

Republic of the Philippines
THE SUPREME COURT
Manila

ROMULO L. NERI in his
capacity as Chairman
of the Commission on
Higher Education
(CHED) and as former
Director General of the
National Economic &
Development Authority
(NEDA),
Petitioner,

- versus -

G. R. No. 180643

SENATE COMMITTEE ON
ACCOUNTABILITY OF
PUBLIC OFFICERS &
INVESTIGATIONS (BLUE
RIBBON), SENATE
COMMITTEE ON TRADE
& COMMERCE, and
SENATE COMMITTEE ON
NATIONAL DEFENSE
& SECURITY,
Respondents.

x-----x

C O M M E N T

The SENATE OF THE PHILIPPINES Respondent Committees, through counsel, in compliance with the Order of the Honorable Supreme Court dated February 5, 2008, copy of which was received on even date, within the reglamentary period, respectfully file their Comment, and aver that:

- I. THERE IS NO VALID JUSTIFICATION FOR PETITIONER TO CLAIM EXECUTIVE PRIVILEGE;
- II. TESTIMONY OF PETITIONER IS MATERIAL AND PERTINENT IN AID OF LEGISLATION;

- III. THE SENATE COMMITTEES HAVE NOT ABUSED THEIR AUTHORITY TO ORDER THE ARREST OF PETITIONER;
- IV. PETITIONER HAS NOT COME TO COURT WITH CLEAN HANDS.

PREFATORY STATEMENT

“There is nothing hidden that will not be revealed, and nothing secret that will not be known and come to light.” (Luke 8:17)

“A transparent government is one of the hallmarks of a truly republican state. Even in the early history of republican thought, however, it has been recognized that the head of government may keep certain information confidential in pursuit of the public interest. x x x.”

*History has been witness, however, to the fact that the power to withhold information lends itself to abuse, hence, the necessity to guard it zealously.” (**Senate of the Philippines v. Ermita**, 488 SCRA 1, 21 [2006])*

The instant case strikes at the very heart of what we, as human beings and as a people, value or ought to value most: the Truth.

Specifically, this Honorable Court is called upon to determine whether or not the mantra of “executive privilege” may be claimed to ward off a legitimate Congressional inquiry in aid of legislation and shield the President from disclosures of information that may reveal her participation in the anomalous National Broadband Network (NBN) Project.

It is fervently hoped by Respondent Committees that, in the end, this Honorable Court, in the exercise of its wisdom, will see through this blatant attempt on the part of the Chief Executive to brush aside the Constitutionally-mandated principles of public accountability and right to information.

Certainly, the instant case goes far beyond what Petitioner would have this Honorable Court believe to be “candid discussions meant to explore options in making policy decisions” and discussions “on the impact of the bribery scandal involving high government officials on the country’s diplomatic relations and economic and military affairs and the possible loss of confidence of foreign investors and lenders in the Philippines.”

What is at stake here is the Truth, the full disclosure of which Respondent Committees believe to be the only way we can strengthen our system of separation of powers, with its attendant checks-and-balances, and, ultimately, restore faith in our system of government.

COUNTER-STATEMENT OF FACTS

In order to put the Petition in the proper context, the following factual incidents have to be added to Petitioner’s statement of antecedents:

1. On 21 April 2007, the Department of Transportation and Communications (DOTC), through Secretary Leandro R. Mendoza, and Zhing Xing Telecommunications Equipment (ZTE), through its Vice

President Yu Yong, executed in Boao, China, a “Contract For the Supply of Equipment and Services for the National Broadband Network Project” worth US\$329,481,290 (approx. Php16 Billion), which signing was witnessed and attended also by President Gloria Macapagal-Arroyo (PGMA), who took time out from her multifarious duties just to witness the signing thereof in China. The ZTE contract was to be financed through a loan that would be extended by the People’s Republic of China, through the Export-Import Bank of China.

2. Thereafter, the supply contract with ZTE for the establishment of a National Broadband Network (NBN) has been shrouded in mystery and buffeted by controversies, with allegations of “overpricing” of around US\$130 Million and “kickback commissions” involving high-ranking government officials and public figures, and other anomalies including, but not limited to, theft of the said contract, collusion, and political pressures. Furthermore, the ZTE contract has been widely criticized by the private sector and the academe as being another ‘white elephant’ and that there is no necessity for the establishment of an NBN project.

3. Thus, by reason of the highly controversial and apparently anomalous nature of the NBN project with ZTE, the Respondent Committees were prompted to conduct an inquiry and investigation, in aid of legislation of the same, upon the instance of the following:

- a) P.S. Res. No. 127, introduced by Senator Aquilino Q. Pimentel, Jr., entitled:

RESOLUTION
DIRECTING THE BLUE RIBBON COMMITTEE
AND THE COMMITTEE ON TRADE AND
INDUSTRY TO INVESTIGATE, IN AID OF
LEGISLATION, THE CIRCUMSTANCES
LEADING TO THE APPROVAL OF THE
BROADBAND CONTRACT WITH ZTE AND
THE ROLE PLAYED BY THE OFFICIALS
CONCERNED IN GETTING IT CONSUMMATED,
AND TO MAKE RECOMMENDATIONS TO HALE
TO THE COURTS OF LAW THE PERSONS
RESPONSIBLE FOR ANY ANOMALY IN
CONNECTION THEREWITH AND TO PLUG
LOOPHOLES, IF ANY, IN THE BOT LAW
AND OTHER PERTINENT LEGISLATIONS.

- b) P.S. Res. No. 129, introduced by Senator Panfilo M. Lacson, entitled:

RESOLUTION
DIRECTING THE COMMITTEE ON
NATIONAL DEFENSE AND SECURITY
TO CONDUCT AN INQUIRY IN AID
OF LEGISLATION INTO THE
NATIONAL SECURITY IMPLICATIONS
OF AWARDING THE NATIONAL
BROADBAND NETWORK CONTRACT TO
THE CHINESE FIRM ZHONG XING
TELECOMMUNICATIONS EQUIPMENT
COMPANY LIMITED (ZTE CORPORATION)
WITH THE END IN VIEW OF PROVIDING
REMEDIAL LEGISLATION THAT WILL
FURTHER PROTECT OUR NATIONAL
SOVEREIGNTY SECURITY AND
TERRITORIAL INTEGRITY

- c) Privilege Speech of Senator Panfilo M. Lacson delivered on 11 September 2007, entitled “*Legacy of Corruption.*”
- d) P.S. Res. No. 136, introduced by Senator Miriam Defensor Santiago, entitled:

RESOLUTION
DIRECTING THE PROPER SENATE COMMITTEE

TO CONDUCT AN INQUIRY, IN AID OF
LEGISLATION, ON THE LEGAL AND ECONOMIC
JUSTIFICATION OF THE NATIONAL BROAD-
BAND NETWORK (NBN) PROJECT OF THE
GOVERNMENT

- e) Privilege Speech of Senator Miriam Defensor Santiago delivered on 24 September 2007, entitled “*International Agreements in Constitutional Law: The Suspended RP-China (ZTE) Loan Agreement.*”
- f) P.S. Res. No. 144, introduced by Senator MAR Roxas, entitled:

A RESOLUTION
URGING PRESIDENT GLORIA MACAPAGAL
ARROYO TO DIRECT THE CANCELLATION OF
THE ZTE CONTRACT

4. By reason of the aforementioned resolutions and speeches, the Respondent Committees have conducted hearings to inquire into and investigate, in aid of legislation, the NBN project.

5. Furthermore, there are three pending bills in the Senate at present, consideration of which requires further investigation by the Respondent Committees. These bills are:

- a) Senate Bill No. 1793, introduced by Senator MAR Roxas, entitled:

AN ACT
SUBJECTING TREATIES, INTERNATIONAL OR
EXECUTIVE AGREEMENTS INVOLVING
FUNDING IN THE PROCUREMENT OF
INFRASTRUCTURE PROJECTS, GOODS, AND
CONSULTING SERVICES TO BE INCLUDED IN

THE SCOPE AND APPLICATION OF PHILIPPINE
PROCUREMENT LAWS, AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 9184,
OTHERWISE KNOWN AS THE GOVERNMENT
PROCUREMENT REFORM ACT, AND FOR
OTHER PURPOSES.

A certified true copy of S. B. 1793 is attached as **ANNEX "A"**.

- b) Senate Bill No. 1794, introduced by Senator MAR Roxas,
entitled:

AN ACT
IMPOSING SAFEGUARDS IN CONTRACTING
LOANS CLASSIFIED AS OFFICIAL
DEVELOPMENT ASSISTANCE, AMENDING
FOR THE PURPOSE REPUBLIC ACT NO. 8182,
AS AMENDED BY REPUBLIC ACT NO. 8555,
OTHERWISE KNOWN AS THE OFFICIAL
DEVELOPMENT ASSISTANCE ACT OF 1996,
AND FOR OTHER PURPOSES.

A certified true copy of S. B. 1794 is attached as **ANNEX "B"**.

- c) Senate Bill No. 1317, introduced by Senator Miriam Defensor
Santiago, entitled:

AN ACT
MANDATING CONCURRENCE TO
INTERNATIONAL AGREEMENTS AND
EXECUTIVE AGREEMENTS

A certified true copy of S. B. 1317 is attached as **ANNEX "C"**.

6. In view of the three Senate bills and the resolutions filed to inquire into the controversial National Broadband Network (NBN) project contract entered into by the government with ZTE, invitations were sent to certain personalities and Cabinet officials who allegedly were involved in, or have knowledge of, the bribery and kickbacks for them to attend a

hearing to be conducted by Respondent Committees on 18 September 2007. One of those invited was Petitioner.

7. On 18 September 2007, only two resource persons, a businessman, Jose de Venecia III and a provincial vice governor, Rolex Suplico, honored the invitations and appeared before the Respondent Committees. The rest, mainly Cabinet officials, invoked either the ‘*sub judice*’ principle or the provisions of Memorandum Circular No. 108 (27 July 2006). At that hearing, Jose de Venecia III revealed that several high executive officials and power brokers were using their influence to have the NBN-ZTE project be approved by the NEDA, then headed by Petitioner.

8. It was later revealed that the NEDA first approved said project as a build-operate-transfer (BOT) project, but later, on 29 March 2007, the NEDA acquiesced to convert it into a government-to-government project to be financed through a loan from the Chinese government. (Please refer to Annex “D”, editorial of Philippine Star, 12 February 2008).

9. For reasons known only to himself, Petitioner was transferred from the NEDA to the Commission on Higher Education (CHED) on 15 August 2007.

10. Petitioner Neri was called upon to testify in these investigations set for 18 September 2007, 20 September 2007, 26 September 2007, and 25 October 2007. Petitioner appeared before the respondent Committees on 26 September 2007. However, he failed to appear on the other hearing dates because, by sheer coincidence, he

happened to be conveniently abroad. According to a colleague, Petitioner's trips abroad were not really by coincidence, but arranged by Malacañang.

11. On 13 November 2007, the Senate Blue Ribbon Committee issued a *subpoena ad testificandum* addressed to petitioner requiring him to appear before it and testify further on 20 November 2007.

12. Upon order of the President, as stated in a letter submitted by Secretary Eduardo Ermita on 15 November 2007, petitioner did not appear before the respondent Committees invoking executive privilege. The letter, in part, states:

"The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China. Given the confidential nature in which these information were conveyed to the President, he cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect."

13. For failure to appear at the said hearing Respondent Committees issued a show cause order dated 22 November 2007, ordering petitioner to show cause why he should not be cited in contempt.

14. On 30 January 2008, an order citing petitioner in contempt was issued by respondent Senate Committees for his failure to appear at several hearing despite personal notice and *subpoena ad testificandum*, and for failing to satisfactorily explain his non-appearance at the hearings. The order, in part quoted hereunder, states:

“For failure to appear and testify in the Committee’s hearing on Tuesday, September 18, 2007; Thursday, September 20, 2007; Thursday, October 25, 2007 and Tuesday, November 20, 2007, despite personal notice and *Subpoenas Ad Testificandum* sent to and received by him, which thereby delays, impedes and obstructs, as it had in fact delayed, impeded and obstructed the inquiry into the subject reported irregularities and for failure to explain satisfactorily why he should not be cited for contempt, ROMULO L. NERI is hereby cited in contempt of this Committees and ordered arrested and detained in the Office of the Senate Sergeant-at-Arms until such time that he will appear and give his testimony.”

DISCUSSION

I. THERE IS NO LEGAL JUSTIFICATION FOR PETITIONER TO CLAIM EXECUTIVE PRIVILEGE

Senate v. Ermita ruling places burden of proof on claimant of executive privilege –

1. In coming to this Honorable Court, the Petitioner invokes the ruling in **Senate v. Ermita**.¹ He is right.

2. The doctrine in that case laid the burden of proof on the shoulders of the claimant of executive privilege, (here the Petitioner), in the following words:

“While executive privilege is a constitutional concept, a claim thereof may be valid or not depending on the ground invoked to justify it and the context to which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information

¹ **Senate v. Ermita**, 488 SCRA 1 (2006).

by the mere fact of being executive officials. Indeed, **the extraordinary character of the exemptions indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure.**²

Petitioner’s claim of executive privilege does not authorize his absolute refusal to obey the subpoena issued by the respondent committees –

1. It bears emphasis that, in essence, the instant Petition is anchored on the sweeping premise that once executive privilege is claimed, then a person subpoenaed by the Senate or any of its committees may no longer be compelled to appear and testify.
2. On its face, the Petition assails the issuance of the Show Cause Order dated 22 November 2007 issued by Respondent Committees (Annex “A” of Petition) in light of Petitioner’s failure to appear despite receipt of Respondent Committees’ *Subpoena Ad Testificandum*.
3. On the other hand, the Supplemental Petition assails the issuance of the Order dated 30 January 2008 (Annex “A” of the Supplemental Petition) citing petitioner in contempt, thus –

“For failure to appear and testify in the Committees’s hearing on Tuesday, September 18, 2007; Thursday, September 20, 2007; Thursday, October 25, 2007 and Tuesday, November 20, 2007, despite personal notice and a Subpoenas ad Testificandum sent to and

² *Id.* at p. 51. (emphasis in original).

received by him, which thereby delays, impedes and obstructs, at it has in fact delayed, impeded and obstructed the inquiry into and subject reported irregularities, AND for failure to explain satisfactorily why he should not be cited for contempt (Neri letter of 29 November 2007, herein attached) **ROMULO L. NERI** is hereby cited in contempt of this Committees and ordered arrested and detained in the Office of the Senate Sergeant-At-Arms until such time that he will appear and give his testimony.

The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty four (24) hours from its enforcement.

SO ORDERED.”

4. The assailed orders of respondents both stemmed from Petitioner’s refusal to obey the *Subpoena Ad Testificandum* (Annex “B” of Petition) duly issued by Respondent Committees, which reads –

“By authority of Section 17, Rules of Procedure Governing Inquiries in Aid of Legislation of the Senate, Republic of the Philippines, you are hereby commanded to appear before the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) of the Senate, then and there to testify under oath **on what you know relative to the subject matter under inquiry by the said Committee** x x x.” (Emphasis and underscoring supplied)

5. It is readily apparent on the face of the Subpoena that the scope of inquiry to be conducted by the respondents includes relevant facts within the knowledge of Petitioner.

6. As was held in **Senate v. Ermita** (at p. 47), even if a type of information is recognized as privileged, the validity of a claim of privilege will depend on the context in which it is made, thus –

“That a type of information is recognized as privileged does not, however, necessarily mean that it would be considered privileged in all instances. For in determining the validity of a claim of privilege, the question that must be asked is not only whether the requested information falls within one of the traditional privileges, but also **whether that privilege should be honored in a given procedural setting.**” (Emphasis and underscoring supplied)

7. It is therefore premature, if not highly presumptuous, for Petitioner to claim that his entire testimony before the Respondent Committees will consist of matters which are covered by executive privilege.

8. Certainly, it is not for petitioner to unilaterally determine that respondents’ duly-issued Subpoena should be totally disregarded, for as ***Philippine Association of Free Labor Unions v. Salvador***, 25 SCRA 393, 402-404 (1968), has held

–

“x x x. The failure to abide by the orders and processes of judicial and quasi-judicial agencies x x x gives rise to a serious concern. It engenders at the very least the well-founded suspicion that such an attitude betrays an absence of good faith. It is indicative of a belief at war with all that adjudication stands for.

“No one may be permitted to take the law into his own hands. No one, much less the party immediately concerned, should have the final say on the validity or lack of it

of one's course of conduct. Centuries of reliance on the judicial process repel such a notion. As was so aptly stated in *Gompers v. Buck's Stove & Range Company*: **'If the party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power x x x' would be a mere mockery.'**

"x x x.

"Law stands for order, for the peaceful and systematic adjustment of frictions and conflicts unavoidable in a modern society with its complexities and clashing interests. The instrumentality for such balancing or harmonization is the judiciary and other agencies exercising quasi-judicial powers. x x x.

"Such is the way of the law. So it has been in the past. So it should continue to be. If it were otherwise, the intellect no longer holds sway, the dictates of moderation are ignored, and passion takes over. The words of Dean Pound come to mind: 'Civilization involves subjection of force to reason, and the agency of this subjection is law.'

"x x x.

"x x x. It is equally well-settled, however, that a tribunal, whenever confronted with a particular question, is not devoid of the authority to pass precisely on the existence or non-existence of its power to act. Whether, therefore, the urgent petition x x x is proper for respondent Judge to pass upon is not for petitioner itself to decide. x x x.

"Even if, therefore, the good faith of petitioner be conceded, the failure to abide by the commands of the orders herein challenged finds no justification if the rule of law has any meaning at all. x x x. **It does not mitigate such defiance of law to urge that hard-won liberties x x x were at stake. The most prized liberties themselves pre-supposed an independent judiciary through which liberties may be, as they often have been, vindicated. When in real controversy, such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the**

parties. This principle is a postulate of our democracy.” (Emphasis and underscoring supplied)

Grounds invoked by Petitioner do not justify invocation of executive privilege for these run counter to constitutional standards –

1. At the outset, it bears stressing that the instant petition is premised on the belief of herein Petitioner that his appearance at the 20 November 2007 hearing of Respondent Committees was for the purpose of testifying only on the three (3) matters which he declined to testify on during the 26 September 2007 hearing for being possibly covered by executive privilege. The records, however, are devoid of any proof to sustain such belief.

2. In any case, even if the herein Respondent Committees would indeed ask him to testify on the said matters, Petitioner cannot cite the claim of executive privilege being invoked by Executive Secretary Ermita as his excuse for his non-appearance at the hearings of Respondent Committees. This is because the claim of executive privilege in this instance is unavailing and without basis.

In ***Senate v. Ermita*** (at pp. 45-47), this Honorable Court had occasion to define, distinguish between the three (3) types of, and delimit “executive privilege” in this wise –

“Schwartz defines executive privilege as ‘the power of the Government to withhold information from **the public, the courts, and the Congress.**’ Similarly, Rozell defines it as ‘the right of the President and high-

level executive branch officers to withhold information from Congress, the courts, and ultimately the public.’

Executive privilege is, nonetheless, not a clear or unitary concept. It has encompassed claims of varying kinds. Tribe, in fact, comments that while it is customary to employ the phrase “executive privilege,” it may be more accurate to speak of executive *privileges* “since *presidential refusals to furnish information may be actuated by any of at least three distinct kinds of considerations*, and may be asserted, ***with differing degrees of success***, in the context of *either judicial or legislative investigations*.”

One variety of the privilege, Tribe explains, is the *state secrets privilege* invoked by U.S. Presidents, beginning with Washington, on the ground that the information is of such nature that its disclosure would subvert **crucial military or diplomatic objectives**. Another variety is the *informer’s privilege*, or the privilege of the Government not to disclose the **identity of persons who furnish information of violations of law** to officers charged with the enforcement of that law. Finally, a *generic privilege* for **internal deliberations** has been said to attach to intragovernmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.

x x x.

The entry in Black’s Law Dictionary on “executive privilege” is similarly instructive regarding the scope of the doctrine.

This privilege, based on the constitutional doctrine of separation of powers, exempts the executive from disclosure requirements applicable to the ordinary citizen or organization *where such exemption is necessary to the discharge of highly important executive responsibilities* involved in maintaining governmental operations, and extends not only to *military and diplomatic secrets* but also to *documents integral to an appropriate exercise of the executive’s domestic decisional and policy making functions*, that is, those documents reflecting the frank expression necessary in intra-governmental advisory and deliberative communications. (Emphasis and underscoring supplied)”

That a type of information is recognized as privileged does not, however, necessarily mean that it would be considered privileged in all instances. For in determining the validity of a claim of

privilege, the question that must be asked is not only whether the requested information falls within one of the traditional privileges, but also **whether that privilege should be honored in a given procedural setting.**” (Emphasis and underscoring supplied)

While the validity of any claim of executive privilege must be decided on a case-to-case basis, this Honorable Court has nevertheless adopted a presumption against executive secrecy and in favor of disclosure, thus –

“From the above discussion on the meaning and scope of executive privilege, both in the United States and in this jurisdiction, a clear principle emerges. Executive privilege, whether asserted against Congress, the courts, or the public, is recognized only in relation to *certain types of information of a sensitive character.* **While executive privilege is a constitutional concept, a claim thereof may be valid or not depending on the ground invoked to justify it and the context in which it is made.** Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials. Indeed, **the extraordinary character of the exemptions indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure.**” (*Id.* at p. 51; emphasis and underscoring supplied)

It is submitted that petitioner has failed to overcome such presumption.

3. Petitioner asserts that his conversation with the President dealt with delicate and sensitive national security and diplomatic matters relating to the impact of the **bribery scandal involving high government officials of the country** and the possible loss of confidence of foreign

investors and lenders in the Philippines. (Please refer to Par. 7.03 and to Annex “D-1” of Petition).

4. This is not a legitimate justification for withholding information from Congress. As the U. S. Supreme Court held:

“Nor do we think it a valid objection to the (legislative) investigation that it might possibly disclose crime or wrongdoing on his (Atty. General) part.³”

5. It is not a legitimate justification because it violates the constitutional and statutory standards which the law has laid down for public officers:

- a. It violates the standard of transparency of transactions involving public interest.⁴
- b. It infringes on the people’s right to know.⁵
- c. It goes against the grain of the principle of public accountability.⁶
- d. It is a violation of the President’s duty to “ensure that the laws be faithfully executed”.⁷ Faithful execution of law includes investigation and prosecution of crime and criminals.

³ **McGrain v. Dougherty**, 273 U.S. 135 (1927)

⁴ Art. II, sec. 28 of the Constitution: “Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

⁵ Art. III, sec. 7: “The right of the people to information on matters of public concern shall be recognized.”

⁶ Art. XI, sec. 1: “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.”

⁷ Art. VII, sec. 17: “The President x x x shall ensure that the laws be faithfully executed.”

- e. It curtails the existing constitutional power of Congress to legislate and to conduct investigations, in aid of legislation, as provided in Art. VI, Sec. 21 of the Constitution, placing it at the mercy of the President.
- f. It violates the principle of separation of powers, which mandates that none of the departments of government may abdicate its power to either of the others. Legislative investigations would be blocked at the outset if the President may determine what Congress shall see and hear.
- g. It undermines the rule of law, for, in a democratic government, no one, not even the President, is above the law (**Estrada v. Desierto**, G. R. No. 146710-15, March 2, 2001).
- h. If the Office of the President is the object of the legislative inquiry, it violates the sporting idea of fair play in the due process clause, which proscribes a person from being a judge in his own cause.

Grounds invoked by Petitioner
mere speculation and
presumptions –

1. In this case, there is no explicit claim at all by Petitioner of the need to protect military, diplomatic or sensitive national security secrets. Petitioner is only worried about the “impact of the bribery scandal involving high government officials on the country’s diplomatic relations and economic and military affairs, and the possible loss of confidence of foreign investors and lenders in the Philippines” (Par. 7.03, Petition). The

President is also apprehensive that the information sought to be disclosed "**might impair** our diplomatic as well as our economic relations with China." (Please refer to Annex "C" of Petition).

2. The above justifications put forth by Petitioner and the President are nothing more than their "*sua sponte* speculations" that revelation before Respondent Committees of the bribery scandal involving high government officials "**might impair** the country's diplomatic relations and economic and military affairs," and cause "**possible** loss of confidence of foreign investors and lenders."

3. There are no sufficient justification for claiming executive privilege for it fails to specify how it will impair diplomatic and military relations with China. As the Honorable Court stated in **Senate v. Ermita**, quoting from an American case:

"A formal and proper claim of executive privilege requires a specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality. Without this specificity, it is impossible for a court to analyze the claim short of disclosure of the very thing sought to be protected. As the affidavit now stands, the Court has little more than its *sua sponte* speculation with which to weigh the applicability of the claim. An improperly asserted claim of privilege is no claim of privilege. Therefore, despite the fact that a claim was made by the proper executive as *Reynolds* requires, the Court can not recognize the claim in the instant case because it is legally insufficient to allow the Court to make a just and reasonable determination as to its applicability. To recognize such a broad claim in which the Defendant has given no precise or compelling reasons to shield these documents from outside scrutiny, would make a farce of

the whole procedure. (Emphasis and underscoring supplied.)⁸

4. Likewise, the President’s invocation of executive privilege in this case, justifying its “necessity for the protection of the public interest in candid, objective and even blunt or harsh opinions in Presidential decision making,” and that “disclosure of conversations with the President will have a chilling effect on the President, and will hamper her in the effective discharge of her duties and responsibilities” (Please refer to Annex “C” (p. 2) of the Petition) is conjectural and presumptive, and is not good enough reason to shield Petitioner from legislative inquiry. The Supreme Court, again quoting American jurisprudence, has already shot this down in **Senate v. Ermita**,⁹ thus:

On the present state of the record, this Court is not called upon to perform this balancing operation. In stating its objection to claimant’s interrogatories, government asserts, and nothing more, that the disclosures sought by claimant would inhibit the free expression of opinion that non-disclosure is designed to protect. The government has not shown – not even alleged – that those who evaluated claimant’s project were involved in internal policymaking, generally, or in this particular instance. Privilege cannot be set up by an unsupported claim. The facts upon which the privilege is based must be established. To find these interrogatories objectionable, this Court would have to assume that the evaluation and classification of claimant’s products was a matter of internal policy formulation, an assumption in which this Court is unwilling to indulge sua sponte. (Emphasis and underscoring supplied)

⁸ *Id.* quoting **Black v. Sheraton Corp.**, 371 F.S. 97

⁹ *Id.*, quoting from **U.S. v. Article of Drug**, 43 F.R.D. 181 (1967)

5. In this connection, it is not quite appropriate for Petitioner to invoke here the ruling of the U.S. Supreme Court in **U.S. v. Reynolds**,¹⁰ since the doctrine in that case is not in point, for the following reasons:

- a. Said case was a civil action for damages filed under the Federal Tort Claims Act by widows of civilians killed in a crash of a U. S. Air Force plane, which had gone aloft to test secret electronic equipment. Under the Federal Rules of Civil Procedure, the widows sought discovery and production of documents, including investigation report about the development of the highly technical and secret electronic equipment. In denying access to the documents, the Supreme Court took judicial notice that the time (1953) was one of vigorous preparation for national defense, that air power was a potent weapon in the scheme of defense, and that newly-developed electronic devices, such as those being tested at the time of the accident, had greatly enhanced effective use of air power, and that such devices must be kept secret if their military advantages were to be properly exploited.

- b. The Department Head in that case based his claim of privilege on an existing statute,¹¹ authorizing the head of each department to prescribe regulations for the custody, use, and preservation of records, papers, and property appertaining to it. ‘Executive privilege’ was not even coined as a phrase then.

¹⁰ 345 U.S. 1 (1953)

¹¹ Rev. Stat. sec. 161, 5 U.S.C. sec. 22.

- c. From the above, the difference in the context of that case and in that of the case at bar is all too obvious to preclude application of the doctrine of *stare decisis* here.¹²

6. The claim that “[p]etitioner is prohibited by law from disclosing communications made to him in official confidence (Section 7, Republic Act No. 6713; Ethical Standards Act, Section 7(c), Rules of Court; Rule 130, Section (34[e], Rules of Court),” is likewise misplaced.

7. In **Sabio v. Gordon**, 504 SCRA 704, 729-730 (2006), this Honorable Court struck down Section 4(b) of E. O. No. 1 insofar as it limits or obstructs the power of Congress to secure from PCGG members and staff information and other data in aid of its power to legislate for being violative of the 1987 Constitution, thus -

“A statute may be declared unconstitutional because **it is not within the legislative power to enact**; or it creates or established methods of forms that infringe constitutional principles; or its purpose or **effect violates the Constitution or its basic principles**. As shown in the above discussion, Section 4(b) is inconsistent with **Article VI, Section 21** (Congress’ power of inquiry), **Article XI, Section 1** (principle of public accountability), **Article II, Section 28** (policy of full disclosure) and **Article III, Section 7** (right to public information).”

8. Applying the foregoing, the laws cited by Petitioner cannot be construed to limit or obstruct the power of Congress to secure from

¹² In the words of Goodhart, “a divorce of the conclusion from the material facts on which that conclusion is based is illogical, and must lead to arbitrary and unsound results.” (A. Goodhart, “Determining the Ratio Dicidendi of a Case,” in Association of the Bar of NY, **Jurisprudence in Action**, 193, 204 (1953).

Petitioner information and other data in aid of its power to legislate; otherwise, they would violate the Constitution.

II. **TESTIMONY OF PETITIONER IS MATERIAL AND PERTINENT IN AID OF LEGISLATION**

Investigation conducted by Respondent Committees is in aid of legislation –

1. As admitted by Petitioner, the investigation being conducted by Respondent Committees is in aid of legislation (Please refer to Par. 3.01, Petition).

2. This power to investigate in aid of the legislative process has been broadly defined by the U. S. Supreme Court to encompass three categories:

- a. inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes;
- b. surveys of defects in our social, economic, or political system for the purpose of enabling Congress to remedy them; and
- c. probes into departments of the Government to expose corruption, inefficiency, and waste.¹³

3. The on-going investigation on the NBN-ZTE project can fall under any of the three categories listed above.

¹³ **Watkins v. U.S.**, 354 U.S. 178, 180 – 1 (1957)

4. As stated above, bills have been filed in aid of legislation namely : (a) Senate Bill No. 1793, which seeks to amend Republic Act No. 9184, otherwise known as the *Government Procurement Reform Act*; (b) Senate Bill No. 1794, which seeks to amend Republic Act No. 8182, otherwise known as the *Official Development Assistance Act*; (c) Senate Bill No. 1317, entitled “An Act Mandating Concurrence to International Agreements and Executive Agreements”.

5. There is an urgent need for remedial legislation to regulate the obtention and negotiation of official development assisted (ODA) projects because these have become a rich source of “commissions” secretly pocketed by high executive officials. Without a doubt, therefore, the information needed from Petitioner relative to the NBN project is quite essential and crucial to the enactment of the proposed amendments to *Government Procurement Reform Act* and *Official Development Assistance Act* so that Congress will know how to plug the loopholes in these statutes and to prevent a big drain on our Treasury. As a recent editorial of the Philippine Star (copy of said editorial attached as **Annex “D”**) puts it:

Even if criminal and administrative charges are filed in connection with this controversy, similar incidents are bound to occur unless safeguards are in place to prevent the misuse of official development assistance. If there is truth in the allegations in the NBN deal as well as in anomalies reported in connection with other ODA-funded projects in the recent past, such projects have become prime sources of kickbacks. Like the NBN deal, the necessity of several of those projects is also questionable. Procurement policies are set aside when it comes to ODA projects, and there is little oversight in the way the executive branch utilizes foreign aid.

This is a window of opportunity for corruption that lawmakers and other concerned parties must close. Donor governments can be brought in for their ideas on how they can maintain control over the way their aid will be utilized without opening opportunities for corruption, and without making decision-making in project implementation hostage to Philippine politics. ODA is not all in the form of outright grants; it can be a loan that must be repaid using public funds, which warrants proper oversight. Many of the major development projects have a foreign funding component. The country cannot afford to have these projects compromised because of corruption.

6. Without the testimony of Petitioner, Respondent Committees are effectively denied of their right to access to any and all kinds of useful information and consequently, their right to intelligently craft and propose laws to remedy what is called “dysfunctional procurement system of the government”. Respondents are hampered in intelligently studying and proposing what Congress should include in the proposed bill to include ‘executive agreements’ for Senate concurrence, which agreements can be used by the Executive to circumvent the requirement of public bidding in the existing Government Procurement Reform Act (R.A. 9184).

7. It must be noted that executive privilege is the exception and hence, executive transparency the rule, as can be gleaned from the ruling in **Senate v. Ermita**, where it was held that:

Certainly, Congress has the right to know why the executive considers the requested information privileged. It does not suffice to merely declare that the President, or an authorized head of office, has determined that it is so, and that the President has not overturned that determination. Such declaration leaves

Congress in the dark on how the requested information could be classified as privileged.

8. Contrary to the position of the Petitioner, there are no diplomatic or military secrets involved in the ZTE Broadband deal. True, the Chinese government is extending a loan to the Republic of the Philippines in lieu of the original BOT project. However, the ZTE Broadband deal is a purely **commercial** transaction and **does not involve diplomatic secrets**. Besides, the alleged diplomatic and economic dangers being foisted are, at best, moot and academic in view of the cancellation by the government of the contract with ZTE. Equally important, the loan is to the tune of US\$329 Million, a mind-boggling and staggering amount by any standard, which the Filipino people must pay for so many years to come. Equally mind-boggling is the alleged US\$130 Million overprice. The Filipino people certainly deserve more effective remedial legislation so that foreign loan funded projects are not made devices for graft.

Executive privilege does not extend to criminal activities –

1. Even assuming *arguendo* that Petitioner is able to invoke executive privilege, and even if he was properly authorized to do so by the President, the same is nevertheless ineffective as it does not extend to protect criminal activities, like the bribery allegations of unprecedented magnitude involved in the controversial NBN project.

2. Two American Scholars on Executive Privilege, Norman Dorsen and John Shattuck, write:

Whatever the effect of these rules in other circumstances, there should be no executive privilege when the Congress has already acquired substantial evidence that the information requested concerns criminal wrong-doing by executive officials or presidential aides. This is obviously an overriding policy justification for this position, since the opposite view would permit criminal conspiracies at the seat of government to be shrouded by the veil of an advice privilege. While the risk of abusive congressional inquiry exists, as the McCarthy experience demonstrates, the requirement of “substantial evidence” of criminal wrong-doing should guard against improper use of the investigative power.¹⁴

3. In Estrada v. Desierto, G. R. No. 146710-15 and 146738, 2 March 2001, the Supreme Court *En Banc* demarcated the strictly limited scope of executive immunity, thus:

Indeed, a critical reading of current literature on executive immunity will reveal a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right. (emphasis supplied).

4. This is because, with respect to executive privilege, which is tied up with immunity, no less than the 1987 Constitution requires that: “The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption. Subject to reasonable conditions prescribed by law, the State adopts and

¹⁴ (Dorsen & Shattuck, “Executive Privilege, The Congress and the Courts,” 35 Ohio State Law Journal I, p. 34 [1974])

implements a policy of full public disclosure of all its transactions involving public interest.

5. In addition, the 1987 Constitution also mandates that: **"The right of the people to information on matters of public concern shall be recognized.** Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

III. **RESPONDENT COMMITTEES HAVE NOT ABUSED THEIR AUTHORITY TO ISSUE ORDER OF ARREST AGAINST PETITIONER**

Question as to whether Respondent Committees should issue arrest order against Petitioner is political

1. In his Supplemental Petition, Petitioner challenges the order of arrest against him as further grave abuse of discretion, for (a) having pre-empted this Honorable Court's action on his basic petition, side-stepping the President's invocation of executive privilege, and (b) that the Rules of Respondent Committees have not even been published.

2. Petitioner has repeatedly and erroneously invoked the executive privilege and by doing so, has unduly and directly interfered with, and obstructed the valid exercise of the powers and functions of herein Respondent Committees as Senators of the Republic. Respondent

Committees are therefore left with no other recourse than to exercise the power to cite Petitioner in contempt.

3. Petitioner’s allegation about Respondent Committees’ pre-emption of the Supreme Court’s action on the main petition has no basis at all. Even within the ranks of the judiciary, lower courts are not required to suspend proceedings in the main case even if one of the parties has resorted to certiorari filed with the Supreme Court. Rule 65 of the Rules of Court provides:

Sec. 7. *Expediting proceedings; injunctive relief.*
– The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.

The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

4. By analogy, the same rule should apply to the Senate and its Committees, since the Senate is a co-equal body with the Court and to which the task of legislative inquiry has been textually committed by the Constitution. The matter of whether the Senate should declare Petitioner

in contempt and as a consequence, issue an arrest order, is basically a political question.

5. Where full discretionary authority has been delegated to the legislative branch of the government, or there is a textually demonstrated constitutional commitment of the issue to a coordinate political department, the question is political in nature and addressed solely to Congress by constitutional fiat.¹⁵

6. The order of arrest does not at all side-step the President’s invocation of executive privilege. It meets the issue head-on even as Respondent Committees have exercised their duty to conduct legislative investigations to its full extent.

7. Petitioner still has to prove his case before the Honorable Court, since he bears the burden of proving the compelling necessity to invoke executive privilege.

8. For the Respondent Committees to wait until the resolution of a pending certiorari petition, or until the resolution of a prayer for injunction, will effectively checkmate the legislative process and the oversight powers of the Senate. The issuance of a valid Order of Arrest after Petitioner was cited for contempt is not arrogance. Neither is it a disrespect to the Honorable Court.

9. The allegation of Petitioner that the Rules on contempt have not even been published is not exactly accurate. The Rules of Procedure of the Senate Governing Inquiries in Aid of Legislation have been

¹⁵ **Estrada v. Desierto**, 353 SCRA 452 (2001).

published in two newspapers of general circulation: first, on August 24, 1995 in **Philippine Star** and **Malaya** and, second, on December 1, 2006 in **Philippine Star** and **Philippine Daily Inquirer**. In addition, said Rules are published in the website of the Senate.

10. The provision on contempt in said Rules of Procedure states:

“Sec. 18. **Contempt**. – The Committee, by a vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively. A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself on that contempt.”

Senate rules do not distinguish direct and indirect contempt –

1. In his letter of January 30, 2007 (Please refer to Annex ‘B’ of Petition), Petitioner reads Sec. 18 of the Rules of Procedure Governing Inquiries In Aid of Legislation (quoted supra) as empowering the Senate to punish witnesses only for direct, but not for indirect, contempt.

2. It is submitted that this is not a correct interpretation of the rule. It speaks only of punishment “for contempt (of) any witness before it who disobeys any order of the Committee or refuses to be sworn or to

testify or to answer a proper question by the Committee or any of its members x x x “ (Rule 18).

3. The above-quoted rule does not make any distinction between direct and indirect contempt because this is irrelevant insofar as the legislative process is concerned. There is need to distinguish judicial from legislative contempt.

“The process by which a contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authority must be distinguished from the judicial process by which offenders are brought to the courts of justice for the meting of punishment which the criminal law imposes upon them. The former falls exclusively within the legislative authority, the latter within the domain of the courts; because the former is a necessary concomitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law.”¹⁶

4. Indeed, the power of Congress to arrest a person has been upheld by the Supreme Court. As early as 1930, the high court refused to invalidate a warrant of arrest issued by the Speaker of the House who, like Petitioner, had concealed himself for two days from the police.¹⁷

5. More recently, in a *habeas corpus* case, the Court did not nullify an order of arrest which was implemented outside the halls of the Senate.¹⁸

6. In the U.S., the Congress has historically imposed contempt sanctions on those who failed to comply with its *subpoenas*.¹⁹

¹⁶ Arnault v. Balagtas, 55 Phil. 170, 179, (emphasis supplied).

¹⁷ Lopez v. de los Reyes, 55 Phil. 170 (1930)

¹⁸ Sabio v. Gordon, 504 SCRA 704 (2006)

¹⁹ Marshall v. Gordon, 243 U. S. 521

7. The direct vs. indirect dichotomy of contempt is irrelevant in legislative proceedings because the contempt power of Congress is essentially coercive and not punitive in purpose.

8. In this category of contempt, the contemnor, like Petitioner here, carries the key to his own prison.²⁰

Respondents have not committed grave abuse of discretion which would justify issuance of the extraordinary writ of certiorari

1. In light of the foregoing discussions which show that the claim of “executive privilege” is unavailing, it becomes clear that there is no grave abuse of discretion on the part of Respondents in issuing the assailed orders.

2. It is beyond cavil that the errors correctible by a special civil action for certiorari are limited to errors of jurisdiction and not errors of judgment, with the burden of establishing such error of jurisdiction falling squarely on the shoulders of the Petitioner. **Montecillo v. Civil Service Commission**, 360 SCRA 99, 103-104 [2001], teaches that -

“First of all, it must be stressed that in this special civil action for certiorari, the Court is limited to the determination of whether or not respondent committed grave abuse of discretion amounting to lack or excess of

²⁰ In the language of an old English decision, cited in In re Nevitt, 117 F. 448, 461:: The petitioner, therefore, carries the key of his own prison in his own pocket. He can come out when he will, by making terms with the court that sent him there. But if he chooses to struggle for a triumph – if nothing will content him but a clean victory or a clean defeat, he cannot expect us to aid him. Our duties are of a widely different kind. They consist in discouraging, as much as in us lies, all such contests with the legal authorities of the country.

jurisdiction x x x **In this regard, it should also be emphasized that the burden of proving such grave abuse of discretion lies with petitioners. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; here abuse of discretion is not enough – it must be grave**”. (Emphasis and underscoring supplied)

IV. PETITIONER HAS NOT COME TO COURT WITH CLEAN HANDS

1. Finally, Petitioner comes to the Honorable Court, seeking equitable remedy.

2. He does not come to court with clean hands. Recent events show that Petitioner, who, as head of NEDA, first approved the NBN-ZTE project through build-operate-and transfer arrangement (BOT) but later acquiesced to a loan package after succumbing to intense pressure from some high executive officials, now invokes the mantle of executive privilege to shield wrongdoing in the upper reaches of the executive department.

3. There are reliable reports that Petitioner and even the President have attempted to use not only executive privilege but even more unpleasant methods to conceal the truth.²¹ A close confidant of the Petitioner has exposed before Respondent Committees alleged attempts to cover up the conversations of Petitioner and the President (the subject of the legislative inquiry here), by extra-legal methods.

²¹ E.g., “Palace tied to abduction”, Phil. Daily Inquirer, Feb. 9, 2008, p. 1, attached herewith as **ANNEX “E”**.

4. He who comes and invokes equity must come with clean hands.

A FINAL WORD

At first blush, the question posed in the instant case may seem difficult considering that it involves a clash between two (2) equal, coordinate branches of government, as was the case in **Gudani v. Senga**, 498 SCRA 671, 703 [2006], thus –

“The fact that the executive branch is an equal, coordinate branch of government to the legislative creates a wrinkle to any basic rule that persons summoned to testify before Congress must do so. There is considerable interplay between the legislative and executive branches, informed by due deference and respect as to their various constitutional functions. Reciprocal courtesy idealizes this relationship; hence, it is only as a last resort that one branch seeks to compel the other to a particular mode of behavior. The judiciary, the third coordinate branch of government, does not enjoy a similar dynamic with either the legislative or executive branches. Whatever weaknesses inheres on judicial power due to its inability to originate national policies and legislation, such is balanced by the fact that it is the branch empowered by the Constitution to compel obeisance to its rulings by the other branches of government.”

However, it is respectfully submitted that the answer to the question posed is clear, since with the separation of powers, there is even more reason to deny the instant claim of “executive privilege”, as **Senate of the Philippines v. Ermita**, *supra* at pp. 56-57, held –

"Indeed, if the separation of powers has anything to tell us on the subject under discussion, it is that the Congress has the right to obtain information from any source – even from officials of departments and agencies in the executive branch. In the United States there is, unlike the situation which prevails in a parliamentary system such as that in Britain, a clear separation between the legislative and executive branches. **It is this very separation that makes the congressional right to obtain information from the executive so essential if the functions of the Congress as the elected representatives of the people are adequately to be carried out.** The absence of close rapport between the legislative and executive branches in parliamentary system, and the nonexistence in the Congress of an institution such as the British question period have perforce made reliance by the Congress upon its right to obtain information from the executive essential, **if it is intelligently to perform its legislative tasks. Unless the Congress possesses the right to obtain executive information, its power of oversight of administration in a system such as ours becomes a power devoid of most of its practical content, since it depends for its effectiveness solely upon information parceled out *ex gratia* by the executive.**" (Emphasis and underscoring supplied)

P R A Y E R

WHEREFORE, premises considered, the Senate of the Philippines Respondent Committees on Accountability of Public Officers & Investigations, Trade & Commerce, and National Defense & Security respectfully pray that the Honorable Supreme Court issue an Order setting aside the Status Quo Ante Order dated 5 February 2008 and dismissing the instant petition and supplemental petition for lack of merit.

Respondents likewise pray for such other and further relief that may be deemed just and equitable under the premises.

Makati and Pasig City, for the City of Manila, 14 February 2008

PACIFICO A. AGABIN

Counsel for Respondents

IBP Lifetime Roll No. 251

PTR No. 0987269J/01.04.08/Makati

Roll of Attorneys No. 16609

26th Floor Pacific Star Building

Gil Puyat Avenue corner Makati Avenue

Makati City, Metro Manila, Philippines

Tel. No. (632) 817-7717

JOSE ANSELMO I. CADIZ

Counsel for Respondents

IBP Lifetime Roll No. 02819

PTR No. 4307376/01-02-2008/Pasig City

Roll of Attorneys No. 35072

Suite 3601, 36th Floor, The Antel Global Center

No. 3 Julia Vargas Avenue, Ortigas Center

1605 Pasig City, Metro Manila, Philippines

Tel. No. (632) 638-0080 to 85

CARLOS P. MEDINA, JR.

Counsel for Respondents

IBP Lifetime Roll No. 00331

PTR No. 3646692/01-10-2007/Makati City

Roll of Attorneys No. 33331

Room 101, Ground Floor, Ateneo Professional

Schools Building No. 20 Rockwell Drive,

Rockwell Center Makati City, Metro Manila,

Philippines

Tel. No. (632) 899-7691 loc. 2109

DAVID JONATHAN V. YAP

Counsel for Respondents

IBP No. 70999043/02-13-2007/Calmana

PTR No. 0951335/01-24-2008/Pasay City

Roll of Attorneys No. 34363

Office of the Senate Legal Counsel

4/F, Philippine Senate, GSIS Building

Pasay City, Metro Manila, Philippines

Tel. No. (632) 552-6860

VERIFICATION

WE, ALAN PETER S. CAYETANO, MAR ROXAS, & RODOLFO G. BIAZON, all of legal age, citizens of the Philippines, with postal address at the Senate of the Philippines, GSIS Building, Financial Center, Roxas Boulevard, Pasay City, after having been sworn to in accordance with law, do hereby state THAT :

1. We are the Chairmen of the respondent Committees on Accountability of Public Officers and Investigations, Trade & Commerce, and National Defense, respectively;
2. We caused the preparation of the instant Comment in consultation with Senate President Manny Villar who approved the same;
3. We have read the aforesaid Comment and attest that the contents of the same are true and correct, of our own personal knowledge, and based on authentic records.

IN WITNESS WHEREOF, We have hereunto set our hands this ____ day of February 2008 at Pasay City.

ALAN PETER S. CAYETANO

Passport # DP0001264

Issued at Manila

Issued on 26 September 2007

Valid until 25 September 2012

MAR ROXAS

Passport No. DP 005641

Issued at Manila

Issued on 22 September 2004

Valid until 22 September 2009

RODOLFO G. BIAZON

Passport No. DP 007265

Issued at Manila

Issued on 9 January 2006

Valid until 17 August 2009

With My Conformity :

Senate President MANUEL B. VILLAR, JR.

Passport No. DP 0000511
Issued at Manila
Issued on 10 August 2007
Valid until 9 August 2010

Subscribed and Sworn to before me, this ____ day of February 2008, affiants exhibiting to me their passports, the details of which are indicated below their names.

Doc. No. _____
Page No. _____
Book No. _____
Series of _____

COPY FURNISHED BY REGISTERED MAIL:

HON. EDUARDO S. ERMITA
Office of the Executive Secretary
Malacañang Palace
1005 San Miguel, Manila

ATTY. ANTONIO R. BAUTISTA
Counsel for Petitioner
Bautista Law Building
30 E. Lopez St., Diliman, Quezon City

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legaspi Village
Makati City

SEC. ROMULO L. NERI
Chairman
Commission on Higher Education
5th Floor, DAP Building, San Miguel Avenue
Ortigas Center, Pasig City

EXPLANATION
(Pursuant to Sec. 11, Rule 13 of the
1997 Rules of Civil Procedure)

This Comment (To Petition for Certiorari dated 06 December 2007 and Supplemental Petition for Certiorari dated 14 February 2008) was served on the other parties by registered mail, following the requirements of the Rules of Court due to temporary lack of messengers who can complete personal service and filing.

DAVID JONATHAN V. YAP