

27 March 2006

Hon. Emmylou Taliño-Santos
Chairperson
Committee on Public Information

Dear **Hon. Taliño-Santos**:

We, the undersigned members of the House of Representatives wish to express our reservations about the adoption of the Committee Report made by the Joint Congressional Committee 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."

We are of the opinion that the views taken by the Joint Committee border on being safe and indecisive. The documents gathered, answers elicited and the conduct of witnesses during the hearings indubitably lead to conclusions which are not reflected in the proposed Committee Report. We believe that the Joint Committee's interpretation of the results of the hearings deserve scant consideration.

Below is a summary of our objections to the Committee Report. As members of the Joint Committee, and as active participants of the hearings, it behooves us that the Joint Committee failed to pin down the very issues of the inquiry and to conclude that certain personalities have to be made liable.

SUMMARY OF OBJECTIONS

1. As what has been seen and heard during the hearings, the application of Republic Act No. 4200 has been severely misused and abused by the supporters of the Arroyo Administration. The heart of the issue was not whether the rights of the President under RA No. 4200 may have been violated, but whether the law unintentionally prevented the president for being held accountable for her crimes and misdemeanors. Arguments on technicalities were used such that the truth was drowned in the provisions of said law. Proposed amendments to RA 4200 should thus ensure that the grandstanding and legal-speak during the hearings will not be repeated as it has done nothing but obstruct a legitimate search for the truth. Noticeably however, the recommendations in the Committee Report on the matter of revisiting RA 4200 lacked an aggressive tone as to the particular amendments that could best address the problems that we faced in this "Gloriagate" controversy. The imperative need to come up with a distinction between private conversations and conversations clothed with public interest is surprisingly missing in the Committee Report. The hearings have

made it apparent that public interest is paramount over any technicality or provision of law.

2. The utter disregard of the ISAFP and the NBI in investigating and discovering the root of the wiretapped conversation in the Garci tapes should have been more severely dealt with in the Committee Report. Indeed, there exists a need to review the capabilities of law enforcement agencies in conducting effective surveillance and the manner by which intelligence information is being handled, yet it is equally important to state that the uncooperative stance of these agencies will not be tolerated. Their actions or lack of it bolstered suspicions of an elaborate cover-up by the executive. The reprimand in the Committee Report, as a form of corrective action is grossly insufficient. The Joint Committee should have undertaken, on its own, the authentication of the tapes and should have been bold enough to recommend the filing of administrative complaints against the responsible officials of both ISAFP and the NBI for violation of the Code of Conduct and Ethical Standards of Public Officials and Employees.
3. Notwithstanding the failure of the Joint Committee to determine how corrupt COMELEC officials had committed fraud in the last elections, Mr. Garcillano's admission as to his conversations with candidates makes him accountable for his actions. Mr. Garcillano, unequivocally, has put in grave suspicion the sanctity of the ballot and the integrity of the elections. Any form of communication taints the entire electoral system and no seeming right of a candidate to protect one's ballot can rise above that.
4. "Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest." These were unequivocally violated by Secretary Bunye when he came up with two (2) versions of the Garci tape, stating that one is the original while the other is fabricated, and then later on retracting the same. The Committee Report committed grave error when it failed to reprimand Secretary Bunye notwithstanding its recognition that the public was misled by his statements. By his conduct, Secretary Bunye should be removed from office for misleading and lying to the public and for using public funds to propagate his lies and should be charged for violation of the relevant provisions of Republic Act 6713 and Republic Act 3019.
5. The *note verbale* from the Singaporean Government is an impeccable document from a sovereign state which proved that Mr. Garcillano was lying to his teeth when he testified that he did not leave the country. The integrity of the note verbale was duly supported by both the Department of Foreign Affairs (DFA) and the Department of Justice (DOJ), yet the Joint Committee has put too little weight in it, if at all. The Com-

mittee Report downright ignored the merit of the *note verbale* and had limited the same to a mere declaration of its existence.

6. The report of the Bangko Sentral ng Pilipinas dated 20 March 2006 categorically stated that Mr. Garcillano's "clean" passport (JJ 243816) does not conform to standard which proves that Mr. Garcillano has been far from truthful to the Joint Committee and to the public. His submission of a fake, or at the very least, a tampered passport to support his statement that he did not leave the country during the time that he was being summoned to appear shows his utter disrespect to the House of Representatives and has made a mockery of the entire inquiry.

DISCUSSION

Amendment to Republic Act No. 4200

The hearings conducted by the Joint Congressional Committee has now made it necessary to distinguish between private conversations and those conversations clothed with public interest when it comes to the application of the Anti-Wiretapping Law. No less than Fr. Joaquin G. Bernas, S.J. has opined that the right to privacy under RA 4200 must be balanced against the right of the people to information, especially information of paramount public interest. He even went further in saying that the contents of the alleged wiretapped materials under inquiry are not merely of private concern as they are matters of public interest.

This being said, RA 4200 must be amended such that communications involving the President, COMELEC Commissioners and other impeachable officials committing crimes while in their official capacity are matters of public interest and should not be protected by the Anti-Wiretapping Law. These recorded conversations must be admissible in evidence in any and all proceedings to ensure that such matters which have a direct impact on the public are disclosed and that RA 4200 will not be used by unscrupulous people to avoid liability. In exempting "public communications," accountability is likewise highly guaranteed considering that public officials will be more circumspect in their public dealings and communications.

Public interest is something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities which may be affected by the matters in question. It is interest shared by citizens generally in affairs of local, state or national government.¹

There is no iota of doubt that the whole controversy involving Mr. Garcillano is one which is of public interest to the entire nation. The content of the Garci tapes has put to serious question the legitimacy of the Arroyo presidency. Questions such as was there widespread fraud and cheating during the last presidential elections and who are the people who should be held accountable for such illegal and immoral acts have surfaced.

¹ Russel v. Wheeler, 165 Colo. 296, 439 P. 2d 43, 46.

With these questions hanging in the balance, there is need to undertake a comprehensive study of Republic Act 4200 and espouse the need to make suitable recommendations for the revision of the said law, to include the much-needed distinction between ordinary conversations and those which are of public concern. This however, the Committee Report surprisingly failed to state in its recommendations. Instead, the report delved greatly on proposals to expand the scope of allowable wiretaps, even allowing private entities to engage in wiretapping. We aver that on the contrary, any amendment should provide for stringent safeguards against possible abuse of the government's capability to tap into private communications and should likewise limit wiretapping capabilities to national law enforcement agencies.

Grave Omission of the ISAFP and the NBI

The Committee Report stated that 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. This was so, for the obvious reason that the ISAFP and the NBI were uncooperative during the investigation. To quote the Committee Report: "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."

Moreover, the lack of interest in pursuing any investigation or indictment as to the party or parties responsible in the wiretapping brings more misgivings in the role of the ISAFP and/or the NBI in the same. The legislative inquiry, which was fully covered by the media, could have been the best opportunity for these agencies to clean their names in this fiasco.

According to the Committee Report, "Both agencies are hereby reprimanded for their cavalier attitudes to 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." It is thus quite absurd that personalities whom the Joint Committee saw as neglectful in their duties which resulted to a national crisis will only be reprimanded.

In at least one instance, on January 25, Defense Secretary Avelino J. Cruz Jr. wrote the Joint Committee stating that ISAFP officials would not attend the hearing by virtue of Executive Order No. 464. This is inexcusable and a blatant disrespect to the House of Representatives as an institution. The Joint Committee should reiterate that the executive cannot just deny the House its cooperation in congressional inquiries without citing factual and legal bases.

It is thus strongly recommended that officials of the ISAFP and NBI be charged before the Office of the Ombudsman for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees, which cover both civilian

and military personnel. They completely failed to observe the standards of personal conduct in the discharge and execution of their official duties. This is shown by their laxity and seeming disinterest in pursuing the truth behind the wiretapping incident. A formal charge will set a precedent to all government officials and employees that matters of public interest should not be taken lightly and must be acted upon expeditiously. It also bears stressing that legislative inquiries are no laughing matter which must be participated in with the best interest of the nation and the people at heart.

Mr. Garcillano's Culpability for Bastardizing the Electoral Process

Indeed, as the Report states, "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."

Notwithstanding the Joint Committee's admission that it failed to determine how corrupt COMELEC officials had committed fraud in the last elections, Mr. Garcillano's admission as to his conversations with candidates makes him accountable for his actions. During the hearings, he testified that indeed, he has engaged in conversation with candidates during the election period. Unequivocally, Mr. Garcillano has put in grave suspicion the sanctity of the ballot and the integrity of the elections. Simply stated, any form of communication by a COMELEC official such as Mr. Garcillano taints the entire electoral system, for which he must be held accountable for. This is too alarming for the Joint Committee to have dismissed.

For his acts, Mr. Garcillano, should be investigated for violating practically all almost all of the prohibited acts under Section 261 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code of the Philippines and charged for violation of Republic Act No. 6713, "Code of Conduct and Ethical Standards for Public Officials and Employees." Section 2 of the said law provides that "it is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest." This was violated by Mr. Garcillano when he talked to candidates within the election period, knowing fully well that the same is prohibited by law.

Secretary Bunye's Lies

Secretary Ignacio Bunye's pronouncement regarding the two tapes has placed him in a very awkward and disreputable situation. 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." This is a complete turnaround of his statements during the June 6 press conference - that the President was illegally wiretapped, the conversation was spliced, and that it was the President's voice.

Such inconsistency has gravely put into question his credibility as a Spokesperson of the President. Such inconsistency reveals Secretary Bunye's violation of the highest standard of ethics in public service. Secretary Bunye's action not only embarrassed the President but had also bungled the issues. Secretary Bunye's act was an act of desperation that tainted his judgment such that a direct act of betrayal of public trust was evident. It is fundamental that Secretary Bunye owes loyalty to the people and to the truth, not to the President.

The inconsistency in Secretary Bunye's statements is glaring. His attempt to conceal the truth, notwithstanding his retraction, does not exculpate him from liability for having violated the basic principle that public office is a public trust and that one must serve with utmost responsibility, integrity and loyalty. It is thus a grave error on the part of the Joint Committee not to have decided to reprimand Secretary Bunye. We feel strongly that Presidential Spokesperson Ignacio Bunye should be removed from office and charged accordingly as stated above relative to the issues warrant such sanction. Holding such an important and sensitive position, Secretary Bunye should have been more careful and circumspect in his pronouncements regarding the whole Garci tape controversy.

In relation to the foregoing, we categorically state that the Minority will advance the passage of a law which will hold public officials liable for acts committed in contravention of the high ethical standards expected of them. Each and every public official should be accountable not only to his direct superiors but more especially to the public whom he serves. Misleading statements made by public officials, even those not made under oath, will be severely punished as this further affects the already tarnished image of government service.

The Integrity of the Note Verbale

A reading of the Committee Report reveals that there is a constant effort to stress that the legislative inquiry has determined and proven very little on the matter of Mr. Garcillano's participation in the wiretapped conversation and his whereabouts during the earlier part of the hearings. This however, is based on the self-serving testimony of Mr. Garcillano and the documents which he presented to the Joint Committee. But one thing that is glaring which the Committee Report has failed to highlight is the fact that Mr. Garcillano flew to Singapore during the height of the controversy in order to escape prosecution.

The Department of Foreign Affairs (DFA) had avoided categorical declarations on the matter of Mr. Garcillano's departing the country. But notwithstanding its reluctance to cooperate in the inquiry, the DFA had presented a diplomatic note from the Singapore Foreign Ministry dated 31 August 2005 containing details of Mr. Garcillano's entry to and departure from Singapore. Official statements were made with the DFA standing by the integrity of the Singaporean Government's report that Mr. Garcillano had entered Singapore en route to a third country on July 14, 2005. As Spokesperson Gilberto Asuque puts it, the *note verbale* is "the primary means of communication between two sovereign nations" such that "both countries appreciate

the integrity of a *note verbale*. I have to stand by its integrity because i ourselves issue *note verbale*.”

The *note verbale* was based on information provided by the Singapore Checkpoints Authority thus undeniably of credence and significance. To top it all, Justice Secretary Raul Gonzales told the media, as reported in the Philippine Daily Inquirer on December 16, 2005 that Singapore's diplomatic note was "an impeccable document...indubitable" and that Garcillano could be held liable for perjury.

With no axe to grind, the Singaporean Government has issued the diplomatic note that Mr. Garcillano entered their territory on board a Subic Air chartered flight. Why then did the Joint Committee ignore the value of the *note verbale*?

Others have argued that the *note verbale* is nothing but a piece of paper. Yet, apart from the recognition of the integrity of the *note verbale* made by the DFA and the DOJ, the DFA has continuously honored *notes verbale* from other sovereign states. An anonymous inquiry at the DFA revealed that *notes verbale* are taken at face value. Receipt of communications similar to this are immediately acted upon and need no further substantiation. The ongoing argument that *notes verbale* have no probative value in our regular courts, citing the celebrated case of Hubert Webb, is misleading. The initial denial of the court in admitting into evidence the *note verbale* from the United States Government was reversed when then Judge, now Court of Appeals Justice Amelita Tolentino issued an order admitting the same. It bears stressing that such initial denial was only due to the fact that they wanted Secretary of State Madeleine Albright to personally testify on the contents of the note, which is of course, an absurdity, to say the least.

The *note verbale* is an impeccable document from a sovereign state, with no interest whatsoever in the issue at hand. The simple question is why would the Government of Singapore state Mr. Garcillano's presence in Singapore if he was not there? It has no axe to grind against Mr. Garcillano. It does not owe the Philippines or any of the members of the Joint Committee anything. What is glaring is that the existence of the *note verbale* indubitably shows that Mr. Garcillano was in Singapore on July 14, 2005.

But only to satisfy the incongruous requests of some of the members of the Joint Committee, it sought the DFA for additional evidentiary support of the *note verbale*. These subsequent requests however, became unheeded calls. The DFA was suddenly on standstill. The Joint Committee had to contend with bureaucratic red tape which slowed down and made difficult all communication between the Joint Committee and the various government agencies, including the DFA. The Committee was informed that all communications now have to be coursed through the DOJ since the latter was also conducting its own investigation on the matter. The DOJ would like to impress upon the House and the public that it is regulating the presentation of documents and witnesses in order to ensure a thorough and independent result. But up to this time, the DOJ has not presented its report nor is there any news that their investigation is progressing. The DOJ and the other departments stalled the inquiry which resultantly affected the right of the people to know the truth.

The *note verbale* is more than enough to cast doubt on the integrity of Mr. Garcillano's words. The DOJ and the DFA have categorically recognized the weight

of the *note verbale* as indubitable truth, yet curiously, nothing was done by them to pursue this matter. And now, even the Committee Report is wanting.

Thus, a charge for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees should likewise be filed. As Section 2 provides "it is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest."

Mr. Garcillano's statements during the hearings remain doubtful. Mr. Garcillano asserts that he never left the country and that his non-appearance was merely caused by fear for his life. But the message in the *note verbale* is clear and both the DFA and the DOJ, on separate occasions, stood by the integrity and value of such message. As a public official, Mr. Garcillano has tainted the integrity of the service and his loyalty to the best interest of the nation is put to question. Such betrayal of the public trust will not be countenanced.

Mr. Garcillano's Fake Passport

In the course of the Congressional Investigation, Mr. Garcillano presented a passport with No. JJ243816 purportedly issued by the Republic of the Philippines. For numerous times, he affirmed and asserted under oath that the aforesaid passport was genuine and that it shows that he never left the Philippines during the whole time that the investigation was ongoing. Mr. Garcillano made everyone believe that he was in the Philippines all this time and that he used the said passport to create such impression.

But in a very timely twist of fate, the Bangko Sentral ng Pilipinas issued its report on the examination of Mr. Garcillano's passports, BB 602533 and JJ 243816. And yes, the expected has been unraveled. Mr. Garcillano's passport with number JJ 243816 is a fake, or at the very least has been tampered with! A safe conclusion after the BSP has categorically stated that such does not conform to the standard of a genuine passport.

In its 20 March 2006 report, the BSP found the following after examining Passport No. JJ 243816 issued to Virgilio Olivar Garcillano:

- Size of booklet (123 mm. x 85 mm.) smaller than standard (125mm. +/- 0.75 x 88 mm. +/- 0.75).
- Inside Front Cover (Data Page) and Inside Back Cover: Paper and print do not conform to standard.
- Stitching: Additional stitch along the seam does not conform to standard.
- Pages 1 to 32: Presence of cuts and joints along the seam does not conform to standard. (The cuts and joints should not be present).

- Page 32:
 1. Presence of the text “BISA-VISA” on the upper portion of the page does not conform to standard. (The text “BISA-VISA” should not be present on the upper portion of the page).
 2. Print quality of the text “Sakaling maaksidente o mamatay.....” and the lines therein do not conform to standard.

The foregoing belies Mr. Garcillano’s statements. The findings made by the BSP can only point to the inescapable conclusion that the subject passport presented by Mr. Garcillano was fake. In other words, Mr. Garcillano did not only speak a lie but he went as far as manufacturing a fake passport just to support his false claim that he never left the Philippines.

Yes, Mr. Garcillano has been caught lying to the Joint Committee! He has perjured himself as he made these lies under oath. Far worse, he submitted a falsified public document only to “prove” that he never left the country and to disprove the *note verbale*. Mr. Garcillano did not only lie but that he lied repeatedly and seriously. These things, the Joint Committee, the House of Representatives and the public should not forgive. He has wasted the efforts and the resources of the House of Representatives. He has made a mockery of the legislative inquiry!

The question now is what else did Mr. Garcillano lie about? It can be safely assumed that Mr. Garcillano, showing utter disrespect to the Joint Committee, could have been laughing in silence as he misled the members of the House of Representatives with his answers.

Based on the foregoing, we strongly push the Joint Committee to recommend the filing of the following cases against Mr. Garcillano:

- a. Violation of Section 19 (C), Paragraph 1, of Republic Act 8239 also known as the “Philippine Passport Act of 1996” for having falsely made, forged and/or counterfeited a passport and actually used the same before a Congressional Investigation in support of his perjurious testimony and to mislead the Filipino people that he never left the country;
- b. Perjury under Article 183 of the Revised Penal Code by falsely testifying under oath in Congress that he never left the Philippines when in truth and in fact he actually traveled to Singapore as shown by the *note verbale*, and possibly to other countries, as well;
- c. Falsification of public document under Article 171 of the Revised Penal Code for presenting in an authentic form Passport No. JJ243816 when such is different from the genuine original, in order to support his testimony that he did not leave the country.

The BSP report and the transcript of the proceedings are more than sufficient records to prosecute and eventually, convict Mr. Garcillano for the foregoing crimes. In support thereof, the *note verbale* which declare counter statements is a document of high probative value which the court can take cognizance of in the prosecution of the above cases. Let the courts decide the fate of Mr. Garcillano’s denials vis-à-vis glaring evidence to the contrary.

Corollary thereto, a charge for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees should likewise be filed against him. As Section 2 provides, "it is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest."

Mr. Garcillano's statements during the hearings remain doubtful. Mr. Garcillano asserts that he never left the country and that his non-appearance was merely caused by fear for his life. But the *note verbale* is clear, which both the DFA and the DOJ, on separate occasions, have buttressed. Even more serious is Mr. Garcillano's presentation of a clean passport which the BSP has now declared as not having conformed to standard. As a public official, Mr. Garcillano has tainted the integrity of the service and his loyalty to the best interest of the nation is put to question. Such betrayal of the public trust should not be countenanced.

The Opposition as Destabilizers

Finally, we vehemently disagree with the Committee's conclusion that the acquisition and subsequent publication of the alleged wiretapped material were "components of a plan... 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." Certainly, it could not be established that former Senator Francisco Tatad, Atty. Allan Pagua, Mr. Samuel Ong and all those who listened and distributed the tapes were out to topple the government. There was, after all, public interest involved especially since the conversations indicated that the people's mandate could have been circumvented during the 2004 elections.

Whether their claims are true or not escapes the Joint Committee. But to say that the members of the opposition are destabilizers for possessing an alleged wiretapped conversation and for exposing rampant fraud in the 2004 elections is an injustice. Nothing in the testimonies during the hearings or facts derived therefrom would warrant the claim that the opposition, along with others who sought the truth behind the Hello Garci tapes, are destabilizers.

On the contrary, it was the administration that attempted to cover up the issue every step of the way. As the report stated succinctly: "the administration could not and would not confront the tapes and contributed nothing towards arriving at the truth about them."

For the reasons explained above, we wish to reiterate that the Committee Report is substantially wanting. The safe and feeble tenor of the same made the efforts of the Joint Committee almost useless in arriving at the truth and in coming up with

effective recommendations. We therefore categorically state that we are unable to sign and are opposing the adoption of the Committee Report.

Questions regarding the tapes, to a large extent, remain unanswered and the alleged fraud perpetrated in the last elections placing in serious doubt the legitimacy of President Arroyo's election and continued stay in office remain unresolved. Until and unless these are resolved and categorically answered, we cannot, as one nation and people, overcome the political turmoil and instability enveloping our country.

Mabuhay ang Sambayanang Pilipino!

Very truly yours,

HON. FRANCIS G. ESCUDERO
Minority Floor Leader

HON. GILBERT C. REMULLA
2nd District, Cavite