXII-6-7
184 Ibid
185 Ibid, pp. 153-155, GCC/XXV-4-6; pp. 162-163, AMC/XXVI-6-7; pp. 167-168, APM XXVIII-4-5
186 Ibid, p. 172, TJAS/XXVIII-1
187 Ibid, p. p. 172, TJAS/XXVIII-1; pp. 195-196, EHM/XXX-6-7; p. 197, GCC/XXX-1
188 Ibid, p. 155, GCC/XXV-6; pp. 172-173, TJAS/XXVIII-1-2
189 Ibid, p. 155, GCC/XXV-6; pp. 165-166, APM/XXVII-2-2
190 Ibid, p. 156, GCC/XXV-7; p. 198, GCC/XXX1-2
191 Ibid, p. 157, GCC/XXV-8
192 Ibid, p. 166, APM/XXVII-3
193 Ibid
194 Ibid, p. 187, RGR/XXIX-6

l. On the night of 10 June 2005 a person whom both she and Doble were able to positively identify as an ISAFP agent managed to enter the seminary. This prompted Mayor Binay to send guards to the seminary on the pretext that they have to be secured because she and Doble might escape the seminary.[195]

m. They were still at the seminary when Doble received a text message from his wife Arlene asking for his help, at the same time stating that if Doble would not return to the ISAFP, he might as well forget he has two children by her (Arlene). They learned that the family of Doble (Arlene, their two children, and his brother Reynaldo) was under the protective custody of the ISAFP. The threat did not come from Ong; rather it came from the ISAFP. She was able to read these text messages because she was right beside Doble when he received them.[196]

n. With Doble's family in the ISAFP, she saw that he could not do anything anymore. He was left with no other choice but to go back to the ISAFP compound. She left the seminary ahead of Doble. He came out later.[197]

o. She was fetched from her Laguna residence by three men in Besta van – the driver and two ISAFP agents who were known to her only by the code names, Chief Orpi and Axel. She knew they were ISAFP agents because she had met them previously. She was brought to the ISAFP compound.[198]

p. She met several ISAFP agents inside the compound, including the Group Commander named Sumayo, Cpt. Sage-Code 212, Cpt. Ribong-Code 213, Code 214, and Sergeant Major or SM. She can identify them personally by face.[199]

q. Inside ISAFP, she and Doble were billeted in separate buildings. Doble stayed together with his family and brother. She described her living quarters inside the ISAFP compound in Camp Aguinaldo which was situated at the back between Kitanlad and the canteen, near the session hall as equipped with an electric fan, TV and refrigerator. She shared her room with a lady soldier.[200]

r. She had no communication with Doble's family. She was constantly talking with M/Sgt. Villedo and other men who became her friends. She can identify Doble's voice, even on tape.[201]

s. She left the ISAFP compound alone. Doble's family remained in custody. She received text messages from Doble saying that he felt imprisoned and that his movements were severely curtailed. He can only send text messages furtively. Doble was not allowed to use cell phones. In fact, one of his cell phones was confiscated; the other unit he managed to hide before the confiscation.[202]

t. She did not erase Doble's text messages about his ordeal inside the ISAFP compound. She was willing to have the text messages printed on paper. She would also sign these,

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195 Ibid, pp. 167-168, APM/XXVII-4-5
196 Ibid, P. 132, RGR/XXIII-2; p. 137, RGR/XXIII-5; pp. 142-143, EHM/XXIV-1-2; p. 173, TJAS/XXVIII-2
197 Ibid, pp. 133-136, RGR/XXIII-1-2
198 Ibid, pp. 168-169, APM/XXVII-6-7; pp. 173-176, TJAS/XXVIII-2-5
199 Ibid, p.174-176, TJAS/XXVIII-3-5
200 Ibid, p. 135, RGR/XXIII-3-6; Pp. 176-177, TJAS, XXVIII-5-6;
201 Ibid, p. 147, EHM/XXIV-5; p. 177, TJAS/XXVIII-6
202 Ibid, p. 138, RGR/XXIII-6; p. 140, RGR/XXIII-8

certifying to their authenticity. She read some text messages which Doble sent her, as follows:[203]

1. That she is in a much better situation because she can move around freely; while he remains inside his room just watching TV; he cannot even go to a priest. He doesn't know how long she has to wait (for him to be released).
2. That his situation remains unchanged.
3. That he asked her not to show his text messages, to erase them because of his case with the CIDG.

u. The latest text message she received from Doble was at 1:11 p.m., 3 August 2005, inside the House of Representatives which mentioned of his marital status with wife Arlene. His most recent call was 9:46 a.m., 3 August 2005; she did not take the call.[204]

v. During a hearing in the Court of Appeals, both Doble and Arlene acknowledged the text messages recorded in Santos's cell phone as having been sent by them. Doble gave her her cell phone.[205]

w. She had no knowledge about any case against Doble, which would explain why he had to stay in the custody of the ISAFP.

x. Doble was pressured into retracting his earlier statement because his family was being held by the ISAFP. Doble confided this to her during their meeting at the CIDG on 11 July 2005.[206]

y. She had heard of a certain Gen. Quevedo but did not have the opportunity to meet or see him. She categorically denied Quevedo's statement that ISAFP no longer has custody over Doble and his family.[207]

z. There have been threats to Sgt. Doble's life. This was during the birthday party of "Captain 214" held 7 July 2005 inside the MIG 21 ISAFP compound. A certain Master Sgt. Villedo, also an ISAFP agent told her angrily that Doble *"(ay) dapat yan itinutumba na kasi nagbebenta ng tape.*" Those who heard Villedo also agreed with him. She knew they were serious because Villedo interspersed his threat with expletives *("Tang ina …")*. Then she began to be afraid. She sent text messages to her friends that she wants to get out of the compound because of the threats she has been hearing. These text messages were recorded and saved in her cell phone, including the names of people involved.[208] (Italics supplied)

aa. She learned that the "tape" allegedly peddled by Doble came from ISAFP itself, and which Doble took during his duty. She was not able to listen to the contents of and voices in the tape. However, she might be able to identify the voice of Doble.[209]

bb. To her knowledge, Ong gave the tapes to Bishop Bacani just before leaving the San Carlos Seminary.[210]

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[203] Ibid, p. 139-141, RGR/XXIII-7-9; p. 142 EHM/XXIV-1; pp. 177-178, TJAS/XXVIII-6-7 (original tagalong texts translated into English). See also Annex F8.
[204] Ibid, pp. 178-179, TJAS/XXVIII-7-8
[205] Ibid, p. 148, EHM/XXIV-7
[206] Ibid, p. 142, EHM/XXIV-1
[207] Ibid, p. 143, EHM/XXIV-2
[208] Ibid, pp. 144-146, EHM/XXIV-3-5; p. 179, TJAS/XXVIII-8
[209] Ibid
[210] Ibid, p. 145, EHM/XXIV-5

cc. She no longer cares if her statements will anger Doble. Her concern now was in telling the truth; after all she was doing this out of her love for him. This was for his own good and protection.[211]

8. Atty. Virgilio O. Garcillano, former COMELEC Commissioner (7 & 13 December 2005, 25 January 2006)

a. His name is VIRGILIO O. GARCILLANO; he is not VIRGILIO O. GARCILLANO, JR.[212]

b. His official address as of hearing date was Camp Bagong Diwa in Taguig. He did not give his permission to be placed at the Camp. He accepted this for security reasons, upon the instigation of Congress. In fact, it was the House of Representatives' Sergeant-at-Arms General Fabic who invited and fetched him from the province. When he was presented to the Speaker, arrangements had already been made for his temporary abode. Although he wouldn't call it arbitrary detention, he did not discard the possibility of harm to his person. He was uneasy over the situation. His bodyguards were provided by the PNP in Camp Crame, not the PSG. He would rather be in his own place in his permanent residence address at 2006 Casimiro Tamparong Street, RER Subd., Kauswagan, Cagayan de Oro City. He did not request General Fabic to bring him to a police camp. It was his counsel who made the arrangements.[213]

c. Since his stay at the camp, he had been out five times: three occasions when he went to the House of Representatives, once to a refreshment parlor close to the COMELEC, and once to visit his provincial home last 17 December 2005.[214]

d. He did have a passport but had not seen it for quite some time owing to his long absence. [215] He had not been to his home yet. He instructed his cousin to retrieve his passport in Cagayan de Oro City inside a closet containing all his important documents.[216]

e. He served the COMELEC for more than 35 years, since 1961. He was a regional director before he was appointed commissioner on 7 February 2004. He could not recall the exact date such an appointment lapsed. He had a total of seven appointments: 7 February 2004, 30 June 2004, 23 September 2004, 7 December 2004, 8 January 2005, 19 March 2005, and 2 April 2005. His last appointment lapsed on 8 June 2005. During the 2004 elections, he was the Commissioner-in-Charge of Regions IV (Southern Tagalog) and V (Bicol Region). He definitely was not assigned in Mindanao. In his capacity as the CIC of Regions IV and V, he directed and supervised the canvassing of votes and the manner in which elections were conducted. He also assigned election officers to the field. On several occasions, he was asked to help in the establishment of polling places and the organization of the board of canvassers in other regions.[217]

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211 Ibid, pp. 187-188, RGR/XXIX-6-7

212 7 December 2005 TSN, p. 84 EPT/XXIX-1.

213 25 January 2006 TSN, pp. 40-41 ADJO/XIV-2-3; p. 45 SZS/XVI-1; pp. 81-82 ALAVT/XXVIII-2-3; p. 83 SZS/XXIX-1.

214 Ibid, p. 83 SZS/XXIX-1.

215 7 December 2005 TSN, p. 85 EPT/XXIX-2.

216 Ibid, p. 85 EPT/XXIX-2; p. 88 GCC/XXX-2; 25 January 2006, pp. 83-84 SZS/XXIX-1, 2.

217 7 December 2005 TSN, p. 24 ESB/IX-2; p. 26 EHM/X-1; 13 December 2005, p. 91 TMR/XXXIV-1; p. 66 MSSSA/XXIV-2; 13 December 2005 TSN, p. 91 TMR/XXXIV-1; 25 January 2006 TSN, p. 57 MTGA/XIX-3; p. 68 JMB/XXIII-3.

f. He had always wanted to be a COMELEC commissioner and worked hard to defend the institution and its name. Because of this controversy, he regretted he ever aspired for it.[218]

g. He was not properly served notice (subpoena) for him to appear in the hearings. He never had any chance of getting a copy of the subpoenae issued by the House. He was not aware that the Joint Committee was hunting him down with an arrest warrant after it consistently failed to reach him.[219]

h. His coming to the hearing was a show of good faith on his part. He was present in order to tell the truth. He would prefer NOT to answer questions with regard to the wiretapped tapes; he can only answer questions on matters that do not pertain to the wiretapped conversation as the Supreme Court had to act upon two petitions he filed:
   1. Petition Lifting the Order of Warrant of Arrest issued by the joint committee investigating the "Tale of Two Tapes;"
   2. Petition pertaining to the wiretapped conversation between himself and the President which would restrain the joint committees from conducting the ongoing investigation on the basis of wiretapped materials.[220]

i. He had to file a case with Supreme Court regarding the tapes even if the voice was not his because the voice was ascribed or attributed to him. He had the right to pursue his case in court especially as this cast a shadow to his personal honor. It was hard to convince people to believe in what he was saying because of their preconceived perceptions about him.[221]

j. Because of threats to his life, he did not immediately make a public appearance. He was afraid for his life even if he was not accused of any crime and did not risk being seen in public too soon. He feared the Administration more than the Opposition camp because of what the former was capable of doing to him and his wife. (Then again, he said that) he was more afraid of the opposition.[222] He could not say which group was after his neck; it could be any one of the parties affected by the controversy: the administration, because it had no way of knowing what he was about to divulge; the opposition; or the military whose career may be imperiled. He was afraid of the warrant of arrest issued by the House, especially with the one million-peso bounty placed on his head. Sooner or later, someone might pinpoint his hideout.[223]

k. He said he was more afraid of the Administration because what he may say in public might damage their present position. He later realized he should also be wary of the opposition camp and the military. He would have come out with the truth sooner but certain people who wanted him to say something in their favor. But he had to come out in the open to once and for all clear the air on issues of alleged anomalies committed in the last elections.[224]

l. He agreed with the observation that he missed a date with history, and lost his one and only opportunity to be the person to end the suffering of a nation in torment over the question of

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[218] 25 January 2006 TSN, p. 69 TMR/XXIV-1.

[219] Ibid, p. 83 EBV/XXVIII-3 to p. 84 EPT/XXIX-1.

[220] 7 December 2005 TSN, VIII-1; p. 54 TJAS/XX-1; p. 31 LCLV/XII-1; p. 53 BBR/XIX-2; pp. 57-58 CAB/XXI-1-2; p. 64 RCN/XXII-2; pp. 72-73 LCLV/XXVI-1-2; p. 102 CAB/XXXV-1; p. 103 RCN/XXXVI-1; p. 111 APM/XXXIX-1; p. 134 TJAS/XLVII-1; 25 January 2006 TSN, p. 79 ADJO/XXVII-3.

[221] 13 December 2005 TSN, pp. 57-58 ESB/XXI-2-3; p. 88 JMB/XXXII-2; 25 January 2006 TSN, p. 79 ADJO/XXVII-3.

[222] 7 December 2005 TSN, p. 20 RCN/VIII-1 and p. 54 TJAS/XX-1; 13 December 2005, p. 54 JMB/XX-2; 25 January 2006 TSN, p. 80 ALAVT/XXVIII-1

[223] 7 December 2005 TSN, p. 53 BBR/XIX-2; p. 54 TJAS/XX-1; p. 135 TJAS/XLVII-2; p. 136 CAB/XLVIII-.

[224] 13 December 2005 TSN, p. 36 SZS/XIII-2; p. 37-38 BBR/XIV-1-2; p. 88 JMB/XXXII-2.

legitimacy of the success of PGMA.[225] His friends advised against his going public, but his fear for his life and the eminent danger he and his wife had to face drove him to seek refuge in an isolated place. He felt ashamed to be seen in public. He was subject to scrutiny and mockery; he became an instant household name; he was on TV and his name can be heard on radio; he even had a "Hello Garci" ringtone attributed to him.[226]

m. In the 2004 elections as in any other elections in the country, it was normal practice for candidates, their lawyers and leaders to call the COMELEC Commissioners. Calls were mostly inquiries on procedures and requests for the transfer of the canvassing and/or polling places. Not one from among those who called him ever asked him to cheat in the elections or rig or manipulate the election results and clinch the victory for them, or for him to corrupt the electoral process. Nobody from Cebu called him to cheat for the President. For example, former Senator John Osmeña inquired on the progress of the canvassing in places outside Cebu, by which time the results would have been submitted to Congress already. He never had any conversation with anybody asking him to cheat for a candidate.[227] During the election period, people request him for the transfer of polling places or election officials because of bias, which he cannot deny the candidates. He appealed to those who called him to speak up for themselves about their purpose for calling him. He would not say, however, if it was normal, too, for people to ask him to "fix" votes in their favor. He is not a "superman" who can fix or arrange for the victory of a particular candidate.[228]

n. He chanced upon the word "superman" in comic strips and had used "superman" to refer to a person, himself included, who can carry on the gargantuan task of cheating without the connivance of other parties or persons. He began to use the word "Superman" only when he became accused of cheating.[229]

o. It was only natural for candidates and their leaders and lawyers to ask for the help of the COMELEC and its personnel to inquire about procedures, safeguards needed to protect their votes and reassignment of certain personnel. There was nothing irregular or wrong about this because the reason is to correct the actuations or behavior of those in the field doing the electoral work. An example is the assigning of a particular military or police official in a region. This is an official function which, although may require collegial (en banc) action in some cases, may be performed by the CIC on his own initiative.[230] He had to respond to requests because the Civil Service Law states that a mere complaint of ordinary citizens must be responded to (by the government official concerned) within fifteen days from receipt thereof.[231] In the 2004 elections, he approved and/or initiated the transfer of certain election officials to other field/place of voting/canvassing on the following grounds: 1) affinity/relation to the candidate/s; 2) perceived to be biased for a particular political candidate, or involved in partisan politics in their area of responsibility; and 3) completion of their 4-year tour of duty. He did not keep a record of the personnel who had to be transferred or directed to return to their original posts during the 2004 elections. The Personnel Department of the COMELEC may have data on this.[232]

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225 25 January 2006 TSN, p. 80 ALAVT/XXVIII-1.

226 7 December 2005 TSN, p. 135 TJAS/XLVII-2; p. 136 CAB/XLVIII-1.

227 7 December 2005 TSN, p. 26-27 EHM/X-1-2; p. 30 AM/XI-2; p 52 BBR/XIX-1; p. 85 EPT/XXIX-2; p. 85 EPT/XXIX-2; p. 116 EBV/XLI-1; p.153 EMA/LIV-2; p. 154 EBV/LV-1; 13 December 2005, p. 15 BGB/V-2; p. 16 CAB/VI-1; p. 69 SZS/XXV-2; p. 70 BBR/XXVI-1.

228 7 December 2005 TSN, pp. 51-52 BBR/XIX-1-2; 13 December 2005 TSN, p. 69 SZS/XXV-2; p. 70 BBR/XXVI-1; 25 January 2006 TSN, p. 72 GCC/XXV-1

229 13 December 2005 TSN, p. 84 CAB/XXX-2; p. 85 APM/XXXI-1.

230 7 December 2005 TSN, p. 43 EPT/XV-3; p. 44 GCC/XVI-1; p. 47 MTGA/XVII-2; 13 December 2005, p. 28 TMR/X-3; p. 29 ADJO/XI-1; p. 28 TMR/X-3; p. 29 ADJO/XI-1.

231 25 January 2006 TSN, p. 72 GCC/XXVI-1.

232 Ibid, p.p. 55-56 MTGA/XIX-1-2.

p. The following personalities who called or contacted him personally during the 2004 election period: Senators Loren Legarda, Juan Ponce Enrile, Jamby Madrigal, Lim, Gordon, Mar Roxas, and Ping Lacson; Representatives Clavel Martinez, Alan Peter Cayetano, Francis Escudero, Benasing Macarambon, Jr., Rafael Nantes, Danilo Suarez, Noli Fuentebella, Narciso "Bong" Bravo, Amelita Villarosa, Suharto Mangudadatu, Ricky Sandoval, Peter Paul Falcon, Carlos of Bulacan, Munir Arbison, Ernie Clarete, Danilo Lagbas, Jayjay Romualdo, and Lynette Punzalan; Catanduanes Governor Verceles (Catanduanes); Mayor Eusebio (Pasig); former Senator John Osmeña; former Congressional Representatives Jaafar (TawiTawi), Aggabao (Isabela), Candazo (Marikina), and Falcon (Surigao del Sur); former Provincial Governors of Sulu Sakur Tan and Jakiri; and Atty. Liwayway Vinzons-Chatto. [233]

q. He removed the name of Rep. Abdullah Dimaporo, who was his godbrother, from the list of people who called/contacted him, because the congressman's call was personal and had nothing to do with the elections. This call was logged by his records staff Atty. Renault Macarambon who called his attention on the matter. He can reinstate the name to the list. This log, as in all existing records in his office in the COMELEC had been turned over to the Chairman, specifically the Election Records and Statistics Division (ERSD) and he no longer has access to it.[234]

r. He could not recall an instance wherein he talked to Senator Barbers informing him that Rep. Salceda and a certain Bicol Governor approved of the fixing of the election results. He had no idea that all three candidates for the gubernatorial position in Cebu (Celestino Martinez, Gwen Garcia, John-John Osmeña) rallied in support of PGMA.[235] Unless the particular person gives his/her go signal, he would not answer questions regarding his conversations with the candidate.[236]

s. He first came to know PGMA when she first ran for Senator. He could not confirm if he had a hand in making GMA number one in the senatorial race. [237] He met the First Gentleman, only once when the FG was traveling around Mindanao. He did not talk to the FG; only the President. He never called up or initiated contacting the FG or answered a call from him, and he could not recall an instance wherein the FG called him. In fact, he had never talked with him.[238] Although he had known PGMA for a long time already, he could not remember having talked to her until now.[239]

t. He admitted that the President did call him once in his career. He agreed that not everyone gets called by the President everyday such that he would tend to remember it. He admitted to having only one conversation with the President but this did not transpire on the date alleged in the tapes.[240] PGMA called him up on 24 May 2004 asking for an explanation why her one million vote margin two or three days before was reduced to 892,000. PGMA did not request him to give her a 1-million or more vote advantage over her opponent FPJ. She did not ask that the elections be rigged. It was an inquiry on why her vote advantage over her opponent went down. He could not remember any other conversation between himself

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233 7 December 2005 TSN, pp. 27-28 EHM/X-2-3; p. 29 APM/XI-1; 13 December 2005, p. 15 BGB/V-2; p. 16 CAB/VI-1; 13 December 2005 TSN, p. 15 BGB/V-2 to p. 16 CAB/VI-1.

234 7 December 2005 TSN, p. 45 GCC/XVI-2; 13 December 2005 TSN, p. 22 JMB/VIII-2.

235 Ibid, p. 16 CAB/VI-1; p. 68 SZS/XXV-1.

236 7 December 2005 TSN, p. 42 EPT/XV-2.

237 Ibid, p. 132 BBR/XLVI-2.

238 13 December 2005 TSN, p. 51 APM/XIX-1; p. 88 JMB/XXXII-2; p. 89 ESB/XXXIII-1; 25 January 2006 TSN, p. 58 EPT/XX-1

239 7 December 2005 TSN, p. 37 EBV/XIV-1; p. 31 LCLV/XII-1.

240 25 January 2006 TSN, pp. 77-78 ADJO/XXVII-1, 2.

and the President unless somebody can show him the succession or series of events surrounding a particular exchange.[241]

u. The Joint Committee should ask PGMA regarding the content of the conversations she had had with the commissioner. He cannot provide information whether or not PGMA cheated her way to Malacañang or if she really won in the last elections.[242] The Joint Committee should also ask PGMA why she appointed him to the COMELEC. He did not know if he was recommended by somebody, or whether Mr. Zuce lobbied for him to get the position. He denied having signed any letter in which he pledged support for the Lakas Party and PGMA; the signature appearing therein was not his and did not originate from his office. He promised the President that elections will be honest, clean and orderly.[243]

v. He was not aware of anyone ever calling him "Garci" except very close friends and politicians. This does not mean that PGMA is a close friend of his. He denied having known or met a person named "Garci;" he is not known as or nicknamed "Garci." He did not think anyone would refer to Chairman Abalos as "Garci." He was not aware of anyone in the COMELEC being called or alluded to by the name "Garci." Nevertheless, should anyone mistakenly call or address him as "Garci," he would not respond.[244]

w. He never left the country. He never went to Singapore. This attestation was contained in an affidavit executed by his cousin Atty. Garcillano, Jr. He left Luzon sometime July 2005 and sought asylum, among loyal and royal friends in Mindanao, both Muslim and Christian, but not in the Islamic Conference in Camp Omar, Datu Odin Sinsuat. He had executed an affidavit to support his claim that he was just around. Absence of markings in his passport was proof enough that he never left the country since 1996.[245] He did not join the COMELEC team who went to Korea to study and conduct a review of applicable means of automation. He had never been out of the country for the past five years.[246]

x. He did not know a Virgilio O. Garcillano who disguised himself as one of the flight crew on board Lear Jet 35 which departed the Philippines and entered Singapore on 14 July 2005, to which flight and entry was confirmed in a *note verbale* from the Singapore Government. He never transited Singapore on 15 July 2005 via Singapore Airlines flight SQ 320 bound for London. He was not compelled by a government-to-government report. As far as he was concerned, he was not aware of its existence, and the *note verbale* was *inter alia res inter alia acta* (any admission or report from anybody shall only bind the one who made the report). He refuted a disclosure by Secretary of Justice Raul Gonzalez that he exited 14 July 2005 on board a flight to Singapore disguised as a flight engineer. [247]

y. He left Manila 7 June 2005 to go to Mindanao to conduct training for field personnel, after which he went hiding especially when he noticed some people were following him. He never left the country. When the Chief PNP General Ben Ebdane saw that his life was in danger, he provided him with an official but privately-owned car and one back-up car.[248]

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241 Ibid, p. 71 APM/XXV-3; p. 68 EHM/XXIV-3 to p. 69 APM/XXV-1; p. 47 MTGA/XVII-2; p. 146 EHM/LI-2; p. 143 ESB/L-2; p. 146 EHM/LI-2; 13 December 2005, p. 50 CAB/XVIII-3 to p. 51-52 APM/XIX-1-2

242 Ibid, p. 47 MTGA/XVII-2; Ibid, pp. 119-120 EPT/XLII-1-2.

243 Ibid, p. 142-A ESB/L-1; p. 132 BBR/XLVI-2; 13 December 2005 TSN, p. 23 ESB/IX-1.

244 25 January 1006 TSN, p. 77 ADJO/XXVII-1; 7 December 2005 TSN, p. 38 EBV/XIV-2; p. 38 EBV/XIV-2.

245 Ibid, , p. 45 GCC/XVI-2 to p. 46 MTGA/XVII-1; p. 46 MTGA/XVII-1; p. 82 EBV/XXVIII-2; p. 152 EMA/LIV-1; p. 71 APM/XXV-3; p 84 EPT/XXIX-1; 25 January 2006 TSN, p. MSSSA/XVII-3 to p. 51 ESB/XVIII-1.

246 Ibid, p. 65 JMB/XX-1.

247 Ibid, pp. 43-47 RCN/XVI-1-3; pp. 48-50 CAB/XVIII-1-3.

248 13 December 2005 TSN, p. 24 ESB/IX-2; p. 91TMR/XXXIV-1; pp. 24-25ESB/IX-2-3; p. 26 TMR/X-1; p. 27 TMR/X-2;

z. He could not be certain if the people who offered him refuge in Mindanao were totting AK-47 firearms. He denied knowing a "Jason" who was seen in a video footage escorting him boarding a speedboat and at the airport.[249]

aa. He never authorized a Captain Mendoza to go to Mindanao. Somebody else was using Mendoza and a Mr. Zuce to engineer and manipulate the elections in Mindanao. He categorically denies allegations made by Mr. Zuce. He had, in fact, filed lawsuits against him.[250]

bb. He categorically denies being the person PGMA talked to in the Garci tapes. He could not be certain if the voice in the tapes was his or if indeed his own voice was recorded in a tape as the audio was unintelligible. It was not his voice in the tapes. He failed to keep track of the other voices in the recording. His concentration was directed towards trying to pinpoint which of the voices was his. He does not accept that the voices in the taped conversations were his and PGMA's. He needed to hear the conversations from the original or source recording before he can really pinpoint the persons to whom the voices belong. He did not even know the person and/or the voice in the tape called "Garci." He was wondering how his former boss Christian Monsod and a friend of Atty. Paguia in Iligan City could have recognized the voice and attributed the voice to him.[251]

cc. His first reaction upon hearing the taped conversation was one of disbelief.[252] In fact, he was aggrieved because as a victim of wiretapping, RA 4200 should have protected him, and to ensure that perpetrators are appropriately censured. He can only be certain if he himself listened to a playback of his own recording of his own voice.[253]

dd. It pained him to be accused of being the one who authored the rigging in the 2004 elections. He was never involved in electoral fraud; he did not commit irregularities in his function as commissioner; and he had nothing to do with "dagdag-bawas." He had never been charged or accused of being the author of "dagdag-bawas" until now.[254] Since he was already practically convicted before the bar of public opinion, it was pointless for him to try and convince the public. He doubted if people would still give him the chance to explain himself and believe his story. It was very unfortunate that his chance came only now when the scales of justice were no longer in his favor.[255]

ee. He did not like being called the operator of the rigging of elections. He cannot do any rigging by himself. If there was rigging to be carried out, there has to be collusion by several members of the board of canvassers. He has no knowledge about cheating in the last elections. Accusations of electoral fraud were uncalled for. In fact, in his 35 years with the COMELEC, he never experienced this. The COMELEC had always been doing its mandated duty to conduct a clean, honest and orderly election. It would not commit irregularity. It is the candidates who do the rigging of the votes during elections. The COMELEC by itself will not volunteer to cheat in an election to ensure the victory of a particular candidate.[256] He appealed that the hearings would not be used to assassinate his character or to soil his honor as an individual. He was aware that his credibility was on trial

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249 7 December 2005 TSN, p. 83 EBV/XXVIII-3; 13 December 2005, p. 26 TMR/X-1.

250 Ibid, p. 48 MTGA/XVII-3; p. 49 TMR/XVIII-1; 13 December 2005, pp. 38-39 BBR/XIV-2-3; p. 40 EBGV/XV-1.

251 Ibid, p. 50 TMR/XVIII-2; p. 59 CAB/XXI-3; p. 67 EHM/XXIV-1-2; pp. 66-67 EHM/XXIV-1-2; 13 December 2005, p. 57 ESB/XXI-2; Ibid, p. 153 EMA/LIV-2; pp. 80-81 BGB/XXIX-2-3

252 Ibid, p. 56 MTGA/XIX-2.

253 25 January 2006 TSN, p. 78 ADJO/XXVII-2.

254 7 December 2005 TSN, p. 119 EPT/XLII-1; p. 54 TJAS/XX-1; p. 152 EMA/LIV-1.

255 Ibid, p. 19 CAB/VII-3; p. 20 RCN/VIII-1 and p. 54 TJAS/XX-1.

256 Ibid, p. p. 149 APM/LII-2; p. 119 EPT/XLII-1; p. 76 LCLV/XXVI-5; p. 77 LCLV/XXVI-6; 25 January 2006, p. 69 TMR/XXIV-1; p. 69 TMR/XXIV-1.

in the hearings and he was not going to force the issue. His reputation was seriously damaged. Although he needed to redeem himself, he felt people would not believe in him or whatever he would say. He did his job in the best way he could. He is not comfortable with all the imputations to his person. He had no control over what people think or believe about him [257]

ff. His voice being recorded in the hearings was enough sample for a test of credibility. He initially conceded to a request for him to read a portion of a document because he did not realize that he would be asked to read the transcript of the tapes. He refused to read the transcript as this would be prejudicial to his pending petition in the Supreme Court.[258]

gg. He admitted he listened to the controversial tapes only once but not the whole recording. He observed it had a narrator, as well as dates and time, details which he could no longer remember.[259] He could not ascertain whether such recordings happened before or after 10 May 2004.[260] He remembered that the recordings of the tapes he listened to were taken after the elections when almost all the election results had been submitted to Congress.[261]

hh. The COMELEC does allow a 1% overprinting of election returns. However, he could not determine the exact number of excess prints. This is covered by a COMELEC en banc resolution.[262]

ii. He requested for safeguards during elections. He could not say who among the employees of the COMELEC refused to support his move in this direction. He could not do anything if some people see the COMELEC as inutile in its task of keeping elections straight clean. He recommended criminalizing the commission of certain acts which are illegal and designed to corrupt the electoral process. He recommended that the provincial board of canvassers composed of the provincial supervisor, fiscal and superintendent of school) be summoned to shed light on the matter. It is not the job of the commissioner to collect the voting results for the President. He would recommend to the COMELEC to prosecute the people responsible for carrying out the alleged cheating in the 2004 elections.[263]

jj. It no longer surprised him to hear losing candidates claiming that they were defrauded or cheated in the elections.[264]

kk. During the 2004 elections, at the time the rigging was supposed to happen, the certificates of canvass for each province and city had already been submitted to the Senate, except in places where there were special elections. It was almost impossible to change anything in the canvass. He admitted that the municipal certificate of canvass can be manipulated, same with the returns for the President and Vice-president to be sent to Congress for purposes of canvassing.[265]

ll. He does not feel anything about the national apology and admission of the President over television, as he cannot feel for her.[266]

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257 7 December 2005 TSN, p. 149 APM/LII-2; Ibid, p. 154 EBV/LV-1; 13 December 2005, p. 29 ADJO/XI-1; p. 87 JMB/XXXII-1.
258 Ibid, p. 154 EBV/LV-1; p. 157 EPT/LVI-1; p. 160 GCC/LVII-1; p. 164 MTGA/LVIII-2.
259 Ibid, pp. 101-102 EPT/XXIX-1, 2.
260 Ibid, p. 111 APM/XXXIX-1.
261 Ibid, p. 114 EMA/XL-1.
262 Ibid, p. 128 TMR/XLV-1.
263 Ibid, p. 142-A ESB/L-1; p. 115 EMA/XL-2; p. 151 LCLV/LIII-2; 13 December 2005, p. 86 APM/XXXI-2.
264 7 December 2005 TSN, p. 148 APM/LII-1.
265 Ibid, p. 149 APM/LII-2 to p. 150 LCLV/LIII-1; 13 December 2005, p. 59 TMR/XXII-1.
266 Ibid, p. 29 ADJO/XI-1.

mm. He was never summoned or asked to appear in the Task Force Garci, the fact-finding committee chaired by Senior State Prosecutor Emily Fe delos Santos of the National Prosecution Service.[267]

nn. He never talked with PGMA prior to his decision to appear in public. He wrote PGMA sometime in July 2005 informing her that he would turn down subsequent appointments to the COMELEC. Prior to the Gloria-Garci scandal, his appointment status was ad interim because Congress was not in session. Pending confirmation of the appointment, he was barred from participating in any function of the COMELEC. He was called only once by the Commission on Appointments for the hearing of his confirmation. For lack of material time, his confirmation hearing was deferred so he needed to secure another appointment from PGMA.[268]

oo. He had no control over the COMELEC. He could not have influenced Chairman Abalos who was sick at that time, or the Commission en banc to proclaim Senator Biazon as the winning twelfth senator. He confirmed that he was not able to sign a resolution transferring to Manila the canvassing of votes in Cotabato City. He did not feel slighted for not being asked to sign the said resolution. He did not harbor any ill feelings about this incident. The same ill feelings that were expressed verbally in the tapes were untrue. He was not lying.[269]

pp. In the 2004 election period, he did not stay in Pili, Camarines Sur for seven days; he was there for only one night. He talked with candidates Alvarez and L. Ray Villafuerte, Prosecutor Jovencito Zuño, and Secretary Mercedita Gutierrez.[270]

qq. He confirmed the maximum number of votes per precinct is 300 persons. He could not comment on an evidence of over-voting in one precinct in Camarines Norte wherein one candidate got 1,041 votes because he was not party in the preparation of said document. He refused to comment that there was a commission of cheating in the said area.[271]

rr. He knew Michael Ubac, a Philippine Daily Inquirer reporter who interviewed him while he hid in the mountains of Mindanao. He affirmed the statement he gave during the (7 December) interview with Ubac wherein he said that he called up (COMELEC) Chairman Abalos to proclaim (Senator Rodolfo) Biazon; He did not want the proclamation to be delayed, considering that there was another candidate who claimed he can still overcome Sen. Biazon's lead.[272]

ss. He (initially) denied that it was his own signature affixed in a COMELEC en banc resolution, SPC No. 04-297, dated 31 August 2005, entitled: "Tony Benwaren versus the New Municipal Board of Canvassers of Tineg, Abra." He (later) admitted to signing said document months before the date of its promulgation on 26 May 2005 while he still had a valid appointment as commissioner. The document was routed among the commissioners before he went out of circulation. He pointed out that Commissioner Barcelona was also able to sign the resolution.[273]

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267 Ibid, p. 50 CAB/XVIII-3.
268 Ibid, p. 51 APM/XIX-1.; p. 69 TMR/XXIV-1; 25 January 2006 TSN, p.p. 69-70 TMR/XXIV1, 2.
269 13 December 2005 TSN, p. 56 ESB/XXI-1; pp. 71-72 BBR/XXVI-2-3 to pp. 73-75 EBGV/XXVII-1-3; pp. 73-75 EBGV/XXVII-1-3 to pp. 76-77 RCN/XXVIII-1-2;p. 75 RCN/XXVIII-3 to pp. 79-80 BGB/XXIX-1, 2.
270 Ibid, p. 57 ESB/XXI-2.
271 Ibid, pp. 60-61 TMR/XXII-2, 3 to pp. 62-63 ADJO/XXIII-1, 2.
272 Ibid, pp. 70-71 BBR/XXVI-1, 2.
273 Ibid, p. 92 TMR/XXXIV-2 to p. 93 ADJO/XXXV-1; pp. 31-32 TMR/X-3, 4; 25 January 2006 TSN, p. 17 EPT/VI-1.

9. Commissioner Florentrino A. Tuason, Jr., COMELEC (25 January 2006)

1. He was appointed as Commissioner on 2 February 2001 and had seen two elections (2001 and 2004) during his career in the institution.[274]

2. He had the opportunity to work with Atty. Garcillano for one year when the latter took over the position of commissioner in February 2004. He was already acquainted with Com. Garcillano prior to this period, the latter being a COMELEC regional director.[275]

3. He was Commissioner-in-Charge for the Cordillera Autonomous Region (CAR) and Region I; Atty. Garcillano was responsible for other regions at the same time in charge of personnel and operations. Normally, the designation or assignment of the respective commissioners determines and delimits their functions and area of responsibility. He never had an opportunity to be assigned as vice chair for personnel. From the time of his appointment, his designation had always been Chairman of the Committee on Overseas Absentee Voting. As such, he trains various personnel of the Department of Foreign Affairs detailed in foreign countries who will comprise the Special Board of Elections Inspectors (SBEIs) in a particular country.[276]

4. SPC No. 04-297 re Benwaren vs. the New Municipal Board of Canvassers of Tineg, Abra, bore the signatures of two former commissioners, namely, Commissioners Manuel Barcelona and Virgilio Garcillano whose appointments at the time of its promulgation (31 August 2005) had already lapsed (10 June 2005). Records would show that Com. Barcelona was able to sign the resolution on 23 May 2005; Com. Garcillano 26 May 2005; Coms. Resurreccion Borra and Mehol Sadain on 1 June 2005; Com. Rufino Javier 11 July 2005; and Chairman Abalos 2 August 2005. He reiterated that Coms. Barcelona and Garcillano signed said resolution while they still possessed valid appointments. Per records of the COMELEC Personnel Department, Com. Garcillano's seventh appointment as COMELEC Commissioner expired 10 June 2005.[277]

5. The COMELEC records logbook would prove his statements with regard to the dates of the signing of the resolution by the different commissioners.[278]

6. As to insinuations of "tollgates[279]" in the COMELEC, he would not countenance its presence in the COMELEC. At least in his own jurisdiction, he assured that the so-called "tollgates" do not exist. In fact, he only had 13 remaining cases up for resolution. He would recommend the investigation of "tollgates" in the COMELEC.[280]

7. Nobody has ever called him "Garci." To his knowledge, the name "Garci" was never ascribed to Chairman Abalos or Com. Javier. It would be understandable and logical though for someone to call Com. Garcillano "Garci." He had always maintained a low

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274 25 January 2006 TSN, p. 36 BGB/XII-2 to p. 37 RGR/XIII-1; p. 52-53 ESB/XVIII-2-3.
275 Ibid, p. 37 RGR/XIII-1.
276 Ibid, p. 37 RGR/XIII-1; p. 53 ESB/XVIII-3; p. 64 RCN/XXII-2.
277 Ibid, pp. 24-25 RCN/VIII-2, 3 to p. 26 JMB/IX-1; pp. 59-60 EPT/XX-2, 3 to p. 61 APM/XXI-2.
278 Ibid, p. 36 BGB/XII-2.
279 Refers to a certain required fee in order to obtain or "buy" the signature of a particular commissioner in the COMELEC for a favorable decision on a case. This term appeared in an open letter dated 11 January 2006 of Atty. Sixto Brillantes to Chairman Abalos, expressing lament over the long and tedious process of resolving cases in the COMELEC due to these "tollgates."
280 25 January 2006 TSN, pp. 26-27 JMB/IX-1, 2.

profile such that he would be the last person anyone would think of calling during elections. Nobody would be calling him as his primary expertise is on overseas absentee voting.[281]

8. He was not among the team who traveled to Korea. He had no hand in the proposed modernization (automation) program of the COMELEC, this being Com. Borra's turf.[282]

9. As a general rule, he believes that candidates should observe ethics and propriety and refrain from calling COMELEC Commissioners during election period, barring exceptional cases wherein one has to report irregularities, or when one's complaints are ignored by the local COMELEC officials.[283]

10. He was able to listen to certain portions of the tapes when these were played in Congress. He cannot pinpoint with certainty whose voice can be heard, or the persons involved. He would not say whether he could recognize Atty. Garcillano's voice in them considering his relatively long acquaintance with him.[284]

11. The COMELEC was put in a bad light because of the Garci tapes. The Chairman and the Commissioners were disturbed. They instructed the Law Department to conduct an investigation on the persons involved or mentioned in the tapes. A committee was put to task to gather and evaluate the statements in the tapes. As of date, no report yet has been submitted or made.[285]

12. Based on law, election officers have a 4-year maximum tour of duty in one place; after which they are reshuffled. Within this term, if shown that he is related to a candidate up to the 4th degree of consanguinity, an election officer may be transferred or replaced. Any movement of personnel in the field has to have the approval of the CIC in the area.[286]

13. The COMELEC deputized the entire AFP and the PNP during the 2004 elections. The AFP and the PNP must secure from the COMELEC a written approval before they can make any deployment of their respective personnel. The COMELEC, however, does not maintain records of deployed personnel; it only approves recommendations.[287]

14. The COMELEC is the National Board of Canvassers for the Senatorial seats. In the 2004 elections, the 12th seat in the senatorial position was a complicated matter because of the margin of votes from the 13th place. This was compounded by the conduct of special elections in certain provinces in Mindanao. It was finally resolved in favor of Sen. Biazon. The decision was based on the report of the Supervising Committee tasked to collate the certificates of canvass on the special elections. He relied on the data from this report as well as other documentary evidences in declaring Sen. Biazon as the 12th winning senator. The canvass report was the best evidence/data/proof that a particular candidate had won.[288]

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281 Ibid, p. 38 RGR/XIII-3.
282 Ibid, p. 66 JMB/XXIII-1; p. 64 RCN/XXII-2.
283 Ibid, p. 38 RGR/XIII-3 to p. 39 ADJO/XIV-1.
284 Ibid, pp. 38-40 ADJO/XIV- 1, 2.
285 Ibid, pp. 49-50 MSSSA/XVII-2, 3.
286 Ibid, pp. 53-54 ESB/XVIII-3, 4.
287 Ibid, p. 73 GCC/XXV-2 to p. 74 RGR/XXVI-1.
288 Ibid, pp. 74-75 RGR/XXVI-1.

HIGHLIGHTS OF INFORMATION PRESENTED BY OTHER RESOURCE PERSONS

1. Prof. Pacifico Agabin (29 June 2005)[289]

   a. The 30-day period provided in Article VI, Section 15 of the Constitution would not apply to the meetings of the congressional committees because: 1) There is no express prohibition against legislative industry; and 2) The Supreme Court has ruled that the Constitution is not a grant of power; it is only a limitation of the powers of Congress. There are instances when Congress may decide to meet during the 30-day period such as: to canvass presidential elections; call for a special election; impeachment; special sessions called by the President;

   b. The Joint Committee can play the tapes/CD in open or executive session because 1) the speech and debate clause of the constitution includes not only utterances of Congressmen in the official discharge of their duties but also of congressional committees duly authorized to perform its functions at the time of the performance of the acts in question;

   c. The right to privacy protected by the Constitution as well as by RA 4200 must be balanced against the right of the people to information. In the case of the tapes, since the President has admitted that hers is the voice in the tape, it is imperative that the people should know what their President had told a member of an independent constitutional commission;

   d. The right to privacy under RA 4200 has already been waived: 1) by the President publicly admitting that hers is the voice in the tape and being the first through her alter-ego to bare to the public the existence of an authentic and an altered tape, and 2) by the unnamed COMELEC Commissioner who has not surfaced to invoke his right to privacy – this inaction should be considered an implied waiver of his right;

   e. With the President's admission of her conversation with the unnamed COMELEC Commissioner, the contents of the tapes/CDs should now be considered official acts of the President.

2. Justice Amado Valdez (29 June 2005)[290]

   a. The 30-day period while Congress is not in session does not apply to hearings and meetings of congressional committees. The Rules of the House make a distinction between sessions and hearings. Sections 68[291] to 69 refer to daily sessions. Section 15 of the Constitution[292] refers to suspension of sessions 30 days before the opening of its next regular session.

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289 29 June 2005 TSN, pp. 32-33, EAT/IX-2-3; pp. 34-35, BBR/X-1-2; p. 36; RCN/XI-1

290 Ibid, pp. 36-37, RCN/XI-1-2; pp. 38-39, DMTD/XII-1-2

291 Section 68 (13th Congress Rules, Rule XI) Commencement of Daily Sessions. – Daily sessions shall commence at four o'clock (4:00) in the afternoon on Mondays through Thursdays and at ten o'clock (10:00) in the morning on Fridays unless the House decides otherwise. Upon written notification to the Secretary General by the concerned committee Secretariat director or secretary, Members who are attending committee meetings while the House is in session as authorized by the Committee on Rules in accordance with Section 35 hereof, shall be deemed present in session.

292 Section 15 (Constitution, Article VI) The Congress shall convene once every year on the fourth Monday of July for its regular session for such number of days as it may determine until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays. The President may call a special session at any time.

Section 35 of the Rules of the House[293] allows committees to conduct their meetings at such time they may determine.

b. The Joint Committee can play the tapes/CDs. Congress cannot legislate wisely in the absence of information respecting the conditions which the legislation is intended to effect or change.

c. RA 4200 is constitutionally infirm and falls short of the constitutional requirement that an accused must be informed of the nature and cause of the accusation against him under the void for vagueness rule. It is absurd that anybody, whether a victim or police investigator or evidence custodian of the court or the Joint Committee can be held liable under the law for knowingly possessing a wiretapped material. Its inadmissibility as evidence would be another matter.

3. Atty. Ronald Solis - Chairman, NTC (3 August 2005)[294]

a. He confirmed that the technology of GSM networks are now vulnerable to interception or wiretapping which, ten years ago were thought to be secure from wiretapping or interception.

b. The GSM system is based on certain security controls and algorithms supposed to be kept secret. However, studies have shown that computer experts can, in fact, intrude into the system and unlock these controls and algorithms.

c. There are two ways wherein conversations and/or text messages may be monitored or intercepted: 1) by internal or legal intercept which is bound by jurisdictions wherein a law requires that the service provider or the GSM network must install legal intercept equipment or monitoring device in its own system itself for law enforcement purposes. The Communications Assistance for Law Enforcement Agencies Act (CALEA) in the US which requires service providers to have this monitoring capability. In the US, wiretapping is done upon the request or authorization of the Attorney General, the Secretary of Justice, or the courts; and 2) by external or off-air intercept which is the installation of equipment extraneous to the facilities of a GSM network. The service provider does not know it is being intruded or tapped.

d. This extraneous monitoring equipment is only available to law enforcement and/or government agencies in charge with regulating the telecommunications industry.

e. The NTC has issued certain memorandum circulars that require purchasers of monitoring equipment to secure a license or permit from the NTC.

f. The records show that the NTC has not received any application or request for the importation or purchase of an intercept device. The NTC does not have knowledge or information regarding the equipment now in possession by the NBI. Further, at no time in the past has it approved or jointly used the equipment.

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293 Section 35 (13th Congress Rules, Rule IX) Place, Time and Notice of Meetings. - All committees and subcommittees shall conduct their meeting, conferences or hearings at such time they may determine in the House building or, whenever necessary, in any government office or facility. They may, however, be held in any other place when authorized by the Speaker or when so authorized by the House. No Committee except the Committee on Rules and such committees to which it has granted permission, may meet while the House is in plenary session, has adjourned, or is in recess. x x x

294 3 August TSN p. 63-65, RGR/XI-3-5; p. 67-68, EHM/XII-2-3; p. 73-76,GCC/XIII-2-5; p. 114, AMC/XX-1

g. There is need for an appropriate government agency, such as the NTC, to have this monitoring equipment to curb terrorism and spur the drive against cyber crime.

h. The NTC has not required the service providers to equip themselves with the device to conduct legal wiretaps for law enforcement purposes because it has not received any such request from any law enforcement authority. He acknowledged that the law authorizes such request.

i. With regard to the documented importation of wiretapping device by Pres. Joseph Estrada, he confirmed that the NTC has no knowledge about this transaction and that no permit was secured from the NTC, therefore an illegal importation.

j. He confirmed that RA 4200 declares unlawful discussing the contents of wiretapped conversations. However, the law does not proscribe the giving of information if or not there was an actual call made. At the same time, RA 4200 does not prohibit the use of such data or information to prove or disprove, as the case may be, whether or not Garcillano's number made connections to and from certain numbers registered under the Office of the President during a particular time frame.

4. Atty. Rodolfo Salalima - Sr Vice President, Legal, Globe Telecommunications (3 Aug 2005)[295]

a. He concurred with the statements of Solis. However, his knowledge is based only on his readings. He has yet to see an actual intercept being done in the Philippines. He has no knowledge about any legal intercept or off-air intercept being done in the Philippines.

b. Globe has no capability to provide a legal intercept; it does not have the equipment.

c. According to his readings, most suppliers would not export this equipment to another country unless the government of that country gives its consent to the importation.

d. Globe would comply with government if it so obliged or compelled by law to use monitoring devices, in the interest of national security and anti-terrorism policies.

e. Globe has not received any request or a court order to perform a legal wiretap. It has, however, received *subpoena ad testificandum* and *duces tecum* for the production of alleged documents or recorded communications that comprise of data of calls, when these were made, the caller and the called party. It has no capability to intercept voice/sound and print communications or the contents.

f. There had been instances in the past when the court ordered wiretapping operations; however, Globe was not able to comply because of its lack of capability to intercept communications.

g. There is a need to amend Republic Act 4200 to remove certain ambiguities. In this law, the requirement to purchase an intercept device may only be complied with upon orders of or authorization by the court; it does not specifically order the service providers to make a purchase.

[295] Ibid, pp. 66-71, EHM/XII-1-6; pp. 72-77, GCC/XIII-1-6; p. 78, AMC/XIV-1; pp. 88-92, TJAS/XVI-1-5; pp. 95-96, RGR/XVII-1-2; p. 113, GCC/XIX-6; p. 114, AMC/XX-1

h. Law enforcement agents are able to pinpoint the exact location of certain kidnappers through "triangulation," a technical term which only communications engineers can explain. For Globe to conduct a "triangulation" procedure, law enforcement agencies must make an official request, either through court order, or a law that would authorize the NBI or the CIDG.

i. GSM networks maintain data such as the history, date of call, calling party and person called, and the duration. These are placed in temporary files for billing purposes and discarded at a later time, six months or less, because such inventory would require a large memory space in the system. Globe does not have data on text messages.

j. Should a *subpoena duces tecum* be issued to produce all these information from 2 January 2004 up to the election period, Globe will comply as long as these data are still available on file. The phone numbers should be specific to avoid dragging other individuals who are not involved into the controversy and, the period or particular dates when such alleged conversations between PGMA and Garcillano took place. The Bill of Rights should be respected even as the purpose of the committees is to unravel and authenticate the said phone exchanges.

5. Atty. Enrico Español - Head, Legal Department, Smart Communications[296]

a. He concurred with Globe's position. Smart has no equipment and is, therefore, incapable to intercept through the system. He has yet to see monitoring equipment that would make the GSM system in the country vulnerable.

b. If request of a government agency is supported by an order issued by the court, Smart Communications is willing to comply.

c. Last July, the Court of Manila issued an order, on behest of the NBI, requesting that a certain number be monitored. Smart submitted a manifestation that it has no capability to comply with the order. Smart has not purchased any wiretapping device.

d. Smart does not have a log of the content of text messages. It only records the date or time a particular message was sent by a person to another party. However, this is only a temporary file for purposes of billing, and discarded or deleted at a later time after the printing of the statement.

e. He is not privy to the relationship between Smart's Legal and Carrier Business Group head, Atty. Quevedo and ISAFP's Chief, General Quevedo.

[296] Ibid, pp. 67-69, EHM/XII-2-4; p. 73, GCC/XIII-2; pp. 95-97, RGR/XVII-1-3; p. 125, APM/XXI-6

LEGAL DOCUMENTS ISSUED

1. *Subpoena ad Testificandum* on Atty. Samuel Ong, dated 30 June 2005, addressed through counsel Atty. Liwayay Vinsons-Chato; *(Annex A1)*

2. *Subpoena ad Testificandum* on Atty. Samuel Ong, dated 30 June 2005, addressed through counsel Atty. Homobono Adaza; *(Annex A2)*

3. *Subpoena Duces Tecum* on Atty. Allan Paguia, dated 30 June 2005, addressed to his residence in Quezon City (for the audio cassette tapes); *(Annex A3)*

4. *Subpoena Duces Tecum* on NBI Director Reynaldo Wycoco, dated 30 June 2005, addressed to his office (for the Bunye CDs); *(Annex A4)*

5. *Subpoena ad Testificandum* on Mr. Virgilio Garcillano, dated 7 July 2005, addressed to his provincial residence at RER Subdivision, Cagayan de Oro City; *(Annex A5)*

6. *Subpoena ad Testificandum* on Mr. Virgilio Garcillano, dated 7 July 2005, addressed to his Metro Manila residence at the Gotesco Towers, Ermita, Manila; *(Annex A6)*

7. *Subpoena ad Testificandum* on Mr. Virgilio Garcillano, dated 13 July 2005, addressed to his provincial residence in Baungon, Bukidnon; *(Annex A7)*

8. *Subpoena ad Testificandum* on Mr. Virgilio Garcillano, dated 13 July 2005, addressed to his provincial residence at RER Subdivision, Cagayan de Oro City; *(Annex A8)*

9. *Subpoena ad Testificandum* on Mr. Virgilio Garcillano, dated 13 July 2005, addressed to his Metro Manila residence at the Gotesco Towers, Ermita, Manila; *(Annex A9)*

10. *Subpoena ad Testificandum* on Atty. Samuel Ong, dated 23 August 2005, addressed to his residence in Novaliches, Quezon City (for the tapes); *(Annex A10)*

11. *Subpoena Duces Tecum* on Atty. Samuel Ong, dated 23 August 2005, addressed to his residence in Novaliches, Quezon City (for the tapes); *(Annex A11)*

12. *Warrant of Arrest* on Mr. Virgilio Garcillano, dated 3 August 2005 for service through the national law enforcement agencies – National Bureau of Investigation, Philippine National Police, Armed Forces of the Philippines and Philippine Coast Guard. *(Annex A12)*

DOCUMENTS AND MATERIALS PERTAINING TO THE SEARCH FOR ATTY. GARCILLANO AND ATTY. ONG:

1. Letter dated 5 July 2005 from Atty. Homobono Adaza to the Speaker acknowledging receipt of the *subpoenae* on Atty. Ong and informing the Speaker that he could not get in touch with Ong, thus the latter could not attend the scheduled hearing; *(Annex B1)*

2. Letter dated 5 July 2005 from Lt/Col Isabelito Flores, OIC, HoR Legislative Security Bureau to Chairman Gilbert C. Remulla informing the Joint Committee that the *subpoenae duces tecum* on Atty. Alan Paguia and Atty. Samuel Ong were transmitted to the NBI for service; *(Annex B2)*

3. Memorandum dated 11 July 2005 from HoR Deputy Secretary General Artemio A. Adasa, Jr. for Chairman Remulla, informing the Joint Committee of transmittal by his office to Station Commander City PNP Command Cagayan de Oro City, Misamis Oriental, of the *subpoena* on Atty. Virgilio Garcillano for service; *(Annex B3)*

4. Letter dated 11 July 2005 from LTC Isabelito Flores, OIC, HoR Legislative Security Bureau to Chairman Remulla informing the Joint Committee that the *subpoena* on Atty. Garcillano addressed at Unit 904, Gotesco Towers, Ermita Manila, was received by Ms. Quindo, Administrative Personnel of Gotesco Towers; *(Annex B4)*

5. Faxed letter dated 11 July 2005 from Sherilyn Cubillo addressed to Chairman Remulla in response to the attached *subpoena* issued to Mr. Virgilio Garcillano (at his address at RER Subdivision, Cagayan de Oro City) stating the she and her cousin have no information as to the whereabouts of the Commissioner as they are mere tenants of the house; *(Annex B5)*

6. Memorandum dated July 12, 2005 from the HoR Records Management Service regarding the undelivered letter-invitation addressed to COMELEC Commissioner Virgilio Garcillano to attend the joint hearing; *(Annex B6)*

7. Letter dated 20 July 2005 from Lt. Col. Isabelito P. Flores, OIC, HoR Legislative Security Bureau thru the Sgt.-At-Arms addressed to Chairman Remulla furnishing the Joint Committee with copies of the letters sent to PNP Director General Arturo Lomibao, NBI Director General Reynaldo Wycoco and Philippine Coast Guard (PCG) Rear Admiral Arthur Gosingan coordinating the service of the subpoena on Atty. Virgilio Garcillano; *(Annex B7)*

8. Letter dated 28 July 2005 from DOJ Senior Undersecretary and NBI Director Reynaldo V. Wycoco addressed to Chairman Remulla returning the unserved *Subpoena Ad Testificandum* issued by the Joint Committee on Atty. Virgilio Garcillano. Atty. Garcillano could not be located at his given city and provincial addresses; *(Annex B8)*

9. Faxed message dated 29 July 2005 from Cagayan de Oro City Mayor Vicente Y. Emano addressed to Chairman Remulla with the information that efforts to locate the exact whereabouts of former COMELEC Commissioner Virgilio Garcillano in Cagayan de Oro City and in his farm in Bukidnon were fruitless; *(Annex B9)*

10. Letter dated 1 August 2005 from Mr. Jose Ch. Alvarez, President of Subic International Air Charter, Inc. to Chairman Remulla regarding flights performed on 13-15 July 2005 with attached documents including the flight manifests which indicated that Atty. Virgilio Garcillano was not a passenger in said flights; *(Annex B10)*

11. Faxed message dated 2 August 2005 from Chief Superintendent Charlemagne S. Alejandro, Deputy Director, PNP Directorate for Investigation & Detective Management addressed to Chairman Remulla stating that the efforts of the NCR Regional Director and those of Regional Office 10 Director, to locate and escort former Commissioner Garcillano to the congressional hearing yielded negative results; *(Annex B11)*

12. Memorandum dated 2 August 2005 from DSG Artemio Adaza for the Honorable Chairman of the Committee on Public Order enclosing the handwritten letter of Mr. Rico T. Lumayog, farm caretaker in Bukidnon returning the *subpoena* on Atty. Virgilio Garcillano; *(Annex B12)*

13. Memorandum dated 2 August 2005 from the HoR Sergeant-at-Arms BGen Bayani N. Fabic (Ret) addressed to Chairman Remulla informing the Joint Committee that his office had forwarded the *subpoenae* issued on Atty. Virgilio Garcillano to the NBI, PNP and PCG for service; *(Annex B13)*

14. Faxed letter dated 3 August 2005 from Department of Foreign Affairs (DFA) Undersecretary Franklin M. Ebdalin reporting on their efforts to coordinate with the UK and Singapore Immigration Offices in order to locate Atty. Virgilio Garcillano; *(Annex B14)*

15. Memorandum dated 8 August 2005 from the Sergeant-at-Arms BGen Bayani N. Fabic (Ret) addressed to Chairman Remulla informing the Joint Committee that his office had forwarded the Warrant of Arrest issued on Atty. Virgilio. Garcillano to the NBI, PNP and PCG for service; *(Annex B15)*

16. Letter dated 15 August 2005 from DFA Undersecretary Franklin M. Ebdalin to Chairman Remulla informing the Joint Committee that the Philippine Embassy in London was advised by the UK Foreign and Commonwealth Office by phone that they have not issued a visa to Mr. Virgilio O. Garcillano, and that the Philippine Embassy in Singapore was informed by the Singapore Ministry of Foreign Affairs that Mr. Garcillano had entered Singapore on 14 July 2005 and departed the following day; *(Annex B16)*

17. Memorandum dated 22 August 2005 from the Sergeant-at-Arms BGen Bayani N. Fabic (Ret) addressed to Chairman Remulla informing the Joint Committee that the requested agencies, NBI, PNP, PCG and AFP, have had no positive results on the service of the Warrant of Arrest issued on Atty. Garcillano; *(Annex B17)*

18. Faxed letter dated 23 August 2005 from BGen Marlu Q. Quevedo, Chief, ISAFP addressed to Chairman Remulla informing the Joint Committee that the agency has not received any Warrant of Arrest for service to Commissioner Garcillano; *(Annex B18)*

19. Faxed letter dated 23 August 2005 from DFA Undersecretary Franklin M. Ebdalin addressed to Chairman Remulla informing the Joint Committee that the department has coordinated with the Malaysian and US immigration authorities as regards the whereabouts of Commissioner Garcillano; *(Annex B19)*

20. Letter dated 23 August 2005 from Bureau of Immigration (BI) Commissioner Alipio F. Fernandez, Jr. addressed to Chairman Remulla stating that he will submit his reply on 24 August 2005 re the Joint Committee's inquiries on the case of Atty. Garcillano; *(Annex B20)*

21. Letter dated 23 August 2005 from Air Transportation Office (ATO) Assistant Secretary Nilo C. Jatico addressed to Chairman Remulla explaining his inability to attend the hearing scheduled on 29 August 2005 and designating Col. Manuel V. Villegas in his stead, with attached Safety

Oversight Committee Report on the Flight of RP-C1426 stating that the aircraft was brought to Singapore for maintenance facility check on 14 July 2005 and that there was no passenger indicated in the aircraft flight journey logbook; *(Annex B21)*

22. Letter dated 24 August 2005 and with pertinent documents attached from Bureau of Immigration Commissioner Alipio F. Fernandez, Jr. to Chairman Remulla reporting that the agency has no record of the departure of Commissioner Garcillano from January to 28 July 2005 from any port of entry in the country nor was he on a Subic International Air Charter, Inc. Learjet which left and returned to the country with no passenger on board; *(Annex B22)*

23. Faxed letter dated August 25, 2005 from BI Commissioner Alipio F. Fernandez, Jr. addressed to Chairman Remulla correcting certain clerical errors in the documents attached to his letter of August 24, 2005; *(Annex B23)*

24. Letter dated 25 August 2005 from BGen Bayani N. Fabic, AFP (Ret) Sgt.-At-Arms of the House of Representatives addressed to Chairman Remulla on the failure to serve the *Subpoena Duces Tecum and Ad Testificandum* on Atty. Samuel Ong at his address in Novaliches, Quezon City with attached letter of explanation from Atty. Homobono Adaza who similarly refused to receive the said subpoena in behalf of his client; *(Annex B24)*

25. Letter dated 26 August 2005 from BI Commissioner Alipio F. Fernandez, Jr. to Chairman Remulla submitting additional documents showing the departure of Atty. Garcillano on 1 September 1993 via Philippine Airlines to Los Angeles, California, USA and his subsequent arrival on 21 January 1994; *(Annex B25)*

26. Faxed letter dated 5 September 2005 from DFA Secretary Alberto G. Romulo addressed to Chairman Remulla informing the Joint Committee that all queries regarding Atty. Virgilio Garcillano shall be addressed to the Department of Justice which had acquired jurisdiction on the case. *(Annex B26)*

27. Letter dated 8 September 2005 from DOJ Secretary Raul M. Gonzalez addressed to Chairman Remulla furnishing the Joint Committee with a copy of the *Note Verbale* from the Singapore Foreign Ministry to the Philippine Embassy on 4 September 2005 stating that Mr. Garcillano transited in Singapore on 14 July 2005 onboard a Learjet 35 with registration Number RP-C 1426 and departed Singapore on 15 July 2005 onboard Singapore Airlines flight SQ 320. *(Annex B27)*

28. Letter dated 30 November 2005 from the Chairpersons of the Joint Committee addressed to Atty. Virgilio O. Garcillano c/o his counsel, Atty. Eddie Tamondong, inviting the addressee to appear and testify on the issues raised in connection with the alleged wiretapped tapes. (*Annex B28*)

29. Letter dated 5 December 2005 from the Office of the Sergeant-at-Arms informing the Joint Committee that the invitation to Atty. Virgilio O. Garcillano to appear at the hearing on 7 December 2005, was personally received by the invitee on December 4, 2005 at 10:55 a.m. *(Annex B29)*

30. Xerox copy of the 1st Indorsement of Department of Justice Secretary Raul M. Gonzalez, dated 15 December 2005 Rep. Emmylou J. Taliño-Santos, Chairperson of the Committee on Public Information of the attached letter of OIC Jose P. del Rosario, Jr. office of the Secretary of Foreign Affairs, Department of Foreign Affairs, providing details of the passport issued to Virgilio Olivar Garcillano. *(Annex B30)*

31. Xerox copy of Passport No. JJ-243816 of Garcillano, Virgilio Olivar issued on 11 February 2002, valid until 11 February 2007, consisting of 17 pages and Passport No. BB-602533 *(Annex B31)*

32. Letter dated 9 January 2006 of Atty, Eddie Tamondong, counsel for Atty Virgilio Garcillano addressed to Chairperson. Taliño-Santos, requesting the formal lifting of the warrant of arrest issued by the House of Representatives against Atty. Garcillano and return of his client's passports No. JJ-243826 and BB-602533. *(Annex B32)*

33. Letter dated 23 January 2006 from Atty. Tamondong addressed to Chairperson Taliño-Santos, confirming the attendance of his client Atty. Virgilio O. Garcillano to the hearing of the Joint Committees on January 25, 2006. *(Annex B33)*

34. Letter dated 08 February 2006 from BGen. Bayani N. Fabic, AFP (Ret.), Sgt-At-Arms, House of Representatives, informing the Joint Committee that the passports of Atty. Garcillano were transmitted to the Bangko Sentral ng Pilipinas for verification and authentication. *(Annex B34)*

35. Copy of 1st Indorsement from DOJ Secretary Gonzalez dated 16 February 2006 to the Department of Foreign Affairs referring to the latter the letter of Chairperson Taliño-Santos requesting for a certified true copy of the disembarkation card of Atty. Garcillano and other pertinent documents which would validate the information in the *Note Verbale*. *(Annex B35)*

36. Letter from Desmond Ng, Deputy Chief of Mission, Embassy of the Republic of Singapore to Chairperson Taliño-Santos dated 22 February 2006 requesting the Joint Committee to course its request on the details of Garcillano's entry to Singapore through the DFA. *(Annex B36)*

ADDITIONAL DOCUMENTS PERTAINING TO ATTY VIRGILIO GARCILLANO RECEIVED BY THE JOINT COMMITTEE (After 15 March 2006)

37. Letter from the Bangko Sentral ng Pilipinas (BSP) Deputy Governor Armando Suratos addressed to Chairperson Taliño-Santos dated 20 March 2006 submitting the results of the BSP examination of two passports BB 602533 and JJ 24316 with attached Laboratory Examination Report detailing the findings of the Banknotes and Securities Printing Department. *(Annex B37)*

DOCUMENTS PRESENTED/SUBMITTED AND SUMMARIES THEREOF

Letters:

1. Faxed Letter dated 14 June 2005 from P/Sr. Superintendent Prudencio Tom Bañas, OIC, Presidential Anti-Crime and Emergency Response (PACER) to Chairman Remulla asking to be excused from the 15 June 2005 meeting and informing the Joint Committee that PACER does not possess wiretapping equipment and is not involved in illegal wiretapping activities; *(Annex C1)*

2. Faxed letter dated 14 June 2005 from Ms. Maria G. Tampinco, Appointment Secretary of COMELEC Chairman Benjamin Abalos addressed to Hon. Teodoro L. Locsin, Jr., Chairman, Committee on Suffrage and Electoral Reforms on the inability of Chairman Abalos to attend the wiretapping hearing due to previous engagement; *(Annex C2)*

3. Letter dated 15 June 2005 from Atty. Homobono Adaza informing the Joint Committee that Bishop Ted Bacani has returned the "mother of all tapes" to his client Atty. Samuel Ong; *(Annex C3)*

4. Letter dated 16 June 2005 from Hon. Rozzano Rufino B. Biazon addressed to Chairman Remulla, requesting that the television networks covering the hearings be asked to furnish the Joint Committee with a copy of the film footage showing Sec. Bunye and Dir. Wycoco conducting a press conference on the compact discs/tapes at issue; *(Annex C4)*

5. Xeroxed copy of a letter dated 17 June 2005 from the OIC, Directorate for Plans Police Chief Superintendent Errol T. Pan, addressed to Chairman Remulla informing the Joint Committee that T/Sgt. Vidal Doble was not in the custody of the PNP but under the care and protection of the Intelligence Service of the Armed Forces of the Philippines (ISAFP); *(Annex C5)*

6. Letter dated 21 June 2005 from Hon. Juan Miguel F. Zubiri of the 3rd District of Bukidnon addressed to the Chairpersons of the Joint Committee, seeking information as to who authorized the holding of the hearings inside the Session Hall which in his opinion is "restricted especially during a legislative recess when other alternative venues/conference rooms are available …"; *(Annex C6)*

7. Letter dated 22 June 2005 from Atty. Homobono Adaza informing the Joint Committee that: *(Annex C7)*

    - Atty. Samuel Ong could not attend the hearings due to serious threats to his life;
    - They are willing to play the "mother of all tapes" during the hearings provided the media and the public would be present;
    - If the above is not possible, they are inviting the Joint Committee to a press conference where they will play such tapes before the media and the public.

8. Letter dated 29 June 2005 from Atty. Homobono Adaza informing the Joint Committee that Atty. Samuel Ong could not testify in the scheduled hearing due to persistent threats to his life and that, should he later testify, he should be the last witness to do so under proper security arrangements. *(Annex C8)*

9. Letter dated 30 June 23 2005 from BGen Marlu Q. Quevedo, Chief of the AFP Intelligence Service addressed to Chairman Remulla informing the latter that invited witness LTC Pedro S. Sumayo could not attend the hearing due to a mission assignment; *(Annex C9)*

10. Faxed letter dated 27 June 2005 from Dean Amado D. Valdez of the College of Law, University of the East, addressed to Chairman Remulla, assuring the latter that he will study the legal concerns involved in the hearings and congratulating him for his able stewardship of the proceedings; *(Annex C10)*

11. Letter dated 27 June 2005 from NBI Chief of Staff Atty. Rogelio C. Mamaril addressed to Chairman Remulla furnishing the Joint Committee a copy of the report on the initial examination of the "Two Audio CDs" dated June 7, 2005 and a copy of the *Sinumpaang Salaysay* of Jose Garcia y Santos given on June 16, 2005 which states that he (Garcia) was the one who went to the printing press and saw the posters and reported these to the NBI; *(Annex C11)*

12. Letter dated 4 July 2005 from Atty. Homobono Adaza to the Speaker inquiring whether a *subpoena duces tecum* was issued on Atty. Ong and informing the Speaker that there is no need to issue a *subpoena* as Ong is willing to appear to testify provided that his safety will be assured; *(Annex C12)*

13. Letter dated 4 July 2005 from BGen Marlu Quevedo, Chief, ISAFP, informing the Joint Committee that LTC Pedro Sumayo cannot attend the hearing as he is still on mission; *(Annex C13)*

14. Letter dated 05 July 2005 from AFP Chief of Staff Gen. Efren L. Abu on the inability of the ten (10) ISAFP personnel to attend the hearing due to "contingencies and operational requirements of the AFP" and instead designating Rear Admiral Tirso R. Danga, Deputy Chief of Staff for Intelligence to attend the hearing; *(Annex C14)*

15. Letter dated 6 July 2005 from Estrellita Juliano-Tamano addressed to Chairman Remulla manifesting her willingness to appear in the ongoing wiretapping hearings, if summoned, to help shed light "on the cheating schemes during the last elections;" *(Annex C15)*

16. Letter dated 6 July 2005 from Colonel Teodoro CT Torralba III, Deputy Chief, ISAFP addressed to Chairman Remulla regarding the inability of ISAFP Chief, B/Gen. Marlu Quevedo to attend the hearing due to "a very important and urgent mission in Mindanao;" *(Annex C16)*

17. Letter dated 6 July 2005 from Chief ISAFP BGen. Marlu Q. Quevedo, MNSA addressed to Chairman Remulla requesting for the complete names and exact date of appearance of ISAFP personnel in the hearings of the Joint Committee; *(Annex C17)*

18. Faxed message dated 7 July 2005 from Deputy Press Secretary Robert T. Rivera addressed to Chairman Remulla on the inability of Press Secretary Ignacio Bunye to attend the hearing due to "a previous commitment;" *(Annex C18)*

19. Letter dated 7 July 2005 from Atty. Homobono Adaza to the Joint Committee informing them that he does not know the whereabouts of Atty. Ong; *(Annex C19)*

20. Letter dated 7 July 2005 from Atty. Francis Villanueva of the Gatchalian & Villanueva Law Offices furnishing the committee a copy of the affidavit of T/Sgt. Vidal T. Doble, Jr. stating the circumstance of his involvement into the controversy of the tapes with Atty. Samuel Ong; *(Annex C20)*

21. Letter dated 12 July 2005 from BGen Marlu Q. Quevedo, Chief, ISAFP to Chairman Remulla requesting for the complete name, including middle name, rank, serial number and branch of

service of enlisted personnel invited to testify in the hearings, in order to locate the person's unit assignment; *(Annex C21)*

22. Letter dated 13 July from Atty. Homobono Adaza to the Joint Committee informing them that they (Ong's lawyers) could not locate Ong and offering to submit the "mother of all tapes" and a VHS videotape of conversations between Ong and Bishop Teodoro Bacani on how Ong acquired the tapes; *(Annex C22)*

23. Letter dated 28 July 2005 from Atty. Francisco I. Chavez, in behalf of his client Ms. Sandra Cam addressed to Chairman Remulla explaining that based on his testimony, NBI Dir. Reynaldo Wycoco "does not have personal knowledge of the matters" pertaining to Ms. Cam, and hence it is not necessary for her to testify, and further requesting that he be furnished a copy of the affidavit of a former NBI agent that may be submitted by the director; *(Annex C23)*

24. Letter dated 1 August 2005 from Senator Panfilo M. Lacson addressed to Chairman Remulla denouncing NBI Dir. Wycoco for his alleged testimonies during the hearings touching on the jueteng issues, which served 'the purpose of vilifying his (my) name and reputation" and as such, urging the censure, if not the relief of the director from his post; *(Annex C24)*

25. Letter dated 9 August 2005 from Dean Amado Valdez to Chairman Remulla declining to reply to the Joint Committee's request for opinion because of a possible conflict in interest as he had been engaged as consultant for the Committee on Justice (for the impeachment proceedings); *(Annex C25)*

26. Letter dated 9 August 2005 from National Telecommunications Commission Commissioner Ronald Olivar Solis addressed to Chairman Remulla furnishing the joint Committees a copy of the agency's report on whether there is "enough security safeguards in place to prevent unlawful intrusion into the privacy of telephone communications" as submitted to Executive Secretary Eduardo R. Ermita stating that the different telecommunications entities have in place enough security measures to protect their networks from intrusion and unauthorized access/use and that the NTC has no capability to analyze and authenticate the wiretapped tapes in issue; *(Annex C26)*

27. Letter dated 16 August 2005 addressed to NBI Director Reynaldo G. Wycoco from Chairman Amado T. Espino, Jr. of the Committee on Public Order &Safety requesting the assistance of the NBI in coordinating with the FBI as regards the authentication of the wiretapped tapes; *(Annex C27)*

28. Letter dated 22 August 2005 from Atty. Enrico L. Español, Head-Legal Department of Smart Communications, Inc. addressed to Chairman Remulla enumerating the strict security measures being employed by the telecommunications company "to ensure that no unauthorized or external device can be connected to its network." *(Annex C28)*

29. Letter dated 24 August 2005 addressed to Chairman Amado T. Espino, Jr. Committee on Public Order and Safety from Atty, Ricardo A. Diaz, Chief, Interpol Division, NBI reporting that the FBI has responded in the negative to the request for assistance in the authentication of the wiretapped tapes explaining that "it is the policy of the FBI laboratory to decline examination of materials that have been the subject of previous examination by other laboratories and scientists"; *(Annex C29)*

30. Faxed letter dated 25 August 2005 from BI Commissioner Alipio F. Fernandez, Jr., addressed to Chairman Gilbert confirming his attendance in the hearing scheduled on 29 August 2005; *(Annex C30)*

31. Letter dated 01 September 2005 from Atty. Ricardo A. Diaz, Chief of Interpol Division of the NBI addressed to Chairman Espino reporting that Scotland Yard has responded to the request for assistance in the authentication of wiretapped tapes in the negative explaining that "(T) there are no British Government Departments which could take on the work you have indicated." *(Annex C31)*

32. Letter of Atty. Homobono Adaza dated 7 December 2005, Counsel for Atty. Samuel Ong, addressed to the Joint Committees, stating the he could not accept the letter-invitation in behalf of Atty. Samuel Ong as he is not authorized to do the same and requesting the Joint Committee not to send any more invitations for Atty. Ong. *(Annex C32)*

33. Xerox copy of a letter from COMELEC Chairman Benjamin Abalos dated 24 January 2006 addressed to Chairperson Taliño-Santos, with the information that he and the other commissioners cannot attend the hearing of the Joint committee on 25 January 2006 because of a previously scheduled conference with the Election Officials from India and designating Commissioner Florentrino A. Tuazon, Jr. to represent the Commission in the aforementioned hearing. *(Annex C33)*

34. Letter from Department of National Defense Secretary Avelino J. Cruz, Jr., dated Jan 25, 2006 addressed to Chairperson Taliño-Santos, informing the Joint Committee that BGEN Marlu Q. Quevedo, Lt.Col. Allen Capuyan and Lt. Col. Pedro Sumayo of the ISAFP, Armed Forces of the Philippines will not able to attend the 25 January 2006 hearing citing Executive Order No. 464. Attached hereto is the 1st Indorsement dated 23 January 2006 and letter of Gen. Generoso S. Senga addressed to the Chairperson Taliño-Santos, also citing Executive Order 464. *(Annex C34)*

35. Letter from Department of National Defense Undersecretary Rafael Antonio M. Santos, dated 13 March 2006, addressed to Chairperson Taliño-Santos informing the Joint Committee that its letter dated 8 February 2006 requesting for a copy of the report submitted by Vice Admiral Mateo M. Mayuga, AFP on the alleged participation of military personnel during the 2004 elections has been forwarded to the Office of the President for appropriate guidance pursuant to Executive Order 464. *(Annex C35)*

36. Letter from the Bangko Sentral ng Pilipinas Deputy Governor Armando L. Suratos dated 14 March 2006 addressed to Chairman Locsin informing the Joint Committee that the BSP cannot meet the deadline (for the submission of the BSP's verification and authentication of the passports of Atty. Garcillano) in view of ongoing efforts for further verification of the technical aspects of the passports. *(Annex C36)*

Legal Opinions:

1. Opinion of the House of Representatives' Reference and Research Bureau-Legislative Counseling Service dated 16 June 2005 on the following queries/concerns: *(Annex D1)*

Whether the House Committee on Public Information May Legally Play an Alleged Wiretapped Conversation during Its Hearing Considering the Provisions of RA 4200

> "The Committee on Public Information and the other House Committees having jurisdiction over the subject of the privileged speech delivered by Rep. Francis Joseph Escudero on June 8, 2005 may require the production and playing of the allegedly wiretapped conversation, during their hearing, in aid of legislation [;]."

The Scope of the Investigatory Power of Congress

> "In the case of Arnault v. Nazareno (87 Phil. 29), the Supreme Court said: "it is difficult to define the limits by which the subject matter of its (Congress) inquiry can be bounded. Suffice it to say that it must be co-extensive with the range of legislative power."

Parliamentary Immunity of Members

> "The Members present in such an investigation are entitled to parliamentary immunity for any statement or, pertaining to the discharge of their official function in the course of the investigation over the wire tapped conversation."

2. Opinions of legal luminaries submitted to the Joint Committee on 28 June 2005 on concerns surrounding the playing of wiretapped tapes in congressional hearings: *(Annexes D2 - Agabin; D3 - Bernas; D4- Pangalangan; D5- Valdez))*

Whether the thirty-day period in Section 15, Article VI of the Constitution during which Congress is restricted from holding session applies to hearings and meetings of congressional committees that are granted authority in plenary to conduct business

Dean Amado Valdez , U.E. College of Law

> "…T[t]he thirty-day period when Congress is not in session does not apply to hearings and meetings of congressional committees."
>
> "Under said (House) rules, committee hearings or meetings are different from sessions."
>
> "Unlike Section 15 (of the Constitution) which prescribes the thirty-day restriction during which Congress shall not continue to hold sessions; Section 21 allows the House of Representatives to conduct inquiries in aid of legislation in accordance with its duly published rules of procedure …"
>
> "It can be easily understood, therefore, that committees may conduct hearings at all times that Congress has been convened, even when it is in plenary session or in adjournment or in recess as long as the concerned committees has been granted permission to conduct hearings."

Dean Pacifico Agabin, Lyceum of the Philippines

> "There is no express prohibition against legislative industry, [in the Constitution], hence the 30-day period should be considered directory."

Father Joaquin Bernas, S.J., Dean Emeritus, Ateneo Law School

> "…T[t]here is no jurisprudence whatsoever which says that Members of Congress may not do anything during the compulsory recess which will have anything to do with legislation."

Whether or not the Joint Committee can play the alleged wiretapped tapes, either in public or in executive session

Dean Amado Valdez

> The tapes can be played, as doing so would be an "effective aid in crafting legislations to further protect private individuals from intrusions into their privacy."

Dean Pacifico Agabin

> "The right to privacy protected by the Constitution through RA 4200 must be balanced against the right of the people to information under the Constitution."
>
> "… nothing is more vital to the democratic polity than the issue of who was elected President in the last elections and whether or not the democratic processes have been distorted. Now that the president has authenticated the tape and admitted that hers is the voice on the tape, it is imperative that the people should get to know what their President had told a member of an independent constitutional commission and what the latter had replied."

Father Joaquin Bernas, S.J.

> Since "hearings are being held in aid of legislation"[.]… there is "no reason why the recorded materials may not be played for the benefit of the members of the House in the exercise of their legislative authority."
>
> "The contents of the alleged wiretapped materials are not merely of private concern; they are matters of public interest." … "Privacy concerns must give way when balanced against the interest in disseminating information of paramount public importance."

Whether the Constitutional provision on immunity privileges covering legislators are applicable considering the provisions of Republic Act No. 4200

Dean Amado Valdez

> RA 4200 makes it unlawful "… to replay the [same] (wiretapped tapes) for any person or persons, or to communicate the contents thereof, either verbally or in writing, …"
>
> In light of "… constitutional requirement that an accused must be informed of the nature and cause of the accusation against him, the above provision is of doubtful constitutionality under the void-for-vagueness rule."
>
> "… the joint committee is conducting a constitutionally mandated official investigation in aid of legislation and according to the House prescribed rules, the playing of the subject wiretapped tapes is justified."
>
> "… the constitutional mandate to conduct inquiries, which in the exercise of the same may require the playing of the tapes, prevails over the prohibitive provisions

of the Anti-Wiretapping Act, which is a mere statute inferior to the provisions of the fundamental law."

Dean Pacifico Agabin

"The speech and debate immunity clause includes utterances and acts of congressmen 'in the official discharge of their duties as members of Congress and of the congressional committees duly authorized to perform its functions at the time of the performance of the acts in questions' (Vera v. Avelino, 77 Phil. 192)"

"… the playing of the tapes by the Congressional Committees would be protected by the speech and debate clause of the Constitution."

Whether playing the wiretapped tapes would violate privacy rights

Father Joaquin Bernas, S.J.

"[But] the Constitution is also explicit about freedom of expression; and jurisprudence is very strict when impairment of expression comes in the form of 'prior restraint.' Prohibiting the airing of tapes would be prior restraint."

Whether the airing of the tapes must be done in camera or in executive session

Father Joaquin Bernas, S.J.

"Quarantining speech in executive session is a form of regulation of speech. … Under current circumstances when copies of the tapes are being freely circulated with no consequent public uprising in sight, I do not see how airing them in a legislative inquiry can make things worse."

Admissibility of the Gloria Tapes

Dean Raul Pangalangan, University of the Philippines

"Under the available facts, the Gloriagate tapes are admissible in evidence before the Congress, whether it acts in aid of legislation or as an impeachment body."

"The tapes are not barred by the Anti-Wiretapping Law. This law aims to protect the right to privacy as provided in the Bill of Rights. It applies only when the speakers have not authorized the recording, and only when the tape pertains to private communications. Even assuming that President Arroyo can now be said to have confirmed the voice on the tapes (though she admitted to the conversation but not to the tapes) and now has the standing to object to the admissibility of the tapes, still that the conversation – about election cheating, intimidation and manipulation – was not "private" in character and is not protected by the Anti-Wiretapping Law."

3. Opinion of the House of Representatives' Reference and Research Bureau-Legislative Counseling Service dated 29 June 2005 submitting that the ***"joint committee meetings may be held during a compulsory recess of Congress without violating Section 15, Article VI of the Constitution;*** *(Annex D6)*

4. Opinion of the House of Representatives' Reference and Research Bureau-Legislative Counseling Division dated 5 July 2005 submitting the following conclusions: *(Annex D7)*

Whether A Witness In A Joint Committee Hearing May Be Granted Immunity From Criminal Prosecution For The Testimony Before Said Committee

> "A witness testifying before a legislative investigation on the issue of wiretapping may be prosecuted for perjury. He may, however, be exempt from the criminal charge of libel or slander for defamatory testimonies as these fall within the class of absolute privileged communication."
>
> "A witness may be granted immunity from prosecution under the Wiretapping Act, if, with his express consent, he is admitted to the witness protection program upon the recommendation of the committee where his testimony is needed and upon approval of the Speaker of the House, by virtue of Section 4, RA 6981."

Whether The Joint Committee, Without Incurring Liability Under Applicable Laws, Can Reproduce And Distribute To Its Members The Disc That Atty. Paguia Submitted During The Testimony And Which Was Played In Open Session

> "The Joint Committee can reproduce and distribute to its Members the disc that Atty. Paguia submitted during his testimony and which was played in open session without incurring liability under applicable laws. However, with respect to the subsequent use of the disc, especially outside the halls of Congress, we respectfully urge the judicious use thereof following jurisprudential standards of permissible official acts under the "speech and debate clause" of the Constitution."

5. Opinion of the House of Representatives' Reference and Research Bureau-Legislative Counseling Service dated 21 July 2005 detailing the ***"Procedure in Serving Subpoena And Warrant Of Arrest Issued By The House of Representatives;"*** *(Annex D8)*

6. Opinion of the House of Representative's Reference and Research Bureau-Legislative Counseling Service on the query: ***"May A Voice Screening Analysis Be Made On The Contents Of The "Gloriagate" Tapes Without Violating Any Law Or Rights Of Any Person?",*** dated 2 August 2005 concluding that voice spectograms "may still be employed by the Joint Committee without violating any law or rights of persons, when: (1) it is used mainly as an investigative tool; or (2) it is used merely to corroborate other methods of identification, such as those based on personal familiarity or circumstantial evidence;" *(Annex D9)*

7. Faxed letter dated 15 August 2005 from Dean Pacifico Agabin of the College of Law, Lyceum of the Philippines addressed to Chairman Gilbert C. Remulla rendering the following opinion ***"on the constitutionality of the Investigating Committees of the House issuing a subpoena duces tecum for the telephone records of the President Gloria Arroyo and Mr. Virgilio Garcillano":*** *(Annex D10)*

> "If my understanding is correct, your question should be answered in the affirmative. There is no constitutional prohibition against a telephone company revealing the telephone records of any person since these are not private records protected by the 'unreasonable search and seizure' clause nor the 'privacy of communication' protection of the Constitution or of any statute."

Audio Visual Materials:

1. ABS-CBN's VHS recording of the footages of the press conference of Secretary Ignacio Bunye where he presented two (2) alleged wiretapped tapes to the media; and, of the press conference of/interview with NBI Dir. Reynaldo Wycoco on the matter, submitted on 15 June 2005; *(Annex E1)*

2. GMA 7's DVD recording of the footages of the press conference of Secretary Ignacio Bunye where he presented two (2) alleged wiretapped tapes to the media; and, of the press conference of/interview with NBI Dir. Reynaldo Wycoco on the matter, submitted on 15 June 2005; *(Annex E2)*

3. One (1) Compact Disc (CDs) submitted by Atty. Allan Paguia on 22 June 2005 purporting to be copy of the alleged wiretapped tapes. Said CD containing a 32-minute taped conversations was marked as Paguia 1 and enclosed in a brown envelope, sealed and signed by the Chairpersons; *(Annex E3)*

4. Two (2) plastic audio cassette tapes submitted by Atty. Paguia on 5 July 2005 purporting to be the source tapes from which the 32 minute CD was copied from. Said tapes containing some 3 and ½ hours of taped conversations were marked as Paguia 2 and Paguia 3 and enclosed in a brown envelope, sealed and signed by the Chairpersons; *(Annex E4)* and

5. Four (4) CDs turned over on 5 July 2005 by NBI Dir. Wycoco, two (2) of which are the CDs turned over by Sec. Bunye to the NBI and labeled as Wycoco 1; and the other two (2) are copies of Sec. Bunye's CDs reproduced by the NBI and labeled as Wycoco 2. *(Annex E5)*

***Reference Materials and Other Documents*:**

1. Search Warrant dated 20 June 2005 granted by the court to the NBI for the raid of All Ways Graphics and Printing Press for violation of Article 154 of the Revised Penal Code submitted on 23 June 2005; *(Annex F1)*

2. Affidavit-Complaint of NBI agents who conducted the raid on All Ways Printing Press which yielded "thousands of posters, microfilms, plates, and other printing paraphernalia bearing the words 'PRESIDENT EVIL' and 'HUNYO 30 …MAMAMAYAN, HUMANDA KA'" submitted by NBI Agent Dominador Villanueva; *(Annex F2)*

3. Position Paper of the National Telecommunications Commission (NTC) submitted on 27 June 2005 where the agency denied ever issuing a Memorandum Circular prohibiting the airing of the allegedly wiretapped tapes in the broadcast media explaining that it merely "issued a reminder calling for sobriety among operators and management of all radio and television stations… and advised them to be careful and circumspect in the handling of news reportage, coverage of current affairs and discussion of public issues, by strictly adhering to the pertinent laws of the country, the current program standards embodied in radio and television codes, existing circulars of the NTC on the matter, and the terms and conditions of their authorizations;" *(Annex F3)*

4. *Curriculum Vitae* of Atty. Allan Paguia submitted on 30 June 2005; *(Annex F4)*

5. Inventory of Electronic Surveillance Equipment of the NBI submitted on 7 July by Rep. Jesus Crispin Remulla containing documents pertinent to the acquisition of the NBI of surveillance equipment in Y2000 such as: Inventory of Electronic Surveillance Equipment; Requests for

Obligation of Allotments; Letters requesting for Authority to purchase surveillance Equipment; Special allotment Release Order; Memorandum Receipts for Equipment, Semi-Expendable and Non-Expendable Property; Request for Approval from the President for funds for the acquisition of equipment; Disbursement Voucher, Quotation submitted by SETCOM, Inc.; Advice of NCA Issued; Certificate of Limited Warranty by SETCOM, Inc.; Certificate of Acceptance by the NBI; Xerox copy of check issued by the Treasurer of the Philippines.*(Annex F5)*

6. Report dated 3 June 2005 from Ernst F.W. "Rik" Alexanderson, Certified Voiceprint Examiner and President of Voice Identification, Inc., addressed to Saguisag Carao Law Offices submitted by Senator Francisco Tatad on 7 July 2005 reporting on the preliminary findings of the voiceprint analysis conducted on the male and female voices on the submitted wiretapped tapes comparing the same with the known voice samples of the alleged speakers; *(Annex F6)*

7. Report dated 9 June 2005 Ernst F.W. "Rik" Alexanderson, Certified Voiceprint Examiner and President of Voice Identification, Inc., addressed to Saguisag Carao Law Offices submitted by Senator Francisco Tatad on 7 July 2005 reporting on the results of their continued aural and spectrographic comparisons of the voices in the wiretapped tapes and on whether identified portions were "contiguous, uninterrupted and unaltered;" *(Annex F7)*

8. Xeroxed copies of the series of text messages handwritten on eleven (11) notebook pages of witness Marietta Santos submitted on 3 August 2005; *(Annex F8)*

9. Affidavit of NBI Regional Director Carlos Saunar dated 3 August 2005 submitted under oath refuting the testimony of NBI Dir. Wycoco that the electronic surveillance equipment in the possession of the agency was a "lemon" or "defective" with the pertinent inventory and memorandum receipts attached. *(Annex F9)*

10. Memorandum dated 15 September 2005 from NTC Commissioner Ronald Olivar Solis to Chairman Remulla submitting to the Joint Committee the NTC's reply to the queries of Reps. Tañada, Rosales, and Chipeco during the 3 August 2005 hearing. The queries of said Members concerned the circular about the importation of wiretapping equipment, the capacity of the NTC to wiretap and measures to ensure security of citizens, and the NTC memorandum on the prohibition of playing the tapes in media. *(Annex F10)*

11. Unnotarized and undated Sworn Statement of Atty. Virgilio O. Garcillano consisting of 4 pages with attached list of Persons who have talked to Atty. Garcillano, either personally or by phone. *(Annex F11)*

12. Xerox copy of Personal Data sheet of one Garcillano, Virgilio Olivar accomplished on 11 February 2004 consisting of 7 pages. *(Annex F12)*

13. Motion to Terminate Hearing submitted by Alagad Party List Rep. Rodante D. Marcoleta to the Joint Committee consisting of 2 pages dated 12 December 2005 praying that the hearings be terminated based on the reasons stated therein. *(Annex F13)*

14. Unnotarized Affidavit of Rep. Anthony C. Miranda signed on the 7th day of December 2005, stating among others, that he does not deny seeing in their respective offices not just Commissioner Garcillano but also commissioners Barcelona and Borra. x x x … *(Annex F14)*

15. Supreme Court's En Banc Resolution dated 6 December 2005 on the Petition of Atty. Garcillano to prevent the Joint Committee from submitting a Committee Report on the Supreme Court's En Banc Resolution dated 6 December 2005 (G.R. No. 170338 (Virgilio O. Garcillano

vs. the House of Representatives committees on Public Information, Public Order and Safety, National Defense and Security, Information Communications Technology and Suffrage and Electoral Reforms) and requiring respondents to comment on said petition within 10 days from receipt of notice, consisting of 5 pages with the attached petition filed by Virgilio Garcillano consisting of 35 pages. *(Annex F15)*

16. Comment of the Joint Committee on the Petition of Virgilio O. Garcillano (G.R. No. 170338) with cover memorandum from the Deputy Secretary General and Chief Counsel, Legal Affairs Department of the House of Representatives Atty. Leonardo B. Palicte III. *(Annex F16)*

17. Xerox copy of Commission on Elections En Banc Notice on Tony L. Benwaren, Petitioner versus The New Municipal Board of Canvassers of Tineg, Abra and Edwin Crisologo under SPS No. 04-297, consisting of 6 pages including its Resolution on said case. *(Annex F17)*

18. Xerox copies of documents re: Benwaren vs. MBOC, Tineg, Abra; Ex-Parte Motion to Resolve signed by Nicolas B. Nicolas, Counsel for complainants; Receipt of Case Records No. SPC 04-297; and COMELEC logbook page Nos. 24 and 25 *(Annex F18)*

19. Report on the Official/Personal Travel of COMELEC Commissioners submitted by Pio Jose S. Sioson, COMELEC Executive Director to the Joint committee with cover latter dated 13 February 2006 *(Annex F19)*

20. Record of Travel of COMELEC Commissioners from 1993 to 12 February 2006 submitted by Atty. Roy M. Almoro, Bureau of Immigration Executive Director to the Joint committee with cover letter dated 15 February 2006 *(Annex F20)*

Administrative Documents:

1. Letter dated 8 June 2005 from Minority Leader Francis Escudero addressed to Chairman Remulla deputizing Rep. Jacinto V. Paras of the 1st District of Negros Oriental as his representative/member in the Committee on Public Information; *(Annex G1)*

2. Letter dated 20 June 2005 from Majority Leader Prospero C. Nograles addressed to Chairman Remulla deputizing Rep. Marcelino C. Libanan of the Lone District of Eastern Samar as member of the Committee on Public Information; *(Annex G2)*

3. Letter dated 20 June 2005 from Deputy Secretary-General Emmanuel A. Albano of the HoR Public Relations and Information Department (PRID) addressed to Chairman Remulla granting the request of the Joint Committee for PRID to coordinate the media coverage of the hearings on the alleged wiretapped conversations; *(Annex G3)*

4. Fax letter dated 23 June 2005 from Deputy Speaker Raul V. Del Mar designating/deputizing Hon. Simeon A. Datumanong as his representative in the Committee on Public Information during the hearings on the wiretapping issue; *(Annex G4)*

5. Letter dated 23 June 2005 from Deputy Majority Leader Oscar L. Gozos addressed to the Chairmen of the Joint Committee deputizing Rep. Rodolfo W. Antonino of the 4th District of Nueva Ecija as member of the said committees; *(Annex G5)*

6. Xerox copy of a faxed letter dated 28 June 2005 from Bing Maano, Executive Producer of ABC-5's public affairs show "Real Stories Kasama si Loren" addressed to Chairman Remulla

requesting copies of transcripts and summary reports on all the hearings conducted on the wiretapping case; *(Annex G6)*

7. Copy of Letter dated 29 June 2005 from Speaker Jose C. De Venecia addressed to Majority Leader Prospero Nograles, deputizing Rep. Ma. Amelita C. Villarosa as his deputized member of the Committee on Public Information; *(Annex G7)*

8. Letter dated 29 June 2005 from Deputy Majority Leader Eduardo R. Gullas addressed to Chairman Remulla deputizing Rep. Nerissa Soon-Ruiz of Cebu as member of the Committees on National Defense, Public Information and Suffrage for the 29 June 2005 hearing; *(Annex G8)*

9. Copy of Letter dated 29 June 2005 from Deputy Speaker Emilio R. Espinosa, Jr. addressed to Majority Leader Prospero Nograles, deputizing Rep. Edgar M. Chatto as member of the Committee on Public Information; *(Annex G9)*

10. Copy of Letter dated 29 June 2005 from Deputy Speaker Gerry A. Salapuddin addressed to Majority Leader Prospero Nograles, deputizing Rep. Salacnib F. Baterina as his deputized member of the Committee on Public Information; *(Annex G10)*

11. Letter dated 29 June 2005 from Deputy Majority Leader Danton Q. Bueser addressed to Chairman Remulla deputizing Rep. Alfonso V. Umali, Jr. as member of the Committee on Public Information; *(Annex G11)*

12. Letter dated 29 June 2005 from Rep. Loretta Ann Rosales, addressed to Ms. May Araneta, Committee Secretary, Committee on Public Information, requesting copies of the transcripts of the ongoing hearings taken from the beginning including future hearings; *(Annex G12)*

13. Copy of Letter dated 4 July 2005 from Deputy Majority Leader Fredenil H. Castro addressed to Majority Leader Prospero Nograles, deputizing Rep. Rolando G. Andaya, Jr. as his deputized member of the Committee on Public Information and Suffrage and Electoral Reforms; *(Annex G13)*

14. Letter dated 13 July 2005 from Gemma B. Bagayaua, Staff writer of Newsbreak addressed to Chairman Remulla requesting permission to photocopy or secure soft copy of the transcripts of the ongoing wiretapping hearings; *(Annex G14)*

15. Letter dated 21 July 2005 from Col. Leonilo R. Lesava Liaison Officer, Office for Legislative Affairs, Dept. of National Defense addressed to Congresswoman Belma A. Cabilao, requesting five (5) copies of the CDs which would be used in the investigation of AFP officers and enlisted men mentioned in the tape, with handwritten side comment: "request one (1) copy only;" *(Annex G15)*

16. Letter dated 19 September 2005 from Rep. Tomas Dumpit to Chairman Remulla requesting copies of the response letters from DFA, BI, and other agencies concerning Mr. Garcillano's whereabouts and other pertinent data. *(Annex G16)*

17. Letter dated 15 November 2005 from Rep. Teodoro Casiño, Bayan Muna Parti-list addressed to Ms. May M. Araneta, Committee Secretary, Committee on Public Information, requesting a copy of the reports of Voice Identification, Inc. submitted by Sen. Tatad to the Joint Committee. *(Annex G17)*

18. Letter dated 30 November 2005 addressed to Hon. Emmylou C. Taliño-Santos, Chairperson of the Committee on Public Information, from Hon., Roilo Golez, requesting that the Joint

Committee invite Mr. Michael Angelo Zuce; Capt. Marlon Mendoza and Justice Secretary Raul Gonzalez to the hearing on 7 December 2005. *(Annex G18)*

19. Letter dated 1 December 2005 addressed to Chairperson Taliño-Santos from Rep. Prospero A. Pichay, Jr., signed by his Political Affairs Officer V. Maria Monica V. Valdes, requesting a copy, of the *Note Verbale* from the Singaporean Embassy, correspondences with the Department of Foreign Affairs and the report of the Department of Justice and other pertinent materials regarding Mr. Garcillano's case. *(Annex G19)*

20. Letter dated 12 December 2005 addressed to Chairperson Taliño-Santos from Rep. Arnulfo P. Fuentebella, requesting a copy of the audio recording and transcript of the Congressional hearing on wire-Tapping last December 7, 2007. *(Annex G20)*

21. Xerox copy of a Petition entitled: "Entry of Appearance with Motion for Extension of Time to File Comment" signed by Atty. Leonardo B. Palicte III, Counsel for Public Respondents House of Representatives' Committees on Public Information, Public Order and Safety, National Defense and Security, Information Communications Technology and Suffrage and Electoral Reforms on the petition of Com. Virgilio Garcillano with the Supreme Court's G.R. No. 1700338 for Prohibition and Injunction with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, consisting of 4 pages. *(Annex G21)*

22. Letter from Ma. Luisa D. Villarama, Supreme Court Clerk of Court to the Joint Committee Received 6 March 2006 by Registered Mail informing the Joint Committee of the Supreme court Resolution dated 24 January 2006 to a) Note the Entry of Appearance dated 12 December 2005 filed by Atty. Leonardo B. Palicte III as counsel for public respondents; and b) Grant the Motion of Atty. Palicte III for an extension of thirty days or until January 16, 2006 within which to file a comment. *(Annex G22)*

23. Letter from Ma. Luisa D. Villarama, Supreme Court Clerk of Court to the Joint Committee received 13 March 2006 by Registered Mail informing the Joint Committee of the Supreme court Resolution dated 7 February 2006 to a) Grant the Motion dated January 16, 2006 filed by counsel for public respondents Chief Counsel and Deputy Secretary General for Legal Affairs, House of Representatives, for a second extension or until January 31, 2006 within which to file a comment on the petition; b) Note the aforesaid Comment filed in Compliance with the resolution of December 6, 2005; and c) Require the Petitioner to file a reply to the above Comment within ten (10) days from notice hereof." *(Annex G23)*

24. Letter from Ma. Luisa D. Villarama, Supreme Court Clerk of Court to the Joint Committee received 15 March 2006 by Registered Mail informing the Joint Committee of the Supreme court Resolution dated 14 February 2006 to expunge from the records the Letter dated February 9, 2006 of Jonathan M. Tiongco, Certified Audio Forensic Analyst, STC, considering that Mr. Tiongco is not a party to this case (GR No. 170313 – Virgilio O. Garcillano vs. The House of Representatives and the House of Representatives Committee on Public Information, et al.) *(Annex G24)*

Privilege Speech:

Privilege Speech (including interpellations thereof) of Rep. Francis Escudero, dated 8 June 2005, on the "Tale of the Two Tapes" *(Annex H1)*

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee conducted fourteen (14) public hearings on the inquiry in-aid-of legislation arising from the 8 June 2005 Privilege Speech of the Minority Leader, Rep. Francis Escudero entitled the "Tale of Two Tapes." Of thirty-six (36) invited witnesses and/or resource persons, only eighteen (18) were able to testify and/or provide their inputs[297]. Witness Samuel Ong, subpoenaed twice, never appeared in the hearings.

Atty. Ong sent his lawyer to the public hearings to inform the Joint Committee that fear for his own safety prevented Ong from personally appearing before the Members. Ong had also, through his lawyer, offered a copy of what has been billed the "mother of all tapes" and the videotape allegedly showing T/Sgt. Vidal Doble admitting that he is the person responsible for the wiretapping. Doble denied this in his testimony, admitting only that he was paid by Atty. Ong the handsome sum of two million pesos (Php 2M) to say on video that he was the source of the wiretap. The Joint Committee declined to accept the materials because without Ong's personal appearance and testimony, these have no probative value. Ong went into hiding and has never reappeared since.

The other important witness, former COMELEC Commissioner Atty. Virgilio Garcillano, completely ignored the Joint Committee during the first six months of the hearings. He even flaunted his disdain by consenting to be interviewed while in hiding by a national newspaper. In that interview, he denied it was his voice in the tapes. Nothing stopped him from appearing before the Joint Committee and unequivocally deny it was his voice in the tapes or that the alleged taped conversations had taken place at all. Instead, Garcillano also went into hiding. It was rumored he fled the country. The government of Singapore issued a *note verbale* that a certain Virgilio Garcillano had transited through Singapore from Manila on to a Singapore airlines flight to London. Whether he was in the country throughout the period he eluded the Joint Committee's summons or left for abroad for that purpose is irrelevant. What is critical is that flight is a sign of guilt.

The Joint Committee cited Garcillano for contempt and the House of Representatives issued a warrant for his arrest on 3 August 2005. In late November 2005, Garcillano suddenly reappeared and granted an interview with ABS-CBN and to a national newspaper. On 7 December 2005, he voluntarily appeared before the Joint Committee to testify on the issues raised in connection with the so-called Garci tapes. He, however, steadfastly refused to throw any light on the matter citing *sub judice* and his right against self-incrimination. His petition with the Supreme Court to stop the Joint Committee from coming out with a report on the tapes is yet unresolved. He unwaveringly refused to give responsive answers to the questions propounded by the Members of the Joint Committee, except on the issue of whether he had left the country. He produced two clean passports for that purpose, a current one and the one previous.

Despite Garcillano's obstinate silence on key issues, and the absence of Ong, the public hearings generated enough information for the Joint Committee to make what it feels are relevant recommendations, particularly on corrective legislation and policy initiatives that Congress might undertake in the short term.

The Joint hearings probed several issues. Foremost among these were the issues concerning violations of Republic Act 4200 or the Anti-Wiretapping Law, the conduct of the 2004 elections and the alleged rigging of the election returns to favor President Gloria Macapagal Arroyo, along with the seeming lack of concern from police and intelligences agencies over the possible

[297] Justice Pangalangan and Fr. Bernas were not able to attend the hearing due to prior appointments but nevertheless, sent their written position papers.

wiretapping of the President, who might have been responsible, as well as the alleged involvement of the opposition with regard to the publication of the so-called Garci Tapes.

Based on testimonies of witnesses and documents submitted, the Joint Committee recommends the following:

1. The Committee on Public Order and Safety, in coordination with the Committees on Justice and National Defense and Security, shall undertake a comprehensive study and review of Republic Act No. 4200 or the Anti-Wiretapping Law and recommend the appropriate amendments thereto or the enactment of a new law, particularly with regard to further enhancing legal protection for the confidentiality of private communications while making allowances for communication that jeopardize the national interest, increasing the severity of penalties in both situations;

2. The Committees on National Defense and Security and Public Order and Safety should exercise its oversight powers on how government handles intelligence information, as well as review the capabilities of intelligence agencies to conduct surveillance and communications intercept operations to fight crime, while increasing accountability for the misuse of these capabilities. Congress, through appropriate legislation, should promote professionalism in the Armed Forces of the Philippines and other national security agencies and exercise its confirmation powers more judiciously in the matter of appointments and promotions in these departments.

3. Enact the "Cyber-crime Prevention Act" to deter illegal access and/or interception of communications systems and networks. Tighten its safeguards and ensure that these will promote privacy rights, including criminalizing both the disclosure and the publication of illegal wiretapped material.

4. The Committee on Suffrage and Electoral Reforms shall undertake a comprehensive study and review of the Election Laws, and recommend the appropriate amendments thereto which shall address gaps in the electoral process that enable the perpetration of electoral fraud and encourage improper conduct by election officials and candidates. Strongly advocate for and pursue legislation on the automation of Philippine elections.

5. The appropriate committees should continue investigating the possibility that former COMELEC Commissioner Virgilio Garcillano fled the country while eluding Congress and may have committed forgery and perjured himself before the Joint Committee when he denied leaving the country. Recommend the prosecution of persons or entities that may have assisted in his flight abroad if such is shown. To be sure, the Bureau of Immigration has certified per its records[298] that the last time Garcillano left the country was in 1993. Nonetheless, a review is called for of the rules and regulations of the Department of Foreign Affairs, Bureau of Immigration, Air Transportation Office, Aviation Security Group and other air or sea transportation agencies covering the arrival and departure of public or private aircraft and seacraft to identify system shortcomings and procedural loopholes that might permit unrecorded foreign arrivals and departures;

6. Recommend to the Inspector General of the Armed Forces of the Philippines to take appropriate action against TSgt Doble for his violation of the AFP Articles of War and Code of Ethics.

[298] See Annexes B25 and F20

7. The House of Representatives to severely reprimand the AFP-ISAFP and the NBI for their cavalier attitude to the so called Garci Tapes and the possibility that the President was the victim of the wiretap operation resulting in a breach of national security;

8. The House of Representatives to cite Atty. Samuel Ong for contempt and cause the issuance of a warrant for his arrest. Admonish the law enforcement agencies to exert all efforts to discover his whereabouts and present him to Congress.

9. The appropriate committee to study whether there is a need for a special law penalizing public officials for deliberately making false statements even in circumstances that do not amount to perjury.

10. The House of Representatives to continue to seek the answers to other issues arising from the hearings, and in particular, subpoena phone records to establish the likelihood or unlikelihood that the alleged wiretapped conversations could have taken place.

Republic Act No. 4200 or the Anti-Wiretapping Law.

The existence of the so-called Garci Tapes highlighted two important concerns, to wit: the opposing interests of an individual's right to privacy and the right of the public to know matters of direct and intense public interest, such as election fraud.

RA 4200 was enacted for the precise purpose of protecting without any exception whatsoever the privacy of communication. The 1935 Constitution, the prevailing Charter at the time RA 4200 was passed in 1965 provided that:

> *"The privacy of communication and correspondence shall be inviolable except under lawful order of the court or when public safety and order require otherwise." (Article III, Section 5 of the Bill of Rights)*

This same right was again enshrined in the 1973 Constitution specifically in Article IV, Sections 4(1) and (2) which state that:

> *"The privacy of communication and correspondence shall be inviolable except under lawful order of the court or when public safety and order require otherwise."*
>
> *"Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."*

These same provisions are likewise guaranteed in the present 1987 Constitution, Article III, Section 3(1) and 2).

Accordingly, any illegally wiretapped recording of a conversation in violation of RA 4200 "shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation" (Section 4, RA 4200). This ban is all encompassing and must include "any proceeding" as provided for in the Constitution. Consequently, the ban extends to congressional investigations and possibly even impeachments.

The foregoing prohibition is lifted or does not apply in only two instances, namely: (1) when all parties have authorized the recording (Section 1 of RA 4200); and (2) when the wiretapping is authorized by a written order of a competent Regional Trial Court upon

written application and examination under oath or affirmation "in cases involving crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code,[299] and violations of Commonwealth Act No. 616,[300] punishing espionage and other offenses against national security" (Sec. 3 of RA 4200). In short there is only one legal basis for publishing or otherwise using a wiretapped conversation, and that is if it was authorized by a court order.

What is protected is the privacy of communication irrespective as to whether the parties are private persons or public officials. However, if the conversation or spoken word is uttered in a public manner, the protection does not apply. This legislative intent is clear in Senate deliberations on the law.[301]

In *Navarro v. Court of Appeals* (GR No. 121087, August 26 1999) the Supreme Court had the occasion to distinguish between private and public communications, describing the latter as the kind conducted in a manner that the parties to the conversation know and will allow it to be overheard. The public character as opposed to the privacy of communications has nothing to do with the contents of the same.

This brings us to the issue of how R.A. 4200, could be enforced without requiring the subject of an illegal wiretap to come out publicly by filing a complaint, thereby linking the embarrassing contents of an illegal wiretap with himself or herself. It was repeatedly stressed by legal experts that the President's failure to come forward and formally complain against the illegal wiretap and order the prosecution of the same—indeed her refusal to seek a judicial injunction against its playing, not to mention mass reproduction and sale—meant that the law was not broken because no one had come forward as a victim of the crime.

Yet violation of RA 4200 is a public crime, the offended party should be the State or the People of the Philippines. Thus the law should be enforceable even without a particular complainant and even against those who so much as claim to be uttering illegal wiretap recordings without need of having to authenticate the same. This is debatable, probably intensely so, but the law might be amended to allow for another distinction to be legally recognized between the public and private character of conversations, so as to allow the evidentiary admission of wiretapped conversations; and that is if it would serve a critically important public interest such as the prosecution of impeachable or national security offenses. Whether we should allow the admission of even illegally wiretapped conversations on these limited grounds turns on how Congress weighs the competing interests of privacy on the one hand and the need to deter the use of new technology to further political crimes like election fraud. In short, are public officials entitled to the privacy of their conversations involving solicitations to crime?

As the law now stands, mere possession let alone manufacture, not to mention publicity of illegally wiretapped material is criminal. And yet the rapid and extensive proliferation of the so-called Garci tapes, in willful disregard of the patent illegality of the same, in addition to their being publicly played by a Joint Committee of Congress, has, in our view, eroded the authority and credibility of the law. Either the severe and all-encompassing character of RA 4200 is reaffirmed by new legislation or relaxed to accommodate the politically charged character of illegal wiretaps, such as that of the so-called Garci tapes.

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299 Article 267, Title Nine, Chapter One, Section One of the Revised Penal Code

300 CA No. 616 – An Act to Punish Espionage and Other Offenses Against the National Security

301 See House of Representatives Archives, p. 626, Congressional Record Vol. III, No. 33 (RA 4200 [SB9] Infopack 5 CRP)

The belated appearance of Garcillano and his unwavering refusal to give responsive answers to any questions relating to the so-called Garci tapes showed how wrong the Committee, the opposition, the public and the press were to have put so much importance on Garcillano's testimony**.**

Where the constitutional mandate of the Committees to conduct the inquiry comes into conflict with public interest and privacy issues that may be invoked under the law, the Committees were guided by the opinions of the country's legal experts as follows:

> "*The right to privacy protected by the Constitution under RA 4200 must be balanced against the right of the people to information under the Constitution."*
>
> *"… nothing is more vital to the democratic polity than the issue of who was elected president in the last elections and whether or not the democratic processes have been distorted. Now that the president has authenticated the tape and admitted that hers is the voice on the tape, it is imperative that the people should get to know what their President had told a member of the independent constitutional commission and what the latter had replied."*[302]
>
> "*The contents of the alleged wiretapped materials are not merely of private concern; they are matters of public interest." … "Privacy concerns must give way when balanced against the interest in disseminating information of paramount public importance."*[303]

The Joint Committee does not adopt as definitive any or all of the legal opinions offered. At least one of them appears to be based on a misreading of the celebrated case of *New York Times Co. v. United States [The Pentagon Papers Case]* which qualified its decision to allow publication of so-called national security documents in the interest of the public's right to information and freedom of expression by adding, through Justices Douglas and Black, that "[t]here is, moreover, no statute barring the publication by the press of the material which the *Times* and *Post* seek to use." While Justices Stewart and White, stressed that "[I]n the cases before us we are asked neither to construe specific regulations nor to apply specific laws. We are asked instead to perform a function that the Constitution gave to the Executive, not the Judiciary."

But in the Philippines, there is such a statute barring the public disclosure of certain information; to wit, Republic Act 4200. So that the situation would be akin to that in *Snepp v. United States*, where the Court held that the failure of a CIA agent—who had signed a confidentiality agreement with the CIA yet failed to get CIA permission for the publication of his memoirs—even if the government conceded that they divulged no confidential information—created a constructive trust over the proceeds of the publication in favor of the government. If that was so with regard to a general law like contracts, what more a specific enactment such as R.A. 4200.

In any case, the Joint Committee ultimately voted to play the tapes on the insistence of the majority of its members for tactical political reasons. And it did so with the repeated caveat that the Joint Committee was not treating them as authentic, or that their content was true or admissible as evidence for any purpose. It was listening to the tapes merely as part of the narrative of the witnesses who presented the same or as "reference materials." It must be noted that the Joint Committee made no disclaimer to the witnesses about their criminal liability for introducing the tapes or admitting to handling them so that they testified at their

302 Excerpts from submission of Dean Pacifico Agabin; For whole text, see Annex D2

303 Excerpts from submission of Fr. Joaquin Bernas, SJ, see Annex D3

peril. Yet, curiously, the government has shown no interest in prosecuting these clear violations of law.

The so called Garci tapes were played in open session. But to what effect this has on the authority of the law has yet to be determined. Fr. Bernas had suggested that it would be more prudent for the tapes to be played in executive session to minimize the legal fallout. Did the playing of the tapes in public by the law-making branch of government effectively create an exception to the blanket prohibition in R.A. 4200 to the use of the products of illegal wiretaps? Do we have here an implicit congressional repeal? Might it be said that the production and playing of the Garci tapes in Congress and by Congress decriminalized the same, so that it can now be authenticated by the admission of those who conducted the wiretap without peril of prosecution? Can the contents of the tapes as captured in the House of Representatives transcripts of stenographic notes be now received in evidence for purposes of congressional proceedings, such as impeachments, or a prosecution for election fraud? Is there a need to reenact the anti-wiretapping law because of what transpired in the joint hearings? Perhaps these questions will get definitive answers when a comprehensive review of the law is finally undertaken in more sober circumstances**.** But to be consistent, the Congress that played admittedly illegal wiretaps should proceed to legislate a legal exception for itself.

The hearings also showed the deficiencies of RA 4200 as a potentially powerful legal tool in the prevention, detection and prosecution of serious crimes.[304] Enacted on 19 June 1965 and never amended since, the concerns raised during the discussions show that the law needs to be updated to accommodate unanticipated improvements in communications technology, as well as unprecedented political situations, particularly on the following provisions and salient concerns:

1. In Section 1 of RA 4200, the modes of communication that can be open to legitimate wiretapping appear to be limited by the prevailing technology at the time of its enactment – *"…to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dectaphone or walkie-talkie or tape recorder,…"*[305] It could be construed as having failed fatally to anticipate novel technologies and services such as digital or wireless communication. In the strict construction required of penal laws, this shortcoming could favor the accused and prove fatal to a criminal prosecution based even on authorized wiretaps.

   Novel and unanticipated wiretapping technology at the time of the law's enactment might be deemed excluded from the penal law's strictly circumscribed coverage. Still, we are satisfied that, in the present case of the so-called "Garci tapes," the phrases "*any other device or arrangement, to secretly overhear intercept or record"* adequately covers even the new technology by which the Garci tapes may have been made. We can conclude, therefore, that the recording of the same is fully covered by the existing language of the law. Nonetheless, a clearer language covering to both existing and future possible technologies *via an amendment or new law may be called for*; (italics supplied)

2. Section 3 of the same law only specifies a limited range of crimes for which legitimate wiretapping can be sought, to wit,"*… crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy, …"*[306] This covers mostly national security offenses. The emergence of organized crime groups

[304] Recommendations herein from the Committee on Public Order and Security
[305] First paragraph, Section 1, RA 4200
[306] First paragraph, Section 3, RA 4200

that are able to exploit modern digital telecommunications has put law enforcement at a distinct and severe disadvantage. For example, it is virtually impossible to conduct a drug buy-bust operation with cellular phones able to alert the suspects to pull out of a "deal" before police agents can swoop in. The new and eminently portable communications technology has greatly enhanced the ease and impunity with which other serious crimes can be committed.

An amended law should now include drug trafficking, bank robbery, kidnap-for-ransom, human trafficking, white slavery, child pornography, illegal recruitment, including acts constituting impeachable offenses as some of the crimes which could be covered by a court order authorizing wiretapping.

3. The NBI has denied possessing even the capability to conduct interception and other wiretapping activities. While the ISAFP has admitted that it can tap landlines or land based cable/wire phones, it has likewise denied any capability to wiretap cellular telephones. Both the major telecommunications companies, Globe and Smart, have also denied possessing equipment capable of conducting electronic intercepts or of having allowed at any time in the past the use of their equipment by law enforcement agencies authorized to conduct the same for the prevention or detection of crimes, such as kidnapping.

   It would be frightening to believe the ISAFP's and the NBI's firm assertions of technical impotence in the field of modern surveillance. It would put the country on the watchlist of countries abetting, deliberately or by neglect, organized crime such as drug trafficking and terrorism.

   The Joint Committee believes that the following needs to be done: 1) Congress should make sufficient budgetary allocations to enable law enforcement and national security agencies to conduct modern surveillance and, equally imperative 2) strictly control and monitor the possession, acquisition and use of modern surveillance instruments by these agencies, severely punishing their unauthorized acquisition and use, extending to their publication. It was the sense of Congress in a recent and related piece of legislation, to wit, RA 9160, as amended, The Anti-Money Laundering Law, that one of the most effective ways of protecting the confidentiality of records and communications is to explicitly and severely penalize their disclosure and publication. RA 9160 therefore included the media within the scope of the prohibition and made it liable for the publication of confidential information, with the aim of discouraging the extortion and blackmail of public officials and private persons by media practitioners.[307]

4. R.A. 4200 does not explicitly mandate the cooperation and assistance of telecommunications service providers or other similar private entities equipped with up-to-date equipment and facilities through which electronic surveillance might be conducted.

   Several countries such as the United States, Canada, the United Kingdom, and Puerto Rico, have enacted laws giving legal authority to law enforcement agencies to conduct surveillance and intercept communications, and for that purpose obligating telecommunication carriers to assist in this endeavor, subject to judicial authorization. This is called the "Communications Assistance for Law Enforcement Act" or the CALEA.

[307] See RA 9160, as amended, Section 9(c), Reporting of Covered Transactions

A provision responsive to this issue is included in several proposed bills under deliberation in plenary. The Joint Committee believes and recommends, however, that this specific matter should be further studied. The Committee on Public Order and Security and the Committee on Justice should undertake a comprehensive study and determine whether we need similar legislation in this area.

National Security[308]

The Joint Committee was not able to establish that the ISAFP or the NBI were responsible for the Garci tapes which involved cellular phone conversations. Both denied the technical capability to do it. But the Joint Committee uncovered that at least one such equipment — GSM Cellular Phone Interceptors and Transmitters capable of intercepting digital cellular phones — existed in the NBI. On 7 July 2005 Rep. Jesus Crispin Remulla submitted documents showing the acquisition of such equipment in Y2000/2001, thus showing that, at one time, the NBI had it. NBI Director General Wycoco denied the NBI's capability to wiretap "at the moment," though he later qualified his statement by saying that such equipment as the NBI had was, as he put it, a "lemon.[309]"

But, according to the affidavit of NBI Regional Director Carlos Saunar, these particular wiretapping equipment were handed over to Atty. Samuel Ong on 4 July 2001 and on 30 July 2001 or immediately thereafter upon the verbal instructions of Wycoco. Atty. Saunar stated in his affidavit that at the time of turnover to Atty. Ong, the equipment did work. Ong's refusal to appear in person denies Saunar's testimony the corroboration it needs.

The Joint Committee had received information that some of our law enforcement and other intelligence agencies such as the former Presidential Anti-Organized Crime Task Force (PAOCTF) or its spin-off, the current Presidential Anti-Crime and Emergency Response (PACER) do have the capability to intercept communications on digital cellular phones, which are being used for anti-kidnapping and anti-terrorists operations.[310] But it is unable to say with any confidence if the information is true. It may just be a useful fiction intended as a deterrent to the use of cellular phones in crimes.

The Joint Committee is fairly certain that, whatever the condition of the wiretap recordings—original or altered—it was former COMELEC Commissioner Virgilio Garcillano who was the subject of the wiretap and not the other parties he was allegedly conversing with. Only Ong's direct testimony on the manner in which the wiretap was conducted could have established the truth. The closest that the Joint Committee might have come to the truth was by consulting the phone records of the alleged parties to the alleged wiretapped conversations, contemporaneous with the time the same are alleged to have taken place. A legal opinion submitted by Dean Agabin stated that the phone companies could submit these phone records without violating the privacy of the persons involved.[311] But time had run out on the Joint Committee. As Congress prepared to reconvene, the action shifted to the 2005 impeachment proceedings.

Regardless of who was the intended victim of the interception, the Joint Committee is very much concerned that the President of the Philippines and other high officials of the government can be victimized by wiretaps. Such activities can compromise national security,

308 Recommendations herein from the Committee on National Defense and Security
309 Refer to pertinent excerpts of Wycoco's testimony above or to the 7 July 2005 TSN
310 See Doble's testimony above
311 See Annex D10

not least by exposing these officials to blackmail and extortion that would, most likely, affect the performance of their duties and subvert their fidelity to the public trust.

There is compelling reason to conduct a review of not only the capabilities of law enforcement agencies to conduct effective surveillance and intercept operations, but also the manner in which classified information or intelligence materials are handled and treated. Specifically, the following should be given importance:

1. Conduct an audit of existing technological capabilities of law enforcement and national security agencies for wiretapping and other forms of electronic surveillance;

2. Review how the above agencies handle intelligence material. That the wiretapped material in question, if authentic, may have been leaked, sold and otherwise illegally disclosed, for whatever purpose, underscores the careless, cavalier, not to say criminal fashion in which intelligence material is handled by the military. This is eloquently exemplified by General Quevedo's testimony that although he had heard about the CDs, these did not appear important to them (ISAFP) and were even surprised when the CDs were presented to the media.[312] At the time of his testimony on 13 July 2005, he had not bothered to listen to the CDs.

   Similarly, the NBI averred utter indifference toward what could well be a wiretap of presidential conversations and refused to budge or even consider investigating the provenance of the so called Garci Tapes even after they blossomed into a full-blown political crisis marked by bitter political divisions, as well as shameless dodging of the issues on one hand, and grandstanding on the other.

   Both agencies are hereby reprimanded for their cavalier attitude toward a development that, unchecked, swelled into a national crisis. Even if the so-called Garci tapes had not been authenticated, the fact that it sounded like the President's voice in the wiretapped conversations and the apparent breach in security should have been a cause for grave alarm.

3. In relation to the above, there is, too, the case of T/Sgt. Doble, who according to his testimony, was approached by Ong to "own up" to the wiretapping in exchange for two million pesos. This happened in the Imperial Hotel on Timog Avenue, which is highly identified with the entertainment industry. He was, however, contradicted, by his lover, Marietta Santos, who testified that it was, in fact, Doble who sold the tapes to Ong for the said amount in that hotel. Regardless of who was telling the truth, Doble should be held accountable for his actions in this issue. As an officer in the Philippine Air Force, and as an agent of ISAFP, his participation in this drama raises questions about his integrity and conduct. Doble must be held liable for violations of the Articles of War, as amended, specifically Articles 63, 67, 84, 95, and 97 and the AFP Code of Ethics, Sections 1.2 and 2.8 of Article III and Sections 3.1, 4.1.2, 4.1.3 and 4.4.8 of Article V.[313]

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312 13 July TSN, pp. 97-98, EHM/XXVIII-1-2

313 Commonwealth Act No. 408, as amended – Articles of War
Article 63. Disrespect toward the President, Vice-President, the Congress of the Philippines or the Secretary of National Defense. – Any Officer who uses contemptuous or disrespectful words against the President, Vice-President, the Congress of the Philippines or the Secretary of National Defense shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct.
Article 67. – Mutiny or Sedition. – any person subject to military law who attempts to create or who begins, excites, causes or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

4. The Committee on National Defense and Security shall exercise its oversight powers and conduct further investigation into the management of intelligence information. In the matter of the subject tapes, their authenticity should be firmly established or definitively disproved to the extent possible, and their real provenance established, so that if the intelligence agencies are shown to have been involved, the officials concerned should be held accountable.

5. Congress should endeavor to promote and preserve professionalism in the AFP and other national security agencies. Legislation should institutionalize these reforms. Congress, particularly the pertinent committees, should exercise oversight powers more firmly, demand higher standards, and conduct a sharper scrutiny of the appointment and promotion of officers in the AFP and other agencies involved in national security.

Technology[314]

Recent years have seen the rapid emergence of new technologies enabling swifter and more effective communications processes and systems. With more than thirty (30) million subscribers, digital cellular phones have become the preferred means of communications because of its ease, versatility, and portability.

While the Joint Committee agrees that unauthorized wiretapping is flatly and universally prohibited by RA 4200, it also recognizes that wiretapping, properly authorized, can be a powerful tool for the detection and prevention of crimes that have been thriving as never before thanks to the technological advances in communications.

The alleged wiretapping of a COMELEC Official and a President, or any other persons for that matter, poses serious concerns about the use of the increasingly sophisticated technology of cellular phone communications. The Committee on Information Communications Technology which has been deliberating on cyber-crime issues has recently approved the proposed "Cyber-Crime Prevention Act of 2005" which aims to promote the development, application and exploitation of information and communications technology. The proposed law at the same time seeks to protect the integrity of wire and wireless computer and communication systems against all manner of abuse, misuse and illegal access. Penalties and sanctions are provided for illegal access and illegal interception of communications systems and networks.

The Committee on Information Communications Technology shall undertake further studies on how the proposed anti-cyber-crime law can complement other legislative proposals

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Article 84. Military Property – Willful or negligent loss, damage or wrongful disposition. – Any person subject to military law who willingly or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military belonging to the Philippines shall make good the loss or damage and suffer such punishment as a court-martial may direct.

Article 95. Frauds against the Government affecting matters and equipment. - Any person subject to military le who,
x x x

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence, stores, money, or other property of the Commonwealth of the Philippines furnished or intended for the military service thereof; or
x x x

Article 97. General article. – Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military disciple and all conduct of a nature to bring discredit upon the military service shall be taken cognizance of by a general or summary court-martial according to the nature and degree of the offense and punished at the discretion of such court.

[314] Recommendations herein from the Committee on Information Communications Technology

intended to rationalize authorized communications interception such as the CALEA. The committee must consider further the deterrent value of increasing the severity of penalties imposed for violations.

The Electoral Process[315]

Nothing strikes harder and deadlier at the life of democracy than the subversion of that singular process by which democracy realizes itself: to wit, the conduct of honest elections. Any serious doubt about the integrity of the electoral process calls into equally severe question the legitimacy of the government that claims to govern by virtue of that electoral process, destabilizes the country, and generates a civil discord impervious to peaceful resolution.

Philippine elections, particularly for the highest office in the land, the Presidency, suffer under the most profound disrepute. It has become conventional wisdom that a presidential challenger must win by an overwhelming majority of the votes to overcome the assumption of a certain amount of institutional fraud favoring the incumbent. In this context, it is virtually impossible to gain a credible mandate in a close election, so that the "winning" party must spend an inordinate amount of time, energy and resources defending his or her "victory" which remains ever in doubt and subject to challenge.

While Philippine elections are often doubted, the Joint Committee hearing was never able to determine how exactly allegedly corrupt COMELEC officials committed fraud in the last election at the alleged behest of the President. The controversy over the alleged wiretap was so tightly and vehemently focused on the tapes' possible provenance, which was never established—and on their contents, which were arguably inadmissible in evidence—that the question was never asked let alone answered whether any fraud actually took place that might be linked to the alleged illegally wiretapped conversations. It was just assumed that the conversations, if true, surely resulted in the commission of election fraud.

The low credibility of Philippine elections is in part the result of corrupt election officials and in part systemic. Thus significant electoral reforms must be institutionalized in the shortest possible time to improve and simplify the process, as well as restore the faith of the voters and political participants in our electoral process. The Committee on Suffrage and Electoral Reforms must press harder for major reforms of the current electoral system in the following areas:

1. A thorough analysis of the current electoral system and its present legal framework [316] to determine specific areas where the issues raised during the hearings can be addressed. In particular, Article XXII, Sections 261[317] and 264[318] of the Omnibus Election Code should be revisited to provide stiffer penalties for government officials and officials and employees of the COMELEC who are found guilty of election offenses such as tampering or conniving to tamper with election results.

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315 Recommendations herein from the Committee on Suffrage and Electoral Reforms

316 Batas Pambansa Blg. 881 (Omnibus Election Code); Republic Act No. 7166 (Synchronized Elections Law); Republic Act No. 6646 (The Electoral Reforms Law of 1987); Republic Act No. 9189 (Overseas Absentee Voting Act of 2003); Republic Act No. 8189 (Voter's Registration Act of 1996); Republic Act No. 7941 (Party-List System Act); Republic Act No. 9006 (Fair Election Act); Republic Act No. 8436 (Automated Election Law)

317 Prohibited Acts (election offenses) in BP Blg. 881

318 Penalties in BP Blg. 881

2. A study should be conducted on how to treat contact between candidates and officers of the COMELEC during election periods. Much of the controversy over the tapes converged on the alleged conversations of the President with a COMELEC Commissioner during the vote counting period. Section 261 does not contain any provision on this subject. Although Section 3 of RA 3019 – Anti Graft and Corrupt Practices Act – criminalizes certain acts, there is no specific provision covering the conduct of candidates and election officials during election periods. Neither does Republic Act 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, contain a provision covering this situation. A determination should be made on whether or not to criminalize such contact as candidates have the right to protect their votes. We are not certain that a flat-out prohibition would promote clean elections, for that would leave candidates at the mercy of election officials whom they suspect or worse know to be committing election fraud against them.

3. Much of the controversy about election fraud can be attributed to the outdated Philippine election process and system, although West European elections, which have not been questioned in living memory, are conducted in pretty much the same antiquated manual fashion. There have been repeated reform proposals for the automation of elections at every stage, from voter registration to vote count and final tabulation. But the same doubts bedevil these proposals, which are suspected of merely accelerating election fraud by electronic means. At any rate, the existing law on automation, Republic Act no. 8436, has been criticized for being too specific on the equipment without regard to rapidly improving technologies and lower costs. In the process of reviewing RA 8436 and crafting the policies to effect the desired reforms, the following concerns should be taken into consideration:

    a. Accessibility – voters need equipment and systems, whether automated or manual, that are user friendly;

    b. Accuracy – the process by which to count votes and determine the winner must be swift, precise and credible;

    c. Security – ballots or votes cast must be secure, particularly on the transmission of results as this is where fraud almost always takes place;

    d. Accountability – the accuracy of results which underpins the accountability of election officials;

    e. Auditability – the vote count and the vote results must be traceable, backward and forward, so that the integrity of the process can be shown at every stage.

    f. Transparency – the electorate and the citizens in general have to be able to fully observe the electoral process, which is important in providing them with enough information so as to foster the credibility of the system.

    g. Technology neutral – no specific technology should be favored by the law which should adopt the most general language possible on the technology of automation.

    h. Integrity – The electorate during the elections and the public as a whole, the rest of the time, must come to trust in the integrity of the process and accept the results.

4. Through legislation and other initiatives, Congress must institutionalize voter education. By this we mean, not personal electoral choices, regarding which it is impertinent to make any suggestion, but with respect to the electoral process itself so that the public are neither misled about the actual integrity of our elections nor become unduly suspicious regarding the same so that they can be misled into questioning and protesting the legitimacy of duly elected governments.

Legislative-Executive Cooperation; the Missing Witnesses

The inquiry in aid-of-legislation required the testimonies of former COMELEC Commissioner Garcillano and former NBI Director Samuel Ong as the most crucial resource persons that could shed light into the controversy.

The abovementioned witnesses, who were invited through formal letters and afterwards subpoenaed by the Joint Committee, and even issued a warrant of arrest as in the case of Garcillano, were believed to be the only ones who could address the issues of authenticity and the tapes' criminal or compromising content. But they refused to appear despite the repeated service of summons and what the police alleged were sincerely diligent efforts to find them. The Joint Committee sought the assistance of the Department of Foreign Affairs to verify the flight to foreign parts of COMELEC Commissioner Garcillano.

The ensuing exchange between the Joint Committee and the concerned DFA office and other concerned agencies evinced only a flaccid response from the latter. It was felt that the reluctance of the DFA amounted to deliberate obstruction of justice.

This problem would bedevil the inquiry from start to finish. The cooperation of agencies of the executive branch is essential to effective congressional inquiries; otherwise Congress will be performing functions that pertain only to the executive.

Throughout the hearings, however, no witness from the administration made a single contribution to arriving at the truth. No sincere cooperation was ever extended by the administration to the congressional inquiry, rather, the administration showed an utter disregard, if not disrespect, towards the inquiry-in-aid of legislation conducted by the Lower House. Though some members of the administration appeared in the hearings, nothing substantial was presented to arrive at the truth. Testimonies of witnesses of the administration were expected to shed light in this highly publicized scandal but their evasive answers merely raised more issues and muddled others.

Likewise, the lack of cooperation not to say outright stonewalling of the military was evident when the ISAFP consistently failed to produce the AFP officers invited to testify. Of fourteen invited military men, only three attended and yet provided no substantial information, worse yet expressing a complete lack of concern over the possibility of their Commander-in-Chief being victimized by wiretapping. And on at least one hearing (25 January 2006), military officers refused to attend invoking Executive Order 464. The Joint Committee noted no objections to this invocation which would trigger a full blown and still raging controversy after it was made in the Senate.

With respect to the whereabouts of Garcillano, it was fortunate that information was provided by a very highly placed official of the diplomatic community to then Chairman Gilbert Remulla, stating that a certain Garcillano arrived in Singapore at 10:00 p.m. on 14 July 2005 and departed thence to London. A letter dated 8 September 2005 from Secretary Raul

Gonzalez of the Department of Justice to Rep. Remulla contained a *note verbale* from the Singapore Foreign Ministry to the Singapore Philippine Embassy confirming that a certain Garcillano "transited in Singapore on 14 July 2005 onboard a Learjet 35 with registration number RP-C 1426. Mr. Garcillano departed Singapore on 15 July onboard Singapore Airlines Flight SQ 320."[319]

That said, Garcillano did produce both his current and previous passports, and showed them to be clear of any marks indicating foreign travel. The DFA certified that it had issued the passports though the Committee had requested the Bangko Sentral ng Pilipinas (BSP), which is the sole authorized manufacturer of blank passports to shed light on the authenticity of the same.

The Committee has also requested the DOJ to seek more information from the Singapore Foreign Ministry on the details in the *note verbale*, specifically requesting at least a certified true copy of Garcillano's disembarkation card and a copy of airport security videos if available. It did not surprise us that the DOJ requested us to direct our inquiries to the DFA[320] after the DFA in August 2005, told us that it had been required to refer all matters pertaining to Garcillano to the DOJ[321] This was classic buck-passing and verged on obstruction of justice.

Nonetheless, the Joint committee was grateful for small mercies. After all, the DFA did present the *note verbale* which is based on information provided by the Singapore Checkpoints Authority. In an interview reported in a national daily on 16 December 2005, Secretary Gonzalez described Singapore's diplomatic note as *"an impeccable document….indubitable"* and that Garcillano could be held for perjury. As DFA spokesperson Gilberto Asuque puts it, the *note verbale* is "*the primary means of communications between two sovereign nations,*" and that "*both countries appreciate the integrity of a note verbale. We have to stand by its integrity because we ourselves issue notes verbale*."

Conflicting Testimonies

Testimony of Sec. Bunye Being Inconsistent with his Public Pronouncement

During his testimony, Sec. Bunye, under oath, said that he "was not sure whether or not the voice in the CDs was that of the President."[322] This is totally different from what he said during his June 6 press conference; to wit that the President was illegally wiretapped, the conversation was spliced, and that it was the President's voice.

The kindest construction of the Press Secretary's equivocation is that he was confused if not panicky. But the Joint Committee does not subscribe to the view that his opinion on this score, though it oscillated wildly, binds the President and constitutes a legal admission on her part under the doctrine of alter ego. The doctrine is limited to official acts of a cabinet official, excluding suppositions about a matter beyond his competence and personal knowledge.

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319 See Annex B27
320 See Annex B35
321 See Annex B26
322 22 June 2005 TSN, p. 132, GCC/XXXIII-2; p. p. 59, TMR/XV-3; p. 70, , DTMD/XVIII-3p. 93, MTGA/XXV-3; p. 99, APM/XXVII-1; and 21 June 2005, p. 98-99, LCLV/XXVIII-2-3; p. 100, APM/XXIX-1

But Bunye contradicted himself in the matter of playing the tapes before the Malacañang press corps. In his 21 June testimony he said that he did not initiate the playing of the tapes; that "*…the members of the Malacañang press corps were very insistent that they at least hear the …the tapes prior to my sending them to the National Bureau of Investigation*;" that he played the tapes *"(A)t the insistence of the Malacañang Press Corps,…"*[323] (italics supplied)

But on 22 June, upon the direct questioning of Rep. Emilio Macias II, who said that some reporters denied having insisted Bunye play the tapes for them but rather that Bunye offered to play the tapes, Bunye admitted that he was the one who initiated the playing of the tapes for the Press Corps.[324]

This matter of whether Bunye initiated the tape-playing or at the prompting of the reporters is a trivial one. The media can confuse any but the most hardened public official. What cannot be dismissed and indeed verges on the contemptible is Bunye's insistence that the two CDs he presented to the Palace press corps—one of them apparently doctored to discredit the other—came into his possession anonymously by an incredibly circuitous route. This is so unbelievable that only another person, former Sen. Francisco Tatad, similarly hard put to explain how his tapes came into his possession, would offer the same preposterous explanation. The tapes/CDs in their possession were purportedly delivered in unmarked envelopes to their respective residences by persons whose faces no one in their homes could recall or, for that matter, even noticed. Tatad would add that he later submitted (improperly not to say illegally) the tapes for authentication to a lawyer who, by a baffling coincidence, would turn out to be the counsel of Atty. Samuel Ong who would publicly declare that it was he who procured the illegal tapes in the first place. This circuitry of circumstances beggars belief.

But Bunye is an incumbent public official, and Tatad merely a former one. As spokesperson of the President, he presumably speaks only the truth in her name and nothing else to cover up ignorance or wrongdoing.

The Constitution provides that: "*Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.*" [325] (italics supplied)

Even a Press Secretary may not use his office to conceal the truth or mislead the public. The Joint Committee recommends that the appropriate Committee be tasked to consider a special law to prohibit and penalize public officials for deliberately misleading statements even in cases that do not constitute perjury.

The Opposition as Destabilizers; The Tale of the Tapes

The brunt of Minority Floor Leader, Rep. Francis Escudero's privilege speech was that the government was unfairly blaming the opposition in the House for the illegal wiretaps, their disclosure and the resulting political instability.

The opposition repeatedly denied that it had or could have had anything to do with the so-called Garci tapes and the resulting instability. Nothing said in the joint hearings belied its

323 21 June 2005 TSN, p. 103/CAB/XXX-1
324 22 June 2005 TSN, pp. 129-130, ESB/XXXII-3-4
325 Section 1, Article 11 of the 1987 Constitution

claim of innocence, not to say inutility, particularly when the government itself denied referring to the opposition in the House.[326]

It cannot be denied that former Senator Tatad belongs to the opposition. Mr. Tatad admitted that he gave Atty. Paguia the two audiocassette tapes from which Paguia's 32-minute CDs were copied. Mr. Tatad has also stated his view that the Arroyo government is illegitimate.

It is therefore difficult to escape the conclusion that this so-called wiretap tapes, whether genuine in whole or in part, or completely fabricated, could have just materialized out of thin air and fallen fortuitously on the laps of the persons who brought them to public attention. Indeed, there is compelling reason to believe that, if not their production, then certainly their acquisition and subsequent publication were actively sought and were components of a plan involving several persons and considerable financial resources, with the aim of embarrassing the President into leaving office or, failing that, toppling the government by the political mass action generated by the scandal. Who were the persons involved, the Joint Committee cannot say; almost everyone who passionately invoked the tapes as authentic was even more vehement in denying any knowledge that could prove its authenticity or having had anything to do with the tapes.

While it is unfair if not impossible to require proof of a negative—to wit, that the alleged conversations in the so-called Garci tapes did *not* take place—on the contrary, the President confessed and apologized that conversations, not necessarily the same, took place between herself and a COMELEC official—Malacañang was clearly at an utter loss to explain the tapes and, on at least one occasion, attempted a cover up.

This was when the Press Secretary's claimed that of the two CDs he purportedly received from an anonymous source, one was original and the other tampered with. This only raised more issues and answered none. How did he know which was which? He later said he had relied on the labels of the CDs, one saying it was fake and the other genuine. But why would anyone send out a pair of contrasting tapes, one self-admittedly a fake and the other claiming to be a true reproduction? And why would Bunye rely on the labels? Was he adopting the labels as true? He appeared to have done so, claiming that one tape contained the President's voice. But he later disowned his own statement.[327]

In sum, on the one hand, a conspiracy clearly existed to topple the President by embarrassing her with the so-called Garci tapes; on the other hand, the administration could not and would not confront the tapes, contributed nothing towards arriving at the truth about them but on the contrary attempted a cover-up.

But whatever the reasons for the appearance of these tapes and CDs, it is necessary to look at the larger picture of the quality of the democratic exercise in the Philippines. It is heartening to note that the public, despite its profound skepticism regarding public officials and official action, preferred to tune in to official and established venues such as a Congressional inquiry to arrive at the truth, and thereby stayed off the streets into which reckless political elements sought to take the controversy. But it cannot be gainsaid that the spirit of faction has attained a degree of virulence with which the present political system can barely cope.

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326 See Bunye and Wycoco testimonies: 22 June 2005 TSN, p. 98, LCLV/XXVI-4, P. 124, TJAS/XXXI-1; 23 June 2005 TSN, p. 23, NAB/VI-4; p. 24, MTGA/VII-1

326 Ibid, p. 34, CAB/X-1

327 22 June 2005 TSN; , p. 125, TJAS/XXXI-2

Much has been said about the tapes. Arguments and counter arguments were put forward, particularly on its admissibility as evidence in this or that forum. Yet RA 4200 is clear: the tapes and their contents are inadmissible for any purpose in any forum whatsoever. Nevertheless, the tapes are there, they were massively reproduced, and they were played in a formal congressional hearing before the nation—with what legal effect on the law itself remains to be seen.

The question of authenticity can only be answered when the person or entity responsible for the alleged wiretaps admits to the act and identifies the tapes or the conversations in them as those that were intercepted, or when the persons who engaged in the conversations admit to them, as the President may have done in her public apology on 27 June 2005.

The repeal of R.A. 4200 will retroactively decriminalize the illegal wiretaps, if such they were rather than wholesale fabrications, and may produce the key testimony on this score. At this point, the Joint Committee does not anticipate that any individual or entity will admit to it. What remains to be done is the authentication of the tapes by a credible body, local or foreign, which could at least inform Congress as to what the latest forensic science can confidently say about them.

Finally, the Joint Committee urges the immediate adoption of this report and that the appropriate Committees of the House of Representatives and appropriate agencies and entities be provided with copy thereof and undertake immediate action on the recommendations.

Respectfully submitted:

SIGNED
EMMYLOU J. TALIÑO-SANTOS
Committee Chairperson
Public Information

SIGNED
AMADO T. ESPINO, JR.
Committee Chairman
Public Order and Safety

SIGNED
JOSE G. SOLIS
Committee Chairman
National Defense and Security

SIGNED
SIMEON L. KINTANAR
Committee Chairman
Information Communications Technology

SIGNED
TEODORO L. LOCSIN, JR.
Committee Chairman
Suffrage and Electoral Reforms

The Honorable Speaker
House of Representatives

MEMBERS OF THE JOINT COMMITTEE ON
PUBLIC INFORMATION
PUBLIC ORDER AND SAFETY
NATIONAL DEFENSE AND SECURITY
INFORMATION COMMUNICATIONS TECHNOLOGY and
SUFFRAGE AND ELECTORAL REFORMS

FOR THE MAJORITY:

ABAD, Henedina R.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
ABALOS, Benjamin Jr. DC
Member, Committee on Suffrage and Electoral Reforms

ABAYA, Joseph Emilio, A.
Member, Committees on Public Order and Safety
and National Defense and Security

Sgd.
ABLAN, Roque Jr. R.
Member, Committees on Public Order and Safety
and National Defense and Security

Sgd.
ABUBAKAR, Anuar J.
Member, Committees on National Defense and Security
and Suffrage and Electoral Reforms

Sgd.
ALMARIO, Mayo Z.
Member, Committees on Public Order and Safety
and National Defense and Security

ALVAREZ, Antonio C.
Member, Committees on Public Order and Safety,
National Defense and Security and
Information CommunicationsTechnology

AMANTE, Ma. Angelica Rosedell M.
Member, Committee on Public Information

Sgd.
APOSTOL, Trinidad "Ebbie" G.
Member, Committee on Public Information

AQUINO, Benigno III C.
Member, Committee on Public Order and Safety

ARROYO, Iggy T.
Member, Committees on National Defense and Security
and Information Communications Technology

Sgd.
BACULIO, Augusto H.
Member, Committee on Public Information
and Information Communications Technology

Sgd.
BADELLES, Alipio "Tikbong" V.
Member, Committees on Public Order and Safety,
National Defense and Security and
Information CommunicationsTechnology

Sgd.
BARINAGA, Roseller L.
Member, Committees on Information Communications
Technology and Suffrage and Electoral Reforms

Sgd.
BATERINA, Salacnib F.
Member, Committees on Information Communications
Technology and Suffrage and Electoral Reforms

BAUTISTA, Claude P.
Member, Committees on Public Order and Safety,
National Defense and Security and
Information Communications Technology

Sgd.
BERSAMIN, Luis Jr. P.
Member, Committee on National Defense and Security

Sgd. with reservations
BIAZON, Rozzano Rufino B.
Member, Committees on Public Information,
Public Order and Safety, National Defense and Security,
and Information Communications Technology

BIRON, Fergenel G.
Member, Committee on National Defense and Security

BRAVO, Narciso Jr. R.
Member, Committee on National Defense and Security

Sgd.
BUESER, Danton Q.
Member, Committees on Public Information,
Public Order and Safety, and National Defense and Security

CABILAO, Belma A.
Member, Committee on National Defense and Security

Sgd.
CAGAS, Douglas, RA.
Member, Committee on Suffrage and Electoral Reforms

CAJES, Roberto C.
Member, Committees on Public Order and Safety and
Information Communications Technology

Sgd.
CARI, Carmen L.
Member, Committee on Public Information

CARLOS, Bobbit L.
Member, Committee on National Defense and Security

CASTELO-DAZA, Nanette C.
Member, Committee on Information Communications Technology

Sgd.
CHATTO, Edgar M.
Member, Committee on Information Communications Technology

Sgd.
CLARETE, Ernie D.
Member, Committees on Public Order and Safety and
Information Communications Technology

Sgd.
CODILLA, Eufrocino M.
Member, Committees on Public Order and Safety,
National Defense and Security, Information Communications
Technology and Suffrage and Electoral Reforms

COJUANGCO, Carlos O.
Member, Committee on Information Communications Technology

Sgd.
COJUANGCO, Mark O.
Member, Committees on Information Communications Technology
and Suffrage and Electoral Reforms

Sgd.
CUA, Junie E.
Member, Committees on Public Order and Safety and
National Defense and Security

CUENCO, Antonio V.
Member, Committee on Information Communications Technology

DADIVAS, Rodroguez D.
Member, Committee on Information Communications Technology

Sgd.
DATUMANONG, Simeon A.
Member, Committees on National Defense and Security,
Information Communications Technology and
Suffrage and Electoral Reforms

DEFENSOR, Matias Jr. V.
Member, Committee on Suffrage and Electoral Reforms

DIAZ, Antonio M.
Member, Committee on National Defense and Security

DIMAPORO, Abdullah D.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
DOMINGUEZ, Victor S.
Member, Committee on National Defense and Security

Sgd.
DOMOGAN, Mauricio G.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
DUAVIT, Michael John "Jack" R.
Member, Committee on Public Information

Sgd.
DUMPIT, Tomas M.
Member, Committees on Public Order and Safety and
National Defense and Security

Sgd.
DY, Consuelo A.
Member, Committee on National Defense and Security

DY, Faustino III G.
Member, Committees on Public Order and Safety

Sgd.
ERMITA-BUHAIN, Eileen
Member, Committees on National Defense and Security

ESPINA, Gerardo Jr. J.
Member, Committees on Public Order and Safety and
National Defense and Security

ESPINOSA, Edgar T.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
ESTRELLA, Conrado III M.
Member, Committee on Information Communications Technology

Sgd.
FALCON, Peter Paul Jed C.
Member, Committee on Public Information

Sgd.
FIGUEROA, Catalino V.
Member, Committees on Public Order and Safety

FUA, Orlando Jr. A.
Member, Committees on Information Communications Technology
and Suffrage and Electoral Reforms

Sgd.
GIDAYA, Ernesto S.
Member, Committees on Public Order and Safety
and National Defense and Security

Sgd.
GONZALEZ, Raul Jr. T.
Member, Committees on Public Order and Safety
and National Defense and Security

Sgd.
HIZON, Joey D.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
IPONG, Gregorio T.
Member, Committees on Public Order and Safety
and Information Communications Technology

Sgd.
JALA, Eladio M.
Member, Committees on Information Communications Technology
and Suffrage and Electoral Reforms

Sgd.
JALOSJOS, Cesar G.
Member, Committees on Public Order and Safety
and National Defense and Security

JARAULA, Constantino G.
Member, Committees on Information Communications Technology
and Suffrage and Electoral Reforms

Sgd. with reservations
JAWORSKI, Robert "Dodot" Jr. B.
Member, Committees on Public Information,
National Defense and Security and Suffrage and Electoral Reforms

JOAQUIN, Uliran T.
Member, Committee on Public Order and Safety

LACSON, Jose Carlos V.
Member, Committee on National Defense and Security

Sgd.
LAPUS, Jesli A.
Member, Committees on Public Order and Safety
and Suffrage and Electoral Reforms

Sgd.
LORETO-GARIN, Janette
Member, Committee on National Defense and Security

Sgd.
MACARAMBON, Benasing Jr. O.
Member, Committees on Public Order and Safety,
National Defense and Security, Information Communications
Technology and Suffrage and Electoral Reforms

Sgd.
MACIAS, Emilio II C.
Member, Committees on National Defense and Security,
Information Communications Technology and
Suffrage and Electoral Reforms

Sgd.
MALANYAON, Corazon N.
Member, Committee on National Defense and Security

MAMBA, Manuel N.
Member, Committees on Public Order and Safety
and National Defense and Security

Sgd. with reservations
MANDANAS, Hermilando I.
Member, Committees on National Defense and Security
and Information Communications Technology

Sgd.
MANGUDADATU, Suharto "Teng" T.
Member, Committees on Public Information,
and National Defense and Security

(I agree with it 98% but it should have included the facts that in playing the tapes in the plenary they were generally inaudible and that a motion was earlier filed to terminate the hearing due to Garcillano's refusal to questions directly)

Sgd.
MARCOLETA, Rodante D.
Member, Committee on Information Communications Technology

Sgd.
MERCADO, Roger G.
Member, Committee on National Defense and Security

MIRANDA, Anthony C.
Member, Committee on Public Information

NANTES, Rafael P.
Member, Committee on National Defense and Security

Sgd.
NIEVA, Ernesto A.
Member, Committee on Public Order and Safety

Olañp
OLAÑO, Arrel R.
Member, Committee on National Defense and Security

Sgd.
ORTEGA, Manuel C.
Member, Committee on Public Order and Safety

Sgd.
PABLO, Ernesto "Ernie" C.
Member, Committee on Information Communications Technology

PETILLA, Remedios "Matin" L.
Member, Committees on Public Information

PICHAY, Prospero Jr. A.
Member, Committees on National Defense and Security
and Information Communications Technology

PINGOY, Arthur "Dodo" Jr. Y.
Member, Committee on Public Order and Safety

PUENTEVELLA, Monico O.
Member, Committees on National Defense and Security
and Information Communications Technology

Sgd.
RAMIRO, Herminia M.
Member, Committee on Public Order and Safety

Sgd.
REAL, Isidro Jr. E.
Member, Committee on National Defense and Security

REYES, Edmundo Jr. O.
Member, Committees on National Defense and Security,
Information Communications Technology and
Suffrage and Electoral Reforms

ROCES, Miles M.
Member, Committee on Public Order and Safety

SANDOVAL, Federico II S.
Member, Committees on Public Order and Safety
and National Defense and Security

Sgd.
SEACHON-LANETE, Rizalina L.
Member, Committee on Public Order and Safety

Sgd.
SOON-RUIZ, Nerissa Corazon
Member, Committees on Information Communications Technology
and Suffrage and Electoral Reforms

Sgd.
SUAREZ, Danilo E.
Member, Committees on Public Order and Safety,
and National Defense and Security

SUSANO, Mary Ann L.
Member, Committee on Public Order and Safety

SY-ALVARADO, Wilhelmino M.
Member, Committee on Public Order and Safety

Sgd.
TOMAWIS, Acmad M.
Member, Committees on Public Order and Safety,
National Defense and Security, and
Information Communications Technology

Sgd.
TULAGAN, Generoso, DC
Member, Committee on National Defense and Security

UMALI, Aurelio M.
Member, Committees on Public Information
and Information Communications Technology

Sgd.
UNICO, Renato Jr. J.
Member, Committees on Public Information
and National Defense and Security

UY, Edwin C.
Member, Committee on Public Order and Safety

Sgd.
UY, Reynaldo S.
Member, Committee on Public Order and Safety

VALDEZ, Edgar L.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
VARGAS, Florencio L.
Member, Committee on Public Order and Safety

VELARDE, Rene M.
Member, Committees on Public Order and Safety,
National Defense and Security, and
Information Communications Technology

VELOSO, Eduardo K.
Member, Committee on National Defense and Security

VICENCIO, Romualdo T.
Member, Committees on Public Information, Public Order and Safety,
and Suffrage and Electoral Reforms

Sgd.
VILLAFUERTE, Luis R.
Member, Committees on National Defense and Security,
Information Communications Technology,
and Suffrage and Electoral Reforms

VILLAR, Cynthia A.
Member, Committee on Information Communications Technology

Sgd.
VILLAROSA, Ma. Amelita C.
Member, Committee on National Defense and Security

Sgd.
VIOLAGO, Eleuterio R.
Member, Committee on Suffrage and Electoral Reforms

Sgd.
YAPHA, Antonio Jr. P.
Member, Committee on Information Communications Technology

ZAMORA, Manuel "Way Kurat" E.
Member, Committees on Public Order and Safety,
and Information Communications Technology

Sgd.
ZIALCITA, Eduardo C.
Member, Committees on Public Order and Safety,
National Defense and Security, Information Communications Technology,
and Suffrage and Electoral Reforms

Sgd.
ZUBIRI, Juan Miguel F.
Member, Committee on Public Information,
Public Order and Safety, National Defense and Security,
and Information Communications Technology

FOR THE MINORITY:

AGARAO, Benjamin Jr. C.
Member, Committees on Public Order and Safety,
and National Defense and Security

AGBAYANI, Rodolfo Q.
Member, Committees on Public Information,
and National Defense and Security

AGUJA, Mario "Mayong" Joyo
Member, Committee on Suffrage and Electoral Reforms

CASIÑO, Teodoro A.
Member, Committees on Public Information,
and Information Communications Technology

DILANGALEN, Baisendig G.
Member, Committees on Public Order and Safety,
and Suffrage and Electoral Reforms

FABIAN, Erico Basilio A.
Member, Committees on Public Information,
Public Order and Safety, and National Defense and Security

GUINGONA, Teofisto III A.
Member, Committees on Public Order and Safety,
National Defense and Security, and
Information Communications Technology

HATAMAN, Mujiv S.
Member, Committees on Public Order and Safety,
and National Defense and Security

HONTIVEROS-BARAQUEL, Ana Theresia "Risa"
Member, Committees on Public Information, Public Order and Safety,
National Defense and Security, Information Communications Technology,
and Suffrage and Electoral Reforms

LOPEZ, Ruy Elias C.
Member, Committee on National Defense and Security

MARCOS, Imee R.
Member, Committees on Public Information,
and National Defense and Security

MARIANO, Rafael V.
Member, Committees on National Defense and Security,
and Suffrage and Electoral Reforms

MAZA, Liza L.
Member, Committee on Suffrage and Electoral Reforms

Sgd. with reservations
NOEL, Florencio "Bem" G.
Member, Committees on Public Order and Safety,
National Defense and Security, Information Communications Technology,
and Suffrage and Electoral Reforms

PONCE ENRILE, Juan Jr. C.
Member, Committees on Public Order and Safety,
National Defense and Security, and
Information Communications Technology

SANTIAGO, Joseph A.
Member, Committees on National Defense and Security,
and Information Communications Technology

VIRADOR, Joel G.
Member, Committee on National Defense and Security

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Sgd. with reservations
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NOGRALES, Prospero C.
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Deputy Majority Leader

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Deputy Majority Leader

Sgd. with reservations re: findings of cover-up
ANTONINO, Rodolfo W.
Deputy Majority Leader

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Ex-Officio Member as Chairman of
Committee on Accounts

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Deputy Majority Leader

Sgd.
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Deputy Majority Leader

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GARCIA, Vincent J.
Deputy Majority Leader

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Deputy Majority Leader

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Deputy Minority Leader

GOLEZ, Roilo S.
Deputy Minority Leader

Sgd. with reservations
MALAPITAN, Oscar G.
Deputy Minority Leader

OCAMPO, Satur C.
Deputy Minority Leader

PLAZA, Rodolfo “Ompong” G.
Deputy Minority Leader

REMULLA, Gilbert C.
Deputy Minority Leader

ROSALES, Loretta Ann P.
Deputy Minority Leader

Sgd. with reservations
SERAPIO, Antonio M.
Deputy Minority Leader

SUPLICO, Rolex T.
Deputy Minority Leader

VILLANUEVA, Emmanuel Joel J.
Deputy Minority Leader

ZAMORA, Ronaldo B.
Deputy Minority Leader