

# INVESTIGATING CORRUPTION

**A Do-It-Yourself Guide**



edited by Sheila S. Coronel and Lorna Kalaw-Tirol  
Philippine Center for Investigative Journalism

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## **USER'S GUIDE**

This book is for those who are interested in corruption, whether they are journalists, activists, government officials, academics, researchers, or plain concerned citizens. What you have in your hand is a how-to manual, a practical guide intended for those who wish to understand how corruption takes place and the damage it has wrought. It is also for those who want to venture beyond understanding to doing actual investigations of corrupt acts and officials.

Investigating corruption requires skill, patience, and a nose for wrongdoing. This manual is intended to make the task less daunting and to provide a map for those who are embarking on the effort. It is hard to navigate blindly the corridors of power and malfeasance. This book was written with the certainty that with a manual such as this, even first-timers can take on the task. It is our hope that the numerous examples contained in this book of how wrongdoing has been unraveled will inspire others to do their own investigations.

The chapters in this volume were written in such a way that they can be read in any order, depending on what readers are interested in or on what they are looking for. The first chapter provides a broad overview, based largely on the existing literature on the definition, types, and consequences of corruption. The chapter also provides a listing of what Philippine laws define as corrupt

acts. Those who want more practical advice on investigating corruption can skip Chapter 1, but they should know that a grasp of legal and academic definitions as well as a grounding in the academic literature can help set the direction for probing.

Chapters 2, 3, and 4 describe the techniques that can be used for investigating corruption in the public sector. These techniques are based largely on the experience of journalists who have worked on corruption investigations for the Philippine Center for Investigative Journalism (PCIJ). Chapter 2 is an overview of investigative strategies; Chapter 3 describes the techniques that can be used for investigating officials; and Chapter 4 looks at the sources – human and documentary – that can be tapped for corruption investigations. Many of the investigations cited in these chapters are contained in the PCIJ's anthology, *Betrayals of the Public Trust: Investigative Reports on Corruption*. Published in 2000, the book describes how the authors of the reports included in the collection investigated wrongdoing, and is therefore a handy companion for this manual.

Chapter 5 lists the various ways in which corruption has been measured by survey groups, governments, donor agencies, and NGOs. This chapter is useful for readers with a statistical bent or for those who want to arrive at an estimate of the scale and cost of corruption. The chapter explains in detail the different methods used to measure corruption, including methods that can be used by researchers, journalists, and citizens' groups who can invest only modest staff and financial resources in the effort.

Chapters 6 to 8 examine corruption in specific sectors. Each chapter starts out with an overview of the functions and structure of a sector before going on to explain how corruption has taken place there and how malfeasance has been investigated by journalists and researchers as well as official bodies.

Chapter 6 explains the complex issue of public procurement or how national and local government units purchase goods and services and contract out public works. The chapter describes the procedures followed in government procurement and shows how corrupt contractors and bureaucrats have gone around these procedures to steal public funds. The chapter also lists the "red flags," the signs that indicate that bribery is likely taking place and that investigators should look out for when probing government contracts and purchases.

Chapter 7 describes the structure of the Philippine judicial system and provides tips on investigating corruption in the courts. Chapter 8 does the same for the environment sector and lists guide questions for investigating corruption in the environment.

Chapters 9 and 10 describe the efforts being undertaken to curb corruption. Chapter 9 looks at all the government bodies that are tasked with investigating and prosecuting corruption in the public sector. This is useful for those who wish to know which government agency is responsible for probing the corrupt act or official they are interested in, the powers of this agency, and the way in which it is structured. Finally, Chapter 10 describes the work of nongovernmental groups in campaigning for good governance, researching corruption, and probing malfeasance.

Because each chapter was written with the idea that it can be read independently of the others, acronyms are spelled out and the complete names of individuals and agencies are given the first time they are used in the chapter. Readers who go through the entire book will find that there are some repetitions, as the writers do not presume that those who read, say, Chapter 6 had already gone through Chapter 3. There are also natural overlaps in the sections: Chapter 3, for example, describes lifestyle and asset checks as one way of investigating officials. Asset checks are also tackled in Chapter 5, as they are one way of measuring the scale of corrup-

tion. To make it easier for readers, however, each chapter has references (enclosed in square brackets and italicized) to other sections and chapters in the book where the same subject is tackled. At the end of this volume, there is a list of the books, articles, and other reference material that were used in writing each chapter.

This is a manual, after all, and it is designed to make it easy for users to find what they want. For this reason, the headers on each page indicate the section in the chapter to which that page belongs, while the notations on the right or left margin of every page indicate the chapter title. In addition, the main sections in each chapter are listed in the table of contents.

*Investigating Corruption* was designed to be user friendly. We hope it is really so.

Sheila S. Coronel

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## DEFINING CORRUPTION

### Meanings, Types, and Consequences

Sheila S. Coronel

Corruption is as old as history itself. In the Philippines, the origins of corruption have been traced to the Spanish colonial era, when public office was auctioned off to the highest bidder and government was mainly an instrument for extracting money and labor from people. Jose Rizal vividly described in his novels the cruel impositions of a corrupt colonial government in late 19<sup>th</sup>-century Philippines.

The United States saw itself as a more benevolent and modernizing colonizer, but it also introduced U.S.-style machine and pork-barrel politics. Postindependence governments were hounded by graft charges, and political debate since 1945 has often been dominated by corruption scandalmongering.

After World War II, corruption flourished as politicians scrambled for a share of war damage payments. In the 1950s and 1960s, opportunities for corruption were created by the imposition of import and foreign exchange controls, the issuance of mining and logging permits, and preferential access to government loans and pork-barrel funds.

Ferdinand E. Marcos centralized corruption in the Office of the President when he declared martial law in 1972. He divided the most profitable sectors of the

economy among his relatives and friends, and amassed billions in ill-gotten wealth that he stashed away in Swiss banks. Corruption was decentralized after Marcos's fall, and the restoration of democracy also resurrected pork-barrel and money politics.

Corruption, therefore, has been part of public discourse in the Philippines for centuries. It has led to the downfall of governments—in more recent times, that of Marcos in 1986 and of Joseph Estrada in 2000. Public opinion polls have consistently shown high levels of public concern about corruption. While such awareness has been translated into popular mobilization in two "people power" revolts in 14 years, it has not resulted in sustained reforms.

The persistence of corruption through various regimes has been attributed to weak institutions, a patronage-based political system, or a "cacique" or oligarchic democracy where a small elite monopolizes access to the state and the economic benefits that can be derived from it.

The costs of corruption in the Philippines are generally acknowledged to be massive. The Office of the Ombudsman estimated that the government lost \$48 billion to corruption from 1977 to 1997, much more than the foreign debt of \$40.6 billion. In 2002, the Department of Budget and Management calculated that P95 billion, or 20 percent of that year's P476 billion procurements budget, would be lost to "side payments."

Since the 1990s, citizens' groups have shown fresh interest in the phenomenon of corruption. The Philippines has become part of what has been called a global "corruption eruption." Throughout the world, the fall of socialist and authoritarian regimes, the rise of democracy movements, and increasing economic liberalization brought to the fore issues of transparency and accountability. At the same time, increasing media penetration and the development of information technology pried open new areas of public life. As new democracies fal-

tered because of malfeasance, global institutions such as the World Bank and the United Nations made "good governance" the core of their programs. The age-old issue of corruption was rediscovered.

While much more is known about corruption now than in the past, a lot more needs to be found out. Corruption thrives in secrecy, and part of the campaign against malfeasance is uncovering new information about corruption and building a body of knowledge that will help citizens and reformers come to grips with the problem. Unearthing information about corruption is the first step toward preventing it.

### **What is corruption anyway?**

We know corruption when we see it. But defining it is not easy. Definitions, however, are necessary. To investigate corruption, one must first of all find out what it is.

Some scholars have written entire books just trying to define corruption. There is a rich academic literature on the subject. The most common—and simplest—definition, however, is the one used by both Transparency International, the global corruption watchdog, and the World Bank:

Corruption is the abuse of public office for private gain.

This is a minimalist definition that covers a wide range of wrongdoing. As the World Bank explains:

Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit if no bribery occurs,

## The problem with definitions

through patronage and nepotism, the theft of state assets, or the diversion of state revenues.

In the Philippines, public office includes appointive and elective posts at both the national and local levels as well as positions in state-owned corporations, government financial institutions, and other quasi-official bodies. Even if they are private individuals, government nominees to the boards of sequestered companies or of firms where government holds shares are also considered to be holding public positions. So would private-sector representatives in government bodies like bid committees or local development councils. Similarly, persons like the First Lady, presidential advisers, and government consultants, even if they do not receive any compensation, have official titles and influence and can therefore be considered to be holding public office.

Most definitions of corruption are limited to that which takes place in the public sector, but they also recognize the involvement of private individuals who initiate or act as brokers and facilitators of corrupt deals. Most definitions, however, exclude corruption in the private sector, as when, for example, company officials award contracts to firms in which they have interests, or when their relatives get choice jobs even when there are others more qualified.

Private-sector corruption often harms the public, who may, as a result, suffer from higher consumer prices, bad service, etc. This manual, however, deals mainly with public-sector corruption. Malfeasance in the private sector deserves a separate manual.

## The problem with definitions

Corruption does not include just the extortion, offer, or payment of bribes. Corrupt deals can involve nonmonetary rewards—such as shares in companies, a Rolex watch, or a night on the town. Public office can be abused

in other ways, such as preferential treatment given to relatives and friends who get contracts, appointments, state housing, or subsidized health care from a state hospital.

The definition often quoted in academic texts is one by scholar Joseph Nye, who defined corruption as

behavior which deviates from the formal duties of a public role because of private-regarding (personal, close, family, private clique) pecuniary or status gains, or violates rules against the exercise of certain types of private-regarding influence.

This definition is a more complicated way of saying public office for private gain. But it is also more inclusive as it lists behavior that may result in nonmaterial gain. A politician, for example, will dispense government favors for "status gains." He can become more popular, develop a reputation for being approachable, and he could parlay this popularity for political and other purposes.

In the Philippines, where corruption often takes the form of patronage for status gain, this definition becomes problematic. An elected official who gives jobs to friends, supporters, and family members is not considered corrupt. He is merely sharing the rewards of public office. As Senate President Jose Avelino said in the 1950s: "What are we in power for?"

Indeed, the practice of dispensing government largesse is widespread and seen as socially acceptable. Thus, every president who is appointed to office names thousands of new people, mainly his or her supporters, to various government posts. Neither laws nor prevailing social norms condone the practice. There are legal limits to the appointment of relatives, of course, but there are big loopholes as well—relatives are allowed as "confidential" appointments, such as staff of officials or as consultants.

**What the laws say**

The law may condone practices that may be considered corrupt in other contexts. Corruption investigators should therefore not be limited to what the laws say. They should carefully weigh their findings and point out forms of wrongdoing even if these are not covered by law.

For example, the discretion given to legislators to choose projects that will be funded by their "pork barrel" is legal, even if it raises conflict-of-interest issues: legislators vote on the budget yet they also appropriate sums for themselves and their districts, so they may be said to be torn between the national and their self- or constituency interest.

Judges are forced to inhibit themselves from cases in which they or their close kin have an interest. Yet, many legislators who are themselves businesspersons often deliberate and vote on bills that may directly or indirectly affect the businesses in which they have a stake. As explained in Chapter 3, "Investigating Officials," conflict of interest in Congress is very loosely defined.

The law is not always a reliable gauge of what constitutes corruption. In the U.S., sizeable campaign contributions from corporations are legal within certain limits. Yet, as the collapse of the energy giant Enron in 2002 made clear, these outsized campaign contributions allowed Enron to get favorable treatment from various sectors of the U.S. government. This raises the question of when a campaign donation, in effect, becomes a bribe. This is a question that applies to "money politics" in the Philippines and other countries as well.

**What the laws say**

In the Philippines, the legal definitions of corruption are supplied by three laws:

- Republic Act 3019, or the Anti-graft and Corrupt Practices Act, passed in 1960;
- Republic Act 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, enacted in 1989;
- and some provisions of the Revised Penal Code, which include penalties for such crimes as malfeasance, bribery, and malversation.

Those investigating corruption should have some familiarity with these laws so that they will know whether the officials or agencies they are probing can be held liable in court. The laws define illegal behavior. Philippine anti-corruption laws punish a range of offenses, not just bribery. This means that those on the trail of a corrupt official should look for other forms of wrongdoing, such as unduly favoring a firm or entering into contracts with disadvantageous terms.

The Anti-graft and Corrupt Practices Act has the most comprehensive listing of what is legally defined as corrupt behavior on the part of public officials and employees. These include acceptance of bribes, gifts, or other non-material considerations (such as a job for the official or a family member) in connection with the approval of licenses, contracts, permits, or other transactions.

Even if no such bribes or benefits are involved, the Act also penalizes officials who cause "undue injury" because of their actions or who enter on the government's behalf into transactions that are disadvantageous to the state. The Act also provides protection against conflicts of interest by banning officials from participating or intervening in decisions in which they may benefit. Even premature disclosure of information and delaying official action are punishable.

If investigators want to nail a government official or employee in court, they should find out whether that person has committed any of the following violations listed in the Act:

## What the laws say

- persuading or influencing another public officer to violate government rules or allowing himself to be persuaded to commit such a violation;
- directly or indirectly requesting or receiving any gift or benefit for himself or any other person in connection with any contract, transaction, permit, or license;
- accepting or having any member of his family accept employment in a private enterprise with pending official business with him;
- causing undue injury to any party or giving any private party any unwarranted benefits in the discharge of his official functions;
- neglecting or refusing to act within a reasonable time on any matter for the purpose of obtaining material benefit or to favor his own interest or that of another party;
- entering, on behalf of the government, into a contract or transaction that is manifestly or grossly disadvantageous to the government;
- directly or indirectly having financial or pecuniary interest in any business, contract, or transaction in which he intervenes or takes part in his official capacity;
- knowingly approving a license, permit, privilege, or benefit in favor of any person not qualified for, or not legally entitled, to such a license or benefit; and
- divulging valuable information of a confidential character acquired by his office or by him on account of his official position.

The penalties for violation of the Anti-graft and Corrupt Practices Act include imprisonment for six to 15 years, perpetual disqualification from public office, and forfeiture by the government of any prohibited interest and unexplained wealth. The Act defines unexplained wealth as that which is acquired during the incumbency of an official, whether or not that property or money is in his or her name, as long as it is "manifestly out of proportion" to his or her salary or lawful income. Unexplained wealth is ground for dismissal or removal from office.

R.A. 3019 also contains provisions on private individuals. It says that it is illegal for any person having family or "close personal" relation with any public official to take advantage of such relationship by requesting or receiving gifts or other benefits from a person transacting with the government, if said official can intervene in such transaction. Family relation includes spouses and relatives within the third civil degree. "Close personal relation" is defined as "close personal relationship, social and fraternal connections, and professional employment giving rise to intimacy which assures free access to such public officer."

R.A. 6713, on the other hand, has more comprehensive provisions on conflict of interest. The law and its implementing rules say that public officials cannot have a direct or indirect financial or material interest in any transaction requiring the approval of their office. An official is said to have a financial interest if s/he is a substantial stockholder (enough to elect a director), member of the board, or officer of a corporation; is the owner of, or has substantial interest in, a business; or is a partner in a partnership.

If a conflict of interest arises, officials or employees are required to divest themselves of such interest within 60 days after assumption of office. Divestment cannot be made to relatives within the fourth degree. [Chapter 3, "Investigating Officials," has a section on conflicts of interest.]

The Revised Penal Code imposes stiff penalties for such crimes as bribery; fraud in the making of contracts, furnishing of supplies, settling of accounts, and collection of taxes and other fees; and malversation or misappropriation of public funds or property.

Finally, R.A. 7080 or the Anti-plunder Law, enacted in 1991, defines plunder as a series of criminal acts by a public official which results in at least P50 million in illegally acquired wealth. Plunder is a nonbailable capital offense. The plunder charge against Estrada, for ex-

## Types of corruption

ample, includes allegations that he received P545 million in illegal gambling payoffs, P131 million in tobacco excise taxes, and P3.2 billion "from commissions, gifts, percentages, and kickbacks" that he deposited in the fictitious "Jose Velarde" account.

## Types of corruption

The laws give an indication of the many types of behavior that can be considered corrupt. Corrupt acts vary in magnitude, intensity, and scale. Corruption takes so many different forms and is found at various levels of government that it is often difficult to decide where one should begin investigating.

One way to grasp the phenomenon of corruption is to look at the various ways in which it has manifested itself. A knowledge of the types of corruption can help investigators know what they are looking for and recognize corruption when they see it in its various manifestations.

Over the years, academics and activists have classified corruption in various ways, according to:

### Where it occurs

**Public-sector corruption** as defined above is that which takes place in government, while **private-sector corruption** involves businesses and other nonstate sectors, such as churches, NGOs, foundations, and professional associations. Public-sector corruption can be either bureaucratic or political.

**Bureaucratic corruption** is that which occurs in the civil service, among the corps of state officials and employees who run the day-to-day affairs of government. Bureaucratic corruption may involve low-level government employees who are given small amounts as "grease" to speed up transactions, such as for licenses or permits. It may

also involve higher-level officials such as district or provincial highways engineers, or members of bid committees who get substantial cuts or commissions for awarding government contracts to favored firms.

**Political corruption**, on the other hand, takes place among elected officials and typically involves such things as vote buying, corruption of the electoral system, the political or regulatory harassment of opponents, and the preferential treatment of friends and allies. For example, a legislator may vote against a franchise that is given to the ally of his political rival, or he can initiate a congressional investigation of a government contract and then later accept a bribe to call off, delay, or derail the probe.

Political corruption often involves the use of influence to get appointments, tax incentives, behest loans, and other concessions from the government. President Marcos, for example, approved hundreds of millions of pesos worth of preferential loans from state banks to his cronies. Estrada, on the other hand, got state pension funds to buy shares of stock from favored firms.



**Ferdinand and Imelda Marcos in the 1960s.** The Marcos dictatorship brought political corruption to new heights.  
(LOPEZ MUSEUM)

## Types of corruption

Political corruption can sometimes involve horse trading. A senator may vote for the confirmation of a Cabinet secretary in exchange for jobs for his constituents, or a congressman will approve the budget of the public works department in exchange for an assurance that the department will award contracts to a contractor recommended by the legislator.

Political corruption takes various forms and often involves bigger amounts because politicians have more powers, including the powers to craft or vote on laws and to make policy, than those in the civil service, who implement law and policy. The bureaucracy can sometimes serve as the channel for political corruption, as in the case of pork-barrel funds. Legislators decide what projects they want funded from their "pork," but the budgets for these projects go through the bureaucracy, which also makes sure these are implemented. Thus, politicians need to collude with bureaucrats if they want to get kickbacks from pork-barrel funds.

### Scale and intensity

Corruption may be petty or grand. **Retail, petty or street-level corruption** is what most citizens experience in their daily lives. A motorist who pays a policeman P100 to escape being fined for a traffic violation is a party to petty corruption. So are citizens who pay fixers small sums to speed up the processing of their driver's license. Petty corruption involves lower-level administrative bureaucrats who are the frontliners in government agencies that transact with the public on such matters as taxes, traffic regulations, licensing requirements, or the discretionary allocation of government benefits such as subsidized food and fertilizer, disaster relief, or low-level jobs in state-funded projects.

**Grand corruption**, in contrast, involves big amounts. In the case of the Amari scandal that hit the headlines in the mid-1990s, the amounts supposedly paid to vari-

ous officials reached P3 billion. Bribes were paid to ensure that prime government property was sold to the company and that legal and regulatory obstacles were hurdled.

As the Amari case showed, grand corruption takes place at the highest levels of government, where political leaders, including then House Speaker Jose de Venecia, the bureaucracy, and the private sector interact. Grand corruption involves government decisions that can be made only with the intervention of high-level politicians, such as the President, legislators, and Cabinet secretaries. Typically, these decisions have to do with the awarding of big-ticket equipment and infrastructure contracts, the granting of multimillion-peso loans from government banks, or the drafting of policy on matters like the allocation of tax incentives or industrial subsidies.

A recent case of grand corruption involved then President Estrada and El Shaddai leader Mike Velarde. In 1999, the government paid Velarde's Amvel Land Development Corp. P1.22 billion for land in Parañaque that was going to be affected by the construction of a road linking to the C-5 highway. Velarde was paid over P15,000 per square meter, when zonal values were less than a third of that amount and market values of land in nearby areas were much less. It was Estrada who made the transaction possible, using the power of the President to approve contracts above P50 million. He himself directed the Toll Regulatory Board to acquire the property from Amvel. He also signed the final approval of the deed of sale and the contracts for land acquisition.

Apart from scale, the other way to classify corruption is according to intensity. **Isolated corruption** occurs in bureaucracies or sectors that are normally otherwise honest. If corrupt acts take place, these are exceptions rather than the rule. In this case, it is fairly easy to put corruption under control, as it is mainly a problem of investigation and prosecution.

## Types of corruption

**Systemic corruption**, on the other hand, is when corruption permeates nearly all levels of a government agency. That is generally perceived to be the case with the Department of Public Works and Highways (DPWH). Studies have shown that corruption permeates the entire life of most DPWH projects, from bidding to completion. Collusion among bidders for a project is routine, so bids are normally rigged. Other common anomalies are "ghost" deliveries, "ghost" projects, the use of substandard materials, and the outright bribery of officials. Politicians often intervene by interceding for favored contractors and getting a cut for themselves. Corruption has become so ingrained in the culture of DPWH and in the way projects are implemented that it is difficult to root it out.

#### Types of corrupt action or behavior

Another way of classifying corruption is by looking at corrupt acts themselves, rather than at the magnitude of malfeasance, where it occurs, and who is involved. **Bribery** is giving anything of value—whether in cash or in kind—to an official in exchange for an act or an omission in that official's public functions. It is probably the most common, and most visible, type of corruption.

As Yale University professor Susan Rose-Ackerman pointed out, bribes are paid:

- 1) to get a benefit, such as a procurement contract; access to government-regulated goods, credit, foreign exchange, import and export license, or business permit; access to government services or subsidies; even the purchase of state assets at a bargain-basement price;
- 2) to avoid costs, such as compliance with regulations, taxes, prosecution for illegal activities, delays, and red tape; and
- 3) for official positions. In the Philippines, for example, school teachers pay principals one-month's salary to get a teaching position.

Distinct from bribery is the **theft of state assets**. This can range from petty theft of such items as office equipment, fuel, and supplies, to the big-time theft of tax revenues or fees that would otherwise go to the government. In May 2001, for example, Dominga Manalili, a cashier at the Bureau of Internal Revenue (BIR), was sentenced to two life terms after being found guilty of plunder. Manalili had opened two bank accounts where she and her cohorts diverted and withdrew more than P260 million in withholding-tax payments of government and private employees from 1996 to 1997.

Thievery can also take the form of cash advances that are never repaid. Commission on Audit reports show huge unpaid advances in nearly all agencies of government. Payments drawn for "ghost" employees, projects, or deliveries are likewise a form of theft. In the Department of Education, ghost or nonexistent deliveries of textbooks and school desks are common, resulting in massive shortages in public schools.

**Patronage** is considered in the academic literature to be a form of corruption. Patronage entails the distribution of government largesse—jobs, subsidized housing, public land, and other public goods and services—in exchange for political support. It is a way of acquiring, maintaining, and expanding political power by distributing economic benefits from the state and dispensing them to political allies, ward leaders, and followers.

Philippine politics at both the national and local levels is patronage-based. As discussed earlier, Philippine norms do not consider the dispensing of patronage as corruption. But most Filipinos will not contest that patronage corrupts politics, if only because the large demands imposed by followers on political patrons is one reason politicians amass illegal wealth.

**Cronyism**, such as that seen during the Marcos era, is the term used when personal relationships (relatives,

## Types of corruption

classmates, business and professional associates) become the paramount consideration in state policymaking and the allocation of public resources. Cronyism has been described as "an extreme form of corruption in which the allocation of rents to elites is a function of their loyalty to individuals or power." Marcos, for example, awarded infrastructure contracts and control of key sectors of the Philippine economy, such as coconut and sugar, to his kin and cronies. This was also the case with President Suharto of Indonesia, whose relatives and cronies apportioned industries and monopolies among themselves.

Cronyism is different from **nepotism**, which is the use of government posts to obtain good jobs or unfair advantages for family members.

A term often found in corruption literature is **rent seeking**, which comes not from political science but from economics. Economists like Manuel Montes make a distinction between profits "that arise out of internal efficiencies and investments of the firm" and rents, which are "due to the firm's success in obtaining and retaining some economic advantage by the state."

Rents are created when the state restricts access to the market, for example, when it rations foreign exchange, curbs free trade, and licenses economic activity. In the Philippines, power and telecommunications monopolies have been accused of rent-seeking behavior, because they have made use of government concessions—including generous franchise terms, loans, rate increases, and tax cuts—to ease out competitors and guarantee high profits for their operations.

The Philippines has been called a "rent-seeking society" because businesses thrive on such behavior and on the concessions and privileges they can get from the state. The playing field for business has thus been described as uneven or noncompetitive because of the reliance of businesses on government privileges.

## **Consequences of corruption**

Corruption is not, as many officials seem to believe, a victimless crime. On the contrary, it has profound consequences on individuals, firms, social sectors, and the development and security of society in general. Investigators, therefore, should focus not just on how and where corruption takes place and who is responsible for it. They should also examine the damage it has wrought.

The literature on the consequences of corruption is vast. In the 1960s, it was fashionable to say that corruption could have beneficial effects on economic development, bureaucratic capacity, and democratization. By the 1990s, however, more and more experts had found that corruption was damaging in various ways, among them:

### **Corruption impedes economic growth**

Empirical studies have shown that countries where corruption is rife suffer from lower levels of increases in gross domestic product and investments. Some experts concede that corruption may indeed be beneficial for some time. For example, so-called East Asian "crony capitalism" — marked by sweetheart deals between government and big business and state support for favored industries and firms — resulted in spectacular economic growth.

Over the long term, however, the sustainability of such growth has been put in doubt, especially after the East Asian economic crisis of 1997. Over time, corruption will tend to undermine growth when privileged firms lose their capacity to compete in open, more competitive markets and officials demand higher and higher levels of payoffs that grossly inflate the cost of business.

Based on the evidence from many countries, the most significant impact of corruption on growth is that it reduces investments. Economists have shown that improvements in the corruption index result in significant increases in investment and per capita growth rates.

## Consequences of corruption

In the Philippines, where crony capitalism has had disastrous results, the devastation wrought by corruption on economic development is starkly clear. Exactions from corrupt officials increase the costs of business, so investors would rather put their money elsewhere. Those who benefit from corruption are inefficient firms with favored connections. When the playing field for business becomes very uneven, business activity as a whole suffers, with only corrupt companies tending to survive.

Moreover, in the Philippines, the gains from corrupt profit making have tended to end up in Swiss bank accounts, real estate in California, and conspicuous domestic consumption. Profits that could otherwise have been plowed back to productive investment in the local economy are either invested abroad or dissipated at home.

### Corruption worsens income inequity and poverty

All over the world, corruption is associated with lower levels of spending on education, health care, and other public services. The costs of corruption, therefore, are borne largely by the poorer sectors of society, who need these services the most. Corruption in textbook procurements means that poor students don't have books; kickbacks from public works contracts mean poor farmers will not have roads for transporting their produce; and under-the-table commissions from the purchase of vaccines mean poor children become prone to disease.

No matter how inadequate these services are, the poor end up paying for them through indirect taxes that the government imposes to raise funds while the rich bribe revenue officials to evade income taxes. Apart from that, the poor also have to shoulder the costs of inefficient and corrupt firms in terms of more expensive goods and services.

Corruption therefore creates a vicious circle. When the budget for procuring goods and services is inflated by



**Slum near the Payatas garbage dump.** Corruption hurts the poor the most. (SONNY YABAO)

graft, and tax revenues are low because of widespread corruption in the tax-collection system, the government has no choice but to raise more taxes and cut spending. Because the corrupt evade tax payments, the exactions are made on the poor through indirect taxes. At the same time, social spending on services that benefit the poor is slashed, so the poor are mired deeper in misery. Meanwhile, the pockets of corrupt officials and businesspeople are filled up, contributing to further inequities in wealth.

Corruption also distorts the allocation of economic benefits from the state. For example, when government decides to spend on a white elephant, it is often so that officials can enrich themselves from kickbacks from construction contracts. Money spent on useless infrastructure is also money taken away from clinics or schools, which are more sorely needed but government scrimps on them because officials can make more kickbacks elsewhere.

### **Corruption damages political legitimacy and stunts democracy**

Corruption undermines governments. The Marcos and Estrada regimes collapsed largely from the weight of corruption. But corruption exacts other political costs as well. It shatters the faith of citizens not only in their

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political leaders, but also in government and in democracy itself. Citizens become naturally suspicious of the intentions of those in authority, thereby eroding the capacity of their leaders to govern. They also become prey to authoritarian and nondemocratic leaders and forms of political action.

Corruption damages the political fabric of a society in other ways. Some political scientists argue that corruption is bad not so much because money changes hands but because it bypasses representation, debate, and choice. If politicians pay for votes or use state patronage to win support, then the candidates who get elected are not necessarily those who represent the citizens' best interests. Patronage skews the political playing field; it results in limited political choices for the electorate, as only those who have money and access to government largesse will contest public office. In such a situation, social debate and democratic development are stunted. "Corruption begets bad politics," writes Michael Johnston, "and bad politics begets further corruption."

### Corruption endangers public order and safety

Corruption results in rules being bent, laws being disregarded, and formal processes, subverted. Corruption in the judiciary suspends the rule of law, so that criminals and lawbreakers are on the loose and allowed to operate with impunity. Corruption in the police force means syndicates involved in drugs, theft, gambling, smuggling, prostitution, and kidnapping thrive, making cities and communities unsafe.

Police forces are especially prone to being drawn into crime because they deal with criminals. Thus they have ended up providing "protection" to syndicates or being part of these syndicates themselves.

Thai scholar Pasuk Phongpaichat's description of the "syndication" of police corruption in Thailand holds

true for the Philippines as well:

Corruption within the police force is held to be sustained by regular redistribution of revenues from corruption widely through the police force itself and through other related institutions. It is sustained also by a subculture which strengthens the group loyalty of those involved, legitimizes the acceptance of revenues from corruption as supplementary income and binds together vertical networks of bosses and subordinates who share the tasks of collecting and redistributing revenue. The values of group loyalty and hierarchy which underlie this subculture are first nurtured in the police cadet school. They are further reinforced at work by the examples of other police officers and the pressure from superiors and peers involved in the corruption networks. Not all policemen are involved in these networks. But the proportion which is corrupt is large enough to maintain the syndicate.

Other forms of corruption have other impacts on public safety. Widespread payoffs in building-safety inspections have led to such disasters as the Ozone Disco fire in Quezon City in 1996. Some 160 youths perished in the blaze caused by an electricity overload. Subsequent investigation revealed that the casualty count was very high because of the absence of fire safety devices and properly marked fire exits, among others. Investigators found over 20 violations of the national building and fire codes, yet year after year, the disco had supposedly been inspected by city hall and permitted to operate.

As in the Ozone Disco disaster, the trail of greased palms was evident in the collapse of portions of the Cherry Hills subdivision in Antipolo in 1999, which killed 57 residents. The construction of the housing estate did not have an environmental compliance certificate. Shortcuts in the procedures evidently led to the safety of residents being put aside.

## Consequences of corruption

The Philippines teems with such regulatory shortcuts that are encouraged by corruption. Many shipping disasters, for example, could have been averted if not for the negligence of maritime authorities and their complicity with shipping firms.

### **Corruption results in bureaucratic inefficiency and demoralization**

Corruption causes delay and red tape when corrupt bureaucrats put up unreasonable obstacles to the completion of routine transactions so that they will be paid grease money.

But bad service is not the only result of corruption. When bureaucracies make corruption the end-all and be-all of their existence, then projects are implemented according to the opportunities for malfeasance that they present.

As Malaysian corruption scholar Sjed Hussain Alatas wrote:

Corruption is psychologically addictive. Like a drug addict, the corrupt man organizes his thoughts and actions around the consummation of the corrupt act. It becomes the dominant passion to which other goals are subordinated.

In such a setup, the idea of public service is thrown aside and bureaucrats drag their feet, unless they are paid to be efficient. Those who choose to remain honest are marginalized. The Philippines is especially prone to this type of malaise because government is seen as an employment agency. Politicians bloat the bureaucracy by wangling jobs for their supporters. Bloated bureaucracies mean small budgets and pitifully small wages for civil servants, who in turn resort to graft. Because political connections matter in appointments, merit is rarely rewarded, and the meritorious become demoralized or opt out of government altogether.

## DETECTING AND DOCUMENTING CORRUPTION

### An Overview of Investigative Techniques and Strategies

Sheila S. Coronel

Corruption is everyday stuff in the media. Newspapers and radio and television programs regularly churn out allegations of malfeasance committed by those in public office. *Sari-sari* store and coffee-shop talk often centers on corruption as well, no doubt because citizens encounter corruption, in all its multifarious forms, in the course of their daily lives.

The challenge, whether for journalists, activists, researchers, and plain concerned citizens, is to probe the allegations of wrongdoing and see how far they go, while steering clear of partisan politics. Those who probe corruption should keep in mind that their goal is not to peddle scandal or to pit rival politicians against each other but to provide citizens with information that will help them understand—and grapple with—corruption and its impact on their lives.

Corruption scandals sell, and many politicians have gained mileage by making damning exposés; many have also lost their careers because they have been implicated in such scandals. The events that led to the fall of President Joseph Estrada in 2001 are the most dramatic example of this reality. Legislators who served as prosecutors in Estrada's impeachment trial were propelled to national prominence and won handily in subsequent elections, while Estrada himself lost the presidency and

was later detained while facing graft and plunder charges.

It is not surprising that in the normal course of events corruption investigations are often initiated by politicians. Many times the probes are made through congressional committees like the Senate Blue Ribbon Committee, a powerful body that can look into just about any form of wrongdoing. At other times, supposedly nonpartisan government investigative bodies, such as anti-graft commissions or the Office of the Ombudsman, initiate the investigations. [See Chapter 9, "Combating Corruption: How the Government Fights Malfeasance."]

Contemporary Philippine political history is filled with numerous accounts of politicians accusing their rivals of corruption. These accusations, whether at the national or local level, provide the grist that keeps the mill of politics going, and it must be added, also the spice that keeps the public glued to the political stage.

The press often does no more than report on the allegations, getting first one side and then the other. Too often the coverage of corruption resembles a ping-pong match, with allegations and counter-allegations being traded, mostly with the help of well-paid publicists feeding "scoops" or providing access to so-called witnesses, and sometimes even to spurious documents. In the end, the public is unable to judge whether the allegations are true. Once the furor dies down and the media move on to the next scandal, the charges are forgotten and the guilty often left unpunished. Follow-ups are seldom made.

To be sure, there have been numerous instances when the media themselves have initiated investigations of corruption, but sometimes they barely scratch the surface and are unable to produce documents or credible witnesses who are willing to go on record about what they know. Sometimes reporters do not do their own probing, relying instead on "leaks" or "feeds" from

sources. Given the deadline and other constraints journalists have to work with, this is understandable.

But corruption should be the concern not just of journalists or of politicians. Because it harms particularly the poor and the powerless, fighting corruption should primarily be a citizens' crusade.

This chapter outlines some techniques and strategies for doing a corruption investigation. While it is based largely on the experiences of journalists who have probed corruption, particularly those from the Philippine Center for Investigative Journalism, these techniques can also be used by other researchers and citizens who want to go out there and find malfeasance. This chapter will help them head off in the right direction and show them how and where to direct their efforts.

### **Investigating petty corruption**

Small-time or so-called street-level corruption—such as policemen mulcting a few hundred pesos from erring motorists or government clerks asking for a small fee to “facilitate” transactions like licenses or permits—is what most citizens experience in their daily lives. It is also fairly easy to document using human sources. Unlike other types of corruption, there is often no “paper trail” in petty graft; after all, policemen and bureaucrats do not issue receipts for the bribes they receive.

Journalists, however, have been able to expose petty corruption using the following techniques, which ordinary citizens can use as well:

#### **Interviewing victims or eyewitnesses**

Because this type of corruption is so rampant, there is no shortage of victims or witnesses. It is not difficult to get a jeepney driver to confess that he paid off a policeman, or someone applying for a business permit to ad-

## Investigating petty corruption

mit that he gave money to a clerk at City Hall. Businesspeople, if guaranteed anonymity, may confess that they pay off clerks and even officials to get a building or business permit.

When sources are anonymous, however, it is difficult to convince others that they are real. If anonymity cannot be avoided, then investigators should try to get as many sources as they can and to ask these sources to give as detailed a description of the pay-offs as possible. These details, if put together well, can provide a convincing account of how the pay-offs are made, the amounts involved, and the officials implicated.

For example, a *BusinessWorld* report published in January 2002 began with the story of two business partners who applied for a building permit to set up a small eatery in Manila. One of the partners said she paid close to P6,000, arranged through an engineer employed by the Manila City Hall, and got her permit in two weeks. In contrast, a businessperson who went through the normal process obtained his permit only after six months. Both businesspersons were not named in the story, but the details, including a breakdown of how the money was divided among various City Hall employees and officials, provided convincing proof of how systemic bribery was in the office.

The *BusinessWorld* report put these two cases together with the results of a Development Academy of the Philippines survey of nine local governments in Metro Manila, showing that the incidence of bribery was highest among offices issuing permits and licenses and those handling traffic enforcers. The result was an interesting and revealing report that documented a well-known, but not well-reported, form of bribery that increased the cost of doing business.

If victims cannot be found, or if investigators want to find more proof of wrongdoing, it may be possible to get witnesses who will attest that bribery takes place. For

example, a security guard posted at a building near a traffic intersection can say that he sees motorists regularly paying off the police. Or a Xerox operator at City Hall can attest to seeing clerks regularly getting payoffs from citizens applying for permits. Single eyewitness accounts like these, however, will not suffice; they have to be corroborated by two or three others or more. Only then can a report, complete with telling details, be woven from their stories.

### Catching wrongdoers in the act

The more dramatic way of exposing petty corruption is to catch wrongdoers *in flagrante*. This is especially true for television, which demands pictures. In an August 2000 episode of the TV program "I-Witness," for example, a TV producer with a hidden camera accompanied a customs broker who was getting cargo shipments for his client. The broker had to get a series of signatures, each one costing anywhere from P20 to P100, depending on the signatory's rank. The hidden camera took shots of brokers dropping bills into the open desk drawers of customs personnel. Even the security guard charged those entering the customs compound an "entrance fee" of P20.

In February 2002, TV reporter Jessica Soho aired on her program footage from airport surveillance cameras that showed returning overseas Filipino workers slipping folded bills into the hands of immigration officials at the Ninoy Aquino International Airport. In Thailand, an independent TV program made waves in the late 1990s by showing such footage as truck drivers routinely paying off policemen at checkpoints.

No doubt, these videos provide visual proof of corruption. Not only that, they make riveting viewing. The use of hidden cameras and other surveillance equipment such as hidden voice recorders, however, can be controversial and can cause both legal and ethical problems for those who use them.

## Investigating petty corruption

Even without surveillance equipment, it is still possible to witness acts of petty corruption. Observing a policeman's behavior from a strategic vantage point is one way of catching wrongdoing. Carefully noting how bills are slipped into the open palms of bureaucrats in a crowded office is another way. This requires staking out for hours, but the effort eventually pays off. In 1995, the PCIJ sent a photographer and a writer to hang out at the Manila Western Police District headquarters for six months. Although both identified themselves as journalists, the policemen had become so accustomed to their presence over the course of many months that the two were able to see how policemen behaved in real life and documented routine violations of the rights of suspects, including children.

**Going through the process**

Another way that journalists have documented wrongdoing is to see whether it is attempted on them. Applying for a driver's license or getting a birth certificate and carefully observing how fixers bribe clerks in order to speed up the process for their clients can provide the initial material for an investigation. In 1999, the PCIJ sent one of the journalists participating in a training course to get his birth certificate at the National Statistics Office. The experience brought him face-to-face with fixers who offered a range of fees for various services.

One of the more famous cases of this type of reporting was done in 1995 by Soho for the TV program "Brigada Siete." Soho's crew tried to get a driver's license for a blind 45-year-old former accountant. They went to two branches of the Land Transportation Office in Metro Manila, where they were approached by fixers who offered to get the license even if the man did not show up at the agency, or sign any forms, or take a driver's test. In both branches, the TV crew got a license in three days.

At the Pasig office, the blind man was given a professional driver's license even if he did not go through the

mandatory six-month waiting period during which applicants are issued a student permit. The fixer asked for P600, which was presumably divided by various employees at the licensing office. At the Sta. Cruz, Manila office, the fixer demanded P1,200 but was able to produce only a student permit after three days. The regular fee for a license then was only P160.

### **Digging deeper: what to look for when going for the big time**

The techniques described above are relatively simple. With imagination, sufficient preparation, and the right state of mind, one can uncover corruption and document it in an interesting way, touching a chord with a public accustomed to dealing with petty graft. This type of story also has shock value, especially on television. Ratings-wise, it is hard to beat video footage showing bills being shoved into open palms or a blind man boasting of having acquired a driver's license. Moreover, this type of exposé sometimes has dramatic results—officials are fired or procedural reforms are instituted.

The danger is that after a while, stories like these become merely entertaining. They may give new information, but end up providing mostly distraction. In the end, nothing is done. When this type of exposés becomes ordinary, the public may become so jaded that they are no longer shocked or enraged by a continuous stream of sensational pictures.

This is one reason to dig deeper. The other reason is that there is much waiting to be uncovered beneath the surface of petty corruption. Quite often street-level corruption is only the tip of the iceberg. Much bigger fish—and far more sensational stories—lie beneath it.

Corruption investigators are often too focused on finding evidence that bribes have been paid that they over-

**Off the beaten track**

look other ways of getting information, especially of other, maybe equally damning forms of wrongdoing. Finding proof of corruption does not always entail staking out and taking pictures of money actually changing hands. In fact, the most scandalous types of corruption rarely take such crude forms as those described in the previous section on petty graft.

Anomalies involving government contracts, for example, can be documented by looking at possible violations of the law, gaps in established procedures, and irregularities in payments or deliveries. [See Chapter 6, "Investigating Procurements."]

Sometimes, rather than investigating a corrupt act, the better approach might be to document the fruits of corruption by doing a check on the assets and lifestyles of corrupt officials. [See Chapter 3, "Investigating Officials."]

At other times, it may be more productive to examine conflicts of interest, divestments, unethical behavior, and problematic relationships. For example, do legislators make laws that ultimately benefit themselves? Are contracts being awarded to, or judgments made in favor of, fraternity mates? Or, as in the famous case of former president Estrada, are mistresses or former classmates involved in lobbying for appointments or in wangling government contracts?

**Off the beaten track: going beyond the obvious**

Here are some ways to document corruption by burrowing deeper and doing original investigations that go beyond the obvious and superficial. These techniques can be used to uncover new information about corruption—how it is organized, the officials involved, the amounts paid, the damage caused. These techniques are also helpful in teasing out trends and discerning patterns as well as in uncovering more specific instances of malfeasance.

**Find out how far or how deep the corruption goes**

Behind the clerk or policeman receiving bribes and the customs or immigration employee with an open desk drawer is an entire bureaucracy that condones graft and provides positive incentives for committing corruption.

Corruption seldom occurs in isolation. In many government agencies, corruption is systemic, permeating the lowest to the highest rungs of the bureaucracy. Corruption at the bottom is tolerated because those at the top are inattentive or are not themselves clean. Worse, they take a cut from the collections below. Investigators, therefore, should not limit themselves to the most obvious manifestations of corruption, which are usually found at the level of clerks or frontline employees dealing with the public.

The probe should also extend to higher-ups who, because of ignorance or complicity, allow corruption to flourish. One way to check the involvement of high officials is to see whether they have investigated wrongdoing, reformed procedures to make them less prone to graft, or taken action against erring bureaucrats. Another way is to interview agency insiders as well as those who do business with the agency to find out whether malfeasance reaches the upper levels.

The case of the Bureau of Immigration (BI), as documented in the PCIJ's 1998 book, *Pork and Other Perks: Corruption and Governance in the Philippines*, provides a good example of top-to-bottom corruption. The BI was given virtual police powers by a 1940 law as part of its mandate to inspect the entry of planes and vessels in search of illegal aliens and to keep track of foreigners living in the country. BI agents can make arrests without warrants, and the immigration commissioner can order the deportation of aliens.

Such powers allow corrupt immigration agents and officials to extort money from foreigners living in the coun-

## Off the beaten track

try. The PCIJ was able to show how corruption had so permeated the BI bureaucracy that in 1996 alone it was estimated that immigration personnel made from P50 to P60 million in payoffs from undocumented aliens entering the Philippines. The pie was divided among various BI personnel ranging from immigration agents all the way to commissioners.

At that time, the most stable source of illegal revenues at the bureau was the residency permits that foreigners are required to obtain. The report cited an episode in the TV program "Hoy! Gising!" which in 1997 accompanied Steven Ong, a Chinese national applying for an Alien Certificate of Registration that would allow him an extended stay in the country. Although Ong's documents were in order, his application did not move.

The bottleneck was the BI's Law and Investigation Division, which a "Hoy! Gising!" crew with a hidden camera visited together with Ong. There, a secretary told Ong that he had to pay P30,000 to process his papers. Half of the money, the secretary said, would go to the BI commissioner; P5,000 each to the assistant commissioner and the head of the Alien Registration Division; P1,000 to the fingerprint division; P1,000 to the man taking the fingerprint; and the rest to the legal officer who was the secretary's boss.

Even immigration clerks take a cut. In an interview with the PCIJ, one clerk admitted that her "small-time" fixing consisted of getting departure and arrival stamps on the passports of overstaying aliens to show that they had been in and out of the country. This way, they would not be held liable for staying beyond the maximum number of days they are allowed in the Philippines without a visa. The clerk acted as a front person dealing with the "client"; another BI employee brought the passport to the immigration officer who provided the stamps. The officer got 40 percent of the payoff; the rest was divided among the clerk, the BI employee who served as a con-

duit, and the government, which at that time imposed a visa-waiver fee of P760.

A variety of research and reporting techniques were used to portray systemic corruption at the Bureau of Immigration. These included interviewing both the personnel guilty of corruption and their victims; undercover operations by the "Hoy! Gising" team, which uncovered extortion; and following the paper trail to get court, audit, and other records, including those of a Senate investigation on the bureau.

Other PCIJ investigations have relied mostly on available public records and interviews to uncover corruption in such agencies as the Department of Agriculture and the Department of Public Works and Highways. In both these agencies, proof of corruption was obtained not through undercover methods, as in the "Hoy! Gising!" case, but through field visits which showed positive proof that public funds were being wasted on corruption, as evidenced by unfinished roads and bridges and by farmers saying they never received seeds and fertilizer allocated to them by the government. [See section below, "Go to the Field," and the section "Field Inspections" in Chapter 5, "Measuring Governance and Corruption."]

The other method that the PCIJ has used is in-depth, open-ended interviews. In a 1995 investigation of *jueteng* in a Pangasinan town, interviews with key informants, including the *jueteng* lord, his operators, and the members of the political family from which the gambling lord came, provided a detailed description of the officials, from local to national level, who protected illegal gambling.

### **Find out who has the power and who gets the money**

How does one begin? How does an investigator go about tracing the route of corruption? The surest way is to find out where the power lies, who makes the decisions, who has the discretion to interpret or bend the rules, whose signatures are required to sign a contract, an

## Off the beaten track

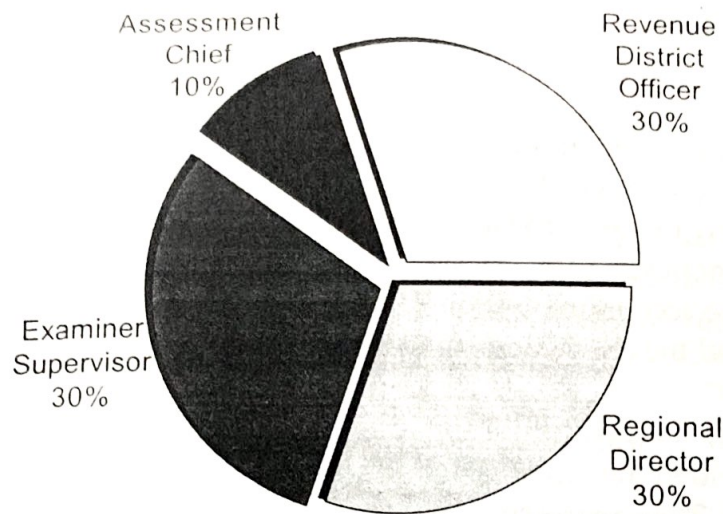
appointment, a permit, or a tax audit. Corruption occurs where discretionary power is exercised. Following the trail of corruption means following the trail of power.

In April 2000, the PCIJ released a report on how tax officials were skimming off huge amounts from businesspeople undergoing tax audits. The Bureau of Internal Revenue (BIR), the country's primary tax collection agency, is tasked with ensuring that citizens pay the correct taxes. To do so, the BIR undertakes tax audits that include going over the books of individuals and businesses. Tax audits can take place only after the issuance of a letter of authority by the BIR commissioner who then authorizes revenue district officers (RDOs) to examine the records of certain taxpayers in relation to their tax liabilities for a specified period. The RDOs then authorize BIR examiners to conduct the audits.

By interviewing both retired and current BIR personnel as well as accountants and businesspeople who had undergone BIR audits, PCIJ contributor Tess Bacalla was able to piece together how the extortion was done. She traced the trail of money by following the flow of power. She found that tax audits are powerful tools in the hands of corrupt revenue officials because they can be used to extort money from individuals and companies. People often choose to give in to the extortion because even if they paid the right taxes, they would be continually harassed by BIR personnel. Going to court to contest the findings of a BIR audit is an option, but it is a long, tedious, and expensive process.

Former and current BIR employees told Bacalla how tax personnel shared their "loot." The sharing was commensurate to the power wielded by officials at various levels of the bureau. Her findings [see graph] show that the bribes were divided among the tax examiners who did the actual audits, their supervisors and assessment officials who sit at their desks and go over the audit findings, the revenue district officers who request from the commis-

Where BIR bribes go



sioner the letters of authority that allow the audits to take place, the regional director who is the boss of the revenue officer and who forms another layer of approval. Sometimes part of the payoff went to higher officials who issued the letters of authority, and these could include even the BIR commissioner and his deputies.

The BIR is not an unusual case. In bureaucracies where corruption is entrenched, a sharing system with precise percentages very often has evolved and been refined through years of practice. This type of information, however, cannot be found in documents. Instead, data is provided by key informants—agency insiders—who have intimate knowledge of how payoffs are shared. [See Chapter 4, "The People and Paper Trail."] It is important, therefore, to find such insiders in the agency one is investigating. Another option is to develop sources among the people who deal with such agencies. This is particularly true of agencies that purchase supplies, equipment, and services from private contractors.

While investigating corruption at the education department, for example, the PCIJ's Yvonne T. Chua interviewed textbook publishers and agents to find out how much they paid corrupt bureaucrats. Her report began with the story narrated to her by a medium-sized book

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publisher who set out on a trip to the regional office of the Education Department soon after she got a P20-million contract to supply supplementary textbooks funded by a congressman's "pork barrel." The publisher carried with her a bag containing P1.17 million in cash, which she distributed thus: P1 million, or five percent of the contract, to the regional director; P50,000 to the supply officer; P15,000 to the accountant who obligated the money; P40,000 to the chief accountant; P5,000 each to the accounting clerks; P10,000 to the cashier who released the check; and P20,000 to the auditor.

Later, the book publisher gave the congressman who provided the funds P8 million, or 40 percent of the contract. The congressman got the largest chunk because it was he who had the power to choose which agency (in this case the Education Department) and what kind of goods (supplementary textbooks) he would spend his pork on.

All told, payoffs ate up more than 50 percent of the contract. Again, in this case, the trails of money and power were closely intertwined, with the stench of corruption leading all the way to Congress. This case involved both petty and grand corruption, as well as both bureaucratic and political corruption.

In both the BIR and Education investigations, the reporters did not focus on individual corrupt officials. In fact, no names—either of corrupt officials or of the contractors or taxpayers who bribed them—are mentioned in the reports. Instead, the journalists sought to establish the prevailing practices—and percentages—in the agencies they were investigating. Their aim was to draw a landscape with broad strokes rather than to sketch damning individual portraits.

While a "macro" approach works, a case study focusing on a particular official, firm, or contractor is also worthwhile, particularly in showing in more graphic detail how corruption takes place and why it remains

persistent and pernicious. This was what Chua did in a 1999 report on a notorious supplier who had been doing business with the Education Department for decades. Chua traced the supplier's long list of anomalous contracts that were marked by underdeliveries, "ghost" deliveries, and overpricing. She also traced the trail of official responsibility by looking at who had the power to approve contracts: from the bid committees that kept awarding contracts to the supplier despite the supplier's record, to high Education officials who approved the bids despite the irregularities.

### **Find out who else benefits from corruption**

Investigating corruption should not end with probing only the state officials and employees guilty of malfeasance. The other end of the corrupt transaction—private individuals, particularly businesspeople who pay bribes, submit to extortion, or use their official connections to wangle contracts, franchises, or government loans—should also be subjected to scrutiny. As the cliché goes, it takes two to tango, and telling the entire story means looking at the other half of a corrupt deal.

For example, in 1999, two state pension funds, the Government Service Insurance System (GSIS) and the Social Security System (SSS), bought P1.8 billion worth of shares of Belle Corp. at the behest of President Estrada. According to the graft case filed against the former president, he received P189 million as commission from the sale. The graft case, however, did not include the other parties who gained from the transaction, among them officials of Belle, who convinced Estrada to compel the pension funds to buy their shares, and Wealth Securities, the broker that facilitated the sale.

Both government and the media are often less hardnosed in their scrutiny of private individuals and entities that are party to wrongdoing. But as seen in Estrada's case, private individuals, among them cronies like businessperson Mark Jimenez, formed the brain trust

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of the ex-president's money-making and money-laundering schemes. They, too, got their share of the pie, but none of them have so far been charged with Estrada. The laws governing private behavior are less strict and the glare of public attention less harsh on those who operate in the private sphere.

Experts have found that the most profitable locus of corruption is that point where the public and the private meet. Sometimes the public and the private meet in one person. Such was the case of businessperson and musician Ramon 'RJ' Jacinto. He was named vice chair of the presidential committee on flagship projects during the administration of Fidel V. Ramos, whose ally he was. While in that post, Jacinto obtained P2.9 billion in loans from two government banks to finance his various business enterprises.

The loans were unusually big, especially when compared to the size of Jacinto's businesses, and their collateral was of questionable value. It was also alleged that Jacinto paid bank officials to get those loans, which remain unpaid. In this case, the focus of the investigation should be Jacinto and not the government bank officials whom he allegedly bribed. It is clear, as shown in a 1998 PCIJ report, that he was the main beneficiary of the influence peddling and the bribery.

**Find out what the laws say**

Corruption is often made possible by loopholes in, or the powers granted by, the law. Sometimes the procedures designed to provide checks and balances against graft just do not work and become corrupted themselves. At other times, corruption thrives because agencies are structured in a way that provides opportunities for malfeasance. Investigating corruption, therefore, entails not just an ability to cultivate insiders as sources of information in corrupt agencies but also the patience to study what laws govern these agencies, how they are structured, and what the routine procedures are for.

say, awarding a contract, hiring personnel, or giving out licenses, permits, or clearances.

A familiarity with laws is crucial because the powers that agencies wield are mandated by law, and power is always prone to abuse despite the best-crafted law. For example, the Office of the Ombudsman has the power to investigate graft cases and recommend their prosecution before the anti-graft court, the Sandiganbayan. The Ombudsman is given vast powers to execute its mandate, but these powers have also been used to dismiss, delay, or derail graft cases filed by powerful and money-eyed individuals. In 2002, a lawyer charged Ombudsman Aniano Desierto with receiving P500,000 as a bribe to dismiss a case against his client, a real-estate developer being investigated in connection with a corruption case.

As can be seen from the examples in this chapter, it is the law that gives the powers to various agencies: the power to deport aliens, to audit tax payments, to issue licenses and permits, to arrest erring motorists, to award a contract, or to determine how pork barrel funds will be spent. These powers have been a lucrative source of illicit revenues for corrupt officials. Therefore, part of the answer to why agencies or officials are corrupt can be found in the kind and amount of power they exercise and the cost, the "market value," of using that power to unfairly favor certain firms or individuals.

Reading the law is necessary because it gives an idea of the powers wielded by an agency, by the subdivisions within that agency, and by the officials at its various levels. Thus, for the PCIJ's 1995 investigation on corruption involving local officials in Cavite, where officials had made money from the conversion of farmland into real-estate and industrial projects, it was necessary to read the Local Government Code. The Code gives local councils the power to classify or zone land, which is a prerequisite to land conversion.

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Little wonder that mayors and councilors were suddenly raking in money. It was apparent that in fast-industrializing and -urbanizing Cavite, local officials used their new power under the Code to make millions from rezoning farmland and approving its conversion to other uses. Often, we were told, the officials themselves were involved in land deals either as brokers or as land speculators. The next step in the investigative trail was therefore to search for municipal and provincial council resolutions that involved land reclassification. After that, we searched for land and corporate records to show the officials' pecuniary interest in transactions involving land they had rezoned.

Sometimes the opportunity for corruption is written into the law itself. Chay Florentino-Hofileña found this out in 1996, while investigating a PCIJ story on corruption in the Mount Pinatubo Commission, which was tasked with rehabilitation of the areas damaged by a volcanic eruption. Reading through Republic Act 7637, the law that created the commission, she found a curious provision that allocated a maximum of P50 million for the acquisition of amphibian trucks. Interviewing congressmen, Hofileña found that military officers had lobbied for the provision.

She saw for herself why: two trucks costing nearly P50 million were lying idle in a military warehouse at the Clark Special Economic Zone. She found that the Commission on Audit (COA) had questioned their purchase, saying they were of doubtful validity. Their purchase was not bid out and they were grossly overpriced: similar trucks were offered by a Finnish company at 20 percent of the price. The trucks had not been used either, because they had not been tested for *lahar*, the mixture of mud and volcanic debris that covered parts of Central Luzon.

Apart from knowing the law that governs an agency, one must also be familiar with anti-graft laws. The first chapter discusses what actions are considered viola-

tions of Philippine anti-corruption laws. It is wise to read the provisions of the anti-graft law carefully, as they provide clues on what to look for if evidence of money actually changing hands cannot be found. For example, an overpriced contract is a violation of the provision of the law that penalizes officials who enter into contracts that are disadvantageous to the government. No proof is needed that a bribe was paid to approve the contract.

Similarly, if an official approves a contract that benefits, say, his son or his brother, he can be sued for vio-



**Victims of the Mount Pinatubo eruption.** Hundreds of millions of pesos in public funds allocated to mitigate the impact of the disaster were lost to corruption. (BULLIT MARQUEZ)

## Off the beaten track

lating the ant-graft law, which prohibits any person with close family or personal ties to a public official from benefiting from a contract or any transaction with the government in which that official has to intervene. Philippine laws are stringent; they fail because of weak prosecution and enforcement. It is the investigators' task to point out whether the laws are being violated, where the prosecution of corruption cases has been compromised, and the other weaknesses of the justice system that allow those guilty of wrongdoing to go on with business as usual.

### Look for the gaps in the structures or procedures

Apart from laws, a grasp of procedures is also invaluable. The case of the amphibian trucks purchased by the Mount Pinatubo Commission is a good example of how corrupt acts are found out. The purchase of the trucks was perfectly legal as it had been written into the law, as explained above. The anomalies lay in the procedures that were followed to acquire the vehicles. There was no bidding, and as a COA report said, many other requirements were not followed, including submission of "documents evidencing cost reasonableness, mode of award, papers relative to the deposit in the opening of letter of credit and escrow deposit as prescribed from the respective vouchers, and authority for effecting advance payments."

Investigators should be suspicious if procedures are not followed or shortcuts are taken. These are often clues that wrongdoing has taken place. This is especially true in the awarding of contracts: investigators should start probing if a contract is not bidden out, if qualified firms are mysteriously taken out of the bidders' list, or if bid announcements are not published, as these are indications that something fishy is going on. [See Chapter VI, "Investigating Procurements," for a more detailed explanation of procedures followed in government contracts.]

The same is true in other types of routine government

transactions; they can be applied to court procedures as well. As the PCIJ's 1993 investigation of alleged anomalies in the Supreme Court showed, the waiving of a case raffle or the unexplained transfer of a case to a court division to which the case was not originally assigned were signs that some behind-the-scenes deal making was taking place.

Thus, if evidence of payoffs cannot be obtained, a report on how procedures have been set aside should alert concerned citizens that anomalies are likely afoot. However, to find out whether prescribed procedures have been violated, one must know them first.

For example, in her report cited above on a notorious supplier at the Education Department, Chua needed to know the department's procedures in awarding contracts. From there, she was able to list down the anomalies in the acquisition of armchairs for students from that supplier: the bidding accredited only two suppliers instead of the required minimum of three; the corrupt supplier's bid was higher than that of her competitor, yet she was awarded the contract; her armchairs also came with features that were not in the original specifications of the bid; and her bid was submitted past the deadline.

Moreover, contrary to standard procedures, the supplier was paid even before deliveries were made, and she was paid with a letter of credit, something that the Education Department had never done in the past. In the end, the supplier never completed the delivery of the armchairs. In detailing this story, Chua was able to demonstrate that something was clearly anomalous in the contract, even if she did not actually say that education officials had been paid.

Bid and other documents are important aids in examining procedures. Bidding for government contracts requires rigorous paperwork, and a careful examination of them will yield clues as to where the anomalies have

## Off the beaten track

taken place. Interviewing informed insiders also helps, especially if they can provide similar cases and show how procedures are normally applied in the agency.

The structures that operate within an agency are also important to look at as these provide a map of where the checks and balances lie within an institution. Sometimes sudden changes in structures are an indication that anomalies are taking place. In her 1995 investigation of corruption in the health department, Gemma Corotán-Robles wrote how Health Secretary Hilarion Ramiro issued a confidential order creating a top-level subcommittee that could overrule any decisions made by the department's regulatory bodies, including those accrediting suppliers, awarding contracts, and conducting bids.

The committee, made up mostly of bureaucrats who had a record of graft, was also given control over the financial, audit, and legal affairs. In effect, Ramiro removed the checks and balances in the department. As Robles' investigation subsequently showed, this lack of checks allowed Ramiro to skim off as much as 40 percent in contracts from the purchase of medicines and other supplies.

In a PCIJ report published in 2000, agriculture reporter Prime Sarmiento used her stock knowledge of the structure of the Agriculture Department and found that corruption there was rooted in the regional field units which were given tremendous power and resources with little monitoring by, and accountability to, the central headquarters. Through interviews with agriculture personnel as well as a perusal of key documents, she found that field units were given leeway to bend the rules: they could do away with public biddings or rig the bids without being found out. She used examples, including graft cases filed against various regional field units, to flesh out the structural weakness of the department that created what a top official there described as "a culture of corruption and waste."

Similarly, this writer's investigation of the Supreme Court in 1997 showed how the separation of the high tribunal into three divisions, each composed of five justices, facilitated improper approaches to the court. Each division can decide a case on its own, if at least three justices concur with a decision. This means that to ensure victory, an enterprising lawyer or litigant has to approach only three justices in a division.

### Look elsewhere

The examples of the investigations cited above were mostly investigations from the inside, using either key informants within an agency or documents obtained from it. An alternative or complementary approach would be to examine the agency from the outside—that is, interviewing sources and getting documents from other bodies external to the one being investigated.

An obvious starting point is the courts, the Office of the Ombudsman, and the Sandiganbayan. If an agency or official is known to be corrupt, it is likely that a court case has been filed or at the very least, that information on alleged wrongdoing has been submitted to a prosecutor or to the Ombudsman's office. Among the documents, for example, that Sarmiento looked for in her investigation of the Agriculture Department were records of court cases. These showed that the most common complaint filed against agriculture personnel was the diversion of funds meant for farm inputs to purchase costly but worthless items. In one case, the regional field unit in Central Luzon was found to have misused P1.5 million intended for the purchase of corn for farmers: it allocated the money to buy overpriced document keepers instead.

Reports from the Commission on Audit are another good source of information on anomalies. COA reports are a mine of information, and they are available for just about every government agency and nearly every expenditure made from the national budget. [See Chapter 3, "The

## Investigating the consequences of corruption

*People and Paper Trail,*” and Chapter 5, “*Measuring Governance and Corruption.*” ] The COA therefore is always a good place to start from when one is embarking on an investigation.

Investigators have also not made enough use of the material produced by the academe and by nongovernmental organizations (NGOs). The increasing interest shown by NGOs and community groups in corruption issues has resulted in so much information being produced on corruption. Some NGOs specialize in particular aspects of governance—whether it is procurement, public works, or tax collection—making it always worthwhile to consult them for expert opinion or to ask them for leads or contacts. Other groups conduct regular public opinion polls or surveys of users of public services, which can be cited to provide more flesh to reports on corruption. [See Chapter 10, “*Graftbusters: Citizens Take up the Challenge.*”]

## Investigating the consequences of corruption

There are, in a manner of speaking, many ways of skinning the cat of corruption. As described above, one approach is to investigate the corrupt acts themselves. Another way is to probe the officials responsible for them. One way to do this is to document the fruits of corruption by looking at the lifestyle and assets of officials. [See Chapter 3, “*Investigating Officials.*”] Yet another is to go beyond the officials and their actions by examining the consequences of corruption.

Many times investigators overlook the impact and consequences of corruption because they become so engrossed with documenting how it took place and who is responsible for it. This is unfortunate because it could well be that the impact of corruption is as big—and as grave—a story as the corrupt act itself. For instance, corruption in the issuance and monitoring of logging permits could result in large-scale deforestation that

could in turn cause massive flooding, with casualties in the thousands. As documented in the PCIJ's 1999 book, *Robbed: An Investigation of Corruption in Philippine Education*, the consequences of corruption in the education sector are a generation of schoolchildren that learned only 50 percent of what they should have and who scored among the lowest in the world in elementary math and science tests. Some of the consequences of corruption are quantifiable; others, less so.

The following are some tips on how to investigate the damage corruption has wrought:

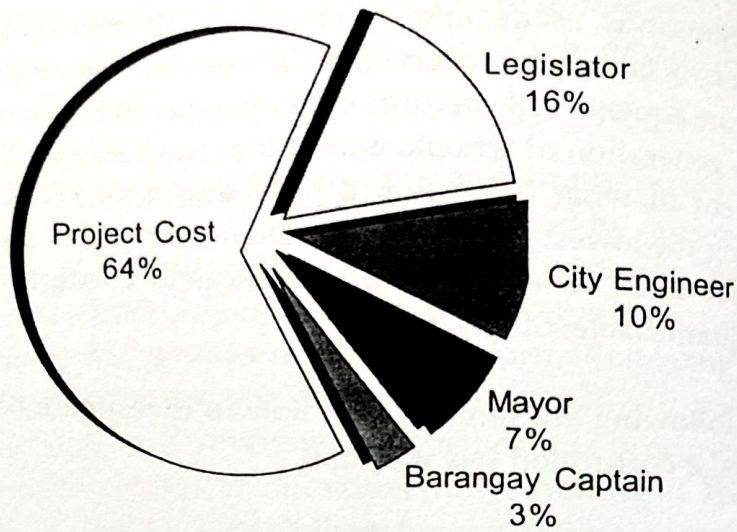
### **Estimate how much is lost**

An important way of showing the magnitude of the corruption is by estimating how much of public funds is lost because of payoffs. This can be done using the same techniques described in the sections above, such as those on following the trail of money and power. One way to drive home the damage caused by corruption is to show, even if only in round figures, the amounts that are wasted because of it. Chapter 5, "Measuring Governance and Corruption," provides various ways in which the amounts lost to corruption can be estimated.

In general, journalists have tended to use rough projections based on case-study findings. For example, when journalist Earl Parreño investigated pork-barrel funds in three congressional districts in Eastern Visayas, he interviewed contractors and suppliers, as well as members of the congressional staff, to arrive at estimates of how the money from pork was spent. Through these interviews, he established the prevailing practice. He found that the leakage was greatest when pork-barrel funds were spent on educational materials, where as much as two-thirds of allocated amounts went to bribes. The percentage that went to corruption was less—36 percent—for public works projects. [See chart.]

Investigating the consequences of corruption

Where funds for public works projects go



From these estimates, Parreño made an assessment of how much of pork-barrel funds is lost. Budget records show that in 1998 each congressman got P30 million for public works funds for their districts, or about P6 billion altogether for the entire House of Representatives. If 36 percent of this amount went to graft, that translated into P2.2 billion. This is of course a rough estimate, as not all congressmen are corrupt, but the gross figure gives a general idea of how criminal the waste is and how congressmen were in partnership with corrupt bureaucrats, local officials, and contractors. It is also an indication of why pork barrel has become so important in the politics between Congress and Malacañang, where the release of these funds is often traded for votes for bills endorsed by the presidential palace.

Bacalla did a similar estimate of how much tax officials made from rigged audits. Based on the calculations of a former BIR lawyer, she said that a typical region with five revenue districts, each with 40 examiners, with each examiner raking in P200,000 a month in bribes, can generate about P40 million in monthly payoffs. A corrupt BIR regional director, therefore, can make P12 million a month, while the regional district officers split another P12 million among themselves, and so on down the line.

The estimate of losses does not have to be in monetary

terms. It can also be in terms of goods and services that the public would otherwise have received if there were no corruption. For example, the P40 million in monthly payoffs that each BIR revenue district gets can be translated into the number of textbooks or kilometers of road that can be purchased or built for that amount. The enterprising journalist or researcher can ask procurements experts for cost estimates and make calculations using these. An online catalogue available at the government's procurements website (<http://www.procurementservice.org>) lists the prices of hundreds of items regularly purchased by state agencies.

Another way to estimate costs is to look at nonquantifiable consequences, such as an upsurge in disease because money to build water wells was lost to corruption, or children who are unable to go to school because funds to construct schoolhouses were pocketed by bureaucrats. The diversion of funds to extravagant or anomalous projects also means that government spending on other, perhaps more worthwhile, projects would have to be suspended. While investigating corruption in the construction of the white-elephant Centennial Exposition at Clark, Hofileña discovered that because billions in government funds were mobilized for it, 245 public-works projects and the development of an industrial estate in Leyte had to be sacrificed.

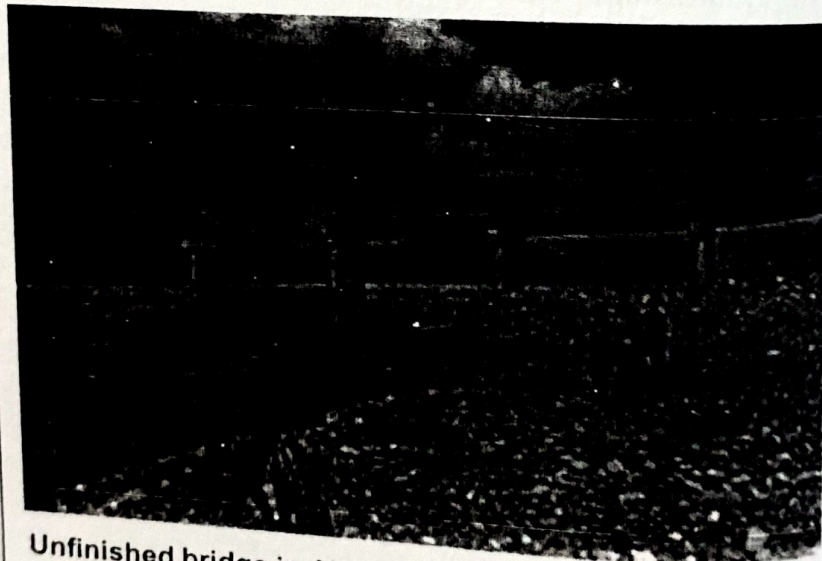
### **Go to the field**

Another way to investigate the consequences of corruption is to go to the field and see for oneself whether bridges or schoolhouses funded from specific allocations in government budgets have been built, or textbooks and school desks delivered. Parreño, for example, saw for himself half-built highways and runways funded from the pork of congressmen. While investigating procurements at the Education Department, a PCIJ video crew went to Leyte and Samar and found schoolchildren making do with broken desks or taking their own chairs to school because school desks that had been

## Investigating the consequences of corruption

bought for them were never delivered. When Sarmiento investigated corruption in the Agriculture Department in 2000, she traveled to Sultan Kudarat to talk to farmers to find out whether they got the seeds and animals that were supposed to have been provided them as part of a project to boost rural productivity.

Some NGOs have successfully done field inspections. Several of them, notably the Concerned Citizens of Abra for Good Government and the Philippine Governance Forum, have developed guides or templates for conducting such inspections. This is discussed in more detail in the section on "Field Inspections" in Chapter 5, "Measuring Governance and Corruption."



**Unfinished bridge in Abra province.** Field inspections are a good way of uncovering corruption, such as that which took place in the construction of this bridge. (SONNY YABAO)

## INVESTIGATING OFFICIALS

### Checking Assets, Lifestyles, Behavior, and Conflicts of Interest

Sheila S. Coronel

Corruption takes place because individuals who have been entrusted with power take liberties with the law and with the public purse. Pursuing the trail of wrongdoing inevitably leads to individuals who commit malfeasance. Sooner or later, therefore, one who is bent on uncovering corruption will have to check on the lifestyles, assets, and behavior of public officials.

These are areas that are ripe for investigation. The accumulation of wealth by those who hold public office is hardly kept secret, and there is bound to be documentation proving such illicit amassing of riches. Moreover, even while corrupt deals are transacted behind closed doors, those who commit wrongdoing invariably leave a trail in the form of botched procedures or behavior that violates codes of ethics.

The following are some techniques that have been successfully used to investigate corrupt public officials:

#### **Check lifestyles**

Many citizens take for granted that bureaucrats and officials live in a grand manner that cannot be explained by their paltry salaries. The fact that poorly paid tax personnel or customs collectors drive Mercedes Benzes and

### Check lifestyles

live in mansions hardly raises eyebrows. Extravagant lifestyles are one of the most obvious indicators of corruption and among the easiest to document. They are also a violation of the law, if an official is unable to prove where s/he got the wherewithal to support such a lifestyle.

The Anti-graft and Corrupt Practices Act (Republic Act 3019) says that a public official can be dismissed if he "has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income." There is a presumption of culpability if an official cannot explain where s/he acquired income or assets. Among the things mentioned in R.A. 3019 as indicators of unexplained wealth are unexplained bank deposits, "manifestly excessive expenditures," and ostentatious display of wealth, including frequent travel abroad.

Unlike other techniques of investigating corruption, conducting a lifestyle and asset check shifts the focus of the investigation from the act of malfeasance (e.g., awarding an overpriced contract, rigging a tax audit, favoring a relative for an appointment) to the fruits of such malfeasance.

When journalist Earl Parreño was investigating the misuse of pork barrel funds in Eastern Visayas in 1998, among the things he looked at was the way the congresspersons from the poorest provinces in the country lived. The result of even a cursory examination of congressional lifestyles was astonishing. Among the things Parreño found on his visits to the congresspersons' districts were fabulous mansions, one with a jet ski in the garage, the other with a helipad where the congressman parked a rented helicopter for his weekly visits to his constituents—all these amid the poverty and misery of Samar island.

Visits to offices and houses are a good way to begin a lifestyle check. Among the things to look out for are fancy

vehicles (boats, cars, jet skis, etc.) parked in these homes or used for ferrying officials, sumptuous parties hosted by them, the retinues they keep (bodyguards, valets, maids), the suits and jewelry they wear. Other lifestyle indicators are foreign trips, children sent abroad for schooling, or, as in the case of former president Estrada, luxury houses built for mistresses and family members. [See also the section "Checking Lifestyles" in Chapter 5.]

After taking note, one can begin asking questions. Remember that public officials are banned by the anti-graft law from receiving gifts. Find out whether they have a plausible explanation for the manner in which they live. What salaries do they get from the government? Did they inherit or marry into land or other forms of wealth? Did they make money from a business or profession?

To answer these questions, one must do a background check. Ask for curriculum vitae; interview family, friends, staff, classmates, and townmates; scour newspaper archives for articles about these officials. Try to get a sense of how official lifestyles have changed over time. Parreño, for example, found that the Eastern Visayas congresspersons he was investigating acquired markedly more affluent lifestyles after their election to the legislature. He looked at their statements of assets and discovered that their assets registered a dramatic increase after they were elected to the House; the longer they stayed in Congress, the larger the cumulative gain in their assets.

### Look for assets

The first step when checking the assets of those in government is to get their statements of assets and liabilities. Officials often lie in their asset statements, tending to understate what they own; nonetheless, these records are among the most valuable public documents available when one is investigating corrupt officials. While

## Look for assets

the data these documents contain are often incomplete, inaccurate, or otherwise unreliable, they still offer baseline information for pursuing a more thorough investigation. [See Chapter 4, "The People and Paper Trail," for a more detailed discussion of statements of assets.]

Government officials and employees are required to make annual declarations of their assets and liabilities. The idea is that such declarations make it easier to keep track of the accumulation of wealth by public officials, so that the public can check on, among other things, potential conflicts of interest or illicit gain from public office. Making inaccurate declarations is a violation of the law and has caused the downfall of high officials.

In Thailand, the newspaper *Prachachart* checked the accuracy of asset statements by comparing them with corporate and other records. For example, in 1999, the Thai interior minister was forced to resign after declaring a fake loan from a company to cover up an unexplained increase in his assets. The newspaper found out about the fake loan because it was not registered in the lending firm's balance sheet.

In 2001, Prime Minister Thaksin Shinawatra came perilously close to losing his post after he was charged with filing inaccurate asset declarations and with concealing his assets by transferring his shares to his maid and his driver. *Prachachart* did the initial investigation as well, again by comparing the prime minister's asset declaration with corporate financial statements, and by uncovering the identities of the individuals who had acted as his dummies.

Similarly, the PCIJ's own investigation in 2000 of President Estrada's unexplained wealth—as shown by the disparity between what he declared in his asset statements and what other public records show he actually owned—became one of the bases for filing impeachment charges against him. [See section "Investigating a President" in this chapter.]

All these investigations were based on a thorough check of asset declarations and proving their inaccuracy by using other public records. In Estrada's case, the PCIJ found that the President's declared net worth and income could not explain how he, his wives, and his children were able to live a lavish lifestyle (including fancy cars and high-priced mansions) and form so many companies, most of which were not listed in his statements of assets.

### **Examine conflicts of interest**

The law recognizes that the tremendous powers given to officials have to be tamed in various ways, including ensuring that they do not use these powers to protect and promote their own interests rather than the public's. Conflicts of interest arise when those entrusted with power or authority have pecuniary interests that may either benefit from, or be damaged by, the exercise of such power.

The Constitution has measures to guard against conflicts of interest in the legislature, the executive, and the judiciary. Any official who violates these measures can be charged with violating the Constitution. *[See sidebar.]* Thus, in investigating officials, it may not be necessary to prove that they received bribes or otherwise benefited from an anomalous action, policy, or decision. Showing that they were in a conflict-of-interest situation often suffices.

For example, in a 2002 investigation of the Justice Department, the PCIJ's Malou Mangahas found that Justice Secretary Hernando Perez declared ownership of shares in Belle Corp. among his assets. She also discovered that Perez had served as chair of Belle in the early 1990s. Yet Perez, as justice secretary, was overseeing the corruption charges against former president Estrada, which included the purchase by state pension funds, at Estrada's behest, of millions of pesos of Belle shares. At

## Examine conflicts of interest

the very least, Perez should have inhibited himself from the case. Yet, the PCIJ investigation showed that he was the one who negotiated for the chair of Belle and the heads of the two pension funds to become state witnesses in Estrada's trial. The three men failed to help the government nail Estrada with their testimonies even as they saved their own skins.

The Constitution requires that the President, the Vice President, and Cabinet secretaries divest themselves of their business interests so that they will not be caught in conflict-of-interest situations. Officials, however, cannot divest to their wives or relatives within the fourth degree.

### Guarantees against Conflict of Interest

#### What the Constitution says:

- The President, Vice President, Cabinet members, and their deputies or assistants cannot hold any other office or employment during their tenure. They cannot directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract, franchise, or special privilege granted by any government entity.
- Members of Congress cannot **personally appear** as counsels before any court, electoral tribunal or quasi-judicial and other administrative body. They cannot be directly or indirectly interested financially in any contract, franchise or special privilege granted by the government. They cannot intervene in any matter before any office of the government, if it is for their pecuniary benefit. They are also required to notify Congress of any potential conflict of interest that may arise from laws or bills they author.
- The President, Vice President, Cabinet members, Ombudsman, and members of Congress, the Supreme Court, constitutional commissions cannot directly or indirectly receive any loan, guarantee, or any other financial accommodation from a government-owned or controlled bank or financial institution.

Even after divestment, officials very often operate in a gray area, which is also an area that is ripe for investigation. In 1992, for example, Howie G. Severino documented a conflict of interest in the case of the newly appointed environment secretary, Edelmiro Amante, a former logger and lawyer for logging firms as well as the former representative of the country's foremost logging province. Severino cited conflict of interest among the issues that raised doubts about Amante's suitability for the post of environment chief at a time when the future of logging was being hotly debated.

In addition to the Constitution, the Anti-graft and Cor-

#### **Guarantees against Conflict of Interest**

##### **Anti-graft and Corrupt Practices Act (Republic Act 3019)**

- Public officials cannot request or receive any pecuniary benefit from any person who has obtained or is seeking to obtain a government license or permit.
- A public official and his family cannot accept employment from a private enterprise that has pending official business with him.
- A public official cannot have a direct or indirect interest in any transaction or act requiring the approval of a body of which he is a member, even if he does not participate in the action of that body.
- The spouse or any relative within the third civil degree of the president, vice-president, Senate president, and Speaker of House cannot intervene directly or indirectly in any business, transaction, or contract with the government.
- Members of Congress are banned, during the term for which they are elected, from acquiring any personal material interest in any business enterprises that will be "directly and particularly" benefited by any resolution or law approved by them during that term. If they already have prior interest in said enterprises, they are required to divest themselves within 30 days.

## Examine conflicts of interest

rupt Practices Act prohibits officials from directly or indirectly benefiting from transactions requiring the approval of government bodies of which they are part. The Act explicitly says that officials cannot be members of such bodies even if they do not participate in the deliberations on transactions in which they may benefit.

Apart from these laws, institutional or professional codes of ethics guard against conflicts of interest. For example, the Code of Judicial Conduct requires judges to inhibit or recuse themselves from cases in which their relatives or former clients are involved. [See Chapter 7, "Investigating

### Guarantees against Conflict of Interest

#### **Code of Conduct for Public Officials and Employees** (Republic Act 6713)

- Public officials and employees are banned from having a direct or indirect financial or material interest in any transaction requiring the approval of their office.
- They cannot own, control, manage, or accept employment in any private enterprise regulated, supervised, or licensed by their office.
- They cannot engage in the private practice of their profession unless authorized by law, and only provided that such practice will not conflict with their official functions.
- They cannot recommend any person to any position in a private enterprise that has a regular or pending official transaction with their office.
- When a conflict of interest arises, they shall resign from any private business enterprise within 30 days from assumption of office and/or divest themselves of their shareholdings or interest within 60 days. Divestment does not apply to those who serve in an honorary capacity nor to laborers and casual or temporary workers.
- Divestment shall be to a person or persons other than the official's spouse and relatives within the fourth degree.

*the Courts," for further discussion.]* The classic example of conflict of interest in the judiciary is Severino's 1994 exposé of how a Makati trial judge issued several rulings in favor of Hoechst, a German multinational company that manufactures Thiodan, one of the most harmful pesticides in the market. Severino examined corporate records, court documents, and minutes of Hoechst board meetings to prove that the judge had once been a lawyer for a Hoechst affiliate while his wife owned substantial shares in another Hoechst subsidiary.

One can document conflicts of interest by doing an asset check of officials and examining how they make decisions on transactions involving companies, property, or economic sectors (e.g., power, manufacturing, agriculture) in which they or their relatives have an interest. For example, in 1995, Marites Dañguilan Vitug obtained a list of projects funded from the pork-barrel allocation of Surigao del Norte Rep. Glenda Ecleo. Among the major recipients of Ecleo's largesse was a mining cooperative. Vitug then checked Ecleo's statement of assets and was not all that surprised to find that the legislator had listed interests in the same mining cooperative among her assets.

Congress is a particularly difficult nut to crack as far as conflicts of interest are concerned. The divestment requirement does not apply to members of Congress, although the law [see sidebar] puts other limits on the actions of legislators. Unlike members of the Executive Department, senators and congressmen are not barred from practicing their profession. They are only expressly prohibited by the Constitution from appearing in court; otherwise, they are allowed to continue practicing law even while serving in Congress.

The difficulty lies in the fact that most legislators have economic and professional backgrounds that put them in potential conflict-of-interest situations. As shown in *The Ties that Bind*, the PCIJ's ongoing research on the proprietary and family interests in Congress, most legisla-

**Look for patterns**

tors own businesses or property which can benefit from the laws they pass. But it is hard to call them to account because they can always say that these laws were drafted on behalf of certain constituencies they represent. Or a representative in a conflict-of-interest situation may simply ask a colleague to file a bill on his or her behalf. At any rate, the mere pinpointing of such potential conflicts through an asset check of legislators and its comparison with their voting record or the bills they filed, is an invaluable public service and will make the lawmaking process more transparent.

**Look for patterns**

Many of the investigations that the PCIJ has done involved examining not just a single corrupt act but a series of acts or anomalies. Investigating wrongdoing often entails looking for a pattern in the actions of corrupt officials or bodies. A single suspicious act can be explained as being due to something plausible, say, carelessness, inefficiency, or ignorance. But a pattern of suspicious actions is harder to account for. When gathering evidence of wrongdoing by officials, therefore, one often has to establish that a pattern of wrongful acts has been committed and to find out who is responsible for them.

Severino's investigation of a Makati judge's rulings on the German pesticide producer Hoechst, for example, entailed examining the judge's actions over a two-year period. These included a ruling overturning the government ban on Hoechst pesticides in 1992, a court order a week later that doubled Hoechst's import quota for one of the banned pesticides, and a 1993 injunction stopping a new government prohibition on the pesticides. The injunction was issued by the same judge even if the case had been raffled off earlier to another judge. When these actions were seen over time, a pattern of anomalous rulings designed to counter government efforts to ban or restrict the harmful pesticide became evident.

In other investigations, the pattern was discernible not so much in the official's actions related to his position but in his acquisitions. In the PCIJ's investigation of Estrada, for example, the pattern of building fancy houses in de luxe subdivisions and the acquisition of real estate through dummy firms were established only after months of gathering documents and doing interviews with knowledgeable sources. Because most of the real estate and the houses were not in Estrada's or his mistresses' names, the PCIJ team had to find patterns in their acquisition as part of the effort to establish ownership. The patterns emerged only after the records of several of the houses were examined: the same contractors and designers were used; the same cronies or friends fronted for the properties; and the same law firm incorporated several of the shell companies in whose names these properties were bought. [See below.]

### **Investigate the public behavior of officials and lapses in codes of conduct**

Investigating officials should not be limited to probing their decisions, assets, lifestyles, and acquisitions. Journalists and other researchers can also venture into examining their behavior both during and after office hours. This is particularly so for officials in positions where high standards of behavior are expected. The foremost example of this is the judiciary. The Code of Judicial Conduct prescribes that judges conduct themselves in a manner above suspicion.

In 1993 and 1997, the PCIJ published articles that reported that Supreme Court justices were violating the code of conduct by being seen in public with litigants and lawyers who had cases pending in their courts. Such so-called *ex parte* communications are not illegal, but they cast doubt on the impartiality of justices when the meetings are held without the presence of both parties to a case.

**Investigate public behavior**

The articles cited interviews with litigants and lawyers who had witnessed these meetings and also revealed the existence of a network of intermediaries that had emerged around justices who were supposed to be impervious to outside influence. The examination of the public behavior of justices led to an investigation of these intermediaries, particularly law offices run by relatives of justices or retired justices, which have been accused of peddling influence in the high court.

Observing the public or social behavior of officials provides clues as to who is doing the influence peddling. Among the findings of the PCIJ's 1997 investigation of Supreme Court Chief Justice Andres Narvasa was that he was often in the company of a lawyer who was known in the legal community as a conduit to the chief. The PCIJ traced immigration records showing the lawyer and Narvasa took several foreign trips together; they

**Checklist for Backgrounding Officials**

The following is a list of documents that can provide essential information on officials. Chapter IV, "The Paper and Human Trail," discusses some of these records in more detail.

- Official biodata
- Newspapers, magazines, and newsletters
- Biographies, family histories, genealogies, and Who's Whos
- Directories and yearbooks
- Listings of trade and professional organizations
- Statements of assets
- Land records
- Corporate records
- Vehicle registration records
- Licenses and permits (for firearms, business, etc.)
- School records
- Civil registry records (birth, marriage, etc.)
- Voter registration records
- Records of campaign expenditures
- Speeches and papers
- Immigration (arrival and departure) records

## Investigate friends, relatives, and cronies

were also seen regularly playing golf and dining together, even if the lawyer and his office had pending cases in the high tribunal. Narvasa had also been seen in the company of litigants who had cases in the Supreme Court, leading to doubts on whether he conducted himself in "a manner above suspicion."

Ethical codes are more lax for elected officials, but they should not be exempt from an examination of their public behavior. For example, eyebrows should be raised if a mayor is often seen in the company of a public-works contractor who has big contracts with the city government, more so if that contractor is listed among the mayor's campaign contributors. While there is nothing illegal about this, such behavior raises issues of propriety and conflict of interest, especially if documents show that the contractor has been unduly favored by the city government.

The issues raised against Estrada during the early months of his presidency also had to do with his behavior, especially in the late evening hours when his friends and cronies joined him for drinks at Malacañang Palace. It later came to light that major decisions of the Estrada presidency, such as appointments to key posts and the award of contracts to favored businesspeople, were made by the so-called "Midnight Cabinet." Who Estrada drank or played *mah-jongg* with became an important issue, as this had a direct bearing on presidential decision making.

## Investigate friends, relatives, and cronies

Nepotism and cronyism are among the most pernicious forms of corruption. [See Chapter 1, "Defining Corruption."] Favorable treatment given to family and friends may include a government job, a public works contract, subsidized housing, a loan from a state bank, even leaked questions in a government exam. Such favors are often accepted as the norm, and officials think that rewarding

## Investigate friends, relatives, and cronies

family and supporters is part of the perks that come with a government post. It is this widespread thinking that leads to abuses of public office and of the public trust.

Corrupt officials typically distribute the profits from, and opportunities for, malfeasance among their kin and cronies. Marcos, who divided control over profitable sectors of the economy among his relatives and friends, was the foremost example of the heights to which this practice can go. Corazon Aquino is generally acknowledged to have been an honest president, but her relatives were not shy about using their closeness to Malacañang to wangle official positions and get concessions from government bodies.

Even if office-holders are themselves clean, their family and friends can still use their connections for various forms of malfeasance. This appeared to be the case with Environment Secretary Angel Alcala, whom Severino investigated for the PCIJ in 1995. Severino found that Alcala had issued anomalous permits to cut down forests because of the lobbying of a "syndicate" within the Environment Department that included the secretary's daughter who was also his secretary and his former students at Silliman University who served as his advisers. Members of the syndicate acted as intermediaries for logging firms. [See below, "Investigate intermediaries."]

The PCIJ's own investigations have shown that the practice of favoring family and friends is pervasive in all branches of government. *The Ties that Bind* shows that the interlocking family and business ties of officials—many representatives, for example, belong to political families that also run business networks—is partly responsible for the fudging of the lines that separate the private from the public sphere.

Investigators of corruption should therefore be adept at unraveling "the ties that bind." One of the strongest ties is family. One way to investigate family ties is to examine genealogies and family histories. In their statements

of assets, officials are also required to list family members holding government posts [see Chapter 4, "The People and Paper Trail"]. It is important to know how officials are related to each other or to businesspeople who will benefit from, or be harmed by, legislation or government regulation. This information could provide the missing link in an investigation.

Other ties are those formed in schools, fraternities, civic clubs, and professional associations. Religious and ethnic or linguistic-group affiliation are also strong ties. These often give clues as to why an official is favoring a particular businessperson or firm. For example, it is well known in the legal community that the University of the Philippines-based Sigma Rho fraternity wields strong influence in appointments to the judiciary. Many lawyers and litigants use the Sigma Rho connection to get favorable rulings from judges.

Real-estate developer Robert John Sobrepeña was believed to have wangled big contracts during the Ramos presidency because he and the President belonged to the same church. It was this connection that made Sobrepeña one of the big contributors to the Ramos campaign. Another contributor was musician and bistro operator Ramon 'RJ' Jacinto, who used his closeness to the President to get billions in loans from government banks.

The campaign expenditure records that candidates are required to submit to the Commission on Elections within 30 days after the vote are a good source of the identities of a politician's presumably closest friends and supporters. Although these listings are by no means complete, they are a good place from which to start. Estrada's campaign expenditure record, for example, showed tobacco tycoon Lucio Tan's brother Harry among the contributors. Lucio Tan himself was believed to be the biggest contributor to the campaign, although he was not listed as a donor. He reaped his investments during the Estrada presidency, when he got preferential treatment for Philippine Airlines and the investiga-

Investigate friends, relatives, and cronies



**Tobacco tycoon Lucio Tan.** Joseph Estrada's biggest campaign contributor was also said to have benefited immensely from his presidency.

tion of his tax evasion cases. Estrada later appointed other campaign contributors to high government posts.

Unlike Estrada, the cronies of Ramos, a former general, tended to be from his "old boys network" in the military. When Chay Florentino-Hofileña investigated the Mount Pinatubo Commission during the Ramos presidency, she found it to be full of retired officers, some of whom used their office to

enter into anomalous and overpriced contracts. It was the same case for the Centennial Exposition, which Hofileña probed years later. Some of the key Ramos-appointed officials who took part in the construction of that white elephant in 1997 and 1998 were former military officers, who appeared to have condoned the massive expenditures and the diversion of funds intended for the exposition to the ruling party's election coffers.

To unravel such ties, investigators can seek interviews with the associates, friends, and long-time staff of these officials. Other sources are published reports, directories published by fraternities and professional groups, alumni associations, rosters of civic clubs. Many of these lists are now online and many organizations, even family or clan associations, have e-groups for their members. Many e-group postings are in Web archives. Reading through the correspondence mounted on these online discussion groups can provide clues of what ties bind. Investigators can also post queries in nonexclusive e-groups or listservs.

## Investigate intermediaries

In the course of its many investigations, the PCIJ has come across the role played by intermediaries—either middlemen or brokers—in corrupt transactions. A company or individual that does business with the government or is subject to official regulation inevitably searches for connections to the powerful. For this reason, a network of intermediaries or intercessors sooner or later forms around a wielder of power or an interpreter of government rules, be s/he a mayor, police chief, district highways supervisor, or even a Supreme Court justice.

Such intermediaries may, in the case of Supreme Court justices, be law offices that have relatives of justices as partners. As this writer's 1997 investigation of the Supreme Court found, the law offices are hired by litigants or subcontracted by other law firms expressly for backroom deals with justices. For this reason, that investigation focused largely on the role of intermediaries in corrupting the court.

Similarly, the PCIJ's 1995 investigation of presidential mistress Rosemarie 'Baby' Arenas was essentially an examination of her role as intermediary to President Ramos. The article, based on interviews with government officials and businesspeople, probed whether Arenas was indeed lobbying for government appointments and contracts.

Very often private individuals do not transact directly with officials. Litigants and lawyers, for example, may go through the clerk of court or other members of the judicial staff. Public works contractors rarely meet with congressmen themselves when they try to negotiate a slice of pork barrel funds; they deal with congressional staff. Demands for payoffs, commissions, or grease money are sometimes coursed through trusted relatives, who are also sometimes employed as secretaries, chiefs of staff, or consultants of officials. Following the trail of corrup-

## Investigate intermediaries

tion, therefore, entails unraveling the network of intermediaries and brokers that surround a corrupt official.

Sometimes corrupt deals are transacted through or by mistresses, as in Arenas' case, fraternity mates, classmates (as in the case of President Estrada, whose classmates were said to have wangled juicy deals from government). In this case, the trail of accountability becomes fuzzy, as these are private individuals who influence government decision making; if at all, it is the officials they influence, rather than the brokers themselves, who are held to account.

For sure, these intermediaries often take a cut for themselves. In the case of the Amari scandal that hounded the Ramos presidency, the PCIJ found that the intermediaries were two ethnic Chinese businesspersons



**House Speaker Jose de Venecia.** The Amari scandal implicated top officials. (RICK ROCAMORA)

who received commissions from Amari in exchange for ensuring that the Thai company got the contract to purchase and develop reclaimed land off Manila Bay. These two businesspersons in turn bribed other officials to get that contract. Amari was a huge and complex deal that involved other brokers as well, including George Triviño, a convicted gold smuggler who was Amari's conduit to House Speaker Jose de Venecia. Triviño, who fled the country at the height of the Senate investigation of the scandal, was the "smoking gun" in that he was the link between Amari's corrupt deals and de Venecia's possible complicity in them.

## Investigating a President

The PCIJ's award-winning investigation of the unexplained wealth of President Estrada employed many of the techniques described in this chapter. The findings of the investigation were published as news reports in major newspapers and aired as 10- to 15- minute segments on public-affairs programs in two major networks from July to December 2001. These reports also became the bases for the impeachment charges filed against the President.

Estrada's two-and-a-half-year presidency provides a classic case study of political corruption in the Philippine context and of the vast amounts that can be amassed by a president who misuses the powers of his office. These included the powers to appoint over 3,500 officials, including the boards of government banks, corporations, and pension funds. The President also has the power to approve contracts above P50 million. He can veto laws, order the release of amounts from the national budget, and exercise influence on nearly every office in the bureaucracy.



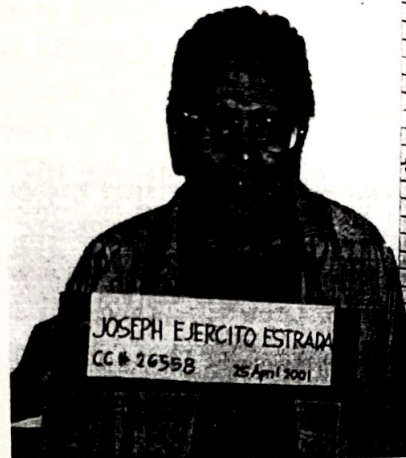
By the time Estrada was ousted in January 2001, it had become apparent that he combined the vintage methods of presidential plunder that Marcos had perfected—behest loans, commissions from contracts, and the ownership of companies through nominees—with newer types of machinations such as stockmarket speculation and corporate mergers and takeovers using state pension funds. The estimate is that Estrada accumulated as much as P20 billion in cash and real estate while in Malacañang.

When the PCIJ began its investigation in January 2000, there was already coffee-shop talk about the deals made by the President and the huge amounts of money that were changing hands. It was, however, difficult to substantiate these rumors, especially when Estrada was at the height of his popularity and had succeeded in muzzling critical segments of the press. It was difficult at that point to get firsthand sources to be interviewed on the subject or to find

*Investigating a president*

documentation to support the allegations.

Such is often the case when one is investigating corrupt officials. This does not mean that one should stop probing. It only means that one should change the focus of the probe and the techniques used. The PCIJ investigation of Estrada took nearly a year and was done by a team of five journalists, several researchers, and interns.



The following is a simplified-step-by-step account of how the PCIJ investigated a president:

### **Aim for what can be documented**

The challenge in investigating political corruption is to find a paper trail and to get sources to reveal information, especially when the targets of the investigation are powerful. The PCIJ knew that it had to find documents to back up its reports. Its investigation, therefore, was determined by what could be documented. It was difficult to document deal making and payoffs. It was easier at that time to document the fruits of the deal making. This was the reason the PCIJ decided to find out how Estrada spent his money rather than how he got it.

### **Devise a research strategy**

It is essential at the onset to conceptualize a strategy for the research. The strategy should include a list of the information needed and the documents and sources that can provide such information. Investigators should know what they are looking for. For the PCIJ, this requirement also entailed rereading the law on assets and conflicts of interest.

The main strategy at the initial stage of the investigation was to find out whether the President's assets exceeded what he had declared in his statement of assets, making him liable for accumulating unexplained or ill-gotten wealth. As shown in the previous chapter, an asset check is often one of the simplest ways to document corruption. To do

this, we needed to retrieve Estrada's statements of assets since 1987. Then we would have to do a systematic search of his assets and see whether his statements contained major omissions.

### **Be patient with documents**

The search for statements of assets was easy. The PCIJ had several of these already on file. Those when Estrada was a senator were still on file at the Senate, and those he filed as president were obtained from the Office of the Executive Secretary in Malacañang. The search for the other assets was more tedious. The PCIJ began with corporate records and did a systematic search of companies in which Estrada and various family members were registered as board members or incorporators.

The search began at a computer terminal at the Securities and Exchange Commission (SEC), where members of the public can key in a name and find out what companies list it as an incorporator or a board member. PCIJ researchers keyed in Estrada's name and those of his wife, various mistresses, and children. More than 100 companies were found, but the list was trimmed down to take out companies that listed people who had the same name but were not Estrada family members.

The next step was to retrieve the registration records of the companies in the trimmed down list. This entailed queuing at the SEC for five to six hours to get a maximum of three records a day. The process took about three months. By the end of that period, the PCIJ had a list of 66 companies in which Estrada or his family held shares. The search had paid off as Estrada declared less than a dozen companies in his statement of assets.

### **Organize and analyze data**

The crucial information from the corporate records (date of incorporation, board members, incorporators, areas of business, amount of assets) were inputted in Microsoft Excel, a basic spreadsheet program which sorts data, categorizes information, and alphabetizes. This allows the user to view the data in any number of ways and to discern patterns. The data were categorized according to which wife/mistress or child held the corporations, at what stage of Estrada's political career the corporations were formed, and how much they were worth. The assets of 14 compa-

### *Investigating a president*

nies alone totaled more than P600 million, but in 1999 Estrada declared a net worth of only P35.8 million. Thus, the PCIJ's first story, released in July 2000, basically said that Estrada had accumulated more assets than could be explained by what he had declared in public records.

### **Investigate further**

Further trips to the SEC later showed that Estrada either did not divest himself from companies where his name was listed or that he divested only after the 60-day deadline set by the law. Moreover, the divestments were made to his wife, Luisa Ejercito, again a violation of the law that says there can be no divestments to relatives within the fourth degree. In effect, there were no real divestments, meaning that Estrada could have violated the Constitution, which bans the President from engaging in business.

This violation became abundantly clear in the PCIJ's investigation of 34 townhouses being constructed by JELP, a real estate company owned by Estrada, his wife, and their three children. The PCIJ team visited the project site in Antipolo and talked to neighbors who complained that the construction caused flooding in their area and tipped off the journalists that the project did not have the required permits.

The PCIJ team then did a research of the permits required for building housing projects and found that JELP had violated every rule in the book: it had none of the eight permits needed for such a project. Moreover, residents had seen Estrada himself inspecting the property, further proof that he had violated the constitutional ban on engaging in business. Because he had named himself housing czar overseeing his administration's housing projects, the President was clearly in a conflict-of-interest situation. The PCIJ's report released in August 2000 exposed the problematic housing project.



Estrada mistress Guia Gomez and  
crony Lucio Tan

### **Continue the search**

In the beginning, the PCIJ's documentation of Estrada's assets focused on those that were registered in his name or those of his family members. The PCIJ, however, suspected that he had more. For example, talk of fabulous mansions being built for various presidential mistresses was rife. If the rumors were true, then it was scandal on a grand scale. An initial search, including tips from various contacts, showed that the mansions were not in the names of either the President or those of his mistresses. This was going to be a far bigger challenge than the corporate search.

Land records are public, but researchers have to know exactly what they are looking for. The process of searching for Estrada's properties involved a lot of trial and error. At the start, the PCIJ had only sketchy information, from rumors and numerous contacts, of the various real-estate acquisitions: in some cases, the journalists knew only who the previous owner of the property was; in others, only the address or the subdivision.

### **Use flow charts**

To put some logic into its investigation, the PCIJ journalists made flow charts. One chart illustrated the process of building a house, who would be involved, and what papers were needed at every step of the way. First would be the owner of the property, the lawyer of the owner, the architect, the contractor. Soon the neighbors would sense that construction was going on, the village association where the building was taking place would have to be informed, permits would have to be obtained, and so on down the line. It is impossible to build a house without an entire army of people knowing about it and a boxful of documents being produced in connection with the construction.

### **Tap human sources**

When the documents—land titles, building permits, etc.—did not show the names of Estrada or any of his family members, the focus of the investigation shifted to human sources. These included architects, lawyers, builders, suppliers, and other contractors, as well as neighbors and residents of villages. These human sources had encountered either Estrada, one of his mistresses, or one of his cronies who had fronted for the sale. Some exclusive residential asso-

### *Investigating a president*

ciations cooperated with the investigation by supplying information as well as giving access to documents such as *barangay* permits and building plans. Some neighbors saw Estrada inspecting his properties. One neighbor said one of Estrada's intermediaries had offered to buy her property, which was next to one of the mistresses' homes.

### **Look for patterns**

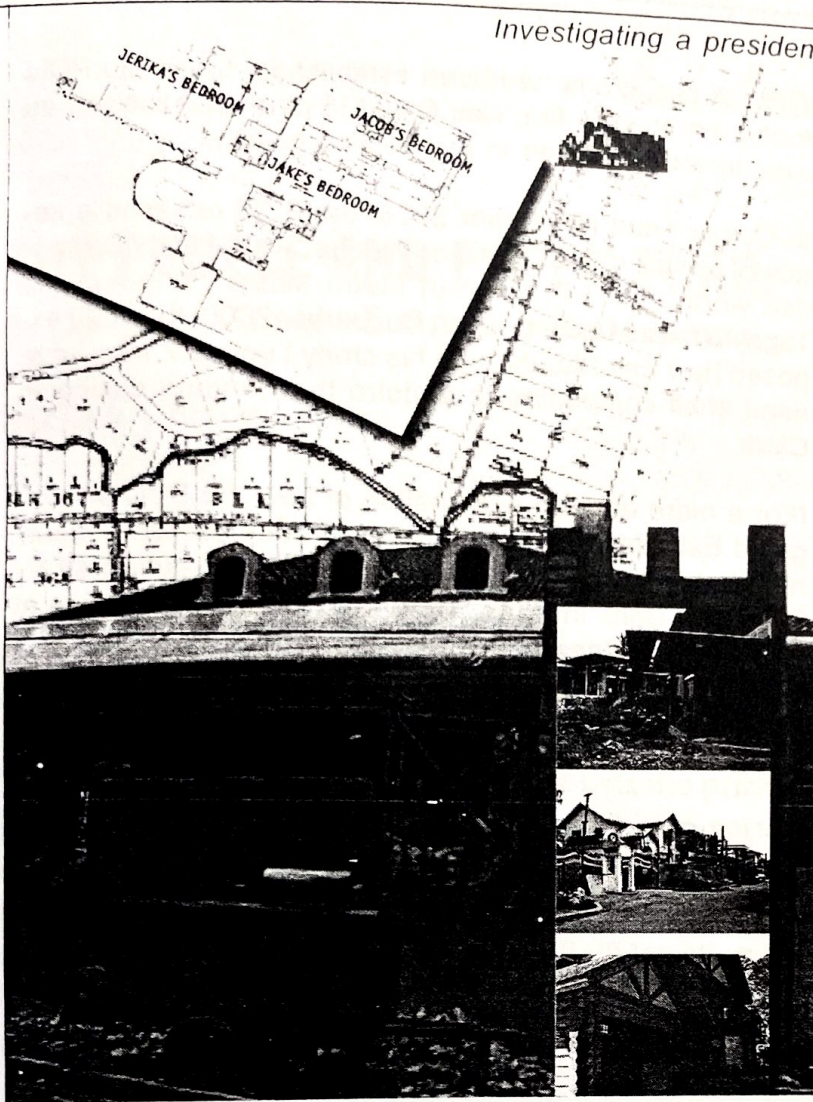
From the beginning, it was clear to the PCIJ that proving the real ownership of the mansions would be problematic. But if there was a pattern that could be established, then it would be possible to link the houses to Estrada. As the investigation progressed, the patterns began to emerge in:

- the mode of acquisition,
- the law firm/s used to form companies or to front for the acquisitions,
- the individuals or companies that acted as nominees,
- the contractors and interior designers of the houses, and
- the design of the houses.

From interviews, buildings plans, and photographs, the PCIJ found a pattern in the use of contractors, project managers, architects, and design firms, as well as a uniformity in the style of the mansions. A routine search of building plans—some obtained from village associations, others from City Hall, or from contractors—showed the grandeur of the constructions. Not only that, they revealed new information, such as the names of the President's children in the blueprint of bedrooms being planned for them—additional proof that the houses were indeed being built for Estrada. While searching for documents, the PCIJ also found a Forbes Park property that Estrada had bought without paying taxes.

### **Unmask front men and shell companies**

The breakthrough in the investigation of the mansions came when the ownership of the ownership of the "Boracay" mansion in New Manila, Quezon City was uncovered. The property was purchased in 1999 from the wealthy Madrigal family. Estrada had both the house and the grounds redone. He also ordered the construction of a heated swimming pool surrounded by white sand. The pool came with wave- and mist-making machines.



From a tip in the address, the PCIJ located the land title for the property and discovered that its new owner was a company called St. Peter Holdings. The real-estate trail thus led back to the corporate trail at the SEC. From the corporate registration files, the PCIJ found St Peter's incorporators. The journalists had no idea who they were. But around that time, the PCIJ was told by various sources, including Estrada's press secretary, that the person to talk to about the President's assets was his counsel, Eduardo Serapio, who had been appointed presidential assistant for political affairs.

A search on the Web showed that Serapio was part of the De Borja Medialdea Guevarra Serapio & Gerodias law firm. The law firm's Website also revealed the names of all the partners and associates working for it. It was here that the PCIJ found that all the names listed as incorporators of St. Peter Holdings were partners and associates of the firm.

*Investigating a president*

The link to Estrada had been established. Later, the PCIJ found that the law firm was linked to other acquisitions as well, including shares in a gambling casino.

In October and November 2000, the PCIJ released a series of stories on Estrada's mansions. A total of 17 properties worth over P2 billion in Metro Manila, Baguio, and Tagaytay were uncovered. In December 2000, the PCIJ exposed how Estrada, through his crony Lucio Co, may have used shell companies to acquire the Fontana casino in Clark.

(For a more detailed explanation of how the PCIJ investigated Estrada, see Lars Moller and Jack Jackson, "Journalistic Legwork that Tumbled a President," published by the World Bank Institute. That paper is available online at <http://www.worldbank.org/wbi/governance/cases.htm>.)

## THE PEOPLE AND PAPER TRAIL

### A Guide to Human Sources and Documents

Sheila S. Coronel

Investigative journalists get information by conducting interviews, retrieving and reviewing documents, and going on field visits. These are techniques that other investigators use as well. This chapter lists the primary human and documentary sources available to corruption investigators, but is not comprehensive. It includes only the most common sources journalists have used. Field visits are discussed in Chapter 2, "Detecting and Documenting Corruption," and in Chapter 5, "Measuring Governance and Corruption."

#### Human sources: whom to interview

In the course of investigating corruption, journalists and researchers invariably encounter a range of people who provide different types of information. There can be no exhaustive listing of the types of people who can serve as informants. In most instances, one source leads to another, and while one type of source may be ideal for a particular type of investigation, such a source may not be helpful when one is researching other issues.

There are generally two categories of sources who can be tapped for information on corruption: 1) those who have witnessed, have had experience with, or are somehow involved in, corrupt acts; and 2) outsiders who

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either have expertise on particular forms of corruption or have been tasked to investigate malfeasance.

When one is looking for interviewees in the first category, the key is to find individuals who have actual, firsthand knowledge of what they are talking about. The more direct the knowledge, the more valuable the source. But even firsthand information must be checked for veracity and accuracy. The memories of interviewees may be flawed; they may also have reasons for withholding, spiking, or even inventing some of the information they provide. Information from interviews should therefore be routinely checked against information provided by other human sources and by documents.

Those who provide secondhand or thirdhand information may be helpful in the initial phase of the research for providing leads, pointing to firsthand sources, and giving background and context. Again, investigators should verify the information these sources give. Even greater care should be taken to ensure that such information is corroborated.

For example, a businessperson who says s/he has heard bribery is rife in the Bureau of Customs is probably giving correct information, but this cannot be used for publication unless s/he has had actual transactions with the bureau or has witnessed people paying or accepting bribes. S/he should, instead, be asked to point to other businesspeople who have had such dealings and can talk about their actual experiences.

In the first category of sources are insiders or whistleblowers in the organization being investigated; victims of corruption, including users of government services or businesspeople who have lost government contracts because of graft; the perpetrators of corruption, whether they are in government or outside it; and those who do business with the government and are familiar with its workings.

To the second category belong sources who are not employed by, or normally do business with, the government agency being investigated. These sources are nonetheless valuable because they have expertise on the subject or have privileged information as lawyers, accountants, or investigators.

The following is a list of sources frequently used by journalists and other researchers when they investigate corruption. The first four belong to the first category of human sources, while the last two belong to the "outsiders" category.

### **Insiders and whistle-blowers**

These are probably the most valuable sources of information because they have firsthand knowledge of how a corrupt agency or official works and the corrupt transactions that have been made. They can also point to other sources as well as provide background and context. In addition, they can give information on how the network of corruption operates. This is why nearly all the corruption stories done by the PCIJ have involved interviewing insiders and whistle-blowers.

The classic whistle-blower—and probably the most famous—is Luis 'Chavit' Singson, the former Ilocos Sur governor who exposed Estrada's receiving a share from *jueteng* or illegal gambling operations in Luzon. Singson narrated how he served as a courier for the payoffs, which he packed in black attaché cases and delivered to the President every month. Singson showed documents, including a ledger indicating where the money came from and how the payments were made. He also recounted how he delivered part of his province's share of tobacco excise taxes to Estrada himself. Without Singson, it is unlikely that Estrada's links to the underworld of crime and large-scale corruption would have been revealed so early in the President's term.

Whistle-blowers are therefore heaven-sent to corrup-

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tion investigators. But their testimonies must also be dealt with carefully and the veracity of their accounts checked. It is also wise to fathom their motives, as these provide clues as to their reliability and credibility. Singson spilled the beans on Estrada because he believed his own life was in danger from his rivals in the President's inner circle. Some people blow the whistle because they are genuinely conscience stricken—as SPO2 Eduardo de los Reyes was, when he talked about the complicity of top police generals in the gangland-style execution of suspected members of the Kuratong Baleleng kidnapping gang in 1995.

Others are driven by a sense of outrage or a crusader's zeal. This was true of Marlene Esperat, a chemist employed by the Agriculture Department's Regional Field Unit based in Cotabato City. Esperat provided evidence of malversation and other forms of corruption against officials of the Regional Field Unit and was a principal complainant in several graft cases filed against agriculture personnel. Her life was threatened and the regional office in Cotabato was burned down to destroy the evidence. Esperat was also a major source for the PCIJ's story on corruption in agriculture.

Some whistle-blowers are driven by a mix of both patriotic and pecuniary considerations, like Danilo Pacaña, the Cebu-based regional auditor of Allied Bank who filed the first-ever tax evasion case against tobacco magnate Lucio Tan in 1987. While doing a routine audit of the Tan-owned Allied Bank, Pacaña found that the bank was underpaying documentary taxes on time deposits. This meant unpaid taxes of P261 million from 1981 to 1987. He reported the matter to the Bureau of Internal Revenue (BIR) and provided documents to back his claim. Pacaña said he wanted to help the new government of Corazon Aquino raise more money, but he also calculated that he could get a hefty reward. The law provides a reward of 15 percent of whatever is collected to those who expose tax evasion.

One problem that faces those who deal with whistle-blowers is how to help ensure their safety. All the whistle-blowers mentioned above faced death threats. Pacaña was threatened with harm by a BIR investigator if he did not accept a P5-million bribe to keep quiet. The auditor did, but the tax investigator also took a P600,000-cut from the payoff.

Whistle-blowers whose identities will be revealed should be warned of the risks, and those who convince them to go public must not expose them to unnecessary danger. Whistle-blowers are themselves often involved or implicated in corrupt acts. It would be wise to consult a lawyer if this is the case and to check whether coming out in public has any legal implications.

The Philippines has a whistle-blower protection law, but it is not sufficient assurance that insiders who provide information will be safe. Law-enforcement officials cannot always be relied upon to guarantee protection for whistle-blowers; law enforcers can be pressured or bought. The Witness Protection Program run by the Justice Department has many deficiencies. Would-be whistle-blowers should be told that the rewards for exposing malfeasance are mainly psychic.

There are times when insiders are not willing to go public; their reluctance should be respected. They can, however, still provide documents that will help the investigation, or they can point to other sources who can be interviewed. They can also be anonymously cited in reports, but only if the information they provide is corroborated by other sources.

In virtually every government body that the PCIJ has investigated, journalists found insiders who were willing to provide information. Many did so because they were disgusted with the corruption in their agency. Others were aggrieved because they were left outside the loop of power, while others had an axe to grind against their colleagues or bosses.

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If those still employed by a government agency refuse to cooperate in an investigation, it might be worthwhile to look for those who have retired or moved elsewhere. They may be able to talk more freely. Several sources in the BIR investigation, for example, were retired tax officials.

Whether retired or not, however, many of the PCIJ sources were anonymous insiders who provided information that kept the investigations going. This was the case in Severino's 1995 report on Environment Secretary Angel Alcala: insiders in the Environment Department provided documents and other information that showed how Alcala signed a series of questionable orders which allowed wood companies to either resume logging or to recover seized contraband logs. One of the insiders, a young clerk who had access to the documents, agreed to meet Severino only at night, and only in the vicinity of the Oblation monument at the University of the Philippines Diliman campus.

Similarly, Malou Mangahas's investigation in 2002 of case fixing in the Department of Justice relied on documents from, and interviews with, personnel in the department. In 1993, Marites Dañguilan Vitug and Glenda Gloria did a controversial investigation for the PCIJ on the socialite Rosemarie 'Baby' Arenas, President Fidel V. Ramos's mistress. The investigation showed that Arenas played a key role in Ramos's presidential campaign and that she tried to wield her influence over government appointments and policies.

Hers was a classic case of influence peddling by a private, and unaccountable, individual who tried to intervene in the affairs of state. The authors interviewed over 50 persons, all of whom could be considered "insiders." They included Cabinet secretaries, former and current military officers, businesspeople, and Arenas's friends. None of them wanted to be quoted by name. To guard against false leads and story feeds, the writers checked every piece of information they were given. No information from a single source was used unless it was cor-

roborated by others. The writers made every effort to find sources who had firsthand knowledge of supposed deals and requests.

With insiders and whistle-blowers, the key is establishing trust. One must also go by the rules agreed upon. If sources demand anonymity, their identities must be kept secret even from friends and colleagues. These should be revealed only to those who need to know, such as editors, who may demand to be told the identities for purposes of verification and fact checking.

Care must also be taken in note taking and record keeping, so that even if one's records are examined, there will be no clues to establish the identities of sources. The use of codes, encryption, or computer passwords may be necessary in some investigations. This was the case in the PCIJ's investigation of Estrada; sources demanded absolute anonymity for fear of dire consequences if their identities were revealed. Anonymity agreements should be respected even long after the investigations are finished.

### **Victims**

Many investigators assume that few people will talk openly about corruption. They are mistaken. While it may initially be difficult to convince insiders and potential whistle-blowers to talk, victims of corruption are often only too willing to recount their experiences. They are also the ones most likely to give their stories to journalists, NGOs, or government investigators in the hope that their grievances will be addressed.

The obvious way to look for victims is to find those who have been disadvantaged by a government decision or policy, the award of a government contract, or extortion by government employees. If one is investigating corruption in the awarding of licenses and permits, then one should look in chambers of commerce, trade organizations, or professional associations (such as archi-

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pects who apply for building permits for their clients) whose members have regular dealings with the agencies issuing such documents.

If the object of the probe is an anomalous contract, then the victims would be companies that were unfairly disqualified from a bid or lost a bid because of under-the-table deals made between bid committees and winning firms. Losing companies would likely have an idea of how the bids were rigged and of the connections between winners and officials who sit on bid committees. Similarly, losing lawyers and litigants in court cases often have some idea of how their rivals influenced a judge. But because they are losers, one must take their stories with a grain of salt, as the bitterness of their loss may have skewed their perspective.

In investigations of public works funds, the victims to look for are communities that suffer from bad infrastructure because the money was pocketed by contractors and officials. People from these communities can describe how they suffer from the consequences of corruption. They may also have monitored the project in the course of its implementation; they will probably also know who the contractors are and their connections to officialdom.

Sometimes victims are organized because there are enough of them who are angry and want to do something to correct wrongdoing. In such cases, investigators should seek out these organizations as they are a gold mine of information and contacts. For example, victims of violent crime have formed associations that look at corruption in the police and criminal courts, among other things.

The families of those who perished in the Ozone disco fire in 1997 also organized themselves; collectively, they pursued a case against Quezon City officials for having given the disco a building permit despite more than 20 violations of the building and fire code. In 1998, Cecile



**Ozone Disco fire victim.** Getting to the bottom of the disaster is part of the healing process. (RICK ROCAMORA)

C.A. Balgos interviewed members of the organization about corruption in City Hall as well as in the Office of the Ombudsman, which heard the case.

Similarly, businesspeople who had exposed extortion by tax auditors formed a foundation to educate taxpayers on their rights and to provide support to those who expose corruption in the BIR. They provided information, as well as a human dimension, to the PCIJ's own investigation of corruption in taxation.

### Perpetrators

Many people assume that officials and businesspersons guilty of corruption will not talk to investigators or will not provide anything useful except denials. That is true in some cases, but sometimes, for various reasons, they decide to provide revealing information.

Such was the case of the *jueteng* operator and his family, composed of various local officials, in a Pangasinan town that was the subject of a study made by the Institute for Popular Democracy and the PCIJ in 1995. The study

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painted a detailed and insightful portrait of *jueteng*'s grassroots base and of the layers of protection by elected officials and the police that shield the gambling operation from the law. The report examined the family and patronage ties that bind the local gambling lord to politicians, the police, and even the parish priest.

The article revealed the amounts paid to officials and law enforcers who protect *jueteng*. The loosely structured, open-ended interviews were conducted on condition that identities, even that of the town, were kept under wraps, so the *jueteng* operator and his cohorts were in no danger of being exposed. The result was a revealing picture of the *jueteng* network, one that would have been possible only with information that was given by the gambling lord and his protectors themselves.

This was also the case with textbook suppliers who provided Chua information about corruption in the Education Department. Because their identities were not revealed, they were shielded from exposure. At the same time, they were becoming sick of the system and of the enormous cuts being demanded from them by officials. They thought that talking to a journalist might help initiate reforms. Similarly, lawyers who talked to the PCIJ about bribery in the courts were doing so because they were tired of the exactions being made on them by corrupt jurists.

While Tess Bacalla was investigating the BIR for the PCIJ, she found that the perpetrators of corruption were businesspeople who had fallen prey to the extortion of tax investigators. They were willing to recount their experiences as long as their names were not mentioned. In cases like these, the parties to corruption—businesspeople who paid off bureaucrats or litigants who bribed judges—saw themselves as victims of the system as well. By talking about their involvement in corrupt deals, they were airing their grievances even while admitting their complicity.

**People who do business with government**

Private individuals whose businesses or professions require dealing with the government are another rich source of information on corruption. To begin with, they can brief investigators about government procedures and how these have been subverted. They can also provide a who's who guide to the bureaucracies they deal with: they would likely know who in an organization is corrupt and who is impervious to bribery.

For instance, owners or employees of transport firms that regularly obtain licenses and franchises from government regulatory bodies are a rich source of information on corruption in these bodies. So are gun owners who obtain licenses for their firearms, owners of firms that supply government bodies, or representatives of construction companies that bid for public works projects. When Gemma Corotan Robles was investigating corruption in the Health Department in 1995, for example, she talked to agents of drug companies supplying public hospitals to find out what bureaucrats at the department, including the secretary himself, were demanding from them in terms of perks and payoffs.

Even if they themselves are not involved in bribery, these sources know how the system works and are familiar with the exactions made by corrupt bureaucrats. They are an invaluable resource.

**Representatives of law-enforcement, regulatory, or investigative bodies**

Official bodies tasked to investigate corruption or regulate particular activities or sectors gather documents and information in the course of their work. They would also have developed the contacts and expertise in their particular field. While some of these bodies are inept or corrupt, there are individuals who remain committed to their work. The task of the investigator is to seek out those who take their jobs seriously and

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over the years have gained a measure of proficiency in probing wrongdoing.

Chapter 9 lists the various government bodies that play a role in investigating and prosecuting corruption. All of them have personnel who can be tapped to provide information about particular forms of malfeasance. If the issue one is investigating is being tackled by any of these bodies, it would be a good idea to seek out the person in charge of the case and to see what assistance s/he can provide. Try as much as possible to get documents, as government personnel often have easier access to state records. Each major government body also has an internal ombudsman, and if that person is doing her job well, then she is also a good resource on corruption in that particular agency.

Sometimes the National Bureau of Investigation (NBI) is called upon to investigate particular cases of graft; if so, talking to the NBI agent in charge of the case might be worth one's while. Congressional staff, especially those assigned to such bodies as the Blue Ribbon Committee, which investigate government officials or bodies, are also good sources as they have privileged access to government records. In the course of investigating some of its stories, the PCIJ has been able to obtain hard-to-get documents from government agencies by courting the requests through congressional staff.

The Department of Justice is often asked to render a legal opinion on government actions or to review cases involving all sorts of wrongdoing, so sources in the department are worth cultivating. Another possible source of information is the Office of the Government Corporate Counsel (OGCC), which provides legal opinions on contracts and other issues related to state-owned companies. If an anomalous contract involving a government company is being investigated, someone in the OGCC may have already looked at it.

Other government bodies regulate such sectors as en-

ergy prices (the Energy Regulatory Commission), telecommunications (National Telecommunications Commission), land transport (Land Transportation Franchising and Regulatory Board), shipping (Maritime Industry Authority), airlines (Air Transport Office), even movies (Movie and Television Review Classification Board). All these are potential sources of information, depending on the area being investigated. A look through the government listings in the phone book would be helpful for those who are navigating blindly. One must remember, however, that some of the personnel in these agencies could well be corrupt, and the information they give, spurious.

### Experts

They are such an obvious information resource that they are often overlooked. In many ways, experts are the ideal source because most of them do not have any partisan political agenda or material motives in speaking out, unless they have been hired by a company or agency involved in a corruption case. Many of them just want to share their expertise and are only too happy to find someone, especially a layperson, who is interested in their field.

Those investigating corruption are likely to consult lawyers, accountants, and auditors. Lawyers can provide information on the nuances of the law and the legal liabilities involved in the offenses being investigated. They can speak of similar cases they have encountered. If they have been hired by one of the parties in a corruption case, they can also provide documents and background information. In this case, though, they will most likely provide only information that will help their client's cause.

Accountants and auditors are helpful in making sense of financial statements, audit reports, and other documents that require a familiarity with numbers. Many times, the key to an investigation is in such documents,

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and the layperson would do well to seek expert advice on what the numbers mean.

Other types of experts would be helpful in providing background information on particular areas, even if they have no specific knowledge of the case being investigated. For example, those who are familiar with budgets and procurements, such as retired government auditors or business consultants, can provide background information that can help the investigator determine how to proceed in investigating, say, a government contract or a particularly notorious supplier or contractor. Tax experts are helpful in investigations of corruption involving tax settlements or revenue officials. Securities analysts are a good resource for such areas as insider trading and price manipulation. Academics can be tapped for information on a variety of issues, whether it is rentseeking, political families, or the underworld.

The rule of thumb is: if you are stumped by a subject, look for an expert to bail you out.

### **The paper trail: what documents to look for**

Malfeasance can often be convincingly established only if documents back up findings. There can be no exhaustive listing of the documents needed for a corruption investigation, as this is largely determined by the area or issue being probed. There are nonetheless some basic documents that anyone investigating corruption should be familiar with as these are used over and over again in the course of investigations. They are also public records, therefore readily available to any member of the public, and those who have difficulty obtaining them have every right to complain. [See sidebar.]

#### **Statements of assets**

Republic Act 6713 requires all public officials and employees, except those in an honorary capacity, laborers,

and casual and temporary workers, to submit a statement of their assets and liabilities every year. While many officials comply with the law by filing annual statements, they generally tend to understate the value of what they own. They also tend to withhold some important information, such as the current values of property they acquired.

Still, these statements are valuable documents, as officials are supposed to list what properties—real estate, vehicles, jewelry, shares of stock, etc.—they acquired, when, at what cost, and their current market values. They also include liabilities such as loans, including those from government institutions, insurance payments, even unpaid rental. The statements also list the names of the official's wife and children below 18. They are also supposed to include the names of relatives up to the fourth degree of consanguinity and affinity if these are employed by the government. These declarations are useful for tracking an official's wealth over time as well as revealing actual or potential conflicts of interest. [See Chapter 3, "Investigating Officials."] Asset declarations can also be mined for bits of information (an official's address, for example) that may be useful when pursuing the investigation further. That information could well be the missing piece in the jigsaw puzzle.

### Court records

If the case being investigated has been filed in court, or if the official under scrutiny has been previously charged, the first stop for the investigator should be the courthouse. Court records are public, and if getting copies of them from the courts where they are filed is a problem, the various parties to a case (or their lawyers) might be willing to provide them.

Court records are valuable because they would likely include original documents that have been obtained through legal research or subpoenaed by a judge. These may include nonpublic records, such as bank statements

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or income tax returns, which are otherwise hard to obtain. They would also include evidence substantiating charges, as well as transcripts of testimonies of witnesses in open court.

Court cases filed against the Agriculture Department, for example, were used as bases for the investigation of corruption in the agriculture sector. In her investigation of corruption in public works projects in Mindanao, Vitug went through court cases filed against erring contractors and found that contractors previously charged for various lapses and offenses were given new contracts despite their track records. Similarly, Chua's investigation of corruption in education extensively used court records in mapping out the patterns of malfeasance in the procurements system of the Education Department.

### Audit reports

Among the most underused public records are audit reports made by the Commission on Audit (COA), the government's bean-counter. The COA audits all government agencies, including government-owned or -controlled corporations, to find out whether money in these bodies is being spent wisely and in accordance with the law. *[For more on COA, see Chapter 9, "Combating Corruption: How the Government Fights Malfeasance. See also the section "Following the trails" in Chapter 6.]*

The auditing process begins with the resident auditor of an agency, who goes through the books of the body for a particular fiscal year and asks for explanations of any specific transactions s/he finds questionable. Consultations with the agency's management are held, questions are resolved, and the auditor prepares the final report for the agency. The COA office that has jurisdiction over the agency then reviews the audit; appeals may be made, which are reviewed by the commission.

An audit becomes final—and public—once a copy is received by the head of the agency concerned. Researchers

and other citizens can ask the Public Information and Media Relations Office of the COA for copies of the report.

The COA reports should not be taken as bible truth. To begin with, COA audits are based on the documents submitted by the government body being examined. It is possible that these documents are suspect or that the COA resident auditor is in cahoots with corrupt officials in the agency being audited. The COA also bases its reports on purely accounting principles—it cannot always discover such things as influence peddling or collusion among bidders. COA audits cannot find out whether bureaucrats are getting bribes to facilitate certain transactions, but they may be able to reveal whether government purchases are overpriced or whether or not there are receipts or vouchers to back up such purchases.

Audit reports are important because they show how budgets are spent, whether procedural and accounting lapses were found, and where money is wasted. They are particularly useful for investigations of government procurements. The anomalies in the purchase of trucks by the Mount Pinatubo Commission, for example, were discovered because of a COA audit that noted procedural lapses in their procurement. [*See also the section "Looking at hard data" in Chapter 5, "Measuring Governance and Corruption."*]

Audit reports are also able to uncover a whole range of other abuses. For instance, the COA reports on the National Food Authority (NFA), cited in an article written by Robles for the PCIJ in 1995, showed how the NFA entered into overpriced shipping and trucking contracts for imported rice. The reports also showed how the food agency borrowed P323 million from banks for a Cereal Procurement Fund. The amount was never used, but the NFA had to pay P42 million in interest payments for the undisbursed funds. The COA likewise documented massive losses from pilferage of grain in NFA warehouses.

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Audits of local government units can show the priorities of local officials: how much money is being spent on, say, health care versus money allocated for basketball courts and fiestas. For example, a 1993 COA report on the municipality of Dinagat, Surigao del Norte, showed the following expenditures: P84,660 for social welfare services; P34,000 for peace and order; P210,471 for infrastructure; and P826,493 for "the enactment of ordinances and approval of resolutions." What is clear from this document is that the town spent 72 percent of its entire budget for the municipal council, with only 28 percent left for various services with a direct impact on citizens.

Special audits can reveal other useful information. In 1997, for example, the audit done on the Bureau of Immigration found a pattern of nepotism in the appointments made by Commissioner Edgar Mendoza—his uncle, two cousins, and two brothers-in-law were appointed to various posts in the bureau.

Investigators, however, should not base their reports solely on COA reports. While these are useful, they do not tell the entire story, and researchers would do well to use other documents, as well as other techniques, to detect corruption.

### Corporate records

Every company that does business in the Philippines has to register with the Securities and Exchange Commission (SEC). This applies even to nonprofit groups such as NGOs or religious organizations that set up offices in the country. Corporate registration papers, which can be obtained from the SEC, contain the following information: the date of registration, the names of incorporators and shareholders (trustees, in the case of nonprofits), the initial investment, and the purposes for which the company was set up, including the firm's line of business and the other activities it intends to undertake in pursuit of that business.

These documents also show information that may provide the key to an investigation, such as a company's address, and the addresses and signatures of the incorporators and board members, and the bank that received the initial investment. SEC-registered companies are also required to submit annual financial statements that show assets and liabilities, income and loss, dividends given to shareholders, sometimes even allowances paid to officers. Financial statements also show who audits the firm's books, crucial information if one is investigating financial wrongdoing in a company.

Corporate records are therefore valuable for a whole range of corruption investigations. They have been useful in checking on the assets of officials, as well as conflicts of interests they face. This was the case in the PCIJ's investigation of Estrada, which started with a search of the companies in which the then president, his wife and mistresses, and his children were registered as incorporators or shareholders. [See "*Investigating a President*" in Chapter 3.]

Corporate records have also been used in procurements stories, particularly in investigating the ownership of companies guilty of overpricing, underdeliveries, or other anomalies. Chua dug up corporate records of a company that had won a bid for school desks amid suspicious circumstances. She found that it had been incorporated by a notorious contractor who had already been banned from doing business with the Education Department. SEC records revealed that to elude the ban, the contractor had formed several companies with different names.

If fronts or nominees are resorted to, then SEC documents will at least contain a list of these dummies. The records may also provide clues to the interlocking interests of officials and businesspeople. The list of incorporators may show, for example, that an official's close relative is a shareholder in a company that is being regulated by that official.

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While investigating Gov. Juanito Remulla of Cavite in 1995, this writer obtained corporate records that showed two of the governor's sons-in-law were board members of a real-estate company that had bought a large tract of farmland from reluctant villagers. The farmers said that the governor himself had forced and even threatened them to sell even if they did not want to. Earlier, the Cavite provincial council, which Remulla's party controlled, had passed a resolution reserving vast areas in the province for nonagricultural use. These included the land the farmers owned.

### Property records

Corruption investigators routinely deal with documents that attest to the ownership of property, such as land records, vehicle registration, gun licenses, corporate papers, and stockholders' certificates. These documents are useful when one is checking the assets of officials suspected of graft. The suspicious accumulation of property, whether in the officials' own names, or those of their relatives and cronies or of front companies, is one of the indicators of ill-gotten or unexplained wealth. [See Chapter 3, "Investigating Officials."]

For example, in 2001, *Newsbreak* magazine investigated real estate, including condominiums in upscale Rockwell in Makati and farmland in Batangas, believed to be owned by former Makati mayor Jejomar Binay. The properties were worth tens of millions of pesos, an amount that the mayor could not have legitimately acquired based on his salary and declared asset base. The article used land and property records to pursue the investigation.

Not all property records, however, are available to the public. Information on vehicle registration is often provided only to those who are party to a case. One may, for example, request such information if the vehicle is suspected of involvement in a car accident or a robbery. While land registration records are public, the registry of deeds in some municipalities may withhold them, as

the San Juan municipality did when PCIJ demanded land titles of Estrada's properties in 2000.

### Contracts

Government contracts to purchase goods or services or to award big-ticket infrastructure projects are documents that should be subjected to greater scrutiny. Contracts show the amount of the project, the timetable for it, the conditions which bind the parties to the contract, the signatories, and other information such as the date the contract was signed. All this information may be useful to an investigation. The conditions, in particular, may be compared to similar contracts to see whether they are unusually favorable to the firm involved. If so, or if the terms of the contract violate laws or government guidelines, then one should dig deeper.

For example, an examination of the contract awarded in 1995 to Benpres Holdings to rehabilitate the North Luzon Expressway showed unusual haste in its signing. It was signed more than a month before the Toll Regulatory Board, the body that supervises tollways, issued guidelines for selecting a company to work on the highway. Moreover, despite guidelines that say the company chosen should have construction expertise, the contract was awarded to Benpres, which had no experience in construction. The contract also meant that toll rates would be increased by at least 900 percent.

Similarly, the contract between the Public Estates Authority (PEA) and Amari, an Italian-Filipino joint venture which bought reclaimed land off Manila Bay, was clearly anomalous. The land was sold by the government body at a price below prevailing market rates; the contract was signed without the approval of the PEA board; and the OGCC, which rules on the legal validity of contracts, approved it in just half a day after the contract was signed. Subsequent investigation by the PCIJ showed that the signing of the contract was rushed three weeks before the May 1995 local elections, because part

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of the nearly P3-billion payoff from Amari went to the ruling party's campaign fund.

In the course of its corruption investigations, the PCIJ has found that contracts are a good place from which to start sniffing. It is quite likely that bribes have been paid if a contract is unduly rushed, or if it contains anomalous provisions and terms that are clearly disadvantageous to the government. Large-scale infrastructure projects are particularly prone to grand corruption involving both politicians and bureaucrats. The trail that leads to such corruption often begins with an examination of the contracts for these projects.

### Records of campaign contributions and expenses

The Omnibus Election Code requires every candidate to submit a statement of expenses and contributions to the Commission on Elections 30 days after the polling. While most candidates comply with this requirement, only a minority make an honest accounting of what they received and from whom, and how they spent the contributions. Nonetheless, like asset declarations, statements of expenses and contributions are a good place to start, as long as investigators are forewarned that they should be skeptical about these documents.

According to the law, a candidate is supposed to state:

- the amount of every contribution, date of receipt, and the full name and exact address of every donor;
- the amount of every expenditure and the date it was made, the full name and exact address of the person to whom the payment was made, and the purpose of the expenditure; and
- any unpaid obligation, its nature and amount, and to whom it is due.

In the U.S., investigators have had great success in using campaign records to match contributions with how

congressmen voted on bills and to discover conflicts of interest. These records have also been used to see which companies or sectors—e.g., telecommunications, information technology, energy—contributed the most to a candidate and to check whether s/he has acted in a preferential manner toward these firms or sectors. Such information becomes particularly useful when scandals erupt, like those that rocked the energy giant Enron in 2002, and the officials who received major contributions from scandal-linked firms are put in the spotlight.

Because the records of campaign contributions in the Philippines are not very forthright, these kinds of investigations are difficult to do here. Nonetheless, these statements have been useful in finding out who the friends and cronies of public officials are and to check whether contributors are eventually appointed to government posts or receive favorable treatment from the state. As noted in the previous chapter, campaign contributors are often rewarded with government contracts, franchises, state loans, tax cuts, or a reprieve from official investigation.

These documents can also be used to check on how legislators voted on bills that affect the business interests of their declared contributors. They are also useful for checking whether the Election Code's limit on expenditures was violated. This is hard to do, though, as no candidate has ever admitted to the Comelec that s/he overspent.

The Election Code bans campaign contributions from a whole range of firms, including those with government contracts; those that have been granted franchises, exemptions, and other incentives by the government; public utilities; and holders of licenses to exploit natural resources. These prohibitions wipe out virtually the entire business class in the country from the list of potential contributors, and are probably one reason candidates are constrained from making an honest declaration of campaign donations. Nonetheless, investigations can also be done on whether candidates comply with these prohibitions.

## Asserting the Right to Public Records

Civil servants are not always helpful when it comes to providing documents to citizens. Access to certain records—such as corporate and land registration—is routine. There are procedures to follow to obtain access, and there is no requirement to disclose the identity of the one requesting the document and the purpose of the request.

Procedures for obtaining the other documents cited in this section differ from one agency to another. While these are public records, bureaucrats sometimes deny access outright by wrongly insisting that these are confidential. They can also delay the release of records by demanding letters of request, saying that permission of higher authorities is needed, or that the persons in charge are not available. In general, civil servants are more cooperative with journalists and less forthcoming with ordinary citizens.

But citizens are not altogether helpless against uncooperative bureaucrats. The Constitution and the law, particularly R.A. 6713, guarantee the right to information. Those who have difficulty getting access to public documents can show copies of the pertinent provisions of the law to reluctant bureaucrats. They can also write letters citing the exact article and section of the law that guarantees access.

Some journalists have succeeded in doing this. For good measure, they send a copy of the letter to the Office of the Ombudsman (and make sure the uncooperative agency knows the copy has been sent). They sometimes also threaten to file a complaint with the Ombudsman, as R.A. 6713 penalizes refusal to provide access to public documents with a fine of up to six months' salary, suspension of up to a year, or removal from office. A reminder of the law and its penalties often suffices to compel compliance.

If threats do not work, investigators can file complaints against the government employee, official, or agency involved. These complaints can consist simply of one-page letters detailing how access has been denied. The letters can be sent either to the Office of the Ombudsman or to the Civil Service Commission (CSC). *[See below for addresses and other contact details. See also Chapter 9.]* If officials do not budge despite these complaints, another option is to file a case in court, a costly and time-consuming alternative.

In 2000, columnist Solita Monsod wrote the CSC to complain about the refusal of the airport authority to release

*Asserting the right to public records*

information on whether Philippine Airlines was paying rental for exclusive use of Terminal II of the Ninoy Aquino International Airport. She said that the case was a matter of public interest. The CSC compelled the airport authority to re-lease the information.

Complainants can cite the following provisions in their letters:

- Article 3, Section 7, of the Bill of Rights, Philippine Constitution: "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 citizens subject to limitations as may be provided by law."
- Article 2, Section 28, Philippine Constitution: Mandates the State to adopt and implement "a policy of full disclosure of all transactions involving public interest."
- Section 5e, R.A. 6713: "In the performance of their duties, all public officials and employees are under obligation to ... make documents accessible to the public. All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours."
- Section 8 (C), R.A. 6713: "(1) Accessibility of documents. Any and all statements (of assets and liabilities) filed under this Act shall be made available for inspection at reasonable working hours."
- Rule IV, Section 2, Implementing Rules and Regulations, R.A. 6713: "It is the responsibility of heads of departments, offices and agencies to establish measures and standards that will ensure transparency of, and openness in, public transactions in their respective offices, such as biddings, purchases, other financial transactions, including contracts, status of projects, and all other matters involving public interest."

"They shall establish information systems that will inform the public of the following: (a) policies, rules, and procedures; (b) work programs, projects, and performance targets; (c) performance reports; and (d) all other documents as may hereafter be classified as public information."

## Where to Get Documents

### Statements of Assets

- **The President, Vice President, members of the Cabinet and other national-level executive officials**

Office of the President  
Malacañang Palace, Manila  
7356201 (trunkline)  
5641451 (trunkline)  
Website: [www.op.gov.ph](http://www.op.gov.ph)

Office of the Vice President  
Hall 1 PICC Bldg., CCP Complex  
Roxas Blvd., Pasay City  
Tel.: 831-2616 (chief of staff)  
Fax: 831-2618  
Email: [chiefovp@yahoo.com](mailto:chiefovp@yahoo.com)

Records Office, Malacañang Palace  
Ground Floor, Mabini Hall, Malacañang, Manila  
Tel.: 736-1064; 736-1346  
Telefax: 736-1084

Office of the Ombudsman  
Agham Road, Quezon City  
Tel.: 926-8752  
Fax: 926-8758  
Email: [ombfao@nsclub.net](mailto:ombfao@nsclub.net)

- **Provincial governors, vice governors, mayors, vice mayors, other local officials and employees**

Office of the Deputy Ombudsman for Luzon  
Agham Road, Quezon City  
Tel: 926-9032  
Fax: 926-8738

Office of the Deputy Ombudsman for Visayas  
Palace of Justice, Capitol, Cebu City  
Tel.: (032) 255-0976  
Fax: (032) 2530981

Office of the Deputy Ombudsman for Mindanao  
4/F Herrera Bldg., Alvarez St., Davao City  
Tel.: (082) 221-3431  
Fax: (082) 221-3938

Where to get documents

- **AFP personnel**

Office of the Deputy Ombudsman for the Military  
2/F Malacañang Annex, 1610 J.P. Laurel St., San Miguel,  
Manila  
Telefax: 734-5545

- **Representatives**

Office of the Secretary General  
House of Representatives  
South Wing Basement, House of Representatives,  
Constitution Hills, Diliman, Quezon City  
Tel.: 931-6216; 931-6298  
Fax: 931-5556

- **Senators**

Office of the Senate Secretary  
Senate of the Philippines  
G/F GSIS Bldg., Roxas Blvd., Pasay City  
Trunkline: 552-6601 to 90  
Direct Line: 552-6854  
Fax: 552-6853  
Email: osec@senate.gov.ph  
Website: www.senate.gov.ph

- **Members of the judiciary**

**For Justices:**

Supreme Court of the Philippines  
Padre Faura, Manila 1000  
Tel.: 523-0679; 521-7239  
Fax: 522-3211  
Email: bryan@supremecourt.gov.ph  
Website: www.supremecourt.gov.ph

**For Judges:**

Office of the Court Administrator  
3/F Old Supreme Court Bldg.  
Taft Avenue, Manila  
Tel.: 525-1238; 521-6809  
Fax: 523-7385

- **All other public officials and employees**

Civil Service Commission  
Constitution Hills, Diliman, Quezon City

**Where to get documents**

Trunkline: 931-6850  
Email: [cscphil@csc.gov.ph](mailto:cscphil@csc.gov.ph)  
Website: [www.csc.gov.ph](http://www.csc.gov.ph)

\* Statements of assets of representatives and senators are also posted on the PCIJ's information site: <http://www.i-site.ph>.

**Where to get audit reports:**

Commission on Audit  
Commonwealth Avenue, Quezon City  
Tel.: 931-9268, 931-9207 (Communication Center),  
951-0934 (Public Information and Media Relations Office)  
Email: [cweb@pacific.net.ph](mailto:cweb@pacific.net.ph)  
Website: [www.coa.gov.ph](http://www.coa.gov.ph)

**Where to get corporate records:**

Securities and Exchange Commission  
SEC Bldg., EDSA Greenhills, Mandaluyong City  
Trunkline: 726-0931  
Email: [mis@sec.gov.ph](mailto:mis@sec.gov.ph)  
Website: [www.sec.gov.ph](http://www.sec.gov.ph)

**Where to get records of election contributions:**

Commission Elections  
Postigo St., Intramuros, Manila  
Trunkline: 527-6111  
Hotlines: 525-9294 to 97; 525-9301 to 92; 525-9334 to 35;  
525-9345  
Email: [webmaster@comelec.gov.ph](mailto:webmaster@comelec.gov.ph)  
Website: [www.comelec.gov.ph](http://www.comelec.gov.ph)

The campaign contributions of key officials are posted on the PCIJ's information site, <http://www.i-site.ph>

## MEASURING GOVERNANCE AND CORRUPTION

### Quantifying the Scale and Impact of Wrongdoing

Yvonne T. Chua

The arrest in 1999 of textbook agent Mary Ann Maslog over what investigators concluded was an attempt to bribe an executive of the Department of Budget and Management into releasing a P200-million contract became the takeoff point for a PCIJ investigation into the government's textbook-procurement program. By the time the study was completed, the PCIJ had documented the large-scale corruption taking place in the different offices of the Education Department and in the other government agencies directly or indirectly involved in the purchase of textbooks.

These included the DBM, local governments, Congress, the Commission on Audit (COA), and even the Office of the President. In terms of numbers, the PCIJ calculated that bribes ate up a staggering 20 to 65 percent of textbook contracts. In pesos and centavos, the Education Department had been losing from P200 to P325 million of its annual half-a-billion-peso budget for textbooks.

Quantifying losses arising from bribes, kickbacks, and other forms of corruption is a tricky and tedious job, enough reason for citizens and journalists to shun the exercise. But translating corruption into figures—whether in percentages, pesos and centavos, indices, or plain rankings in a survey—can be a worthwhile undertaking. The statistics that emerge at the end of the

**Who said it would be easy?**

process help illustrate the gravity of corruption. They also make it easier to compare corruption across sectors or countries and over time.

**Who said it would be easy?**

No one ever said measuring corruption was easy.

Citizens hot on the trail of wrongdoers know only too well how hard it is to get the right people to talk about corruption. The least likely to talk are the parties privy to irregular transactions from which they stand to gain. On many occasions, even victims of corruption are unwilling to talk. A survey done by the Social Weather Stations (SWS) in 1999 showed that while a fifth of the public had been asked for money or a gift to speed up their transactions with a public official, only four percent bothered to report the incidents.

Respondents kept mum for a number of reasons: they felt it was futile to go to the authorities, they feared retaliation by the public official, they did not know whom to turn to, or they considered the bribe they had paid "too small." Citizens should thus count themselves lucky when they come across a whistleblower, usually a disgruntled party to the transaction, a losing bidder, or a conscience-stricken civil servant.

Wrongdoers are known to cover their tracks well. They are careful not to leave a paper trail, especially when their kind of corruption entails monetary payments. Most of the time, bribes are paid in cash, through conduits. Just as problematic is finding a trail in noncash corruption, such as exchange of favors and abuse of authority, like appointing a friend as a confidential employee in government.

Because corruption is a highly political topic, citizens will find that those in power typically like to keep the numbers down, while those out of power, or in the op-

position, like to jack them up. As a result, it is hard to determine who is telling the truth.

Among the different levels of corruption, grand corruption is, hands down, more difficult to quantify than retail or petty corruption. One can hide behind a lamp-post and count the amount of *tong* a cop collects from passenger jeepney drivers. But how can one get into a meeting where top government officials exact a fat sum from big contractors for the next elections?

### **But it can be done**

The good news is, governance watchers have come up with various ways to measure corruption.

Getting the sordid details from primary sources is still the best measure. But since this is least likely to happen, citizens would do well to consider alternative measures that have been devised and to adapt these to their needs. They range from the mind-numbing number churning that economists do, to public opinion surveys that have become popular at home and worldwide, to simple tools that nongovernmental organizations (NGOs) use to monitor projects.

There are, however, a few important things to remember about measuring corruption.

One, measurements based on perceptions or proxies will not tell about the actual corruption, although they may serve as good indicators that corruption is or may be going on.

Two, measurements are not always precise and reliable. In surveys, factors such as how well respondents know about the extent of corruption going on, how they interpret the questions being asked them, and how honestly they answer these questions can make the results either precise or imprecise. In measurements that rely

### Measuring the impact on economic development

on the number of corruption charges in a given year and other similar hard data, the victims' willingness to file charges against the perpetrators, as well as the efficiency of the judiciary, affects the reliability of the data.

### Measuring the impact of corruption on economic development

Economists look at a number of items, including those in the following list, when they try to quantify the effects of corruption on economic development:

*Growth rates.* Economic losses presumably arising from corruption can be calculated by comparing the growth rates of a less corrupt country over a specific period to a more corrupt one. If the Philippines' growth had paralleled Singapore's during the Marcos years, what might the Philippines' gross domestic product have been? The difference between the "what was" and "what might have been" represents the losses resulting from a number of reasons, including corruption. The volume and growth of investments, both domestic and foreign, have also been used in lieu of, or along with, growth rates.

*The size of the country's debt.* It is widely held that excessive debt may be incurred through "white elephant" investment projects that owe their origin, in part, to bribes. Debt guarantees and other off-budget contingent liabilities are treated as red flags.

*The government's investments.* What does the government consider as priorities? These will appear in its budget, as well as its development plan. If the government prefers to keep repairing roads and bridges that are still in good shape instead of buying medicines and books that its health centers and schools urgently need, something is amiss.

*Poverty and basic services.* Of late, poverty assessments have been taking into account the potential cost of corrup-

tion, especially petty corruption, to the poor. "When access to public goods and services requires a bribe, the poor may be excluded. Given their lack of political influence, the poor may even be asked to pay more than people with higher incomes. Corruption results in shoddy public services," says World Bank president James Wolfensen.

### Measuring public opinion

Pollsters offer a different way of quantifying corruption. The surveys they conduct come in different shapes and sizes. Surveys may be country-specific or cross-country. They may poll either a panel of country or regional experts, or a random sample of locals or businesspeople. Surveys may gauge either respondents' perception or experience of corruption, or both. Perception-based surveys outnumber by far those that rely on experience.

In the Philippines, the SWS is the research outfit that has become synonymous with surveys. Since March 1987 it has been polling Filipinos on what they think about corruption and the government's anti-corruption effort. Most of its public opinion polls are national in scope, covering the entire country, both genders, and all socio-economic classes. But the SWS also conducts sectoral surveys, like its study on corruption in the judiciary.

In 2000, the SWS ran four quarterly national surveys on corruption in the government, the private sector, and the media for the Transparent and Accountable Governance Project. It also conducted two surveys of enterprises on their perception of public-sector corruption in 2000 and 2001.

The quarterly national surveys cut up the country into four major areas of study: Metro Manila, the rest of Luzon, Visayas, and Mindanao. A sample of 300 voting-age adults, or a total of 1,200 respondents, was ran-

## Measuring public opinion

domly drawn from each area of study. The SWS then fielded trained interviewers who used a pretested questionnaire to conduct face-to-face interviews for about two weeks. The questionnaire was derived from a list of 63 questions the SWS had identified at the start of the survey.

Respondents were asked about the following:

- The extent of graft and corruption in the government, the private sector, and the media
- The branch and level of government where corruption occurs or is widespread
- Government agencies perceived to be corrupt and not corrupt
- Government's effort, sincerity, and effectiveness in fighting graft and corruption
- The portion of government funds wasted due to corrupt practices
- The perceived number of businessmen engaged in bribery in the government
- Their personal experience of corruption in government and in the private sector, and the forms of corruption recently witnessed
- Whether they would report to authorities if asked for P5,000 to speed up the release of business permits, or if they saw someone pocketing P5,000 from project funds
- The accuracy of media reports about corruption and perceived extent of corruption by the media
- Suggested reward and punishment for those involved in corruption
- Government official and private sector personality most admired for having a clean reputation

The margin of error of the surveys was +/-3 percent for the entire country. This means the answer could move up or down three points, or a 6 percent range of spread. Because the SWS keeps its methodology consistent, it is

Measuring experience

possible to compare the data generated from its different surveys over the years.

**Filipinos who think there is "a great deal" of corruption in government, 1998-2000**

| Period         | Percent |
|----------------|---------|
| September 1998 | 38      |
| November 1998  | 52      |
| June 1999      | 33      |
| September 1999 | 50      |
| March 2000     | 40      |
| June 2000      | 51      |
| September 2000 | 36      |
| December 2000  | 36      |

SOURCE: SOCIAL WEATHER STATIONS

Top- and middle-level managers were interviewed for the SWS's survey of enterprises. The first survey polled 604 small and medium enterprises. The second surveyed 505 small to large enterprises, including 200 firms randomly drawn from the 1,500 largest corporations. At least 242 companies were common to the two surveys.

Many of the questions raised in these surveys were similar to those asked in the quarterly national surveys. In addition, the managers were asked to estimate how much of their company's net income they would be willing to contribute to a hypothetical anti-corruption program. Managers in the first survey said they were willing to give one percent, while those in the second survey said they were prepared to set aside two percent.

**Measuring experience**

Because perceptions can be untrustworthy, some researchers believe it is better to conduct surveys that are based on actual experience. The Public Affairs Center (PAC), a nonprofit organization in Bangalore in southern India, pioneered in this field of study when it did the Citizen Feedback Surveys in 1993 that highlighted corruption in Bangalore's public services. The survey, the first of its kind in India, is popularly known as the "Report Card."

### Measuring experience

The PAC basically adopted customer satisfaction surveys, a market research technique used widely by the private sector, to measure citizen satisfaction with the services they get from the government. It then scored each agency's performance based on the data it had gathered, like a teacher would in a report card.

Bangalore's Report Card survey examined three major themes:

- How satisfactory were the public services that mattered the most to the citizens?
- What specific aspects and features of their working were satisfactory or unsatisfactory?
- What did it cost the user to get the services (including hidden costs) or to solve the problems associated with getting services?

Researchers first stratified the residential areas by the age of the locality and then picked six areas at random from among them. More than 800 households were contacted, the only necessary criterion for survey being that the selected household had interactions with one or more public service agencies in the preceding six months.

Trained investigators then administered structured questionnaires. The questions used for the general households, or upper- and middle-income families, were different from those used for the slum households. The PAC said this was because the problems the households faced with services they received from public agencies were different.

The PAC chose not to present to respondents a predetermined set of public agencies in its survey. Rather, it asked them to focus on agencies they had dealt with in connection with a problem or to obtain a service. The households were given a seven-point rating scale to quantify how satisfied—or dissatisfied—they were with the agency they had interacted with and the service it

provided. Show cards were flashed to help respondents arrive at the ratings. The Center then used the set of scores to rank the agencies according to overall public satisfaction, as well as specific dimensions such as quality and corruption. This made it possible to compare the performance of the agencies.

Bangalore's Report Card survey is unique also because it specifically asked the bribe givers to identify the agencies involved and the amounts they paid to get things moving. This allowed the survey to achieve a measure of specificity and credibility.

### **Filipino report cards**

The report card survey as a tool to assess the performance of public agencies has since been modified and used in countries like Canada, Denmark, Ghana, India, Sweden, United Kingdom, the United States, Uzbekistan, and even the Philippines.

In 2000, as a follow-up to its Philippines Poverty Assessment Study, the World Bank tapped the SWS to conduct the Filipino Report Card on Pro-Poor Services. Like other SWS national surveys, the Report Card covered 1,200 respondents, who were asked 335 questions about the delivery of five basic services and the Lingap para sa Mahirap program, the flagship poverty reduction program of President Joseph Estrada.

The Filipino Report Card found overall dissatisfaction, especially among the poor, with state programs in health care, elementary education, water supply, housing and subsidized rice distribution, sectors in which disturbing levels of bribery and corruption had been reported.

An interesting finding was how the Lingap Para sa Mahirap Program had been subjected to the pressures of political patronage. About two-thirds of the funds were disbursed in each constituency with the approval

## Filipino report cards

of the members of Congress. The legislators were represented in the Program Advisory Board in each of the implementing agencies. About a fifth of the households believed they needed to pay a senator or a congressman a bribe—money, gifts, services, future political support, and other means of returning the favor—to get a recommendation to be included in the program. The study found that nonpoor households seemed to enjoy an unfair advantage in obtaining recommendations for inclusion in the program.

In 2001, the Development Academy of the Philippines (DAP) used the report card survey technique to study services provided by nine cities in Metro Manila. Residents were interviewed about their experience with garbage collection, public market management, permits and licensing, public safety management, and traffic management, including corruption.

A total of 2,700 household heads, or 300 from each city, took part in the survey. Researchers identified 60 sample spots in each city, secured a street map for each of these, and then selected a street corner from which they picked the five households using an interval of six. The study's margin of error was +/-1.8 percent.

Unlike the Bangalore study, the DAP used only one questionnaire. But like the Bangalore poll, it asked households to rate the services and their dealings with the city governments. Several scales, ranging from a two-point to a seven-point scale, were used. Each point on the scale had a corresponding score, with 10 as the highest.

The survey results did not match the general belief that Metro Manilans were discontented with services they got from the government. Residents, in fact, rated overall satisfaction with garbage collection as average (50 to 61) to good (79 to 84 points) in all cities, except Parañaque, where garbage collection got a below average grade (40 to 49). The same held true for public mar-

ket management. All cities, save for Parañaque, got a rating of average to good.

The level of satisfaction with permits and licenses was high in six out of nine cities where services were rated as good. Even Parañaque's performance was considered average. On the question of public safety management, no city got a below average score. Residents seemed contented with traffic management in their cities as well, with those in seven cities rating the performance of the local governments as above average.

The DAP's survey attempted to measure graft and corruption in the city governments by asking households about "extra" or bribe they needed to pay for certain services. It found incidences of actual bribery rather low, ranging from one to six percent, although reported bribe giving tended to be higher in permits and licensing compared to other services.

### **Surveying surveys and going cross-country**

With the proliferation of surveys on corruption at home and across the globe, how does one make sense of all the data?

Several organizations specialize in cross-country comparisons. They survey surveys, aggregate the data, draw inferences, and convert the information into a statistic or statistics that serve as an index of good or bad governance. Statistical techniques such as regression analysis, which allows researchers to relate two or more variables, are employed.

The best-known "poll of polls" and governance indicator is Transparency International's (TI) Corruption Perceptions Index or CPI, an annual ranking of countries according to perceptions of corruption.

The Corruption Perceptions Index 2001, which ranks 91

## Surveying surveys and going cross-country

countries, used 14 surveys, including those of the World Economic Forum, Institute for Management Development, PricewaterhouseCoopers, Freedom House, and the Political and Economic Risk Consultancy. These surveys examine corruption in different spheres, such as irregular extra payments connected with import and export permits, public utilities and contracts, business licenses, tax payments or loan applications, as well as corruption and its effect on the overall living and working environment. At least three surveys were required for a country to be included in Transparency International's index. The index ranges from 0 (highly corrupt) to 10 (highly clean).

**The Philippines' CPI Scores, 1997-2001**

| Year | Score | Rank | No. of Countries |
|------|-------|------|------------------|
| 1997 | 3.05  | 40   | 52               |
| 1998 | 3.3   | 55   | 85               |
| 1999 | 3.6   | 55   | 99               |
| 2000 | 2.8   | 69   | 90               |
| 2001 | 2.9   | 65   | 91               |

\*A score of 10 means highly clean; 0 means highly corrupt (SOURCE: TRANSPARENCY INTERNATIONAL)

Transparency International's CPI measures only the perception, not the actual level, of corruption. While year-to-year comparisons may be helpful in tracking improvement in the fight against corruption, TI's own statisticians say these should be done with caution. They point out that the CPI 2001, for example, used data compiled between 1999 and 2001. This means the currency of the information is not even.

Governance experts at the World Bank also note the limitation of broad indicators like the Corruption Perception Index. "The problem is that they implicate many institutions and policies at the same time. They mea

sure government performance but do not describe government processes or institutional arrangements. They typically measure performance very broadly rather than characterize specific dimensions of performance," according to a December 2000 World Bank publication.

The World Bank is one of the organizations that have produced substantial work in measuring governance. In the late 1990s, a team headed by Daniel Kaufmann, now the Bank's director for global governance and for Latin America capacity building and learning at the World Bank Institute, combined close to 200 governance indicators churned out by 13 organizations and covering about 160 countries into a smaller number of aggregate governance indicators. An updated study, this time covering data done by 15 organizations and covering 175 countries, was released in early 2002.

From the mass of data, Kaufmann's team grouped related indicators into what it called the six dimensions or indicators of corruption:

- Voice and accountability: the extent to which citizens participate in selection of government and independence of media
- Political stability: perceptions of likelihood of government being destabilized or overthrown through unconstitutional or violent means, including terrorism
- Government effectiveness: delivery of basic services, competence of civil servants, quality of the bureaucracy, independence of the civil service and credibility of the government's commitment to policies
- Regulatory: policies that are market-unfriendly, such as price control and bank supervision, and regulation in foreign trade and business development
- Rule of law: perceptions of incidence of violent and nonviolent crimes, effectiveness of the judiciary and enforceability of contracts

## Surveying surveys and going cross-country

- Control of corruption: frequency of additional payments to get things done, effects of corruption on the business environment, grand corruption

The WBI team used statistical tools to make the data comparable, came up with numerical values for each dimension, and then plotted these on a scale of -2.5 to 2.5. The higher values correspond to better outcomes.

According to Kaufmann's team, aggregate indicators like theirs provide more precise measures than individual indicators. Aggregate indicators, it says, also have the advantage of spanning a larger set of countries, allowing comparisons across more countries. The indicators made it possible for Kaufmann and his co-researchers to identify countries with the so-called best and worst governance, although they still found it difficult to identify statistically significant differences among most of the countries. Their study also showed that good governance is strongly correlated with development.

The updated study, meanwhile, allowed the WBI team to track changes of governance perception over a four-year period, or between 1997-1998 and 2000-2001. The study, for example, showed the deteriorating rule of law

## Aggregate Governance Indicators for the Philippines

| INDICATOR                | 2000/2001 | 1997/1998 |
|--------------------------|-----------|-----------|
| Voice and accountability | 0.53      | 0.63      |
| Political stability      | -0.21     | 0.27      |
| Government effectiveness | 0.03      | 0.13      |
| Regulatory quality       | 0.21      | 0.57      |
| Rule of Law              | -0.49     | -0.08     |
| Control of corrupt       | -0.49     | -0.23     |

Higher values correspond to better outcomes.

SOURCE: GOVERNANCE MATTERS II, WORLD BANK INSTITUTE

in the Philippines, Malaysia, Zimbabwe, and Moldavia.

### **D.I.Y. (Do-it-yourself) surveys**

Can non-experts conduct their own surveys on corruption? Yes, a number have, including the PCIJ. To grasp how widespread the phenomenon of media corruption was and how it distorted the news, the PCIJ polled 100 journalists of national dailies and leading radio and television stations covering key beats (business, defense, police, Congress, Malacañang, and justice) from September 1997 to March 1998. The survey queried journalists about both their perception (Do you think reporters and editors in your newspaper/station took money from sources?) and experience (Have you ever been offered money in the course of your coverage of your beat? Did you take the money?) of corruption in the industry.

The results helped illustrate the extent of corruption in the media. Two of every five reporters polled by the PCIJ said they had received offers of money. Of these, one-third admitted to taking the money.

Here are a few reminders for citizens planning to conduct a DIY survey:

*Read up on survey and other research techniques.* Many books walk readers through the process of doing a survey, from designing it to presenting the data. These books are found in libraries, bookstores and on the Web. Beginners may want to take a look at Asian Institute of Management professor Eduardo Roberto's *User-friendly Marketing Research* and the late communication research guru Gloria Feliciano's *Communication Research for Beginners*. Both books are easy to read. Feliciano's book devotes one chapter to opinion polling.

A good but complicated read is the World Bank Institute's *New Empirical Tools for Anti-Corruption and Institutional Reform: A Step-by-Step Guide to their Implementation*. This guide-

## D.I.Y. (Do-it-yourself) surveys

book gives in detail the design of the Bank's governance and anti-corruption surveys on public officials, households, and enterprises. The surveys emphasize experiential rather than perception data and consist of closed, indirect questions.

*Find out what has been done.* Thousands of surveys on corruption have been done. Citizens should select the ones that interest them or suit their needs, and examine how these were conducted: how respondents were selected, how they were polled, how questions were phrased and asked, how the data were analyzed and summarized.

*Replicate or modify.* In the course of studying a survey, researchers should ask themselves if it is worth replicating. A group of students from a Pampanga university, for example, repeated the PCIJ's survey on media corruption, with some modifications, for their thesis, using journalists in the provinces as respondents.

*Don't be ambitious.* Unless citizens have the means and know-how, they will not likely be able to mount national and cross-country surveys like those of the SWS and Transparency International. Projects should thus be kept small and simple. It is more realistic to run surveys in a school, office, church, neighborhood, organization, and even among peers. Laypeople may not succeed in carrying out a report card survey on traffic service management in nine cities like the DAP, but they can very well pull off a survey on traffic service management in their barangay or on selected streets.

*Consult experts.* When the PCIJ did its survey on media corruption, it sought the help of Segundo Romero, a professor of political science who has run numerous surveys, including the DAP's report card survey of Metro Manila cities. Romero helped the PCIJ fine-tune the questions in order to draw good responses and recommended a user-friendly statistical software to process the data. There is no need to look far to find the experts. A good place to start is the local university, especially its politi-

cal science, public administration, and social sciences departments.

*Explore tie-ups.* It should be easy for citizens to convince academic institutions to become partners in interesting and innovative projects. Citizens who want to do surveys should also explore the idea of working under the supervision of a social scientist with background in polling or tying up with university students who have been trained to do surveys.

*Be truthful.* Surveys should not be passed off as scientific when they are not. Data should never be tampered with, especially when they do not support the assumptions made at the start of the project. Occasions may demand that the raw data be shown and the methodology explained. Researchers should be prepared to do so. Credible pollsters subject their methodology to public scrutiny so people can assess the worthiness of their findings.

### **Designing the survey**

Here are some of the questions that need to be considered when designing a survey:

#### **Who will be the sources of information? Will they be primary or secondary?**

Primary data are those collected expressly for the survey being conducted. In the case of corruption, primary data can be drawn from people who are directly involved in the transaction, including victims or losers, or those who are knowledgeable but may not be involved in the transactions, such as government employees who witness how much bribe their colleagues collect for issuing a license or permit.

By contrast, secondary data refer to any data collected by a person or organization other than the one doing the survey. The data can be aggregated or summarized. An example of aggregated data would be the Office of

## Designing the survey

the Ombudsman's annual statistics on the complaints of graft and corruption filed. Or citizens can work with microdata. These can be the specific complaints or the records of transactions.

### How many people or elements will be included in the survey? How will they be selected?

It is impractical to get every voting-age Filipino into a survey on how voters perceive corruption. The easy way out is to take a sample, or a relatively small subset of the total population, the way pollsters do all the time.

How big should the sample be to get meaningful results? Some statisticians suggest a sample size of at least 100 for any study, preferably 250 to a maximum of 400. Parametric statistics will accept a sample of 30. The thing to remember is that the quality of the sample is as important as the size. This means that a small but representative sample is better than a big but arbitrarily selected sample.

Some sampling strategies:

In simple random sampling, all units in the population have the same chance to get selected, and the selection of one unit has no influence on the selection of others. This type of sampling works best with a homogeneous population that is geographically concentrated. For a survey that intends to find out the perception of corruption of Payatas's urban poor, a researcher can get all the names of the adults in the barangay, write each name on a sheet of paper, put their names in a *tambolo*, roll the *tambolo* well, and then pick out the names of those to be included in the survey. Or the researcher can draw up a list containing all the names and use the table of random numbers favored by statisticians.

What if the population is heterogeneous or consists of sub-populations with different values, like officials and

employees of the Bureau of Customs? Simple random sampling is unlikely to yield a good sample because the top-, middle-, and low-level employees hold different views about corruption in the bureau. In cases like this, researchers use stratified sampling. They first divide the population units into homogeneous groups and then draw a simple random sample from each group. This ensures a representative sample is selected from each of the three levels in the bureau.

For a big population that is geographically dispersed but has fairly similar characteristics, like drivers applying for a new license or renewal, cluster sampling will work for a survey about their experience with fixers. The population is first divided into small clusters; several clusters are then selected for inclusion in the survey.

Systematic sampling starts with a randomly chosen unit, and the subsequent units are chosen at regular intervals. Systematic sampling can be applied to a survey of bribery cases filed before the Sandiganbayan. The researcher can get every 10<sup>th</sup> document but has a random start to make the study scientific.

All these methods are called probability sampling because every member of the population has a probability of being chosen because s/he was given the same chance of being included in the sample frame.

Some sampling procedures are considered as nonprobability methods. This happens when the units are "self-selected" or "volunteers." Or the units get chosen because they are the most easily accessible or are considered by the researcher as "typical" of the target population. They can get selected also on economic grounds, or simply with no obvious design (i.e. the first 20 who show up at this place at this hour get included in the poll). As these methods depend in part on the researcher's experience, or even on luck, they are highly unreliable and should be regarded as a "last resort" when designing a survey.

## Designing the survey

**How will the data be collected?**

Several methods of asking questions are used in public-opinion polling. Some pollsters favor a self-administered questionnaire; others prefer an interview schedule that is administered by an interviewer.

Because respondents would be administering the questionnaire themselves, the self-administered questionnaire demands a rigid structure and precisely worded questions. It also has to be brief to encourage respondents to answer all the questions. Compared to the interview schedule, the self-administered questionnaire is cheaper and faster, but it does not allow the researcher to probe deeper into respondents' answers. The self-administered questionnaire also cannot be used on illiterate respondents.

In the case of interview schedule, the researcher can dig deeper into answers that are incomplete or vague. The problem: respondents can be guarded with their answers or may be influenced by biases of the interviewer.

There are various ways of reaching respondents. Self-administered questionnaires, for example, may be delivered by mail or email or administered through the Web. Researchers keep their fingers crossed that the recipient will fill out the questionnaire and send it back. The surveying individual or organization may also deliver the survey and arrange the time and date for collection. The response rate of these methods tends to be low as most people are known to throw an unsolicited survey into the wastebasket.

Researchers who prepare interview schedules usually employ face-to-face or telephone interviews. Face-to-face interviews can be impromptu and scheduled. Impromptu interviews can take place wherever there are people who are likely to have an opinion of, or knowledge about, the survey topic, like a mall, a supermarket, or a school. The question is, is the re-

searcher in the right place at the right time with the right type of respondent?

Scheduled interviews are normally done at home or at work, where people can answer a larger number of questions and give more detailed answers. But these interviews demand greater mobility on the part of the interviewer. They are also more time-consuming and hence more costly to administer. On average, a complex survey employing a scheduled interview system might only obtain one completed interview per interviewer per day.

Telephone surveys vary enormously in quality. At one end are telephone surveys done by reputable survey organizations like Gallup that work with surprisingly small but very representative samples. At the other end are the useless and misleading "phone ins" and increasingly popular "text ins" conducted by the mass media that pretend to discover public opinion by asking people to ring in or text their "vote."

In "real" telephone surveys, a list of potential respondents is drawn up, based on sources such as business directories, credit lists, and membership lists of professional or social organizations. Each person on the list is contacted by telephone until researchers have reached their quota. Respondents are asked a predefined set of questions, usually simple in structure such as multiple choice. The interview is unlikely to last for more than a few minutes.

Telephone surveys are a low-cost method. The problem with them is that not everybody has a telephone. As a result, some sectors are under-represented. Or people may not be at home when the interviewer calls. There are also people who dislike taking calls from unfamiliar people.

### **What should the questions be?**

There are two basic types of questions. Open questions

## Designing the survey

allow respondents to say or write in their own words how they feel about the topic in question. An example of an open question: "What do you think journalists can do to fight corruption in the media?" The archetypal open question has a series of lines or a blank space in which respondents can write down their answer.

Closed questions give respondents a limited number of choices from which to select one or more answers, including "Yes" or "No." The open question about what journalists can do to fight corruption can be followed by a list of concrete suggestions from which journalists can choose, like reporting incidents of corruption to publishers, running workshops on journalistic ethics, imposing sanctions on journalists who are on the take. There is one obvious advantage in using closed questions: the data are categorical and are easier to encode and analyze.

What would make a fine mix of questions? Open questions must be balanced with closed questions, especially if the objective is to collect data to be compared with those from other surveys. While it would be ideal to get respondents to give the maximum amount of relevant information in their own words, if possible, there are certain constraints, largely because of the space available in the questionnaire. It would be a good idea to provide space for respondents to add their comments.

Whether open or closed, questions should be clearly worded. The language should be simple and easy to understand, especially in self-administered questionnaires. Double negatives should be avoided as they tend to confuse. The same rule applies to double-barreled questions or two questions masquerading as one. An example of a double-barreled question: "Do you think your editors take money from sources? How about other reporters in your newspaper? There are four possible answers to this question: Yes/Yes, Yes/No, No/Yes, No/No."

**How will the data be analyzed and summarized?**

Seasoned researchers are familiar with the following forms of statistical analysis: descriptive statistics, to describe or summarize the structure of data; inferential statistics, to derive conclusions about a large group of the population from measurements on a smaller subgroup or a sample; and hypothesis testing, to tell if the hypothesis is supported by the collected data.

Descriptive statistics are the easiest for laypeople to understand and apply. There are various ways to summarize the data. Those on agencies perceived as corrupt can be grouped to constitute a frequency distribution. This makes it easy to detect the most corrupt agencies, especially when expressed in percentages. The data can then be sorted or ranked from either the most corrupt to the least corrupt, or vice-versa.

It also pays to look at the average or mean. That was how the SWS computed the percentage of a company's net income that managers were willing to contribute to an anti-corruption program. It added all the values given by the managers and divided them by the total number of answers.

Citizens can also try simple ratios in analyzing data. A simple formula proposed by Erlend Berg of the London School of Economics and Political Science is to divide the total bribe value paid in a specified period by the total income of a firm in the same period to arrive at what he calls the "bribe ratio." Under normal circumstances, he says, the bribe ratio is a number between 0 and 1. A bribe ratio of 0 indicates absence of bribery. In practice, one will rarely see values approaching 1. Berg's bribe ratio may be used for individuals, companies, provinces, and even for countries.

## Using focus-group discussion

**Using focus-group discussion**

On many occasions, pollsters run focus-group discussions to help them design their surveys, especially the questionnaires. The discussion can also be held right after a survey is completed to validate the findings or to find out approaches to a problem.

The SWS, with the help of the Makati Business Club (MBC), held four focus-group discussions with owners or managers of firms—from small to multinational—to arrive at the questions that were included in the two surveys of enterprises it ran in 2000 and 2001. Bangalore's Public Affairs Center also identified issues for the survey through focus group meetings.

Guided by a facilitator, a focus-group discussion is designed to surface the participants' thoughts and feelings about the topic at hand, including corruption. It can be effective, especially when participants are assured of the confidentiality of the proceedings. Good examples of focus-group discussions were the four arranged by the MBC, during which businessmen openly talked about their experiences of corruption in government, including the kickbacks some firms paid to corner government contracts and how these resulted in markups in project costs.

In the mid-1990s, the Integrity Circles project under the Moral Recovery Program also held focus-group discussions on corruption. Employees from specific government agencies gathered to identify and analyze corrupt practices, and listed these based on their seriousness and controllability. Members of the Air Force at the time identified the fraudulent encashment of unclaimed pension checks by unauthorized persons as the top problem, followed by the printing of checks with fictitious pensioners or the double printing of pension checks.

In focus-group discussions, the facilitators ask pointed and clear questions that generate discussion. They en-

sure that everyone participates and avoid situations where just one person is commenting or everyone is commenting at once. The facilitators summarize the results of the discussion at its conclusion and illustrate how these relate to the overall topic. Focus-group discussions are difficult to lead, but yield significant results when conducted well.

### Going to the field

Some groups have made it their business to go to the field and monitor government projects to assess the performance of agencies. One of them is the Philippine Governance Forum, which in 2000 launched the Governance Watch or G-Watch project. In the course of finding out what is happening on the ground, the PGF identified problematic areas in government projects, including graft and corruption.

G-Watch started with three government agencies that were delivering basic social services yet believed to be the most riddled with graft and corruption—the Department of Public Works and Highways (DPWH), Department of Health (DOH), and the Department of Education (DepEd).

A small staff of fresh college graduates it had assembled sifted through the budgets of these agencies to find their major projects for the year. From a list of these projects, the PGF consulted high officials of the agencies to select those that they could best monitor or those that had been completed or were nearing completion.

The young graduates were then sent to the project sites with still cameras and a copy of the project documents. They consulted with local project managers to ensure that they had the right information about the projects being monitored.

Through the site visits, the PGF found that not a single

Going to the field

tetra pack of milk that was supposed to be given to 5,048 schoolchildren in one region from January to March 2000 was delivered. It discovered—and photographed—an unfinished schoolbuilding with only two walls, although the building was reported on record to have been “completed.”

The PGF also found that the government released P365 million to the DPWH in the 1999-2000 budget for a project that was completed in September 1998. Six high-priority projects under the supervision of the department also overshot their original budget, suffered delays, failed to meet standards in their original plan, had funds that were unaccounted for, or were grossly overpaid.

The following matrix developed by the PGF for the first phase of its G-Watch project may come in handy for citizens who wish to monitor government projects:

G-Watch Phase One Matrix

| Projects | Planned Output | Actual Output | Variance | Comments |
|----------|----------------|---------------|----------|----------|
|          |                |               |          |          |
|          |                |               |          |          |

The matrix compared the planned output with the actual output and the variance between the two. The bases, or criteria, for comparison of the planned and actual outputs are quantity, quality (adherence to specifications), and timeliness of delivery (schedule on time). The right side of the matrix solicited comments from the agencies and juxtaposed these with the comments and findings of the PGF.

The PGF has modified the tool for the second phase of G-Watch which, it says, retains the best features of Phase One but expands the two columns on the right side of the matrix.

In the expanded monitoring tool, the PGF suggests the use of appropriate benchmarks—better practices, standard cost, and better cost—whenever these are available locally or internationally for a third-party objective assessment. The actual output would be compared with the benchmark.

Instead of just comments by the agencies concerned and the PGF, the proposed matrix provides three columns: the first for reasons for delays, cost overruns, and under quality; the second for consequences; and the third for the ranking.

By exploring the reasons for the delay, the PGF says it hopes to present the causes that the agencies can act upon. Doing so, it says, makes the matrix more than a mere report card that scores the performance of a government agency.

To analyze the “consequences” of project delays and other problems, the PGF suggests the following methods:

*Quantify the cost of delay by using the concept of the commitment fee used by the World Bank and the Asian Development Bank.* Delays mean that funds for subsequent activities or for more of the same activities cannot be released. In addition, a commitment fee is imposed on the whole loan amount, the still-to-be disbursed portion, or for the amount disbursed for that period. The commitment fee represents the financial opportunity cost of the govern-

**G-Watch Phase Two Proposed Matrix**

| Projects | Planned | Actual | Variance Planned vs. Actual | Variance Planned vs. Benchmark | Reasons | Consequences | Ranking |
|----------|---------|--------|-----------------------------|--------------------------------|---------|--------------|---------|
| Quantity |         |        |                             |                                |         |              |         |
| Cost     |         |        |                             |                                |         |              |         |
| Time     |         |        |                             |                                |         |              |         |
| Quality  |         |        |                             |                                |         |              |         |

**Following public spending**

ment for allotting this amount to this agency or project and not to another that is equally worthy or necessary.

*Imagine that the fund being used comes not from taxpayers' money but from commercial sources. What would be the cost of money to the government if there were cost overruns? How would this affect the government's payment schedule and payback periods? How much would this amount to in penalties on delayed loan payments?*

*Translate cost overruns to opportunity foregone. How many more schoolbuildings could the DECS have built with the cost overrun or the excess amount over the standard or better cost in the market?*

*Show cost overruns in terms of the opportunity cost of a different department. As an example, the PGF cites the delay in a transmission grid project, resulting in the government paying a commitment fee to an international lending institution, an amount that could have been used to build a certain number of schoolbuildings or to immunize a certain number of children.*

**Following public spending**

The budget is a document that shows where the government says it will put taxpayers' money and domestic and foreign borrowings. But how the money is actually spent can be an entirely different story.

In Uganda, a team of researchers led by Emmanuel Ablo and Ritva Reinikka found that budget allocations are actually poor predictors of services that beneficiaries receive when governance is poor. They say that in areas where little is known about how budgets are transformed into services, tracking public expenditures should be considered.

Ablo and Reinikka's study examined public spending on education in Uganda by monitoring the entire budget

cycle, from its formulation to its execution and reporting. Despite the quadrupling of public spending between 1991 and 1995, official statistics showed that enrolment rates in primary schools remained stagnant. The study, however, found this was not true. There had been an actual increase of around 60 percent in enrolment during the period, but it was not reported. Reinikka believes that at the level of the schools, underreporting allowed them to remit a smaller amount of collected fees to the districts, while underreporting at the district level allowed them to withhold, and essentially usurp, capitation grants (per enrolled) awarded by the center to the schools. On average, only 30 percent of allocated funds per student reached the schools on average at the end of 1995.

As a result of the study, Ugandan authorities began publicizing in newspapers and radio broadcasts the amounts transferred to the districts, required schools to maintain public notice boards on which to post monthly transfer of funds, required districts to deposit all grants to schools in their own accounts, and delegated authority for procurement from the center to the schools, among other actions.

Project and budget monitoring done by the PGF and Reinikka's group can be undertaken by communities. It is best to start with a simple and focused study like, say, vaccines the DOH is supposed to deliver to the town within a specific period. Citizens who embark on big, ambitious projects may find themselves biting more than they can chew: the expenses of government offices for every program or project it manages could entail hundreds of thousands of transactions; the government's accounting system is complicated; and the bureaucratic maze is often difficult to navigate.

There are other types of fieldwork that citizens can consider doing:

- From time to time the Commission on Audit (COA) sends questionnaires or inspectors to the

## Following public spending

field to check if supposed recipients received the goods and services the government procured for them. In 1998, the COA checked with all school divisions in the country if a school desk supplier who had cornered a P81.7-million contract had been prepaid by the DECS had delivered plastic armchairs. It found that 60 percent of the armchairs had not been delivered.

- Suspecting overpricing in the Makati city government's purchases, Vice Mayor Edu Manzano decided to find out the extent of it through an independent canvass of selected items such as computers, paper copiers, and fax machines. He first obtained the purchase orders and receipts of these items. Then he sent his people to retail stores in Makati and Mandaluyong to check the prices of these same items there. Manzano found that on the average the items had been bought at an overprice of 519 percent.
- Some journalists have discovered the amount of bribes exacted by government agencies from the public and from businesspeople by going undercover, getting someone else to go undercover, or by accompanying a victim of extortion. In 1997, the public service television program "Hoy Gising!" sent a crew to escort a Chinese national whose application for an alien certification registration was being held up at the Bureau of Immigration's Law and Investigation Division. With a small camera hidden inside a crewmember's bag, the crew filmed the secretary of the division's head demanding P30,000 in grease money on her boss' behalf, and providing a breakdown of where the money would go. Two days later, the TV crew again accompanied the Chinese national to meet the division head himself who, again on hidden camera, demanded P30,000 in grease money.

## Looking at hard data

Hard data are valuable when measuring corruption. They are generally considered more objective than anecdotal evidence of corruption. It is significantly quicker, easier, and less costly to collect hard data than the same data "from scratch." Existing data are likely to be available in more convenient form, especially with those that have been summarized. Hard data also allow researchers to make comparisons over time and across places.

One of the problems with hard data, however, is that the method by which they were collected is often unknown to researchers. On many occasions, researchers rarely have access to the original raw data. This means they have to rely on the skills and integrity of those who gathered and analyzed the data. Some data are also late and inadequate, such as those derived from government audit reports and expenditure reports.

Here are some agencies that can provide hard data:

COA. Government audit reports pinpoint irregular transactions and identify the aspects that fail to comply with laws and regulations, including bidding rules and government accounting procedures. On many occasions, supporting documents of the transactions in question are appended to the reports. Audit reports also allow researchers to do agency-to-agency or year-to-year comparisons.

Audit reports, however, do not provide a blow-by-blow account of how irregularities are carried out, especially with procurement contracts. Some anomalous transactions also get past the COA. As a rule, it does not examine each and every transaction at a government office. Neither does it examine intelligence and other discretionary funds. Since the COA depends on transactions reported to it by a government agency, those not reported by that agency do not get examined. Auditors have also been known to collude with government agen-

**Looking at hard data**

cies in suppressing information about certain irregular transactions.

Information on losses suffered by the government can be drawn by studying individual transactions reported as irregular. But by studying several transactions of a similar nature over a period of time, citizens can get a clearer picture of how much is lost to corruption as well as systemic problems. The COA, for example, has estimated that overpricing of goods and services purchased by the government constitutes about a tenth of the annual procurement budget. But a review of audit reports of the DECS over a 10-year period has shown that overpricing can reach up to 1,000 percent of the contract price.

Many items appearing in audit reports can help citizens draw conclusions about the extent of corruption in the government, such as:

- **Unliquidated advances:** Audit reports even list national government agencies and local government units with the biggest unliquidated cash advances, and the purposes for which the advances were made, ranging from intelligence work to travel.
- **Illegal and dishonest acts** like claiming checks, signing disbursement vouchers and purchase orders, granting contracts to favored firms, diverting of funds to purposes other than those approved: In 1998, the COA found that local governments spent funds totaling P1.17 billion for purposes other than those for which they were created or received.
- **Patronage and nepotism:** Audit reports, especially on local governments, provide a breakdown of employees. The COA has come across many local governments units, especially in Metro Manila, where casuals outnumber regular employees.

*Office of the Ombudsman.* Based on all the corruption complaints it had received, the Office of the Ombudsman in 1997 came up with a price tag on corruption. The country, it said, lost \$48 billion to corruption over the last 20 years, an amount that exceeded the entire foreign debt then of \$40.6 billion.

In the past, the Ombudsman's office has also come up with a list of the most corrupt agencies, using corruption complaints it received from 1993 to 1998. The DPWH was at the top of the list, followed by the Department of Environment and Natural Resources, DECS, Bureau of Customs/Philippine Ports Authority, National Irrigation Administration, and the Bureau of Internal Revenue.

The number of complaints, however, is not an accurate gauge of corruption. For example, the Office of the Ombudsman said that the number of corruption complaints it received in 1999 dropped by 45 percent. Governance experts point out, however, that the decline in the number of complaints can be attributed to several factors, ranging from an actual decrease in corruption, to the failure of the resident ombudsman to report all complaints received, to the public's disillusionment with the Ombudsman's office.

The Office of the Ombudsman is not the only place to look for complaints of corruption. Administrative complaints are filed with the Civil Service Commission or the affected government agency, usually the legal office. Until a recommendation is reached, such complaints are classified as nonpublic records, but citizens who have tried to access them do get lucky sometimes.

*The Sandiganbayan and regular courts.* Corruption cases that are filed, tried, and completed before the Sandiganbayan, an anti-graft court that tries cases of public officials, and regular courts are a better indicator of corruption than those filed with the Office of the Ombudsman, simply because prima facie evidence, or probable cause, has been established. By counting the number of cases, research-

### Scanning the news

ers can determine the most widespread form of corruption, the sums involved, the agency with the most number of cases, as well as the age, gender, and position of government employees involved in corrupt practices.

One can also measure corruption by looking at arrests and convictions. But some problems are associated with this method. If the number of arrests goes up, does it mean corruption is on the rise? Or does it mean law enforcers are doing a better job of catching the crooks? What this means is not always clear, but arrests and convictions are often used to get some sense of the effectiveness of anti-corruption agencies.

### Scanning the news

Newspapers publish many corruption-related reports every day. In Bangladesh, the Transparency International chapter decided to use such reports to gauge corruption in that South Asian country. Although scanning newspaper articles on corruption is admittedly not a reliable measure, the TI Bangladesh chapter found that its news scan elicited dramatic reactions, from both the public and the government.

The chapter's News Scan Database Team scanned nine dailies for six months. During that period, it gathered 1,345 cases, which meant more than 224 cases each month or about 51 cases each week. Stories were then used to analyze corruption by sector/department, administrative district, level of official, actor level, victims of corruption, effects of reported corruption cases, and reported financial loss.

### Checking lifestyles

As stated in Chapter 2, one of the simplest but oft-forgotten methods of measuring corruption is to check the lifestyles of individual public officials. Called net asset

evaluation, the method was first used in the United States in the 1920s. The process is simple: Look at how much public officials spend and then compare their spending with their declared incomes. A significant discrepancy that means that some impropriety is going on.

When casing public officials, researchers should first get hold of the statement of assets and liabilities all government employees are required to file every year. Underreporting and nonreporting are common, so researchers should be wary.

The most visible signs of wealth are real property assets. Fortunately, land records are routinely available in the Philippines. The problem with investigating real property assets, however, is that astute public officials conceal ownership by putting the property in the names of other people, like relatives, and companies. Still, asset tracing is worth doing, as the PCIJ's own experience with investigating then president Estrada's wealth has shown. [See Chapter 2, "Detecting and Documenting Corruption."] Researchers may find useful the following form used by a local detective agency to trace real property assets of people they place under surveillance:

Asset Tracing Form

| Owner's Name | Owner's Address | Tax Declaration No. | Area (sq.m) | Type | Location | TCT No. | Remarks |
|--------------|-----------------|---------------------|-------------|------|----------|---------|---------|
|              |                 |                     |             |      |          |         |         |
|              |                 |                     |             |      |          |         |         |

Nonreal property assets of public officials also provide telltale signs of wealth of public officials. Here's a checklist:

- stocks
- golf/club shares
- vehicles (registration, make/model, year, peculiarities, especially accessories)

### Getting anecdotes

- collectibles
- bank accounts
- cash
- jewelry
- clothes

It may also help to observe the following of public officials:

- their hobbies/form of recreation
- their social/lodge affiliations
- the bars and restaurants they frequent
- the type of tobacco and alcohol they consume
- the shops they, their spouses and children patronize
- the school where they send their children

### Getting anecdotes

Anecdotes about corruption may be misleading and incomplete, but they remain useful in determining the extent of corruption. Information from sources with firsthand knowledge of irregular transactions is good, but should still be subjected to a rigorous accuracy test. Responsible journalists test the integrity of anecdotal testimonies through multiple sourcing, or asking several other sources, and prefer to use information that is corroborated. The PCIJ, for example, turned to more than 20 sources, ranging from textbook agents and publishers and former and current DECS officials, for its study on corruption in textbook purchases. By the time it published the findings of its investigation, it was quite sure it got the picture—and the figures—right.

## Reading surveys

How seriously should you take a survey claim that a certain government agency is more corrupt than another?

Depends on how much—or little—is said about the survey. As a rule of thumb, the less that is disclosed about the polls, the more distrustful the public should be.

When reading surveys, one would do well to ask the following questions:

*When was the poll taken?* Remember that the opinions expressed in the survey reflect those prevailing at the time they were taken. The findings should not be taken out of context.

*How was the survey conducted?* Telephone, mail, SMS, and Internet surveys are cheaper, but face-to-face interviews done at home are the best.

*What was the sample, and how was it selected?* Conclusions can be drawn from a probability sample, meaning everyone was given a chance to be interviewed. On the other hand, coupon, call-in, straw, online, SMS, and man-on-the-street surveys employ nonprobability samples, which hardly represent the sentiments of the general population. But these are favored, even by the media, because they are cheaper to administer. Nobody says they cannot and should not be used, but only as long as it is clear that the survey is no more than the opinions of a scattering of people.

*What part of the data is disclosed, and what part is not?* If the data are released by sources other than the pollster, did the latter approve the material? What possible motives could the groups releasing the data have?

*What is the exact wording of all the questions?* Are the questions clear and unbiased? Were they pretested? Do respondents have enough information to enable them to understand the question?

*Who are the interviewers?* Survey interviewers are supposed to be trained for the task.

*Who paid for the poll, and who made it?* Surveys made and funded by interest groups like political parties must be scrupulously examined. Are the survey outfits reputable? The leading survey organizations in the Philippines, the Social Weather Stations and Pulse Asia, are also the most reputable.

*Reading surveys*

*Does the information include the margin of error to allow the results to be set within the actual limits of reliability? The more people interviewed, the smaller the margin of error. Surveys with a sample of 1,200 carry a margin of error of +/-3 percent.*

*How are the results interpreted? Has the poll been fragmented so that only favorable results are used? Does the pollster claim more than the results indicate?*

## INVESTIGATING PROCUREMENT

### How to Keep Track of What Government Buys

Yvonne T. Chua

Why should citizens watch closely what the government buys?

Procurement specialist JeanMarie Fath Meyer offers a good reason. "Public procurement," she says, "builds roads, bridges, and tunnels; launches rockets; designs and constructs public buildings; feeds, clothes, and equips the military; furnishes chairs, pencils and paper, and computer equipment to government offices; treats water; provides electricity; collects garbage; dams rivers; conducts research; commissions art work; writes reports; provides professional and technical assistance to government officials."

"The range of purchases to satisfy public needs," she stresses, "extends to nearly all forms of goods, construction, and services."

Citizens feel the impact of government contracting directly or indirectly in their daily lives. When these deals go awry, they not only see taxpayers' money go down the drain, but also suffer the consequences—substandard or unfinished classrooms, roads, and bridges; shortage of school desks, textbooks, and medicines; defective military aircraft and weaponry, to name a few.

The sad thing is, public procurement in the Philippines

too often tends to get corrupted. The fat procurement budgets—about P82 billion based on the General Appropriations Act (GAA) and P372 billion allocated to the build-operate-transfer (BOT) and other schemes, or a whopping P454 billion for the national government in 2001 alone—often serve as incentive to lowly paid government employees and profit-hungry contractors to engage in acts of corruption. Results of surveys by the Social Weather Stations (SWS) appear to support this. The Department of Public Works (DPWH), Department of Education (DepEd), and the Department of Health (DOH), which get huge slices of the national government's annual procurement pie, consistently appear on the list of government agencies perceived by citizens to be among the most corrupt.

Just how much of state contracts is lost to corruption? The figures vary.

Jose Edgardo Campos, a governance expert whom the Department of Budget and Management (DBM) has hired as a consultant, says bribes or kickbacks account for a tenth to half of contracts, or from P45 to P220 billion of the procurement money in 2001.

The SWS, which polled enterprises in late 2001, has found that business firms set aside an average of 19 percent of the contracts they get from the government for bribes.

Citizens, who are the beneficiaries of goods and services the government buys, believe the level of corruption is worse than that. More than three-fourths of the respondents in SWS's June 2000 survey said that from 30 percent to more than 50 percent of government funds were being wasted due to corrupt practices involved in providing books to public school children, in purchasing vehicles, equipment, and furniture for government offices, and in building roads.

## Where to start

The best tactic for citizens who wish to investigate state procurement is to take a well-defined government task— for example, the purchase of vehicles by City Hall or the awarding of an office supply contract by the Education Department— and examine it step by step. A good place to start is with the enabling law and the particular office in the executive branch that is implementing it.

The bad news is, the current rules on procurement are voluminous. Executive Order 40, which was signed by President Gloria Macapagal Arroyo in October 2001, partly solved this problem when it consolidated the separate rules that had previously governed the contracting of goods, services, and materials, civil works or infrastructure projects, and consulting services.

The executive order, however, can be set aside for contracts financed either partly or wholly with the official development assistance fund, as well as from bilateral and other sources. In these cases, procurement guidelines agreed upon between the foreign funding agency and the government will prevail.

Local governments are covered by a different set of guidelines as well, and are required to follow E.O. 40 only for procurements that are funded by the national government.

Then there are laws that affect military purchases and BOT schemes.

Even with the issuance of E.O. 40, it pays to know the old guidelines covering the procurement of goods, civil works, and consulting services as these apply to contracts signed in the pre-E.O. 40 days. There is another good reason to learn the previous rules: E.O. 40, not being a law, can be amended, or worse, rescinded anytime.

## Where to start

Here are some of the applicable laws and rules:

*Infrastructure projects:* Presidential Decree 1594 is the most important document. The others are P.D. 1870, which authorizes the government to take over a delayed contract or to award it to another qualified contractor; Letter of Instruction 30, which limits contracting to Filipino individuals and to corporations, partnerships, or associations whose capital stock is 75 percent owned by Filipino citizens; and Republic Act 4566, or the contractor's licensing law, which created the Philippine Licensing Board of Contractors under the Professional Regulation Commission, which is authorized to issue, suspend, and revoke contractors' licenses.

*Goods, supplies, and materials:* Three important executive orders preceded E.O. 40: the amended E.O. 302 of 1996, E.O. 201 of 2000, and E.O. 262 also of 2000. The orders also applied to mixed civil works procurement agreements, contracting of janitorial or security services or repair and maintenance services, and the procurement of materials and supplies provided by another government agency.

*Consulting services:* The National Economic and Development Authority (NEDA) issued in December 1992 the guidelines on the procurement of consulting services for government projects.

*Common-use goods, supplies, and materials:* Government agencies are required to source these items, such as pens, paper, garbage cans, toilet paper, and even office furniture, from the Procurement Service, which was created in 1978 under Letter of Instruction 755. E.O. 359 of 1987 and E.O. 285 of 1989 expanded the Procurement Service's role and structure. Enacted in 2000, Republic Act 8792, or the Electronic Commerce Act, provides for the establishment of a single and centralized electronic portal for the procurement of goods, supplies, materials, civil works, and consulting services, and entrusts to the Procurement Service the establishment, management, op



**Samar students have to bring their own chairs to school.** Lapses in public procurement have far-reaching consequences. (SONNY YABAO)

eration, and maintenance of the Electronic Procurement Service (EPS). In 2000, E.O. 322 required government agencies to use the EPS and to post bidding notices on their own Websites on top of newspaper ads.

*Purchases by local governments:* Following the passage of the Local Government Code, the Commission on Audit (COA) issued Circular 92-386, or the rules and regulations on supply and property management in local governments.

*Military purchases:* Republic Act 7898, or the Armed Forces of the Philippines Modernization Law, prohibits the purchase of major equipment and weapons systems that are not being used by the armed forces in the country of origin or used by the armed forces of at least two countries. It allows only manufacturers to submit bids. Supply contracts must provide for after-sales services and availability of spare parts.

*BOT projects:* Republic Act 6957, the BOT Law, allows a private entity to propose to undertake a BOT or similar project not being undertaken by the government, subject to certain conditions. The law was amended by R.A. 7718.

### The procurement process

the COA has quick guides to the intricate procurement process. Particularly useful are its "Manual on Procurement" and "Manual on Public Biddings." They explain the various modes of procurement, from public bidding and personal canvass to emergency purchase and direct contracting, and the conditions under which they are either allowed or disallowed.

Besides these laws and rules, citizens should look up procurement-related orders and memoranda issued by the different agencies. These provide a wealth of information about how contracting is done from office to office and the transformation it has undergone over the years. For example, a 1986 order of the Department of National Defense (DND) requires all the service commands and other units under it to submit contracts worth P2 million to the department for approval. A DPWH order in 2001 provides for a computerized national registry of contractors for civil works contracts.

Confidential orders and memos, in particular, should pique one's interest as they often mean that something is afoot. When Hilarion Ramiro became health secretary in 1995, he issued a confidential order that created a secret committee empowered to overrule any decision made by any of the DOH's regulatory bodies such as on accreditation, inspections, and bids and awards.

### The procurement process

Public procurement starts long before the invitation to bid is issued by a government agency. It can be cut up into several stages:

- The preparatory stage involves the planning of government expenditures. Procurement needs are stated and evaluated, mostly according to the budget for a particular year.
- The selection stage starts with the elaboration of

the tender data, proceeds to the procurement method and selection of the most appropriate supplier, and ends with the signing of the contract with the winning bidder.

- The implementation or execution of the contract follows, and ends with the takeover of a contract and its usage.
- Payment is made only after the contractor has presented the following documents to the accounting unit of the agency: purchase order, sales invoice, delivery receipt, report of completion and acceptance, and inspection report.
- Control of the administrative performance is performed through audits. Since the early 1990s, COA has made it a policy to conduct only post-audits.

Before the selection stage begins, there are a few important things to remember.

One, the law on budgets is clear: no money can be paid out of the treasury without an appropriations law. Citizens should thus look up the GAA when examining procurements by the national government and the appropriations ordinance or local budget for purchases made by provinces, towns, cities, and barangays. The local legislature can enact a supplemental budget to cover other expenditures as long as the local budget officer certifies that money is available for the purpose. The supplemental budget is enacted in the same way as the regular budget. When looking at the budget, one must remember that some purchases, like textbooks and school desks, appear as line items while others are lumped under a more general heading.

Two, an agency cannot procure goods, civil works, and consulting services unless these items appear in its procurement program or plan, except for emergency purchases. At the national level, this is now called the

## The procurement process

Agency Procurement Management Plan under E.O. 40. This plan consists of Project Procurement Management Plans for each project prepared by the project management office or the end-users of the agency. The project plan states the type, extent, and size of contract, the procurement methods to be adopted, the time schedule for each procurement activity, and the budget allocated for each procurement. Both the agency and the project plans are lodged with the secretariat of the agency's Bids and Awards Committee (BAC) and have to be updated every six months. E.O. 40 requires agencies to submit their preliminary plan for the succeeding year to the interagency Procurement Policy Board and NEDA's Infrastructure Committee by the end of the third quarter of the preceding year.

The annual procurement programs of local governments are based on the annual procurement plans submitted by the heads of departments. The plan is an itemized list showing the kind, estimated quantity, estimated cost, and description of supplies or property the department requires for the year and the balance on hand. The total estimated cost of the program itself cannot exceed the total appropriations authorized for the acquisition of supplies or property for the year, although supplementary and amendatory programs are allowed. COA requires local governments to prepare separate plans and programs for the following: supplies or property; non-expendable supplies or articles that are not consumed in use, such as weapons, vehicles, ma-



**Street beggar, Baclaran.** Corruption in government procurement means lower levels of public services.  
(RICK ROCAMORA)

chines, tools, and instruments; nonpersonal services, which include repair, cleaning, redecorating, or rental of personal property and furnishing of necessary repair parts or other supplies as part of the services performed; and materials for infrastructure projects.

Three, an agency is required to run an inventory of supplies, after which it can request purchases through requisition and issue vouchers. In the absence of an inventory report or for items that are not carried in stock, requests are made through purchase requests. Each requisition comes with a request for obligation and allotment.

Four, the selection process cannot start without an advice of allotment (AA). The AA signifies that funds have been earmarked to cover the purchases. The advice is issued by the DBM for national agencies and by the local budget officer for local government units. The DBM issues Special Allotment Release Orders (SAROs) for contracts that require a realignment of funds.

At the local level, there is a string of certifications before the local chief executive can approve a requisition. The department head certifies the validity, propriety, and legality of the funding. The budget officer certifies that the appropriations exist. The accountant certifies that the expenditure has been obligated. The treasurer certifies that the funds that have been obligated are available. At the national level, it is the agency's chief accountant who certifies that funds are available for purchases.

Five, there are different levels of approving authority or signing limits of government officials involved in procurement. For example, department secretaries can sign contracts of up to P50 million. Contracts exceeding their signing limits have to be transmitted to the next higher office for approval. This requirement explains why all contracts of national agencies exceeding P50 million, except for the DPWH, go to the Office of the President for review and approval. The public works secretary has a signing limit of P100 million.

### Purchases by the national government

Six, no bidding or award of contract for infrastructure projects can be made unless detailed engineering investigations, surveys, and designs have been carried out and approved according to the standards and specifications set by the agency head. Detailed engineering can proceed only after a feasibility study has established a project's technical viability and conformity with land use and zoning guidelines. Detailed engineering activities include a survey, site investigation, soils and foundation investigation, construction materials investigation, and the preparation of design plans, technical specifications, quantity and cost estimates, program of work, and proposed construction schedule. They also include the preparation of site or right-of-way plans, utility relocation plan, design report, minimum requirements for a construction safety and health program for the project, and bid documents, as well as an environment impact statement for a critical project.

Seven, consulting services are limited to advisory and review services, pre-investment or feasibility studies, design, construction supervision, management and related services, and technical services or special studies.

Eight, the law prohibits advance payments—no services rendered, no goods delivered, no payment—without the approval of the president, but makes exceptions for infrastructure projects. The law, however, allows partial payments for partial shipments.

### Purchases by the national government

With E.O. 40, it has become easier to follow procurements made by national agencies. The executive order consolidates procurement rules as an initial step to making procurement procedures uniform. Previously, the rules were embodied in what procurement experts say were far too many laws and executive issuances that resulted in a multivolume manual on procurement

and varying—sometimes conflicting—procedures that have abetted corruption.

E.O. 40 introduced several significant changes to the procurement process. It simplified the prequalification of bidders by just requiring interested parties to submit a certain set of documents and evaluating their applications on the basis of nondiscretionary pass/fail criteria. Bidders who meet all the requirements are rated “passed” and can join the bidding. The new guidelines mandate procuring agencies to perform a thorough postqualification of the winning bidder.

In deciding the winning bid, E.O. 40 requires the use of the lowest calculated responsive bid for goods and civil works and the highest rated bid for consulting services. The lowest calculated bid is determined first through a thorough evaluation of the bids to establish their correct calculated prices. The total bids are then ranked from lowest, or the lowest calculated bid, to highest. The highest rated bid, on the other hand, is determined by evaluating bids using numerical ratings based on quality or quality and cost, after which the bids are ranked from highest, or the highest rated bid, to lowest.

In lieu of agency estimates, which are often easy to manipulate, the executive order simply uses the approved budget for the contract as the ceiling for the bid price.

E.O. 40 applies to all agencies of the national government, including state universities and colleges, government-owned or -controlled corporations, government financial institutions, and local government units whose procurements are funded by the national government.

Besides the rules covering the purchases of goods, civil works, and consulting services, the executive order explains how information and communications technology projects should be procured, defines the role and use of the EPS, and lists incentives and sanctions for government employees involved in public procure-

## Purchases by the national government

ment as well as administrative penalties for bidders.

Every agency has a BAC that is responsible for its procurement activities, from the pre-procurement conference to the recommendation of the award. Under E.O. 40, the committee consists of five members—three regular and two provisional. Regular members have fixed terms of three years.

The committee chairperson should be at least a third-ranking official. To avoid conflict of interest, the chairperson and the official who will sign the contract should not be the same person.

The executive order also encourages the inclusion of an official from the agency's technical, legal, or finance areas in the fixed-term group. Provisional members are the technical members.

E.O. 40 requires BAC members to render "jury duty," meaning they must give priority to their assignments in the committee.

In addition to a COA representative, two observers are allowed to be part of the committee as nonvoting members. The first observer should come from a private sector association or organization that has relevance to the contract, or from a project-related professional organization that is accredited or recognized by the government. The second should represent a nongovernmental organization (NGO) or the end-user group.

The BAC has a secretariat that provides administrative support. Its work includes preparing minutes, consolidating project procurement plans and making them available for review, taking custody of procurement documents, and distributing bidding documents to interested parties. The secretariat is headed by at least a fifth-ranking official of the agency who sits in the BAC as a nonvoting member.

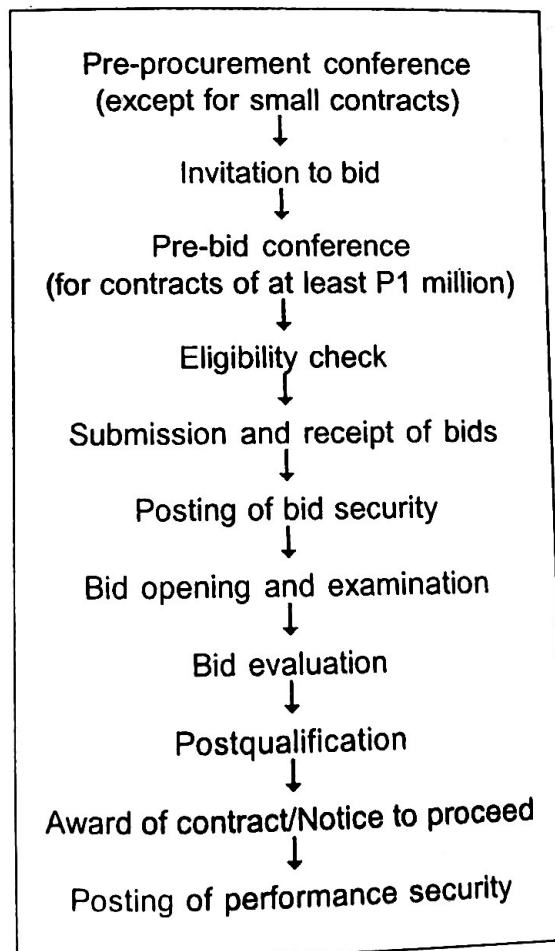
E.O. 40 also allows the creation of a technical working group to assist the BAC.

### Public bidding

Public bidding should be the preferred mode of procurement at both the national and local levels. Public bidding requires that the public be given fair and reasonable notice, equal opportunity to become contractors, and equal competition in bidding.

E.O. 40 has standardized procedures for public bidding by the national government. The following flow chart summarizes the process:

#### Public bidding under E.O. 40



### Beyond public biddings

The period from the opening of bids up to the award of contract should not exceed three months. A detailed discussion of every stage in a public bidding spelled out under E.O. 40 is found at the end of this chapter.

### Beyond public biddings

When justified, other procurement methods can be used, provided they have been recommended by the BAC and approved by the head of the agency. Here are the alternative methods for goods, supplies, and materials:

*Direct contracting*, also called single-source procurement, does not require elaborate bidding documents. The selected supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of the sale. Direct contracting is allowed for procurement of items of a proprietary nature, such as those covered by patents and copyright, items sold by an exclusive dealer or manufacturer who has no sub-dealers selling at lower prices, critical plant components to ensure a contractor will guarantee its project performance, and a small addition to an existing fleet of equipment to maintain standards, and in emergencies. (An emergency is a situation in which the need for supplies is exceptionally urgent to prevent imminent danger to, or loss of, life or property, or to avoid detriment to public service.)

*Limited source bidding* involves direct invitation to bid by the concerned agency from a set of preselected suppliers with known experience and proven capability on the requirements of the contract. This applies only to procurement of highly specialized types of goods where only a few suppliers are available, relatively small additions to an existing fleet of equipment where a few suppliers are well-established and provide satisfactory after-sales service, major plant components, and goods involving amounts of P1 million or less.

*Negotiated procurement* is allowed in the following cases: when there has been a failure of public bidding for the second time, when the existing contract has been terminated, when goods are to be used in connection with a project or activity that cannot be delayed, or when the purchase is made from another government agency.

*Repeat order* allows the agency to buy, from the same supplier under a previously bid contract, additional quantities of the same items on the same terms and conditions as the original purchase within six months for the national government. The repeat order should not exceed the quantity specified in the original contract.

*Shopping* allows the agency to simply request that price quotations be directly submitted by at least three suppliers of known qualifications. It may be employed in the procurement of off-the-shelf goods or regular or ordinary equipment costing P1 million or less.

An agency is allowed to take over an infrastructure project when it has been delayed, when there is a lack of qualified bidders or contractors, or when there is conclusive evidence that greater economy efficiency would be achieved through this arrangement. Under project by administration, the agency hires its own laborers, procures supplies and materials by itself, and administers and supervises the work through its own engineers. But when the agency cannot undertake the project by administration, it is allowed to enter into negotiated procurement in any of the following conditions:

- in emergencies arising from natural calamities;
- where a second public bidding has failed;
- where the project is adjacent or contiguous to an ongoing project and it would be more economical to have the same contractor undertake it; or
- for contracts terminated according to P.D. 1870, which authorizes the government to take over administration of delayed infrastructure projects or to award the contract to other qualified contractors.

### Purchases by local governments

Negotiated procurement for consulting services is allowed in emergencies, when a second public bidding has failed, or when a consultancy contract has been rescinded or terminated partly or wholly. In the third instance, consultants who participated in the original competitive selection have the right of first refusal.

### Purchases by local governments

The Local Government Code specifies public bidding as the primary mode of procurement. It also mandates the creation of a committee on bids and awards, which will decide the winning bids and questions of awards on procurement and disposal of supplies or property. This committee consists of the local chief executive as chair, and the treasurer, accountant, budget officer, general services officer, head of office, and occasionally a Sanggunian member as members. In the barangay, the Sangguniang Barangay makes up the committee.

Usually, the general services officer or the treasurer acts as secretariat to the committee and keeps records of the minutes of meetings. The same official puts out the call for bids.

The call or invitation for bids must be posted in at least three publicly accessible and conspicuous places, such as the barangay hall or the public market, at least 10 days before the opening of bids. This invitation must contain the complete description and technical specifications of supplies or property, terms and conditions of participants and award, and the terms of delivery and payment. For infrastructure projects, the invitation must have the program of work. Local governments may also publish the notice of bidding in a newspaper of general circulation.

The general services officer or treasurer is required to maintain a list of bidders in the locality, and this must be indexed and cross-indexed by supplies categories. Bid-

ders fill out bid forms in which they declare their business interests, submit quotations, and indicate the brand name and country of origin of the manufacturer of the supplies.

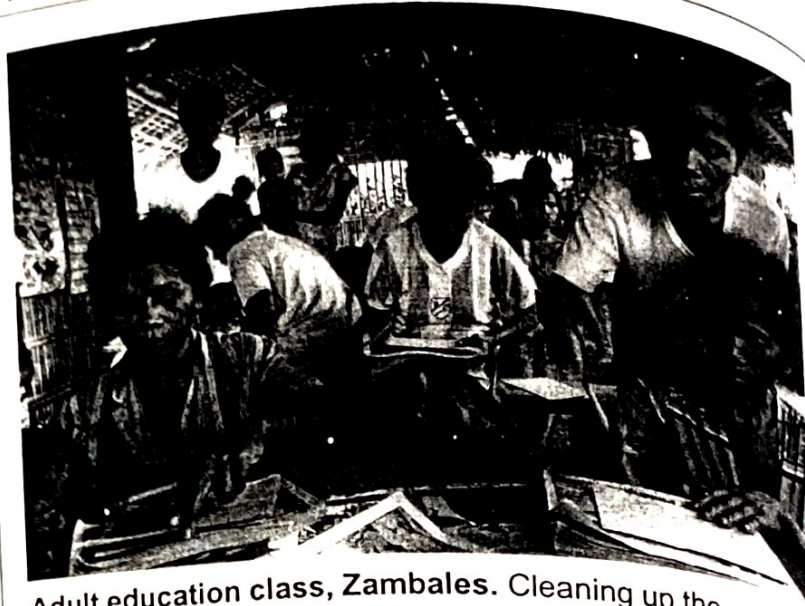
The COA sets the bidder's bond at five percent of the total amount of the tender but limits it to P20,000 at most per proposal. A winning bidder who refuses to accept the award without justifiable reason forfeits the bond and will be barred from participating in future biddings. Tenders are good for 60 days.

Bids are submitted in sealed envelopes. Bidders may be required to submit a sample as well. All submitted bids are opened on the date and at the time and place set in the call for bids, in the presence of the provincial, city, or municipal auditor or his or her representative who needs to initial and secure copies of the bids. The proceedings are open to the public. The bids are then abstracted and certified as to their correctness and authenticity by the committee on awards and the auditor.

Defective bids may be considered to determine whether it would be advisable to hold a rebidding or waive the defects. Whenever the price in a defective bid is lower by at least 10 percent, the bidder who offered the nondefective bid will be asked to reduce his price to that of the defective bid. If he consents, the award goes to him at the reduced price.

The lowest complying and responsive bid that meets all the terms and conditions of the contract is declared winner by the committee on bids and awards. The COA requires that the decision be recorded and posted at a prominent place in the provincial capitol or the city or municipal or barangay hall.

Winners and losers alike should be notified of the acceptance of their bids. The bonds of the unsuccessful bidders are then released; the losers should acknowledge the return of the bond. The winner's bond, in turn,



**Adult education class, Zambales.** Cleaning up the government contracting system could bring relief to many poor communities. (JOSE ENRIQUE SORIANO)

gets a receipt and may be released only when the bidder enters into a contract and files a performance bond.

The winning bidder is then issued a purchase order or contract, which must contain the following information: the office to which the account will be charged and the requisition number; the name and address of the supplier or contractor; the office to which the delivery will be made; complete descriptions and specifications of the supplies or property, including the nature and quality of the items; a penalty clause for late delivery or nondelivery; the quantity and unit price; the period of delivery; the shipping terms and conditions and other conditions of delivery; the date of effectivity and termination of the contract; and the conditions regarding importation.

Contracts involving more than P10,000 require that the winner put up a performance bond equivalent to a tenth of the value of the purchase order or contract. In case of importation, the bond reaches 20 percent. An extension of delivery period is allowed if the request is made before the term has expired, and is recommended by the committee on awards and approved by the local chief executive.

## Purchases by local governments

Should the first bidding fail, a second bidding can be called by the committee on awards. Only after a second failed bidding can the committee recommend a negotiated purchase.

The committee on awards or its representative does the canvass and prepares an abstract of it. The local chief executive, upon the committee's recommendation, decides and awards the contract, which then goes to the Sanggunian for approval. Items must be delivered within seven days after the order is placed.

The COA allows other procurement modes. These include personal canvass, emergency purchase, direct purchase, and purchase from an exclusive distributor or a government entity. The authority to decide awards in emergency purchases rests with the local chief executive, upon the recommendation of the general services officer or the treasurer. In the other modes, the authority rests with the bids and awards committee.

The law sets limits on the various modes of procurement. Personal canvass, for example, is limited to amounts specified for all items in any one month for the entire local government unit. This means P150,000 for first- and second-class provinces, cities, and Metro Manila towns; P100,000 for third- and fourth-class towns; and P50,000 for fifth- and sixth-class local government units.

In municipalities outside Metro Manila, the ceilings are P60,000 for first-class towns, P40,000 for second- and third-class, and P20,000 for fourth-class and below. Barangays in cities and Metro Manila can buy up to P10,000, and the rest, P5,000. Metro Manila, the Autonomous Region of Muslim Mindanao, and the Cordillera Autonomous Region fall under the category of first-class provinces.

Unless the purchase order or contract says otherwise, deliveries must be made within seven days of receipt of the order. Deliveries must be inspected and verified by

**Red flags**

the authorized inspector, and evidence of deliveries presented. An inspection report should be submitted within 24 hours to the auditor, who can conduct surprise and selective inspections. Property inspectors must submit reports to their supervisors during the day.

Curiously, though, the deadline for delivery of items bought as emergency purchases is 10 days after an order is placed, but the supplies must be used within 15 days of delivery. A report of utilization must be prepared, supported by requisition and issue vouchers signed by a representative of the beneficiaries. A copy goes to the auditor. Confirmatory reports must be furnished to members of the awards committee.

The COA also allows local governments to buy from exclusive distributors that have no subdealers selling substitutes of the same quality at lower prices. The authority to purchase rests with the committee on awards.

Repeat orders have to be made within three months from the date of the original purchase order. The mayor or governor is empowered to place a repeat order upon the recommendation of the treasurer or the general services officer.

**Red flags**

Rampant bribery in government contracting is a matter of common knowledge. When government is the buyer, a private individual or firm bribes public officials for several reasons:

- to be included in the list of qualified bidders and to restrict its length;
- to acquire inside information, such as minimum and maximum price thresholds, average-offer prices, and project evaluation criteria;
- to induce public officials to formulate the bidding specifications so that the firm becomes the

- only qualified supplier;
- to be selected as the winning contractor; or
- to get inflated prices or to skimp on quality upon winning the contract.

Bribes are not always in the form of money, as some simplistic politicians insist. They also include travel, meals, entertainment, gifts, favors, discounts, even future employment, or anything of real material value from a supplier or contractor. Bribes are given not only to public officials, but also to their spouses, parents, children, other close relatives, or friends.

It is often difficult to establish that payoffs have been made. But there are some indicators that bribes may have been made and taken: procedural lapses, violations or revisions of rules, conflict-of-interest situations, or lapses in codes of conduct. These can take place at any stage of the contracting process.

Corruption can happen as early as when budgets and laws are made. The budgets of local governments, for example, are supposed to implement local development plans, but that rarely happens. Instead, many local budgets have been found to lean heavily toward infrastructure projects instead of development projects, because of kickbacks offered to local officials.

The pork barrel of members of Congress, provided through both the Priority Development Assistance Fund, which is taken from the budgets of various departments, and the Public Works Fund, which comes from the DPWH budget, and the unflagging lobby for bigger sums is another clear indication of how politicians meddle in public procurement. Many politicians are known to commit their share to favored contractors and to exert pressure on implementing agencies to award contracts funded by their pork barrel.

Even laws can be crafted to favor certain parties. A good example is Republic Act 7637, the law that created the

## Red flags

Mount Pinatubo Commission and allocated funds for its operations. Why should a law specify the purchase of amphibians and other equipment in an amount not to exceed P50 million? The Commission subsequently bought two amphibious trucks for P50 million. The trucks were later found to have been nearly 10 times overpriced and lay idle because they had never been tested for lahar.

Decisions at this stage are political in nature, making it difficult to establish responsibility.

Some public officials are known to have used money for purposes other than what it was specified for. Regional field units of the Department of Agriculture (DA), for example, were notorious for diverting funds meant for farm inputs for the purchase of costly and unnecessary items, or technical malversation. In lahar-ravaged Central Luzon, the regional unit bought 4,000 document keepers with P1.5 million allotted for the purchase of corn for distribution to farmers. The DA legal division found that the document keepers were overpriced by 50 percent, no public bidding was held, and the supplier developed only 70 percent of the contract he was paid for.



**Government immunization program.** The collusion of corrupt contractors and bureaucrats results in real losses to the public. (JOSE ENRIQUE SORIANO)

To skirt the signing limits, a number of public officials split contracts or payments, if they belatedly realize they had exceeded their authority when they entered into a contract. The COA once chided the Quezon City schools division for its persistent practice of splitting requisitions, purchase orders, and payments for homogeneous supplies that it needed at about the same time. The COA said the practice was obviously meant to circumvent the limitations of the regional director or schools superintendent's signing authority.

Because the rule on advertising and posting of the invitations to bids was often breached in the past, the national government now requires agencies to post these on their Website and the EPS's, in addition to publication in newspapers and posting in conspicuous places in the agency's premises. But the new rule does not apply to local governments. Some offices advertise in small papers or in an early edition and then buy all the copies of the publications. Others ask for a special print run to carry the ad. In 1999, the COA discovered fraud in the publication of invitations to bid for projects by several engineering districts in Metro Manila to favor certain contractors. The "published" invitations attached to contract documents submitted to the COA for review turned out to be fake. The publications had been tampered with to show there was an advertisement when in truth there was none. The projects totaled P275 million.

In the days when the national government still adopted agency estimates for contracts, bidders sought ways to buy information before a bidding. Some agencies set estimates based on the figures suggested by favored contractors. Significant discrepancies in cost estimates, whether below or above, should be treated as a red flag.

Prequalification has been simplified at the national level, but not at the local level. It used to take national agencies five to six months to conduct a background check of bidders because of the long list of documents bidders had to submit for prequalification. Most of the time,

**Red flags**

agencies could verify only 20 percent of what companies stated in their applications. The long wait caused a lot of uncertainty among contractors, some of whom eventually resorted to bribing the bids and awards committee in order to get into the list of qualified contractors. Some agencies also imposed requirements that prevented certain parties from qualifying.

Citizens should be suspicious of bid specifications that are narrowly drawn. Who sought them? Why? Did a potential supplier help the agency write the terms? Is there a product or a supplier preference? Did the agency reveal conditional or inside information to a supplier or contractor? On several occasions, the COA has found that winning bids for infrastructure projects matched exactly the specifications of agencies, including those that were supposed to be confidential. There have also been cases where contracts were awarded to suppliers or contractors that went beyond an agency's specifications. This is a no-no.

Some bidders have acquired a knack for rigging public biddings. At the DepEd central office not too long ago, a supplier who enjoyed the backing of a legislator formed 16 dummy companies that joined in nearly all the bids for department purchases. Some suppliers collude with each other to force a failure of bidding or take turns at winning contracts. When a newcomer emerges as a potential threat to their business, these suppliers try to buy off the neophyte or sometimes bodily remove him or her from the bidding. The latter happened to a supplier at a bidding in a Central Luzon province. Blacklisting has not prevented unscrupulous firms from forming new companies in order to continue joining biddings in the same agency. Other blacklisted agencies simply move their operations to a different government office.

Because of money spent on bribes, winning bidders recoup their losses through overpricing, short or "ghost deliveries," delivery of substandard or defective goods,

or substitution of materials, usually of inferior quality, when executing the contract. Some contractors request change orders so they can charge extra. Change orders are not subject to competitive bidding.

The rule against advance payments is not always followed to the letter. Until a notorious supplier was blacklisted for good, she almost always got both the central and regional offices of DepEd and local governments to give her advance payments.

For domestic purchases, payment by checks is the rule. That is why an P81.7-million transaction at the Education Department that was paid to a domestic letter of credit immediately caught the COA's attention. The LC transaction led to the removal of checks and balances on public procurement and allowed the supplier to be paid in full despite its failure to deliver 60 percent of the goods.

Payments are sometimes made to suppliers even when they fail to submit all the required documents, such as the purchase order, sales invoice, delivery receipt, report of completion and acceptance, and inspection report. On several occasions, the agency or the COA discovers too late that acceptance and completion reports and inspection reports are untruthful.

An agency's accounting unit can make the lives of suppliers unpleasant by delaying the release of their checks. When this happens, some suppliers end up shelling out grease money.

### **More red flags**

Corruption is by no means confined to the procuring agency. COA auditors have not escaped corruption charges for ignoring anomalous transactions or allowing agencies to get away with violations.

## More red flags

Corruption can also take place in other agencies with some degree of involvement in the procurement. When the PCIJ was investigating textbook purchases, suppliers candidly talked about bribing the following: the DBM, to obtain the advice of allotment, the SARO, or the notice of cash allocation; congressmen and senators, to pressure implementing agencies to award their pork barrel-funded contracts to them; the National Printing Office, to set prices for their books; mayors or governors, to buy books from them using the Special Education Fund; and even the Office of the President, to approve the realignment of funds or contracts exceeding P50 million.

Local governments are required to prepare annual procurement programs. But the COA has found that 15 percent of the country's 1,660 towns and cities do not do so. As a result, personal canvass has become the rule rather than the exception. Many local governments buy as the need arises, and often exceed the monthly limitation on personal canvass.

In international procurement, according to Transparency International, the main sector in which a great deal of corruption occurs is the weapons industry. Developing countries spend huge amounts of their limited budgets on the acquisition of war materiel, which is supplied by companies in the industrialized countries. According to estimates, at least 15 percent of the expenses intended for defense by these countries were delivered as illegal commissions to those chiefly responsible for their civil and military public administration. For national security reasons, procurement of war materiel tends to be done in secret. The public administration does not use the public tender or auctions system to award these contracts. These are either directly granted to a given company, or offers are invited from only a few companies.

A PCIJ investigation on military procurements showed that supply contracts with the Army are padded by as much as 35 to 50 percent of the original prices because

of the need to pay off officials. Grease money paid to corrupt officials can drive contract costs up to 100 percent in the Navy and up to 200 percent in the Air Force. The contracts cover a range of items, from small-ticket items like Howitzer shells, bullets, guns, and uniforms to major capital expenditures like tanks and Howitzers that are one-shot deals. Some items were purchased even when they did not appear on the list of priorities to be purchased under the AFP Modernization Law. These include second-hand Peacock-class patrol vessels bought from the United Kingdom's fleet in Hong Kong in 1997 and 10,000 rounds of 105MM Howitzer shells bought from Thailand in 2000, at the height of the military offensive against the Moro Islamic Liberation Front.

A negotiated deal for the purchase of four 30-year-old C-130-K military transport and cargo planes and two pieces of sensor equipment for \$41 million from Lockheed Martin Corp. set tongues wagging when it was found, among other things, that not all those authorized to review defense contracts, including Defense Secretary Orlando Mercado, were brought into the loop. Contrary to the provisions of the Modernization Law, the contract involved not a manufacturer but a distributor. The transaction also put Mercado's successor, Angelo Reyes, in a conflict situation. Reyes had endorsed approval of the deal when he was still the Armed Forces chief of staff and signed the contract barely three weeks before his retirement. Later appointed defense secretary, he was given the job of evaluating the contract.

Competitive bidding has not been universally practiced in the selection of BOT contractors because of a provision in the law that allows agencies to accept unsolicited proposals on a negotiated basis if all the following conditions are met:

- The project involves a new concept or technology and/or is not part of the list of priority projects.
- No direct government guarantee, subsidy, or equity is required.

## More red flags

- The agency or local government unit received no proposal within 60 days after publishing an invitation for comparative or competitive proposals for three consecutive weeks in a newspaper of general circulation.

The prohibition on direct government guarantees for contracts stemming from unsolicited proposals has not prevented the government from honoring its obligations to them. A good example is the \$470-million contract that was awarded to the Argentine firm IMPSA to rehabilitate and operate the 750-megawatt Caliraya-Botocan-Kalayaan (CBK) power complex in Laguna. Three weeks before President Joseph Estrada's fall from power, Finance Secretary Jose Pardo signed a Government Acknowledgment and Consent Agreement that bound the government to honor agreements IMPSA had made with its creditors. Pardo later asked the Justice Department for a ruling on whether his signing of the document was valid. Justice Secretary Hernando Perez ruled that the government "has validly and effectively consented to the transfer and assignment to the lenders of all CBK's rights under the government undertaking." Former Finance Department officials said the statement commits the government to agreements entered into by IMPSA and its creditors.

DBM consultant Campos takes issue with such arrangements because they shift the commercial risks from the private firms to the government. If a contingency occurs, he estimates the cost of one such contract alone to be about P2 billion a year.

Lawyer Jose Luis Syquia, a member of the board of the NGO Procurement Watch, proposes a specific provision in the law that would nullify any government guarantee given in violation of the BOT law or a requirement that any such prohibition be expressly provided in the agreement between the proponent and the government. He also suggests more stringent provisions in the BOT law on the amendment of contracts already awarded

as, he notes, the amendment may actually go beyond the original ambit of the award. He says amendments must be at least closely scrutinized or reviewed before an implementing agency signs them. While the agency may see the need for an amendment, it may cost more to the ordinary taxpayer in the end, he says.

Campos, meanwhile, has come across problems in other arrangements such as joint ventures, concessions, management contracts, and lease agreements. He says regulations and guidelines tend to be agency-specific, making these arrangements less transparent and more manipulable.

### Following the trails

When the COA conducts fraud auditing, it gathers four types of evidence:

- Physical evidence—obtained by direct inspection or observation of activities of people, property, or events.
- Analytical evidence—includes computations, comparisons, reasoning, and separation of information into components.
- Documentary evidence—consists of created information such as letters, contracts, accounting records, invoices, and management information or performance.
- Testimonial evidence—obtained from others through statements received in response to inquiries or interviews, and corroborated with additional evidence.

The COA's process of gathering evidence is no different from what journalists do when they investigate wrongdoing. The COA's checklists are helpful to citizens who wish to scrutinize contracts. For example, it reminds auditors that the best way to detect a ghost project is through inspection. In addition, it reminds auditors to

**What else to look at**

collect the following documents:

- Location plans/maps
- Programs of work
- Voucher
- Contracts
- Inspection report/accomplishment report
- Team's inspection signed by all members of the inspectorate team
- Picture of the site/location
- Affidavit from the project engineer/contractor that the project was not yet started
- Confirmation from the contractor
- Paid checks
- Bid documents

**What else to look at**

When investigating corruption in public procurement, one may find it useful to ask:

*What's the motive?* Plain aggrandizement is the obvious answer. But corruption must also be seen as a political problem. The requirements for elections may induce corrupt behavior. In a number of democracies, including the Philippines, corruption scandals are frequently associated with the financing of political campaigns. A PCIJ report showed how the Centennial exposition project was used as a cover for raising funds for the Lakas campaign. One of the star witnesses, Joseph Ocol, executed an affidavit in June 1999 detailing how contractors working on the project were asked to make substantial contributions to the ruling party. These contributions were in turn delivered to Lakas fund raisers by officials of the Bases Conversion and Development Authority and the Clark Development Corp.

*Who are the players? What are their relationships to another?*  
The offer of money is often made to government personnel who exercise some sort of discretionary power. They

include those who request the allocation, those in the procurement committee who accept or monitor deliveries or projects, and those who release the payment. Special attention should be paid to decision makers. While all members of the bids and awards committee bear scrutiny, the chairman and the secretary wield the biggest influence. One must be sensitive to potential conflict-of-interest situations. One must determine as well if committee members have shown bias in favor of sellers, and if they are known to have succumbed to pressures exerted on them. Also worth looking into is the members' unexplained wealth, if any. Another aspect that should be examined is the relationships of officials who are involved in or can influence procurement. Is the winning contractor a friend, relative, campaign contributor, business partner of the congressman? The Estrada period best illustrates how friends and relatives can skew decisions. Franchises and juicy contracts were awarded to a number of individuals, consisting of Estrada's cronies, kin, wife, and mistresses, and those close to them. [See also Chapter 3, "Investigating Officials."]

*How is the loot split?* In government contracting, payoffs are rarely made to only one person. PCIJ investigations have shown that corruption in many agencies is systemic, and bribes are given to different layers of the bureaucracy. Thus, a challenge to investigators is to find out how much is given and to whom the money goes.

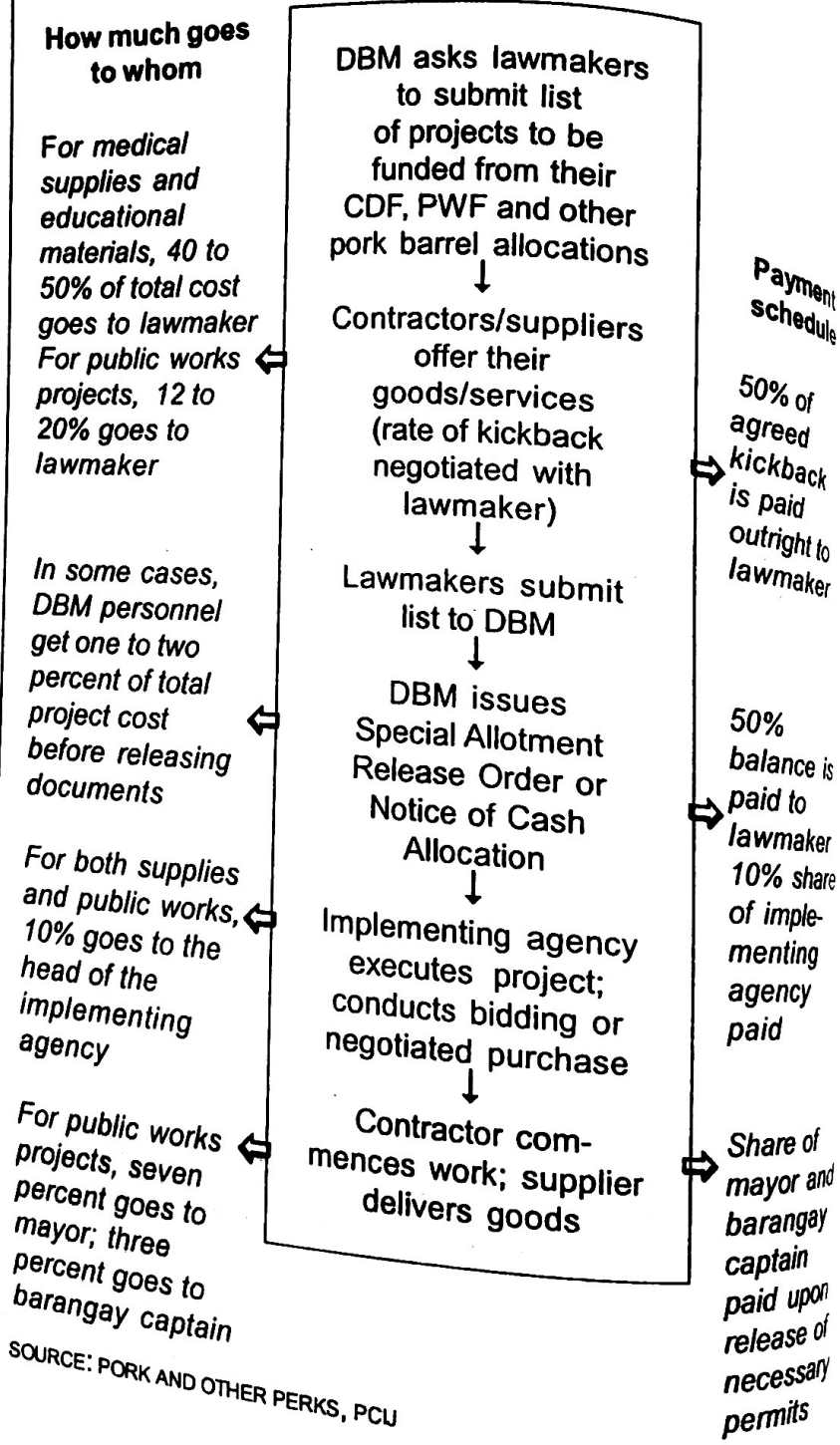
At the Education Department, for example, payoffs for the purchases of textbooks took place from top to bottom—from as high up as Malacañang to as low as the clerk cashier who prepared the check. About a dozen suppliers interviewed for the PCIJ's report gave a full breakdown of the money they allotted for bribes. Kickbacks for supplementary materials started at a low of 40 percent but rose to a high of 65 percent of contracts. Suppliers said at least 15 percent would go to the regional director, another 15 percent to the division superintendents under him, five percent to the DBM, and 30 to 35 percent to legislators and their staffs if the contracts were funded

What else to look at

by their pork barrel. Smaller amounts were given to the chief accountant, the accountant who obligated the money, the accounting clerks, the cashier, the National Printing Office, and the auditor.

It helps to illustrate who took the money and how much they took through a chart or table, as the PCIJ did when

The Flow of Pork



SOURCE: PORK AND OTHER PERKS, PCU

it investigated in 1997 the misuse of pork barrel funds, known back then as the Countrywide Development Fund and Congressional Initiative Allocation. [See also the section, "Off the Beaten Track: Going beyond the Obvious" in Chapter 2.]

*What are the consequences?* Almost always, the biggest victims and losers in cases of corruption are citizens. There is no better way to dramatize the consequences of corruption than by showing the sufferings it has caused citizens.

What happens when payoffs eat up 20 to 65 percent of textbook funds? Ask the public school children. By the late 1990s, the public school system lacked 70 million textbooks. As a result, six children in grade school and eight in high school had to share one textbook.

What happens when school desk suppliers deliver only 40 to 70 percent of their contracts? About 3.5 million of 15 million school children end up not having a desk or a chair.

The story does not end there. The consequences of corruption in education can be seen in the children's poor mastery of school subjects. They learn less than half of what they are supposed to. Their below-average performance is borne out by their dismal performance in both local and international tests. In a 1995 test done in 45 countries, the Philippines ranked third to the last in elementary math and second to the last in elementary science.

In Abra, corruption is visible in nearly every bridge that has been built. Bridges dot the Abra River and its tributaries, but all except two are either damaged or unfinished. To cross the river, people are forced to take the motorized ferry, actually a platform mounted on rows of what look like steel canoes. In the interiors, children have drowned for lack even of hanging bridges.

## Working for reforms

**Working for reforms**

In recent years, the government, with help from civil society groups like Procurement Watch and funding agencies like the World Bank and Asian Development Bank, has been gradually introducing reforms in the procurement system. [See Chapter 10, "Citizens Combating Corruption," for more information about NGOs involved in anti-corruption campaigns.]

To ensure greater transparency of the process, the national government has chosen a few NGOs such as the Concerned Citizens of Abra for Good Governance, to join its experimental participatory audit. Under the program, NGOs are involved in the auditing of selected government agencies and are provided access to documents.

Another important reform has been the issuance of E.O. 40, crafted with the help of Procurement Watch. The executive order not only consolidated the voluminous procurement guidelines but also made electronic procurement an important component in a package of procurement reforms that the government has come up with. In many parts of the world, especially in East Asia and Latin America, electronic procurement or e-procurement has proved to be an effective means of stemming corruption, as well as easing the purchasing woes of the various state agencies.

For sometime now, the DBM's Procurement Service has been maintaining an online catalogue of hundreds of items usually bought by state agencies. Almost two years ago, the Service put up the Internet-based Electronic Procurement System to help speed up the shopping tasks of government offices. Now, with several executive orders, among them E.O. 40, issued by Estrada and Arroyo mandating government agencies to use the EPS, it is gearing up to build and maintain "a single and centralized electronic portal" for procuring just about everything the government buys: goods, supplies and materials, civil works, and consulting services. This

means that all purchases of national government agencies, as well as those of local governments funded by the national government's money, will eventually have to be coursed through the EPS.

Now at the design stage, the central portal will feature an electronic bulletin board to advertise procurement opportunities, notices, awards, and reasons for award; a centralized registry of authorized suppliers, contractors, and consultants; an electronic catalogue of common-use goods; and a virtual store, electronic bid submission, and online payment. Of these, only the store is not yet running, while the rest are partly up. Later, government agencies are also supposed to have their very own catalogues of noncommon-use goods (such as guns and ammunition, firefighting equipment, and patrol boats) hosted by or linked to the EPS Website.

Procurement Service director Estanislao Granados is confident that the EPS can help level the playing field because of its reach, which is far wider than that of newspapers. He says the system will solve problems concerning the publication of notices of bids. Some government agencies, for example, publish in small or local papers or arrange a special and small print run. While these may satisfy government requirements, information is limited to a few favored suppliers.

Also working in the suppliers' favor is the EPS's bid-matching system. In its present state, the system already automatically sends an email to notify registered suppliers that the goods they carry match those that are up for bidding.

Granados says that while the EPS's supplier registry currently contains only basic information about a firm, there will eventually be a comprehensive centralized database of all suppliers in all government agencies. This database will include information about a supplier's eligibility, as well as all the contracts it has won and its performance in each one. In this way, the central sup-

## Working for reforms

plier registry can double as a blacklist registry. "If a supplier is blacklisted in one agency, he's blacklisted all over the country," says Granados.

Moreover, because procurement information is posted for everyone to see, the central portal will facilitate monitoring, not only by government agencies and the COA but also by the public. Such transparency can only help discourage corruption.

Electronic procurement works best in the announcement of opportunities and awards, the sending of documents, and the posting of bidding prices. But even Granados points out that it may not be ideal for certain procurement activities. One of these is the evaluation of bids, which is still best done manually.

Granados also concedes that e-procurement may address problems up to the awarding phase, but may be ineffective as far as post-awarding problems, such as delayed deliveries, underdeliveries, or ghost deliveries, are concerned.

While the DBM is confident that electronic procurement will prevent overpricing of common-use goods and sup-



Community health program. Citizen's vigilance in the contracting of government goods and services has had beneficial results.

plies, it may be unable to catch overpricing that results from "established prices" of special items where there is little or no competition or where no standards are set. A dam or a power plant is a good example.

But problems do stare the Procurement Service in the face. The most immediate kink is the digital divide. Only 30 percent of national government agencies are wired, Granados says. "It's even worse at the local government units, especially in the towns," he adds. Government suppliers, mostly small and medium enterprises, are similarly situated. Granados also estimates that only a third of suppliers have an Internet connection.

To connect government agencies and suppliers to the Internet, the DBM will set up public access terminals, hopefully at the provincial offices of the Department of Science and Technology. In the meantime, both the government and the private sector are being urged to use Internet cafés, which exist in practically every town. The DBM has also appealed to the private sector, especially business associations and socio-civic organizations, to allow the public use of their Internet connection at certain hours of the day or on certain days of the week.

The Procurement Service is not the first or the only state agency to make use of the Internet for purposes of procurement. A number of government agencies use the Web chiefly to advertise bidding opportunities. Among the more ambitious about online offerings, however, is the Defense Department. During the time of Secretary Mercado, the DND became one of the first government offices to embrace e-procurement. In mid-1999, it launched the Computer Aided Procurement System, or CAPS, which went as far as conducting electronic bid submissions. But problems with connectivity and bandwidth triggered failed biddings and brought the system to a sputtering halt last year.

The DOH, meanwhile, posts procurement procedures and bids and awards notices, lists suppliers and the

## Working for reforms

goods they are authorized to sell to the government, and makes registration and bidding forms available for downloading on its Website.

The DPWH site offers the same features, but not the list of contractors. A computerized national registry of contractors it set up with assistance from the World Bank has yet to go online.

At the NEDA Website, the public can look up a database containing the contracts that have been submitted to it for review, as well as their status.

Several government agencies instituting reforms in procurement, however, have run into obstacles. The Procurement Service, for example, has come under pressure from the private sector to award the contract to build the central portal. Considering that the portal is supposed to be among the government's weapons against corruption, it is ironic that, according to a DBM official, a big private exchange has been "muscling its way in" through highly placed connections in Malacañang, who in turn have been calling people involved in the design of the EPS to favor the "bully." Another DBM insider discloses that representatives of the exchange even showed up at the Procurement Service one day and began barking orders to the personnel, "as if they had already won the contract."

Another DBM official says several private exchanges have resorted to enlisting the help of certain members of the Information Technology and E-Commerce Council (ITECC) to exert pressure on the department to award them the contract. The official quotes an ITECC member as asking, "Why don't you just give it to (this company)?" What galls these Budget Department insiders is that the DBM is being asked to settle for a negotiated purchase instead of an open, competitive bidding. Huffs one official: "This is ridiculous. How can we go into negotiated purchase for a system that is supposed to encourage public bidding?"



**Patients in a government hospital.** Improved procurements systems mean better public services. (RICK ROCAMORA)

DBM officials worry that they may be in for more pressure, this time from legislators, cabinet secretaries, and suppliers, should the Procurement Service also begin undertaking biddings for noncommon-use items. "If we stay away from it, we stay away from the pressures," says one official.

The DBM's fears are not totally unfounded, especially after the department got wind of the DPWH's experience with several congressmen when the National Registry of Contractors went into full swing.

A few weeks before he bowed out of office in January 2001, Public Works Secretary Gregorio Vigilar issued a department order allowing only contractors included in the National Registry and holding valid contractors' registration certificates issued by the central office to participate in the bidding for all DPWH projects. Some months later, when Simeon Datumanong took over, congressmen began complaining to the department that contractors in their localities had been unsuccessful in getting into the Registry, or if they were in, were not winning contracts. A number of lawmakers were said to have hinted that Datumanong would have a hard time when he faced the Commission on Appointments.

## Working for reforms

As an apparent compromise, Datumanong amended Vigilar's order in August 2001 to allow contractors not in the National Registry to bid for projects costing P15 million and below. The order leaves the eligibility screening of contractors to the district engineers. The DPWH's districts more or less correspond to the congressional districts. The DPWH has since tried to justify the move by saying that not all district engineering offices are fully computerized, and that these would start using the Registry once they are.

For all these problems, the government apparently still believes that the benefits of electronic procurement outweigh its drawbacks. It is pushing for passage of a procurement reform bill that practically echoes E.O. 40 and provides for electronic procurement, a uniform procurement process for both national and local governments, criminal and civil liabilities for violations of the law, and two representatives from the nonpublic sector in the bids and awards committees.

Campos acknowledges that while the recent executive orders have gone a long way in reforming the procurement process, they lack the force of law. "An executive order can easily be changed," he says. "There is also the possibility that if it stays as an executive order, it's open to challenge. We really need a law."

The bill has drawn bipartisan support from the House, but at a price. Several legislators have demanded the inclusion of a provision that blatantly favors provincial contractors, and have gotten their way. The provision applies to biddings for provincial projects. In cases where a bidder from outside the province submits the lowest bid, a provincial contractor who submits the lowest bid among the provincial bidders will be allowed to match the outsider's bid and, if able to do so, will be awarded the contract. Thankfully, the preferential treatment will last no more than five years, if the procurement reform bill is passed.

**Standardized Procedures for Public Bidding**  
(Executive Order 40 of 2001)

| GOODS, SUPPLIES, MATERIALS  | CIVIL WORKS  | CONSULTING SERVICES                                    |
|---|--|--|
| <p><b>STAGE 1: PRE-PROCUREMENT CONFERENCE</b><br/>Required for contracts costing above P2 million</p>   | <p>Required for contracts costing above P5 million</p> | <p>Required for contracts costing above P1 million</p> |
| <p><b>STAGE 2: INVITATION TO BID</b></p> <p>Contents:</p> <ul style="list-style-type: none"> <li>• Agency's name and contact details and designated contact person</li> <li>• Item or service to be procured</li> <li>• Criteria to be used in eligibility check of bidders, bid evaluation, and postqualification</li> <li>• Approved budget for the contract</li> <li>• Where and how long bidding documents are available and, if applicable, how much these are</li> <li>• Date, time, and place of submission of eligibility requirements, pre-bid conference, and submission and opening of bids</li> <li>• Contract duration or delivery schedule</li> </ul> <p><b>Advertising/Posting</b></p> <ul style="list-style-type: none"> <li>• Advertised at least twice within two consecutive weeks, with seven days between publications, in at least two newspapers of general nationwide circulation that have been published for at least two years</li> <li>• Posted continuously in the agency's Website and the Electronic Procurement Service during the two-week period</li> </ul> |  |  |

6 : INVESTIGATING PROCUREMENT

Standardized Procedures for Public Bidding

| GOODS, SUPPLIES, MATERIALS  | CIVIL WORKS   | CONSULTING SERVICES   |
|---|---|---|
| <ul style="list-style-type: none"> <li>• Posted in a conspicuous place in the agency's premises</li> <li>• Advertisement in newspapers not required for small procurements</li> </ul> <p><i>Period between last day of advertising/posting and opening of bid</i></p> <p>30 days</p> <p><i>Bidding Documents</i></p> <ul style="list-style-type: none"> <li>• Terms of reference for the procurement</li> <li>• Contract plans and specifications, if applicable</li> <li>• Draft contract form</li> <li>• Bid form, consisting of the technical proposal form and financial proposal form</li> </ul> <p>Letter of intent from bidder</p> | <ul style="list-style-type: none"> <li>30 days for contracts costing up to P25 million; 45 days, above P25 to P50 M; 60 days for above P50 to P100 M; 90 days for above P100 M</li> </ul> | <p>75 days</p> <ul style="list-style-type: none"> <li>• Additional information required to be submitted by the consultants in their proposals</li> <li>• Supplemental information to guide consultants in preparing their proposals</li> <li>• Evaluation criteria</li> </ul> <p>Must be submitted not later than seven days after last day of period for advertising/posting</p> |

| GOODS, SUPPLIES, MATERIALS   | CIVIL WORKS   | CONSULTING SERVICES   |
|--|---|---|
| <p><b>STAGE 3: PRE-BID CONFERENCE</b></p> <ul style="list-style-type: none"> <li>• Required for contracts amounting to at least P1 million</li> <li>• Must be held at least 15 days before the deadline for the submission of bids</li> <li>• Minutes must be made available to participants at least 10 days before the deadline for bid submission</li> </ul>  |   |   |
| <p><b>STAGE 4: ELIGIBILITY CHECK</b><br/> <i>Registry of suppliers, contractors and consultants</i></p> <ul style="list-style-type: none"> <li>• Required of every agency; updated at least once a year</li> </ul> <p><i>Basic requirements for registration</i></p> <ul style="list-style-type: none"> <li>• DTI business name registration or SEC registration certificate</li> <li>• Mayor's permit/municipal license</li> <li>• Taxpayer's identification number</li> <li>• Statement of bidder that it is not blacklisted by any government agency (and by the Construction Industry Authority of the Philippines or CIAP for civil works contractors)</li> <li>• Other licenses required by the agency</li> </ul> <p><i>Who can bid</i></p> <ul style="list-style-type: none"> <li>• Filipino citizens or sole proprietors</li> <li>• Partnerships, corporations, or joint ventures with at least 60 percent Filipino ownership</li> </ul> | <ul style="list-style-type: none"> <li>• Same requirements for suppliers of goods except Filipino ownership of partnerships, corporations, and joint ventures must at least be 75 percent</li> <li>• Joint ventures licensed by the Philippine</li> </ul> | <ul style="list-style-type: none"> <li>• Filipino citizens or sole proprietors, or partnerships/corporations with at least 60 percent Filipino ownership</li> <li>• Individuals or owners of firms who are</li> </ul> |

6 : INVESTIGATING PROCUREMENT

| GOODS, SUPPLIES, MATERIALS   | CIVIL WORKS  | CONSULTING SERVICES   |
|--|--|---|
| <ul style="list-style-type: none"> <li>Cooperatives registered with the Cooperatives Development Authority</li> </ul>  | <p>Contractors Accreditation Board</p> <ul style="list-style-type: none"> <li>Bidders with satisfactory Contractor's Performance Evaluation System rating or certificate or completion and owner's acceptance of the contract</li> </ul> | <p>registered professionals authorized to practice profession</p> <ul style="list-style-type: none"> <li>Foreign individuals, sole proprietorships, partnerships or corporations that are registered with the SEC or other authorized agencies, and authorized by the Philippine government professional regulatory body to engage in consulting services</li> <li>Joint ventures among Filipino consultants, and among Filipino and foreign consultants</li> </ul> |
| <ul style="list-style-type: none"> <li>Value of bidder's largest single contract, similar to the contract to be bid, must at least be half of the approved budget for the contract to be bid.</li> <li>Bidder's net financial contracting capacity (NFCC)* must be at least equal to the approved budget for the contract to be bid.</li> </ul> <p>*NFCC = [(current assets minus current liabilities) multiplied by (K)] minus the value of all outstanding works or projects under ongoing contracts, including awarded contracts yet to be started, where K = 10 for a contract duration of one year or less, 15 for more than one year up to two years, and 20 for more than two years</p> |  |   |

CONSULTING SERVICES

CIVIL WORKS

GOODS, SUPPLIES, MATERIALS

- Eligibility requirement or statement must be submitted in a sealed eligibility envelope, to be opened on the date of the bid opening.

Eligibility check (Documents to be submitted)

- Bids and Awards Committee (BAC) certification of the bidder's official registration
- Technical documents
  - Valid joint venture agreement, in case of joint venture
  - Letter authorizing the BAC to verify documents submitted for eligibility check
  - Statement that bidder is not blacklisted in any government agency or by CIAP
  - Statement of bidder of all its completed contracts in at least three calendar years or more, including details such as name, date, duration, and amount of contract, date of delivery or completion, certificates of completion, and owner's acceptance

- v. Types and number of equipment the consultant owns, has under lease, and/or has under purchase agreements
- vi. If juridical entry, statement of the ownership and key staff, partners or principal officers and curriculum vitae and that they are registered professionals; technical competences, experience, and staff capabilities
- vii. If individual, statement that s/he is citi-

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| GOODS, SUPPLIES, MATERIALS  | CIVIL WORKS  | CONSULTING SERVICES   |
|---|--|---|
| <p><i>Financial documents</i></p> <ul style="list-style-type: none"> <li>• Audited financial statements, stamped received by BIR, for immediately preceding calendar year, showing bidder's total and current assets and liabilities</li> </ul> <p><i>Documents under oath by bidder</i></p>  | <p>Financial documents, stamped received by BIR, for immediately preceding calendar year, showing bidder's total and current assets and liabilities</p>  | <p>zen or registered with SEC and/or authorized agency, and is a registered professional</p> <ul style="list-style-type: none"> <li>• Audited financial statements, stamped received by BIR, for at least the last three calendar years, showing bidder's total and current assets and liabilities</li> </ul> |
| <p><b>STAGE 5: SUBMISSION AND RECEIPT OF BIDS</b><br/>                     Bids must be submitted in two separate sealed bid envelopes, the first containing the technical component and the second containing the financial component of the bid. The envelopes must be marked: "Do not open before (date and time of opening of bids)."</p> |  |   |
| <p><i>First envelope</i></p> <ul style="list-style-type: none"> <li>• Bid security</li> <li>• Authority of the signatory</li> <li>• Production/delivery schedule</li> <li>• Person-power requirements</li> <li>• After-sales service/parts</li> <li>• Technical specifications</li> <li>• Commitment from the supplier's</li> </ul>           | <ul style="list-style-type: none"> <li>• Bid security</li> <li>• Authority of the signatory</li> <li>• Construction schedule and S-curve</li> <li>• Person-power schedule</li> <li>• Construction methods</li> <li>• Organizational chart for the contract</li> <li>• List of contractor's personnel to be as</li> </ul> | <ul style="list-style-type: none"> <li>• Depending on specifications in the bidding documents</li> </ul>  |

| GOODS, SUPPLIES, MATERIALS  | CIVIL WORKS  | CONSULTING SERVICES  |
|---|--|--|
| <p>bank to extend to bidder a credit line if awarded the contract, or a cash deposit certificate</p> <ul style="list-style-type: none"> <li>• Certificate from bidder under oath of its compliance with labor laws and standards</li> </ul> | <p>signed to the contract, with qualification and experience data</p> <ul style="list-style-type: none"> <li>• List of contractor's equipment units</li> <li>• Equipment utilization schedule</li> <li>• Certificate of site inspection</li> <li>• Certification that the detailed estimates, cash flow by quarter, and payments schedule are in the second envelope</li> <li>• Commitment from the supplier's bank to extend to bidder a credit line if awarded the contract, or a cash deposit certificate</li> <li>• Contractor's construction safety and health program</li> <li>• Certificate from bidder under oath of its compliance with labor laws and standards</li> </ul> |  |
| <p>Second envelope</p> <ul style="list-style-type: none"> <li>• Bid prices in the bill of quantities in the prescribed bid form</li> <li>• Recurring and maintenance costs, if applicable</li> </ul>  | <ul style="list-style-type: none"> <li>• Bid prices in the bill of quantities in the prescribed bid form</li> <li>• Detailed estimates, including summary sheet indicating unit prices of construction</li> </ul>  | <ul style="list-style-type: none"> <li>• Depending on specifications in the bidding documents</li> </ul> |

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| GOODS, SUPPLIES, MATERIALS  | CIVIL WORKS   | CONSULTING SERVICES |
|---|---|---------------------|
|   | <p>tion materials, labor rates, and equipment rentals used in coming up with bid</p> <ul style="list-style-type: none"> <li>• Cash flow by the quarter and payments schedule</li> </ul> |                     |
| <p><b>STAGE 6. BID SECURITY</b></p> <ul style="list-style-type: none"> <li>• Serves as guarantee that the successful bidder will, within 15 calendar days or less from receiving the Notice of Award, enter into the contract and finish the performance security</li> <li>• Minimum amount in percentage of approved budget for contract, in pesos:             <ol style="list-style-type: none"> <li>Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit: 1 percent</li> <li>Bank guarantee: 1-1/2 percent</li> <li>Surety bond: 2-1/2 percent</li> </ol> </li> <li>• Returned to bidders after successful bidder signs contract and furnishes the performance security</li> </ul> |   |                     |
| <p><b>STAGE 7. BID OPENING AND EXAMINATION</b></p> <ul style="list-style-type: none"> <li>• Open to bidders, their representatives, and the public</li> <li>• BAC opens first envelope, checks documents against checklist of documents, and rates bid as "passed" or "failed."</li> <li>• BAC opens second envelope of bidders rated as "passed" and returns those of "failed" bidders.</li> </ul>   |   |                     |

GOODS, SUPPLIES, MATERIALS

CIVIL WORKS

CONSULTING SERVICES

**Two-stage bidding**

Permitted in contracts where technical specifications cannot be precisely defined in advance of bidding, or where technically unequal bids may occur.

**Stage 1:**

- Bidders submit letter of intent, eligibility requirements, and initial technical proposals, but not price tenders.
- BAC meets eligible bidders, draws up final revised technical specifications, and distribute these to bidders.

**Stage 2:**

- Eligible bidders submit revised technical tenders and price proposals in two separate sealed envelopes.

**STAGE 8: BID EVALUATION**

"Lowest calculated bid" determined by:

- i. Detailed evaluation of bids, to establish the correct calculated prices of bids
- ii. Ranking of total bid prices from lowest to highest

All voting and nonvoting BAC members sign the Abstract of Bids.

"Highest rated bid" determined by:

- i. Detailed evaluation of bids using numerical ratings based on the quality-based selection procedure (based only on technical proposals) or the quality-cost based evaluation procedure (based on both technical and financial proposals)
- ii. Ranking of bidders based on numerical ratings from highest to lowest

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| GOODS, SUPPLIES, MATERIALS  | CIVIL WORKS  | CONSULTING SERVICES |
|---|--|---------------------|
| <p><b>STAGE 9: POSTQUALIFICATION</b></p> <ul style="list-style-type: none"> <li>• Must be done within seven calendar days from determination of lowest calculated bid or highest rated bid</li> <li>• BAC verifies, validates, and ascertains all statements made and documents submitted by the bidder with the lowest calculated bid or highest rated bid. If bidder fails postqualification criteria, BAC notifies first bidder and completes postqualification on the bidder with the second lowest calculated or highest rated bid.</li> <li>• If no bidder passes, BAC declares failed bidding and conducts rebidding with re-advertisement/posting. Agency allowed to enter into negotiated procurement if rebidding fails.</li> </ul> | <p><b>STAGE 10: AWARD OF CONTRACT AND NOTICE TO PROCEED</b></p> <p>Agency head awards contract to bidder with lowest calculated or highest rated bid within 10 calendar days from the date BAC determines winning bid. Government-owned firms and financial institutions are allowed up to 30 days. For foreign-assisted projects, agency head advises the funder of the decision within seven days from decision date and issues notice of award within seven days from the date of the funder's concurrence.</p> <p><i>Part of the contract</i></p> <ul style="list-style-type: none"> <li>• Contract agreement</li> <li>• Conditions of contract</li> <li>• Drawings/plans, if applicable</li> <li>• Specifications, if applicable</li> <li>• Invitation to apply for eligibility and to bid</li> <li>• TOR</li> <li>• Addenda</li> </ul> |                     |

| GOODS, SUPPLIES, MATERIALS | CIVIL WORKS  | CONSULTING SERVICES |
|----------------------------|--|---------------------|
|                            | <ul style="list-style-type: none"> <li>• Bid form, consisting of the technical proposal form and financial proposal form</li> <li>• Eligibility requirements, documents, and statements</li> <li>• Performance security, if applicable</li> <li>• Credit line issued by bank, if applicable</li> <li>• Notice of award of contract and contractor's conforme</li> </ul> <p><i>Contract signing</i></p> <ul style="list-style-type: none"> <li>• Within 10 calendar days from receipt by the winning bidder of the notice of award</li> </ul> <p><i>Notice to proceed</i></p> <ul style="list-style-type: none"> <li>• Issued to winning bidder within seven calendar days from date of approval of the contract</li> </ul>   |                     |
|                            | <p><b>STAGE 11: PERFORMANCE SECURITY</b></p> <ul style="list-style-type: none"> <li>• Posted by winning bidder with agency upon the signing of contract</li> <li>• Minimum amount in percentage of contract price, in pesos:             <ul style="list-style-type: none"> <li>i. Cash, certified check, cashier's check, manager's check, bank draft, or irrevocable letter of credit: 5 percent</li> <li>ii. Bank guarantee: 10 percent</li> <li>iii. Surety bond: 30 percent</li> </ul> </li> <li>• Winner posts additional performance security to cover increase of more than 10 percent over original contract price. Government allows reduction in original performance security in case of a reduction of contract value by more than 10 percent.</li> </ul> |                     |

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| CONSULTING SERVICES | CIVIL WORKS  | GOODS, SUPPLIES, MATERIALS  |
|---------------------|--|---|
|                     | <ul style="list-style-type: none"> <li>• Bid security forfeited if winning bidder fails to enter into a contract with the agency or post the required performance security</li> <li>• Performance security released after certificate of completion of the contract is issued</li> </ul> | <ul style="list-style-type: none"> <li>• Performance security is released after certificate of acceptance of goods is issued</li> </ul> |

## INVESTIGATING THE COURTS

### A Guide to the Cracks in the Justice System

Cecile C.A. Balgos

Survey after survey has shown that Filipinos in general are not that sure about the impartiality of the courts. Many in fact believe that the justice system is crawling with corruption. In 1993, for instance, half of the non-lawyer/judge respondents to a survey by the Social Weather Stations (SWS) said "many, if not most," judges can be bribed. Six years later, 80 percent of the respondents to another SWS survey said there was corruption in the judiciary.

The curious thing about both surveys is that among the two sets of respondents, only a minority had actual experiences of corruption in the courts. Even the SWS noted in 1993 that the negative perception of the judiciary was coming from "other sources, including the mass media, which might not always be accurate."

Then again, court personnel, including many judges, do not deny that there are crooks in their midst. Lawyers say as much, with some also pointing out that attorneys and litigants are themselves instigators of corruption. What all of them cannot quite agree on, though, is the extent to which corruption has pervaded the system. Some people even turn somewhat schizophrenic while trying to decide just how corrupt the courts are. For instance, one judge says she has become so frustrated over so many under-the-table deals that she is

### Of salaries and scruples

now thinking of resigning. In the next breath, however, she says, "It's not really all that bad."

Since the judiciary has yet to collapse, the confused judge may be right, and the courts may not be as corrupt as many people seem to think. But because legal institutions are supposed to uphold the law in the first place, the expectation is that they would have no room for corruption. Even a hint of this happening therefore becomes a cause for major consternation and disappointment.

To be sure, for all the flak it has received, the system in general seems to be still delivering accurate interpretations of the law (which of course may not necessarily be synonymous with justice), albeit at the speed of a mammoth suffering from gout. But that does not mean corruption has not done damage to the courts. In fact, these have already shown telltale cracks in the past, and now no longer command as much respect and trust as they used to.

### Of salaries and scruples

One of the reasons cited for the occurrence of corruption in the judiciary is the low salaries of judges and justices, at least when compared to the fees raked in by some private lawyers. The chief justice's basic monthly salary, for instance, comes to about P48,000, which is less than that of an associate in a major law firm. The theory is that if salaries of members of the bench are raised to levels more appropriate to their stature, magistrates would have less reason to take bribes.

As of April 2002, a bill was pending at the Senate seeking to exempt judges and justices from the Salary Standardization Law that covers government workers. Should it pass, judges and justices may no longer have any reason to feel impoverished. Whether there would be less corruption in the bench, however, is uncertain.

What is certain is that there have been cases of corruption involving other court personnel, such as the sheriffs and the clerks of court, even if they receive salaries comparable to those of the same rank in other sectors. Corruption could then be less an indirect product of poverty or even the feeling of somehow getting the short end of the stick, and more of an individual's questionable moral values, as well as the system's inability to catch and punish those who practice it.

Some observers thus say that part of the blame for corruption in the courts should be borne by the Judicial and Bar Council (JBC), which draws up a list of at least three recommendees for each vacancy in the bench. It is the President who makes the final selection from the list submitted by the JBC, which is headed by the Supreme Court chief justice, and has as members the justice secretary, a retired Supreme Court justice, a law professor, and one representative each from the Integrated Bar, Congress and the private sector.

But lawyers and judges alike are critical of the lack of transparency in the JBC's selection process. They note that it publishes only the preliminary list of aspirants for a vacancy, and those who do make the first cut are notified only in private. They also say that the JBC's method of selecting who among the applicants are "of proven competence, integrity, probity and independence" is unsystematic, relying too much on the personal views of friends.

Yet since the JBC is a constitutional body, it would take a constitutional amendment to make changes in the way it works. Vigilance against corruption in the courts is therefore needed more than ever today—and however much judges get each payday. The good news is that the Supreme Court under Chief Justice Hilario Davide Jr. has taken an active role in cleaning up the judiciary, as well as in making the high court more transparent. The latter has made ferreting out corruption in the courts easier for nonmembers of the legal community, but the

## Of salaries and scruples

task remains daunting and can wear down even the most determined of corruption watchers.

Among the biggest obstacles for outsiders is the special language of the courts, or the legalese that is often unintelligible to the layperson. Another is the tendency of the legal community to take care of its own. Especially before Davide became chief justice, outsiders had described it as Mafia-like and strict about observing *omerta* or the code of silence. No one is supposed to tell on anyone, at least in public. The net result of just these two characteristics is a community that is quite impenetrable to legal outsiders.

Fortunately, many lawyers are loquacious by nature and can rival showbiz gossips in swapping and spreading stories about which case is being fixed and who is giving what. What they actually balk at doing is going on record regarding such tales. But provided they are never identified by name as the sources of these stories, lawyers will regale even legal outsiders with accounts of how, say, a new law firm seems to be doing great despite the lack of experience, why the court decided in favor of this party and not the other, or how they themselves have just been asked by a sheriff to fork over P5,000 just to deliver a summons across the street from the court.

The trouble is, not all of these stories are accurate or even true, especially if the lawyer or any other legal insider is merely repeating something s/he has heard from someone else. Sometimes, the storyteller himself may have an ulterior motive. A lawyer may simply be looking for someone to blame for his own inability to win a case. Or he may have an axe to grind against a judge for some reason. Thus, double-checking with other sources and coming up with some corroborating if not hard, evidence is a must. That, however, is where the real work starts.

## Starting with the basics

First things first: researchers may never have enough time and patience to learn enough legal gobbledeygook to represent themselves with confidence in court, but those who want to investigate the shenanigans happening inside the justice system should start by acquainting themselves with at least its basics. For one thing, knowing how the system is supposed to work will be helpful when trying to determine whether or not something is amiss or if something funny is really going on. For another, arming oneself with the basics may spare one from going around in circles in the search for the right office or agency to approach for that crucial piece of data.

### The institutions

For example, the justice department is not the place to head for if a researcher wants information about a judge. To begin with, it is the **Supreme Court** that has administrative supervision over all courts and court personnel, including the judges and justices. Among its offices is the Office of the Court Administrator, which has on file the biodata of all the judges and justices in the country, among other things. Queries on court matters can also be coursed through the Court's relatively new Public Information Office, which is supposed to be the repository of all the public records the Court has at hand.

The **Department of Justice (DOJ)**, though, is itself a powerful institution. It has governance over the state prosecutors, the National Bureau of Investigation (NBI), the Bureau of Immigration and Deportation (BI), the Board of Pardons and Parole (BPP), the Bureau of Corrections (BUCOR), the Land Registration Authority (LRA), and the Commission on the Settlement of Land Disputes (COSLAP).

### The courts

That's just for starters. There is also the Office of the Solicitor General (OSG) and the Office of the Government Corporate Counsel (OGCC). Partly because these two offices, both autonomous institutions, rarely stray in front of the media's crosshairs, people tend to mistake one for the other. The OSG represents the government in civil actions, as well as in criminal cases on appeal. The OGCC is the government's legal adviser for state-owned or -controlled corporations.

Then there is the Office of the Special Prosecutor, once known as the Tanodbayan. It is the Special Prosecutor that represents the People of the Philippines in criminal cases filed with the Sandiganbayan, where public officers charged with graft and corrupt practices are tried. Not to be confused with the Special Prosecutor is the Ombudsman, who investigates the graft cases filed in the same court. [See Chapter 9, "Combating Corruption: How Government Fights Malfeasance."]

### The courts

It would also be good to familiarize oneself with the courts. The Philippine judiciary is actually organized into four main levels, not quite counting the barangay justice system at the very bottom. Because Filipinos are notoriously litigious (note the almost reflex utterance of "*Idedemanda kita!*" by an offended Pinoy), even the pettiest of quarrels used to be the subject of suits. To help declog the courts, the barangay justice system was set up. It takes care of simple tiffs between neighbors or people who live in either the same barangay or in adjoining ones and the matter is usually settled after a single hearing.

**First Level Courts** For more serious misunderstandings, the formal courts take over. At the first or lowest tier are the Metropolitan Trial Courts (MeTCs), the Municipal Trial Courts (MTCs), and the Municipal Circuit Trial Courts (MCTCs). MeTCs are those located in Metro

Manila while MTCs are situated outside the country's metropolitan capital. In theory, there should be an MTC for each municipality, but there are cases where two or more municipalities are grouped into a circuit and covered by just one MCTC.

Where the crime was committed or the official address of the plaintiff, or the one filing the case, in civil suits determines the location of the court that will handle the case. The amount of money involved or the jail term are also among the deciding factors on which goes where.

Cases filed with first-level courts include those involving violations of city or municipal ordinances, as well as offenses that are punishable with imprisonment not exceeding more than six years or a fine of not more than P4,000. But a charge that carries a fine of not more than P20,000 can be tried in these courts if the case involves damage to property arising from criminal negligence. Cases involving bouncing checks are also filed before first-level courts.

Civil proceedings that involve a demand or property valued at not more than P100,000 fall within the jurisdiction of MTCs as well, while MeTCs accept those involving amounts not exceeding P200,000.

**Second Level Courts** Criminal cases that carry higher fines or longer jail terms go to the Regional Trial Courts (RTCs). So do civil proceedings where the value of the subject of litigation cannot be assessed or if the demand involved is more than the maximum accepted by the first-level courts.

RTCs also act as appellate courts, meaning they handle the appeals of litigants dissatisfied with the decisions handed down by the lower courts. In addition, they are the designated courts for actions affecting ambassadors, consuls, and other public ministers. These courts can issue the following writs or orders for cases within their territorial jurisdiction:

## The courts

*Certiorari*—corrects the grave abuse of discretion, excess, or lack of jurisdiction committed by a lower court.

*Mandamus*—commands the performance of a ministerial act by a lower court, board, or body charged with a judicial function.

*Quo warranto*—questions the right of a person to occupy a certain position.

*Habeas corpus*—literally, “produce the body,” action for the purpose of having a person who may be detained or held against his will by another person be brought, on a specified date and time, before the court issuing the order; also asks for justification why that person is held in detention or against his will.

*Temporary Restraining Order (TRO)*—a relief granted before a writ of preliminary injunction is issued. As its name implies, it prevents something from being done for a limited time. The exceptions to this rule are those issued by the Supreme Court.

*Preliminary injunction*—prevents the performance of an act temporarily or until the case is terminated. It becomes an injunction if the judge finally sustains the command or prohibition in his decision. If it is a mandatory injunction, it commands the performance of an act by the person against whom the action is brought.

Some Mindanao provinces also have Shari’a Circuit Courts (SCC) and Shari’a District Courts (SDC). The SCC is equivalent in rank to the MCTC, and the SDC to the RTC. These Shari’a courts interpret and apply the Muslim Code on Personal Laws in Muslim Mindanao.

**Court of Appeals** Litigants still dissatisfied with an RTC decision can go to the Court of Appeals (CA) for a review of their cases. The CA also handles appeals regarding decisions from quasi-judicial agencies such as the Civil Service Commission (CSC) and the Securities and

Exchange Commission (SEC), as well as decisions those handed down by the Court of Tax Appeals.

The CA has one presiding justice and 50 justices, and it has 17 divisions that have three members each.

Decisions handed down by SCCs and SDCs, meanwhile, may be elevated to the Shari'a Appellate Court for review.

**Supreme Court** There is a judicial equivalent to the end of the line: the Supreme Court (SC). Once the SC hands down its decision or resolution, it will allow only one more appeal for review of the case. An official pamphlet of the high tribunal also stresses that "no doctrine or principle of law laid down by the Supreme Court in a decision rendered en banc or in division may be modified or reversed except by the Court sitting en banc."

Cases in which the defendant receives a life term or the death penalty automatically go to the SC for appeal. Questions on the validity or constitutionality of any treaty, law, presidential decree, proclamation, order, instruction, ordinance, or regulation are also deliberated upon by the high court, as well as those on the legality of any tax, impost, assessment, or toll imposed through these measures. The SC can also order a change of venue or place of trial to avoid a miscarriage of justice.

The Supreme Court is composed of the chief justice and 14 associate justices. It may sit en banc or in divisions of three, five or, seven members. At present, the SC has three divisions, with five members each. When a case is assigned to a justice, s/he becomes the *ponente*, or the writer of the majority's decision or resolution. A justice who votes against the majority may issue his own dissenting opinion and attach it to the decision.

The high tribunal convenes en banc in cases that involve the interpretation of the Constitution or the "validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proc-

### The case paths

lamation, order, instruction, ordinance or regulation is in question," according to a 1993 court regulation. Cases heard en banc are decided with the concurrence of the majority of the justices who actually took part in the deliberations on the issues in the case and voted on it.

### The case paths

There are two types of cases: civil and criminal. Both take very convoluted paths and researchers should know that there are differences in the way each progresses; otherwise, they may end up crying wolf.

**Civil suits** These are cases aimed at recovering an indebtedness or damages arising from a misunderstanding. They cover anything from an ejectment suit filed by a landlord against an errant tenant, to a marriage annulment, to a full-blown family feud over inheritance.

Once the aggrieved party authorizes a lawyer to go to court, a complaint is filed. Filing fees are paid, depending on the amount of money or the value of the property involved. If the value cannot be determined, the court collects filing fees according to a schedule drawn by the Supreme Court. The case is not considered accepted by the court until the proper fees are paid.

The plaintiff also pays fees to the **sheriff**, who is the officer of the court authorized to serve summons upon the defendant. A **summons** is a court process that requires the defendant to answer the complaint within 15 days upon receipt of the summons itself as well as a copy of the complaint. The defendant may either move to dismiss the complaint, answer it, or ask for more time to file his or her reply. Ordinarily, courts grant a 15-day leeway.

The defendant may also ask for additional information about the case by filing a **motion for bill of particulars**. This motion seeks clarification on what the defendant

considers as vague or ambiguous allegations in the complaint. If it is granted, the 15-day period to answer is suspended until the clarifications are made.

Should the defendant fail to answer within the time limit, the plaintiff may ask the court to declare the defendant in default and obtain a judgment by default (which does not necessarily mean that the plaintiff has a case; in fact, the judge may even dismiss the case).

In many cases, the defendant's reply contains a **counterclaim**, which asks the court to find the plaintiff liable to him. The plaintiff also has 10 days to file his or her own answer to the counterclaim. Once the counterclaim is answered, the issues are said to be **joined**, and the case is now ready for pretrial.

During **pretrial**, the parties are called to a conference to agree on the facts, issues, number of witnesses to be presented, admissions to be made, and the dates for the trial itself if the court deems the case not yet ready to be decided upon or dismissed. The most important aspect of the pretrial is a possible amicable settlement of the case.

Once trial begins, the plaintiff first presents evidence, after which it is the defendant's turn. The court can render judgment after the defendant has finished presenting his or her evidence. In most cases, however, the plaintiff submits what is called rebuttal evidence, and only after does the court issue a decision.

The lower courts have 90 days to decide cases, and the clock starts to tick on the day a case is submitted. The Court of Appeals and the Sandiganbayan are allowed a maximum of one year to release a ruling on a case. The Supreme Court can take as long as two years before it hands down a decision. Either party has 15 days from receipt of a copy of the decision to appeal. All these timetables, of course, are the ideal. In reality, court cases can drag on for years and years because of lengthy trials and postponements.

## The case paths

**Criminal cases** When a case involves a violation of a law, for which a penalty is imposed, it is classified as criminal. If found guilty, a defendant may be fined and sent to jail. For heinous crimes, the penalty is death.

Keep in mind that criminal cases spawn civil suits in which the victim asks for damages. Thus, there can be two suits filed in the same court on the same matter and tried by the same judge. In some cases, the complainant opts to file a civil complaint even if the civil aspect is already included in the criminal complaint. The decision in one suit may differ from that in the other.

Charges against a suspect in a crime must be made within nine, 18, or 36 hours, depending on the gravity of the offense. It is the police that files the complaint—the first of two charge documents—on behalf of the victim. Within Metro Manila, the prosecutor receives the complaint. Outside the capital, the document is filed in court.

The prosecutor conducts an investigation once s/he gets the complaint. S/he then files the **information**, the second charge document, within 60 days upon finding probable cause to pursue the case. The prosecutor is also supposed to conduct an **inquest** to determine whether or not the accused was arrested legally. If the arrest was illegal, the prosecutor makes a recommendation to discharge.

Heinous crimes are nonbailable offenses, which means the accused in such cases must remain in detention for the duration of the trial. Others arrested legally, however, can post bail and enjoy temporary freedom.

That detainees live the life of sardines in city jails across the country is an indication that money is often a problem for those charged with criminal offenses. People unable to post bail languish in prison while their cases are being heard. This is largely the reason criminal cases

get priority in the setting of trial schedules. Despite this and a law that says the maximum detention time spent in a city jail is six months, years may pass before an accused regains his freedom.

The lawyer of an accused can move to **quash** the charges. If the motion to quash fails, the case goes to **arraignment**, during which the defendant enters his or her plea. The accused is required to be present in court but can refuse to enter a plea, citing reasons like non-recognition of the court's jurisdiction. When that happens, the court enters a plea of not guilty for the accused.

Sometimes, a criminal case also has a pretrial, or what is called "plea bargaining" in the United States. Either party can request this, and the case may not even go to trial. No trial occurs as well if the accused pleads guilty during the arraignment. The court can then already hand down a sentence.

But should the accused plead not guilty, the case goes to trial. The order of presenting evidence follows that in civil cases. The prosecutor's goal is to prove the guilt of the accused beyond reasonable doubt.

Unless the case is quashed, the court finds the accused either not guilty, thereby acquitting him of the charges, or guilty, thus convicting him. The time spent in detention is subtracted from the sentences of those found guilty. But those who are acquitted do not get any compensation for the time they had to be a Batang City Jail. They are, however, protected against double jeopardy, or being tried twice for the same crime.

The cases of those who are meted out the maximum penalty automatically go to the Supreme Court for appeal. Those who have lesser sentences can file an appeal with the CA. If denied there, they can take the last option—bring the case to the SC.

**A few more basics**

If his jail term does not exceed six years, a convict can file for probation or supervised liberty. A convict out on bail can also file for an extension of bail. The prosecutor, for his part, can petition the CA to cancel bail while the case is on appeal.

The convict can appeal as high as the Supreme Court, but has to start serving his sentence if the court of last resort denies his petition.

Someone freshly convicted by a lower court can also take advantage of the Probation Law by applying to have his sentence suspended and have himself put on probation. But not every convict can avail himself or herself of this option, and filing for probation means waiving the right to appeal.

Disqualified from applying are convicts sentenced to serve a maximum imprisonment of more than six years, found guilty of subversion or any crime against national security or public order, previously convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than P200, and who have been on probation once.

A convicted felon can also gain freedom early by applying for parole or pardon after s/he has served the minimum term. The Board of Pardons and Parole recommends to the President which application has merit. While a pardon sets the convict free for good, a parole can be revoked if the convict violates the conditions attached to the granting of his or her freedom.

**A few more basics**

One can more easily follow what is going on in the courts with the help of the Rules of Court, a valuable road map of the maze that is the Philippine justice system. Copies of the Rules are available at major bookstores or it can be downloaded from the Supreme Court Website

([www.supremecourt.gov.ph](http://www.supremecourt.gov.ph)), which also has the Revised Rules on Criminal Procedure.

The following are some more terms that could help researchers figure out what lawyers and judges are up to, at least in open court:

**Pleadings** are written allegations of the parties in the case informing the court what their positions are, defining the issues and asking the court to grant them what they want. In short, they are the statements that the parties intend to prove.

The **complaint** tells the story from the point of view of the plaintiff. The **answer** tells the story from the point of view of the defendant. The **evidence** consisting of the exhibits will support the stories presented by the parties. The judge will have to evaluate whether or not the evidence is believable. Its purpose is to provide basis for the allegations in the complaint.

**Exhibits** are pieces of evidence submitted during the trial and identified by the witnesses for the purpose of proving allegations of the complaint, whether the complaint is civil or criminal. Without the exhibits, the complaint is not considered proved. The court has to admit the exhibits offered.

**Arguments** are not evidence but only the conclusion drawn by lawyers based on what they assume their exhibits or evidence prove. In civil cases, believability is based on the preponderance of evidence. In criminal cases, it is based on reasonable doubt.

**Decisions** are adjudications on the merits of the case. **Resolutions** are what the appellate courts issue on motions for reconsideration and are therefore rulings only on incidental matters. In the lower courts, such are called orders.

Court documents are public records, which means anyone has the right to see them even if they have no tan-

### The dark side of the courts

gible personal relevance to the researcher. Case documents are kept by the court docket clerks. Decisions are released by the clerk of court, who also keeps a record book of all the cases filed.

### The dark side of the courts

Corruption can rear its head anytime and anywhere in the whole judicial process, sometimes even before a complaint is filed at an MTC and up to the time the case reaches the Supreme Court. This of course is not a blanket condemnation of the system, but an acknowledgment of the high probability that corruption can happen in it.

Within the courts, the speed of a stenographer in producing the official transcript may be determined by the amount given by the lawyer desperate to have a copy. A judge may see the pleadings filed by a law firm only after the latter greases the palm of the clerk of court. A state prosecutor may suddenly forget what an information should contain after a talk with the accused, ensuring that the hearing of the case would be delayed at the very least, thereby giving the accused a chance to hide or to harass witnesses.

But legal insiders say that these days giving a bribe no longer guarantees that the litigant will get what s/he wants from the court. In many instances, those to whom they give the bribe may not have real access to the judge, who could well be clueless about the illegal act that s/he is supposed to be part of. Insiders say that when the decision ends up favoring the other side, the corrupt court personnel would try to wriggle out of the situation by saying the other party gave a bigger amount to the judge or was able to find a *padrino* whom the magistrate could not refuse.

Some crooked judges, many lawyers say, also accept "offerings" from both parties in a case. This way, they

can even give themselves the disingenuous excuse that they were impartial when preparing the decision.

### Corruption's many mutations

One SC official also says that corruption is present whenever a decision is based not on the merits of the case but on other considerations. Indeed, corruption in the courts is not limited to bribery, or the outright exchange of a favorable decision for money, material goods, or even some form of aid for a judge's relative.

Corruption comes in many forms, among the most insidious of which are those stemming, ironically enough, from the supposedly positive Filipino traditions of *pakikisama* and *utang na loob*. These are also among those hardest to prove, since, unlike in bribery, there is no material trail. But they happen often enough, and it is not uncommon to have judges and justices complain that long-lost friends suddenly began calling them up after they gained seats on the bench, or that their relatives seem to be multiplying every day.

Judges may also find themselves under pressure to accede to requests from their former employers (whether in the public or private sector) to give the latter's cases more than a bit of special attention. To avoid any controversy or questions later, some judges inhibit themselves from handling cases that have some connection with their pre-bench days.

That, however, is no guarantee that judges would not ask their fellow magistrates to handle a case of a former colleague or classmate "with extra care." One MeTC judge confesses that while she would not find it hard to make excuses to an ex-office mate or even a longtime friend who has a pending case in her court, she may wind up as twisted as pretzel trying not to offend a fellow judge, especially one whom she would have to deal with each working day.

## Corruption's many mutations

Think then of how State Prosecutor Pablo Formaran III must have felt when on July 18, 2000 he was visited at his office by Court of Appeals justice Demetrio Demetria. Accompanying Demetria was the justice's close friend, lawyer Reinerio Paas, and the latter's client, Go Teng Kok. According to Formaran, Demetria asked him to drop his motion asking Judge Manuel Muro to inhibit himself from handling the drug-trafficking case of Go's alleged girlfriend, Yu Yuk Lai. Demetria was said to have followed up his "request" by later calling up Formaran's boss, Chief Prosecutor Jovencito Zuño.

Demetria would later say that his actions had "no immorality involved. There was no money involved." But the Supreme Court still thought that what he, an appellate justice, did was not only "indiscreet" but also "improper." In March 2001, it fired Demetria from the bench after finding him guilty of violating the Code of Judicial Conduct. Demetria thus became the highest-ranking magistrate to be dismissed so far. The high court noted in its en banc ruling, "The mere mention of his name in the newspapers, allegedly lawyering for a suspected drug queen, seriously undermined the integrity of the judiciary."

Yet Demetria's case is illustrative of the *pakikisama* syndrome that pervades much of Philippine society. This syndrome has given rise to the perception that having an inside track in the court system cuts short the path to a favorable decision. But perhaps it may be more precise to blame this perception on *pakikisama's* more malevolent sibling: *palakasan*. Many say this is why law firms usually give priority to applicants who happen to be the scions of judges and justices. This is also why some litigants choose firms not because of the latter's proven legal expertise and abilities but because of its perceived court connections or clout.

When Calauan, Laguna town mayor Antonio Sanchez was accused in 1993 of the rape and murder of University of the Philippines student Eileen Sarmenta, as well

as the killing of her friend Alan Gomez, he chose a son of the then Supreme Court chief justice to be the second chair in his defense team. Eyebrows immediately shot up because at the time, the magistrate's son was still in his thirties and lacked experience to handle such a big case. The suspicion was that he had been hired largely because of his father's position. Faced with growing adverse public opinion, the young lawyer later decided to withdraw from the case.

The tandem of *pakikisama* and *palakasan*, however, persists to this day. It encourages influence peddlers, who may or may not have access to the court but who somehow manage to make litigants believe that they do. These influence peddlers can be anyone from a private attorney to a lowly court personnel, even to a mere court *istambay* who inflates his everyday presence in the courthouse as proof of his access to the judges there.

Complicating matters is the very real political pressure that members of the bench sometimes have to endure. Judges, for instance, may want to be on constantly good terms with the officials of the local government that gives them a monthly allowance on top of what they get from the national government and the Supreme Court. The local government is also responsible for the general physical upkeep of the courts in its territory. Some judges may thus see it as practical to make allowances for a case involving the local government or one of its officials.

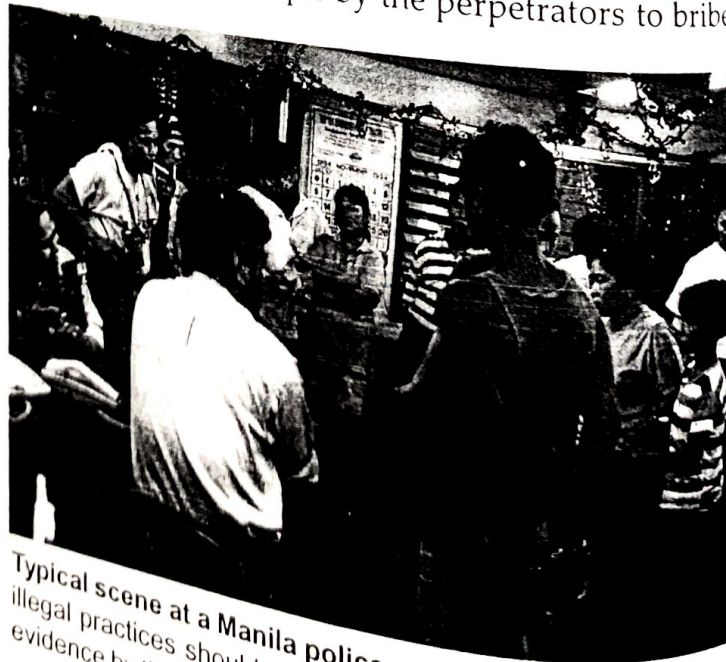
In a small town, a judge who fails to do this may also find himself up against not only the politicians themselves but also the police. Moreover, the nature of Philippine small town living makes it quite difficult for a judge not to befriend local authorities, particularly if his court is the only one in the area. Concern for his safety and *pakikisama* could then come into play in cases where the judge has to make a ruling on matters that involve local authorities, as well as the local government.

## Policing the police

But there are times when a judge may act seemingly to protect local officials involved in a case even before charges are filed. In the Calauan case, the local judge apparently ordered a clean-up of the van that had been used to transport the bodies of Sarmenta and Gomez, before police investigators had a chance to have a look at the vehicle. As a result, the police lost the chance to gather potential evidence from the van. Unfortunately for Mayor Sanchez, other pieces of evidence, as well as the testimonies, were presented by the prosecution. It was also the Pasig RTC that heard the case against Sanchez and found him guilty in 1994. The former mayor is now serving several life terms in the national penitentiary.

## Policing the police

As the Calauan case shows, the lookout for illegal practices should start as early as the gathering of evidence by the police. Carina Agarao, head of the anti-crime citizens group Crusade Against Violence (CAV), says, "While you're crying at the wake, the perpetrators are out there negotiating with the police." Indeed, the police are vulnerable to attempts by the perpetrators to bribe



Typical scene at a Manila police station. The lookout for illegal practices should start as early as the gathering of evidence by the police. (RICK ROCAMORA)

or coerce them into submitting faulty reports, if not tampering with or destroying evidence altogether. After all, as Agarao points out, "The police have the capacity to redirect the investigation away from the real culprits."

Agarao is speaking from experience. In April 1996, her husband Clarence, a lawyer, was shot dead while attending to official business in a town in Laguna. He was with two companions at the time. Agarao says both men saw who killed her husband, and one of them even knew the killer's name.

But when the two witnesses were taken to the police station to give their statements, they went only as far as supplying a description of the assassin. According to Agarao, the witness who knew the assailant's name hesitated to identify him because he feared for his own safety; the police officer interrogating them was said to be close to the adversary of Agarao's husband. The officer supposedly told the two witnesses that the killer had to have a name so that the case could be solved. Since they were not giving him any, he supplied it: Berto Toque.

The police would later say that they thought of Toque because his features matched those given by the witnesses. But while the police in general have gained notoriety for conducting shoddy investigations, Agarao is adamant in her belief that the name of Toque came up as part of an attempt to protect the mastermind behind her husband's murder. She reports, however, that in January 2001, one of the witnesses finally had the courage to point out the real gunman and identify him by name: Luisito San Juan. Then again, that was only because he spied San Juan lurking near the other witness, and he was afraid another murder would occur.

### **D.I.Y. investigations**

Hooking up with organizations like CAV is one way to ease a researcher's investigative burden. Because these

**D.I.Y. investigations**

groups know their way around the system, they can tell researchers exactly what to look for and where to find it. Having a group backing one up may also be helpful in opening doors—not to mention files and record books—that otherwise may be declared off-limits to outsiders by officious bureaucrats. This may not be as much of a problem for members of the media, although journalists could also use some help in identifying the right bureaucrat who will be able to answer specific questions.

The following are some tips that will help investigators who want to probe wrongdoing in the courts:

**Check out the reputation of the investigation's target.**

Members of the legal community tend to know one another, at least by reputation. Often, too, a lawyer who has had a brush with an unscrupulous colleague or a crooked judge or court clerk would be only too willing to let off steam by telling his story to someone—even if it is years after the incident, and even if he has already recounted his experience many times before.

As mentioned earlier, researchers should check and double-check the stories they hear; otherwise, they may become an unwitting part of a lawyer's attempt to discredit an opponent or a judge. Investigators should also widen their pool of "interviewees" to include not only lawyers and judges, but also other court personnel.

Incidentally, this is also how lawyers themselves find out if the judge trying their case is on the straight and narrow—they ask around. A MeTC judge says that lawyers are "very careful. They don't approach all the judges." But once they find out that a judge is "approachable," some lawyers then start determining how to strike a deal. Others content themselves with warning their clients about the judge's reputation. (The better perhaps to lessen their responsibility should they lose the case. Or, they could be leaving it up to the client to decide

whether or not to give something to the judge.)

Researchers may also want to find out if their target has ever been disciplined administratively. There could well be a pending administrative case against him or her, but such information is confidential and not available to the public. In due course, the investigators' inquisitiveness will lead them to the very person who filed the case, which may mean they get to hear the story firsthand.

One way to check on administrative cases is to go through the Supreme Court Reports Annotated (SCRA). The SCRA, which can be found in the libraries of many law firms and law schools, comes in hundreds of hefty volumes, but a researcher does not have to go blind trying to read every single one of them.

At the back of each volume is an index; one should look for headings like "Attorneys," "Judges," "Disbarment," "Discipline," and "Judicial Conduct," and see if the name one is after pops up in the cases listed under these. If it does, the researcher should take time to read the decision. For one, the ruling could be in favor of the target. For another, decisions detail the circumstances from which the charges arose. Even if the target escaped being disciplined, the information contained in the decision may still be useful since some of it could later turn out to be part of the target's modus operandi.

The SC has also begun posting its decisions and resolutions on its Website, but as of this writing, its listing goes only as far back as January 2000. The latest were those handed down in January 2002. One could try perusing the site anyway, and looking for those whose docket numbers are preceded by A.M., which stands for "administrative matter." The SC's Public Information Office is also a good place to obtain information about the newest decisions and resolutions.

If there is reason to believe that the target of an investi-

## D.I.Y. investigations

gation is indeed corrupt, the next step would be to find some evidence to prove it. As noted before, it is best not to expect any of one's sources to come forward and put on record what s/he knows or even witnessed. This is even if there have been very rare occasions when legal insiders, braving the probable ire of their colleagues, speak up in public about alleged court anomalies.

In late 2001, for example, lawyer Ernesto Francisco went as far as to file an impeachment case in Congress against Ombudsman Aniano Desierto. According to Francisco, one of his clients, real estate developer/banker Luke Roxas, had given the Ombudsman a bribe, and he was witness to the act. Francisco said the bribe was in exchange for Desierto's sitting on a case that would have necessitated an investigation of Roxas's bank. Francisco said Roxas was worried about a possible bank run.

Desierto, who had faced an impeachment complaint involving bribery once before, denied the allegations. Roxas also denied bribing the Ombudsman. Even if Francisco happened to be telling the truth, these twin denials would not have been surprising since the law on bribery punishes both the giver and the taker. Also not surprising is the failure of the impeachment complaint against Desierto to prosper.

**See if the person is living within his or her means.**

A lawyer recalls a case where a judge accepted a few kilos of meat in exchange for a decision in favor of the gift-giver, but bribe-takers in the court system usually go for far more than that. Given all the grumblings about the low salaries in the courts, lavish living should be limited to those who came to their posts already moneyed. Just to find out whether or not the investigation's target is one of these, one should obtain a copy of the person's statement of assets and liabilities. [See Chapter 4, "The People and Paper Trail."]

These statements will indicate whether the target's as-

sets have increased significantly through the years. Civil servants, however, tend to be shy about listing all their assets, so another round of pestering people on what the target's latest acquisitions are would not hurt. One may also want to check land records for real estate holdings and the data bank of the Securities and Exchange Commission (SEC) for companies in which the person owns shares.

In the first impeachment complaint ever filed against Desierto, then Parañaque Rep. Roilo Golez took note of the Ombudsman's purchase of a house in upscale Tierra Pura subdivision in Quezon City for P10 million in 1996. Desierto's 1995 statement of assets, however, listed his net worth as only P6 million. (Soon after that report came out in the newspapers, the Ombudsman said he had paid for the Tierra Pura property with the proceeds of the sale of his house and lot in Marikina. A few years later, however, media reports would quote him as saying that the money had come from the sale of inherited property in Cebu.)

**Keep an eye out as well for any signs of sudden prosperity among the target's known close associates and family members.**

A legal insider says corrupt courts have a pervading sense of "everybody happy," meaning everyone gets a cut from earnings from an illegal "sideline." This arrangement helps ensure that no one squeals, except perhaps in sheer glee.

The target may also be the generous sort. But it is possible as well that trusted people are being used as fronts and attaching their names to some of the target's new assets. Another possibility is that an associate or relative who seems to be moving up in the world despite the lack of visible means to do so may be acting as an intermediary for the shady deals of the subject of the investigation. According to one former prosecutor, this is often the case with corrupt judges — "*parating may* Batman."

During the tenure of Andres Narvasa as chief justice, his brother-in-law, lawyer Joaquin 'Bobby' Yuseco, was accused in a formal complaint of approaching justices on behalf of litigants. Another lawyer, who happened to be a close friend of Narvasa, was also rumored to be one of the "keys" to getting to the chief justice. So too was a Narvasa son, yet another attorney.

The overworked gossip mills failed to spew out any story on any gains made by Yuseco and Narvasa's close friend. But they did come up with a tale of a "Supreme Court village"—so labeled because of the allegedly high concentration of scions of justices living there—that had sprung up inside a posh Quezon City subdivision.

#### **Monitor the target's social behavior.**

Court watchers at the time said that the persistent perception that the Narvasa Court could be bought could be traced partly to its chief's insistence on having a busy social calendar, even if doing so probably made it hard for him to "avoid impropriety and the appearance of impropriety in all activities" as stipulated in the Code of Judicial Conduct. The 1989 Code also says that magistrates should regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties. In simpler terms, judges and justices should best keep away from public gatherings where they are bound to meet people, lawyers and litigants alike, who have pending cases in their courts.

But Narvasa continued to play golf and tennis with lawyers and high-powered individuals, and to grace major social events with his presence. At one dinner party, he even wound up sharing a table with businessman and jai alai franchise holder Sy Pio Lato at a time when the high court was still deliberating on the issue of whether or not jai alai should be allowed to resume. This incident only bolstered suspicions that the decision was being railroaded, even if Narvasa had inhibited himself



**Andres Narvasa (extreme right) with his golf cronies.** The Chief Justice's busy social calendar raised eyebrows in legal circles. (OLIVER GARCIA)

from the case.

One MeTC judge told the PCIJ in 1997 that her lawyer-father had always said women judges are less prone to corruption because "they seldom go out on drinking bouts with lawyers or litigants. The problem with male judges is they're buddy-buddy with their prosecutors. After work, they drink together or go ballroom dancing. To me this is not good because the prosecutor represents one side of a case, and you're the judge, you're supposed to be in the middle. This is improper, as improper as being seen with defense lawyers or litigants."

#### **Watch out for conflicts of interest.**

Narvasa of course volunteered to sit out the deliberations and the vote on the jai alai case not because he had sat beside Sy Pio Lato at a party, but because his eldest son ran the restaurant at the fronton. Lawyers would later say his fatherly concern was the real reason why the then chief justice did not immediately release the decision on the case. It turned out that the en banc decision banned the resumption of jai alai, in effect leaving Narvasa's son less one restaurant.

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According to Narvasa, though, he put off the release of the decision because of a constitutional provision that said en banc rulings should be signed by each member who participated in the deliberations. One of the justices could not sign right away because he had fallen sick. In an impeachment complaint filed against Narvasa sometime later, however, piqued lawyers cited 72 en banc decisions that did not bear the signatures of all the participating justices.

In 1994, journalist Howie Severino, working on a story on the efforts of the German multinational Hoechst AG to evade a government ban on a particular pesticide, was tipped off that the lower court judge trying cases involving the chemical giant had once worked with the Hoechst lawyer in the same company. Both the judge and the lawyer confirmed this information later in separate interviews. But Severino decided to check out their former employer by looking up the firm's corporate papers at the SEC. The company turned out to be a Hoechst subsidiary. The judge's wife also owned substantial shares in another Hoechst affiliate.

The Code of Judicial Conduct is explicit about which proceedings judges should not take part in to avoid questions regarding their impartiality. These include cases where:

- they have personal knowledge of disputed evidentiary facts;
- they had served as executor, administrator, guardian, trustee, or lawyer or a former associate had served as counsel during their association, or they were a material witness;
- their ruling in the lower court is the subject of review;
- they are related by blood or marriage to a litigant within the sixth degree, or to counsel within the fourth degree;
- they know that their spouses or children have a financial interest, as heir, legatee, creditor, fiduciary, or any other interest that could be substan-

tially affected by the outcome of the proceeding.

**Take note of any deviation from proper procedures.**

Actually, Severino began getting suspicious after he noticed that the judge seemed to be hoarding the Hoechst cases, despite the raffle system in the assignment of cases. It could only be inferred that either Hoechst was extremely lucky or the system was being rigged.

Researchers can take a cue from the Hoechst case and test to see if the cases handled by a particular lawyer or law firm keeps landing in the same judge's sala. One way to do this is by checking the case documents submitted to that court. These would contain the names of the law firms and the lawyers handling the cases pending there.

In 1992, a raffle-rigging scandal also rocked the Supreme Court. According to a letter-complaint filed by lawyers Eduardo de los Angeles and Ricardo Romulo, then SC Justice Rodolfo Nocon, while he was still presiding justice of the Court of Appeals, had violated the internal rules of court by assigning a case to a specific justice instead of letting it go through the raffle system. The complaint said Nocon did so upon the request of lawyer Bobby Yuseco and former SC justice Antonio Barredo, both of whom were counsel to one of the parties in the case. Romulo and de los Angeles were the lawyers of the other. Yet, while the assignation of a case to a particular justice was already highly irregular, the Narvasa Court chose to sit on the complaint and nothing was heard about it again. Interestingly enough, the company represented by Yuseco and Barredo won in the CA, and again in the Supreme Court.

But the raffle system is only one of the many court procedures that can be tampered with, manipulated, or ignored altogether. Among the most favorite playthings of corrupt magistrates are procedures regarding the issuance of TROs. In 2001, for example, the Supreme Court slapped Lanao del Norte RTC Judge Oscar E. Zerna on

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the wrist and fined him P5,000 for apparently rushing the issuance of a TRO and in the process skipping the summary hearing required by Administrative Circular No. 20-95 before such an order could be granted.

The judge had tried to reason that he was in a hurry because of the "extreme urgency" of the matter then at bar. The high tribunal noted, however, that instead of making the TRO effective for just 72 hours as prescribed by law in cases of extreme urgency, Zerna granted it a maximum of 20 days.

TROs are probably the writs most frequently produced by the courts; they have also acquired a reputation for dripping with grease money. Because the applicant for a TRO needs it to prevent something he does not want to happen, he may be more than willing to part with substantial amounts just so it can be issued, and as quickly as possible to boot.

A veteran lawyer also explains why the Court of Appeals in particular seems to have become a quasi-factory of TROs: "The losing party more often than not would say that the issuance of the TRO or injunction was tainted with grave abuse of discretion or in excess or lack of jurisdiction. This is where the appellate court will come in." (TROs issued by the Court of Appeals also enjoy a longer effectivity period of 60 days.)

Yet another set of court procedures that becomes silly putty in the hands of some judges is the one for the issuance of bail bonds. Then Navotas MeTC Judge Reynold Q. Yaneza was so taken with playing around with bail bond rules that even when he knew he was already under investigation, he continued with his little "game." In 1999, the Supreme Court finally found him guilty of having "grossly abused his authority in irregularly approving bail bonds and issuing release orders." Yaneza was consequently dismissed from the bench.

Among the Court's findings was that almost all of the

cases in which the judge had approved bail bonds and issued release orders were not pending before his sala. The accused were also neither arrested nor detained within the territorial jurisdiction of Yaneza's court. In one instance, the judge had even approved and ordered the release of an accused "charged with an explicitly non-bailable offense pending in another court far away from his station...."

Said the Supreme Court: "While the practice of granting bail (initial) not strictly in conformity with Rule 114 has been tolerated to a certain extent for the sake of securing the prompt release of the detained accused charged with bailable offenses, the regularity with which Judge Yaneza has resorted to this modus operandi and the zeal with which he has applied himself to the task is nothing short of remarkable."

"There is that serious concern that in all these, respondent Judge has acted—not out of feigned ignorance or a heightened sense of compassion for the hapless accused—but out of a desire to materially benefit from his endeavors," said the Court. "In other words, with respondent Judge we are no longer speaking of ignorance of the law—for that would be too simplistic—but of corruption which if left unchecked will further erode public confidence in the judiciary."

**Scrutinize unusual patterns in decision making, and rulings that go against precedents, if not the law.**

Another way of putting the Court's comments in the Yaneza case is that seeming serial stupidity is in fact a reflection not of a weak intellect but of a scheming and corrupt mind. In other words, the rules or laws are being ignored or misinterpreted deliberately, and in all probability in exchange for something.

Sometimes a judge does not have to disregard the law as often as Yaneza did. In 2001, Dagupan City RTC Judge Deodoro Sison was dismissed from service after he was

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found guilty of deliberately applying "patently inapplicable" and even repealed laws to favor San Jacinto mayoral candidate Rolando Costumbres. According to the SC's findings, Sison used Batas Pambansa 222 and an ancient resolution of the Commission on Elections to nullify votes cast for Costumbres's political rival, Hilario de Guzman Jr.

In any case, Ismael Kahn, who spent decades in private practice before becoming head of the SC's Public Information Office, says that a judge who has a high reversal record (i.e. higher courts keep on reversing his decisions) deserves closer scrutiny. A similar check could be done on state prosecutors who keep on filing defective informations or have their cases dismissed on technicalities a bit too frequently. For years now, many lawyers have noticed that the Office of the Ombudsman has these very same bad habits, and some have implied that money may be among the reasons behind them. Attempts to test this theory, however, have yet to be made.

When Narvasa still headed the Supreme Court, lawyers also thought it curious that the high tribunal suddenly acquired a penchant for setting aside precedents, especially in decisions that favored "well-connected litigants." Sequestration cases were among the several examples usually cited by the lawyers. In January 1995, Narvasa himself had written an omnibus decision covering several sequestered firms, saying that the government's failure to file cases against each of these companies within the deadline set by the Constitution did not nullify their sequestration.

Less than a year later, the third division headed by the then chief justice lifted the sequestration on two companies owned by tycoon Lucio Tan because, it said, the government had failed to file charges against the firms within the constitutionally prescribed timetable. The ruling also said there was a "hairline, but critical distinction" in the case that essentially freed it from the precedent set by the January 1995 decision.

In trying to explain why the Supreme Court was flip-flopping with what many described as alarming frequency, legal expert Fr. Joaquin Bernas, S.J. speculated that the divisions were perhaps simply not talking to each other. But then that would not have explained the sequestration decisions. Some lawyers, meanwhile, thought they heard not the sound of silence but of money changing hands.

They were probably not reassured at all by the dissenting opinion of Justice Teodoro Padilla Jr. in a 1996 SC ruling concerning the investigation into the P25.6 billion worth of taxes that cigarette companies owned by Tan had allegedly failed to pay.

The tycoon's lawyers had managed to persuade an RTC to restrain the Department of Justice and the Bureau of Internal Revenue from continuing the probe. The CA had upheld the lower court's decision. The government then went up to the Supreme Court, accusing the RTC and the CA of "grave abuse of discretion amounting to lack or excess of jurisdiction" in stopping it from conducting a preliminary criminal investigation against the Tan companies.

The first division dismissed the government's petition. But Padilla's take on the case should convince any researcher not to ignore the dissents in SC cases. Among other things, the justice, who headed the division, argued in his dissent that the decision had changed the existing notion of preliminary investigation. He also said that it contradicted a previous high court ruling that the filing of a criminal complaint for tax evasion, even without a previous assessment of the correct tax, is proper.

### **Some legal look outs**

At this point, it is probably prudent to issue a fair warning. Many lawyers, and especially judges, have thin skins, and they are obviously most sensitive when they

## Some legal look outs

think they are being accused of corruption. Some researchers may be satisfied with just submitting their findings straight to the Supreme Court in the form of a complaint, in which case the most an ill-tempered judge or attorney would probably do would be to harass or malign them. But those who may want to go public about the anomalies they have dug up are hereby forewarned that they may be stepping on a legal land mine.

Among the more benign reactions they may encounter is a grilling by the irate judge or justices. In 1993, for instance, journalist Stella Tirol Cadiz endured two hours of interrogation by SC justices shortly after she wrote a story on how a high court decision was written not by the justice assigned to be the *ponente*, but by the defendant's lawyer.

A few years earlier, columnist Ramon Tulfo had fared worse following the publication of a couple of items he had written about some members of the bench. In a March 2002 column, Tulfo recalled how in 1988 two judges had sent him to prison one after the other "for my alleged contemptuous behavior toward them." He recounted that then Olongapo City RTC Judge Esther Bans had thought she was the judge being referred to in his expose regarding an unnamed corrupt Olongapo judge. Bans sentenced Tulfo to 10 days in an Olongapo City jail, but changed her mind and ordered him released after only three hours.

Tarlac magistrate Jose Bartolome also slapped Tulfo with a 10-day term at the Bataan Provincial Jail. The journalist had hit Bartolome in his column "for allowing three accused in a robbery-with-homicide case to roam free when they should (have been) in jail," and the judge was apparently not amused. Tulfo got away with serving only half the jail term imposed by Bartolome after the CA ordered his release on the fifth day.

Non-journalists who would dare test the patience of judges can expect less tolerance, and perhaps heavier

sanctions. Members of the media tend to be let off relatively easy even by the most irritable of justices, largely because journalists can place the issue before the public and gain its sympathy. At the same time, they are able to count on the support of their colleagues elsewhere in the country and even abroad.

### **Sub judice and contempt**

Researchers would be wise to consult a lawyer before they do start talking in public about their findings. Legal insiders themselves would probably warn researchers about the possible consequences of bringing the results of their investigation into the public arena. If one's research involves cases that are still in the courts, one may be told of the principle of *sub judice*. This means that one cannot comment publicly on a case in such a way that would influence the decision of the court. Any person found to be in violation of this can be held in contempt of court.

The penalty for contempt may be either a fine or imprisonment. The amount of the fine or the length of imprisonment is at the discretion of the judge, who may also issue a mere admonition, reprimand, or chastisement. A lawyer found in contempt of court could be suspended from practice. But there should be no problem so long as researchers refrain from speculation and opinion and keep to the facts and evidence already presented during the trial.

Journalist Severino says several lawyers who saw his draft story on Hoechst warned him that he could be violating the *sub judice* principle if it was published while the Supreme Court was not yet finished deliberating on one of the cases the company had filed contesting the pesticide ban. But Severino felt strongly about the need to warn farmers of the dangers of the banned pesticide, which was still on the market because of Hoechst's court actions. He would argue later, "While there was a legal angle, it was still primarily a public

## Some legal look outs

interest issue about environmental policy and about agricultural policy."

Severino pushed through with the story, which eventually won the 1994 Jaime V. Ongpin Award for Investigative Reporting. No contempt charge ever came.

Four Cebu-based journalists were not as fortunate. In 2002, Cebu City RTC Judge Fortunato de Gracia found *Cebu Daily News* publisher Eileen Mangubat, editor in chief Thea Riñen, news editor Piedad Gonzalez, and reporter Suzzane Salva guilty of indirect contempt after the newspaper published an article that linked him to an alleged bribe attempt. The four were then ordered to pay a fine of P5,000 each.

The story had been based on the testimony of assistant prosecutor Mary Ann Castro during an inquiry of the Office of the Ombudsman-Visayas on an alleged bribe attempt at the City Prosecutor's Office. Castro testified that lawyer Gines Abellana had given her P10,000 in exchange for not opposing a motion for bail filed by the accused in an illegal drugs case that was in de Gracia's sala. Abellana had also claimed to have approached the judge about the matter, the paper quoted Castro as saying.

De Gracia, however, took particular offense at the article's headline, 'Judge Bribed?,' as well as the newspaper's cartoon mascot wondering, "Disgrasya?," on the ear of the front page. As the judge saw it, the cartoon was an "unmistakable and dismaying comic parody" of his surname.

In his ruling against the journalists, de Gracia said that even though they knew Castro's statements were "double hearsay," they went ahead with the headline that he felt maligned him. He added that the four knew as well that his court had already denied the motion in question. (The case is set to be elevated to the Court of Appeals.)

When newspapers in 1993 published the dismal findings of the Social Weather Stations (SWS) on the judiciary, however, it was the chief of the social survey institute who found himself facing contempt charges from Quezon City RTC Judge Maximiano Asuncion, who was acting in his capacity as an officer of a judges' organization. Asuncion wanted SWS head Mahar Mangahas to "explain why you should not be held in contempt for distributing to the general public without prior permission from any court your findings that the people have more confidence with the police than with judges, thereby tending directly or indirectly to degrade the administration of justice."

The charges were dropped after Mangahas explained that the survey had not been meant for public consumption and was supposed to be for the President. He also said he had not acted out of malice. Despite the dropping of the charges, the SWS went ahead with the filing of a suit against Asuncion in the Supreme Court. The SWS accused Asuncion of grave abuse of authority and ignorance of the law, arguing that contempt can exist only in relation to a pending case. It said that since there was no pending case against the SWS, Asuncion should not have issued a contempt order.

But the SC found Asuncion in the right, pointing out that contempt may concern any issue in which the court's integrity seemed to be undermined. It also said, "In light of the fact, of which judicial notice is taken, that said report came out at a time when there was already widespread publicity adverse to the judiciary, there can be no doubt of its clear tendency to degrade the administration of justice."

The 1995 en banc resolution by the Supreme Court on a complaint filed by a Palawan RTC judge against a columnist and his publisher is a good guide for those trying to make sense of contempt charges in the Philippines. This is even if the judge took the unusual tack of seeking relief from another court, instead of merely requiring the

## Some legal look outs

parties to show cause why he should not cite them for contempt. A magistrate, after all, has the inherent power to maintain decorum and respect in his own court without seeking the assistance of another court.

It is best that researchers take time to read the resolution in full (get a hold of a copy of SCRA vol. 243, *People vs. Godoy*), but in the meantime here is a summary:

In his column in the locally circulated *Palawan Times*, journalist Mauricio Reynoso Jr. had twitted Judge Eustaquio Gacott Jr. for, among other things, creating his own ghosts. In a radio interview, the judge had apparently said he had received death threats from the family of Danny Godoy, whom he had sentenced to suffer a double death penalty. Why, wrote Reynoso, did the judge not file a case against the family instead of strutting around "in full battle gear"?

The infuriated Gacott did file a case, but one seeking to have an indirect contempt charge slapped on Reynoso and *Palawan Times* publisher Eva Ponce de Leon. The Supreme Court, however, not only dismissed the judge's complaint but also set down some rules on contempt charges and public comment.

It first defined criminal contempt as "conduct that is directed against the dignity of the court or a judge acting judicially...(or) an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect." In contrast, the SC said, civil contempt "consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein, and is therefore, an offense against the part in whose behalf the violated order is made."

The resolution went on to analyze what it called the "Philippine Doctrine" on contempt. Among its features, which helped save Reynoso and Ponce de Leon from getting what Gacott thought they deserved, was the contention that "fair criticism" of the court, its proceed-

ings, and its members are allowed when the case is no longer being handled by the same court. By the time Reynoso wrote his piece, the case of the accused who had been handed the double death penalty was already in the high court.

But the resolution presented caveats. It said that even if the case had been terminated, there may still be contempt of court if the publication "tends to bring the court into disrespect or, in other words, to scandalize the court," or "where there is a clear and present danger that the administration of justice would be impeded."

### Libel

The resolution also commented on what the appropriate remedies are when the "alleged contemptuous statement is also claimed to be libelous." The Court's stand was that the offended judge should be content with a contempt suit.

Suggesting that a judge who has been "unjustly attacked" has a remedy in an action for libel is "without rational basis in principle," it said. The Court pointed out that, after all, "the outrage is not directed to the judge as a private citizen but to the judge as such or to the court as an organ of the administration of justice....The same reasons of public policy which exempt a judge from civil liability in the exercise of his judicial functions, most fundamental of which is the policy to confine his time exclusively to the discharge of his public duties, applies here as equal, if not superior force."

Yet, having said all these, the Court did not outrightly prohibit judges from filing libel suits against those who they think defamed them with malice. Libel carries a penalty of either a fine or imprisonment, or both. The fine ranges from P200 to P2,000, while the jail term can be as short as six months and one day to as long as four years and two months.

More than two years after the Supreme Court issued the landmark resolution on Judge Gacott's complaint, Cebu City RTC Judge Martin Ocampo sued the Sun-Star Publishing, Inc. for libel. In August 1997, one of the media company's newspapers, the *Sun-Star Daily*, ran two articles on the graft charges Ocampo was then facing at the Office of the Ombudsman for the Visayas.

In the second of these articles, the paper acknowledged receiving a letter from the judge, who called the earlier report "libelous" and argued that the Ombudsman had no jurisdiction to investigate his case. The paper also noted that its first article on the graft charges against Ocampo was based on the complaint filed with the Visayas Ombudsman's Office and that the *Sun-Star* even delayed publication of the piece for a day to get the judge's side. The article in fact quoted him, it said.

The lower court dismissed Ocampo's complaint, finding no malice in the publication of the articles. Ocampo then filed an appeal before the high court. By the time the first division of the Supreme Court came out with a decision on his case on December 15, 2000, however, Ocampo had been dead for more than a year. The Court also dismissed his petition.

(Parts of this chapter have been culled from the PCIJ book *Uncovering the Beat* that was published in 1997.)

## INVESTIGATING THE ENVIRONMENT

### Trawling for Violations in a Sea of Rules

Howie G. Severino

Corruption in environmental regulation is not like corruption involving highway contracts, textbook deals, or the tax man.

In most cases of government corruption, money is stolen from the public. But ultimately money is replaceable, and so are roads, books, and taxes. What is at stake is merely human-generated wealth.

In environmental corruption, what is at stake is Creation. This is a capital C for both spiritual and crassly material reasons. One can calculate the public money available for plundering, but not the wealth contained in nature. A single sheet of paper signed by the environment secretary can permit logging in an area the size of a province, producing profits in the billions. But company ledgers would not reflect what the timber would cost in terms of biodiversity or water supply or the risk of flash flooding.

Just as the gains in environmental corruption are different in scale, so are the losses. No one has yet put a price tag on the nation's environment, although some try to imagine it. There is value at so many different levels—from the contraband narra that is turned into expensive furniture to the pristine rivers that provide farmers with irrigation to the rare Philippine eagle

**Government holds the key**

which has value simply because it still exists.

Simply put, the Philippines was created as one of the planet's most blessed places in terms of natural resources—with the best hardwoods, among the richest concentrations of precious metals, and abundant sea life. Hectare for hectare, the Philippine archipelago harbors the highest degree of biodiversity on the globe. Aside from its intrinsic value to the planet, the country's magnificent array of species has economic value as a source of solutions to many of the world's ills.

The effort to put a monetary value on natural resources that would reflect all these other considerations has required an entirely separate field of study called environmental economics. Some of the same methods can apply to calculating the costs of environmental corruption.

In other words, an activity like commercial logging is not simply the extraction of a resource (timber), but the destruction of an even larger one (forest ecosystems). Resource extraction is one source of wealth that results not from growing or making products, but destroying something already useful to humans.

Nevertheless, with their current lifestyles, humans need to extract minerals, wood, and a myriad other products of nature. Resource extraction and its environmental impact are inevitable. Rules have been developed by the state to minimize the harm to the environment caused by resource extraction, and a whole industry of illegal activity has grown around the ways for skirting the rules.

**Government holds the key**

With its licensing and regulatory powers, the government holds the key to natural treasures many times the value of any department budget for highways or textbooks.

This is why resource extraction and political power go hand in glove. Historically, those who desired to cut timber or receive resource concessions of any kind had to be well connected to the government. Before martial law, public opinion did not promote the value of protecting the nation's environment, since textbooks had long propagated the view that the Philippines' resources were abundant.

During the Marcos era from the 1960s to the 1980s, his closest cronies got the choicest timberlands. Those individuals who controlled both large resource concessions and government's licensing powers were often one and the same, such as Marcos's martial law enforcer Juan Ponce Enrile. The government watchdog—the Ministry of Natural Resources, later renamed Department of Environment and Natural Resources (DENR)—became little more than a mechanism to keep noncronies out of the industry. With no oversight or free press to provide



**Tree being cut down in Agusan.** Loggers have traditionally had sterling political connections, if they were not in politics or government themselves. (ALEX BALUYUT)

## Government holds the key

even minimal constraint, no one could even point out that the system for allocating resource access was inherently corrupt.

Perhaps the seminal book on the subject of political power and natural resources in the Philippines is Marites Dañguilan Vitug's exposé, *Power from the Forest*, published by the Philippine Center for Investigative Journalism (PCIJ) in 1993. By poring over public records on wood companies, Vitug linked some of the country's most prominent political names to the virtually uncontrolled logging that gained them billions in profits but cost the rest of the country its rich heritage in forest ecosystems and biodiversity.

Today, nearly two decades after the fall of Marcos, the connections between political power and resource extraction are less obvious. With an occasionally watchful press and a noisy community of nongovernmental organizations (NGOs), discretion has become the name of the game. Gone are the days of brazen cronyism in forest and mining concessions.

Ex-president Joseph Estrada attempted to bring them back with his own brand of flagrant favoritism. But his own grotesque indiscretions, and his misreading of the power of the press and civil society, doomed his presidency, serving as a warning to his successors. The environment was a beneficiary of his ouster.

Estrada's appointee to the DENR, Antonio Cerilles, was a naked concession to the politically powerful Zamora brothers, Ronaldo and Manuel. The Zamoras controlled major mining interests in the Philippines, including the controversial Rio Tuba nickel mines in southern Palawan.

Their man Cerilles, a former congressman, had no track record on environmental legislation or advocacy. Soon after he took over the DENR, he began to make prominent statements and appointed associates from his prov-

ince, Zamboanga del Sur, to the National Commission on Indigenous Peoples (NCIP), which was tasked with processing the ancestral domain claims of indigenous people. These claims often conflicted with the mining applications of commercial mining companies. To hardly anyone's surprise, the processing of Certificates of Ancestral Domain Claim (CADCs) virtually stopped during the Cerilles/Estrada administration, while mining companies were encouraged to apply for various kinds of mining licenses.

Environmental corruption persists, but in more sophisticated forms, and often in obscure places far from the press, civil society, and honest law enforcement. The investigative digging has to be just as sophisticated. The paper trail is still important in establishing corporate and individual ownership of businesses that purportedly harm the environment, as well in tracing the origins of ill-gotten regulatory licenses.

### **Go to the field**

Investigating the environment also involves the classic techniques of firsthand observation. My own experiences tell me that what DENR field officials report on paper is often markedly different from the reality on the ground. This is how the facetious reference to "table surveys" came about. Instead of actually conducting field surveys in forests and other resource areas, DENR field personnel are known to concoct survey figures on a desk in an air-conditioned office, to the satisfaction of whoever will benefit and pay for such malfeasance. Partly as a result of this practice, other DENR personnel turned to "ground truthing" to countercheck reports received from the field.

Investigators have to become adept at "ground truthing" as well and show a willingness to travel and reach the remote and rough areas where many of our best-preserved and most exploitable resources still exist.

**Establish cause and effect**

The government's foreign-funded reforestation program was crying out for investigation when the PCIJ decided to look into discrepancies between the DENR's rosy tree survival figures and what any domestic airline passenger could see from the air—bald mountains bereft of ground cover. A short hike by a reporter at one "successful" reforestation site in Cavite, combined with a study of other sites conducted by a University of the Philippines academic working with the PCIJ, revealed the common practice among private contractors of using the foreign funds to plant seedlings and then allowing them to die for lack of maintenance.

Then again some of the ocular inspections can sometimes be in the journalist's own backyard—like the reporting of emissions of factories, piggeries, and other enterprises into urban waterways.

During the Ramos administration, journalist Chay Florentino-Hofileña followed up complaints about a subdivision in Los Baños, Laguna, that was bulldozing illegally. Once at the site, Hofileña learned that some of the lots in the project were owned by the President himself, who was a known golf buddy of one of the subdivision owners. Further sleuthing revealed not just documentary proof that the Ramoses owned property there, but that their names were being dropped by the developer to create shortcuts in the regulatory process. By investigating a tip about a local environmental story, a reporter discovered a political story with national implications.

Perhaps more than other stories, those on the environment are enriched by going to the site and finding out what is going on and its impact on the lives of people.

**Establish cause and effect**

One of the greatest challenges facing environmental journalists is establishing cause-and-effect relationships. There is a general tendency to discern environ-

mental damage as having been caused by the nearest or most obvious source of pollution. Red tide, a form of sea pollution that causes fish kills, is still considered by many scientists to be mysterious in origin, although pollution is generally seen as the main cause. But that does not explain why red tide also occurs in relatively pristine areas like Zambales, which are far from factory emissions.

### ■ Go beyond the obvious culprit

Reporter Lina Sagara Reyes spent months trying to establish the cause(s) of a "green tide" (so called after another form of ocean pollution, the better known "red tide") which was killing sea life along a stretch of coast near Cagayan de Oro City. To many fisherfolk, the obvious culprit was a nearby brewery, which had been virtually cleared by local environment officials after little technical study.

Reyes went to the extent of organizing a scientific team to collect samples and test them in accredited laboratories. In the end, she still did not have a firm conclusion about the real cause(s) of green tide, but she had enough evidence to say that it was probably a combination of several factors, and not only the effluents coming from the brewery. Agricultural runoff from distant farmlands and human waste from fishing communities surrounding the brewery could not be discounted. One solution, therefore, would be to address every possible source of pollution entering the bay.

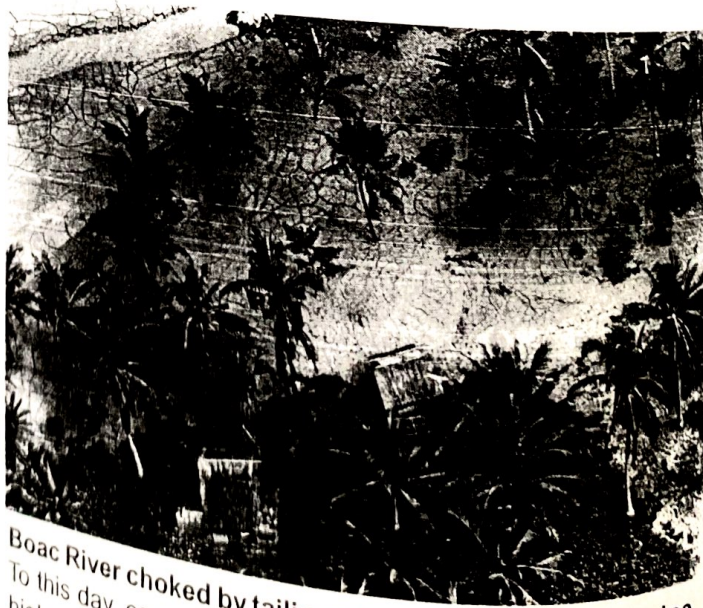
The obvious culprit could also be the wrong one. When the Ormoc flash flood killed over 4,000 in 1990, everyone was quick to blame illegal logging in the hills above the city. There were widespread calls to go after illegal loggers, most of them small-scale cutters trying to earn a daily wage.

But that reflexive finger pointing tended to exonerate other causes, or at least divert attention from them. Tech-

## Establish cause and effect

nical studies later concluded that when the slopes near the city were cleared decades before to create the sugar plantations of Ormoc's landed elite, low-lying areas became vulnerable to disastrous flooding. Add to that the necessity for the landless poor to settle on dangerous river bends and islets in the city, where most of the deaths occurred. If such possible causes had been more widely known, perhaps there would have been more discussion of other government responses such as agrarian reform in a place of extreme land inequality.

Corporations have also learned to exploit this cause-and-effect quandary by washing their hands of environmental damage. Marcopper executives insist to this day that the high incidence of leukemia, lead poisoning, and other illnesses on the island of Marinduque—which residents and doctors say started only after the company began mining—was due to other factors and not to company operations. The executives know that there may not be a precise way of determining culpability, at least not precise enough to stand as evidence in court, even if there are no other apparent risk factors, such as other major industries, on the island.



**Boac River choked by tailings from the Marcopper mine.** To this day, company executives deny responsibility for the high incidence of leukemia and other illnesses on Marinduque. (RICK ROCAMORA)

The United States government has denied for years that its former military bases in the Philippines could have had something to do with the diseases that have struck communities near its former oil and waste dumps. Its firm denials have enabled the U.S. to avoid paying compensation to victims.

■ **Work closely with experts**

One way for journalists to handle this cause-and-effect dilemma is to work closely, as Sagaral Reyes did, with scientists and other professional investigators, and to report their findings against the claims and denials of corporate and government spokespersons.

Good stories often begin with ecological or medical mysteries. The journalist or researcher becomes a detective, tracking down suspected causes with the help of experts and eliminating the theories one by one until the probable, or even certain, culprit is found.

In producing his groundbreaking documentary on the toxic waste left behind by the U.S. military bases, U.S.-based Filipino journalist Benjamin Pimentel Jr. collaborated with Filipino-American environmental scientist and activist Jorge Emmanuel, who holds a doctorate in chemical engineering. While Pimentel tracked down victims, Emmanuel focused on the chemical analysis.

As Pimentel and Emmanuel showed, it is often still not possible to be absolutely sure of the causes of environmental damage and disease even with scientific due diligence. But they were able to gather enough evidence to convince many in the Philippines and the United States that the U.S. military did damage the Philippine environment in ways that could have easily caused the illnesses of people living around the former bases. That achievement has since driven citizens' movements in both countries to pressure the U.S. government to investigate the actions of its military, acknowledge wrongdoing, and compensate the victims.

## Guide Questions for Investigating the Environment

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Since our food and water supplies and breathable air are all dependent on healthy environments, uncovering corruption and culpability in environmental regulation is not simply a matter of making government more accountable and preserving public funds. It is a matter of human survival. To be an effective investigator or whistle-blower of environmental corruption, one should be guided by the following questions:

### 1. Who calls the shots?

Which individuals have de facto powers over the environment? The secretary of environment and natural resources is one obvious individual. Investigating his/her background and how s/he got the position would show where biases could lie and what private interests could be promoted or protected. Ex-secretary Edelmiro Amante was a logger in Mindanao, a fact that helped expedite his transfer out of the DENR.

Many top government officials have influential private friends and associates whose vested interests they are promoting or protecting. Former DENR secretary Cerilles got his post with the backing of Manuel Zamora, a mining magnate. Former secretary Angel Alcala, despite sterling credentials as an environmental advocate, had a legal consultant drafting numerous anomalous orders favorable to logging companies. Alcala in fact had in his office a slew of unaccountable assistants who were accused officially and in the press of corruption.

"Distinguish real power from the displayed power," Alcala's former undersecretary, Ben S. Malayang III, would advise in an article written years later. "The combination of anonymity and influence is probably the more potent brew for persistent corruption than the dramatic blatant ones. The decisions and actions that require the longer and more convoluted string of staff work would probably host the most incidents of corruption."

2. Who has power over what?

With so many laws, more than a few of them conflicting or subject to various interpretations, and with numerous government agencies, this is not an easy question to answer. Some of the more important environmental stories of the day are not even confrontations between aggrieved private citizens and the state, but between agencies that disagree about their roles. Authorities in such varied places as Subic Bay, Palawan, and the Autonomous Region of Muslim Mindanao have been locked in disputes with national officials over their conviction that they hold legislated powers over natural resources that supersede those of the DENR. Sometimes only the courts can resolve these bureaucratic gridlocks.

Nearly every level of government has some jurisdiction over the environment. Determining possible points of corruption requires figuring out where each agency's powers begin and where they end. Even within a single agency, byzantine regulations govern the division of powers.

While the DENR secretary may have command responsibility over his department, his local subordinates exercise enormous powers. Regional directors issue Environmental Compliance Certificates (ECCs), for example, for all projects in "environmentally critical areas" such as prime agricultural lands, and they recommend whether logging companies can continue cutting in their concessions.

Each year, the DENR's Environmental Management Bureau (EMB) processes hundreds of ECCs for real estate, industrial, and other "environmentally critical projects."

The Local Government Code, legislated by Congress in 1991, devolved many powers to local officials, such as the issuance of small-mining and quarrying permits, and law enforcement in municipal waters. This has cre-

**Guide Questions for Investigating the Environment**

ated conflicts with larger government entities such as the "super agency" Laguna Lake Development Authority (LLDA), which was created to regulate the use of the country's largest and most important lake.

**Government Agencies Involved in the Environment**

| Agency   | Primary Function        | Involvement in the Environment  |
|--|-------------------------|---|
| Department of Environment and Natural Resources (DENR) | Regulation; Development | Land, forests, minerals, protected areas & wildlife; pollution prevention & control; research & development |
| Department of Agriculture (DA)                         | Regulation; Development | Fisheries & aquatic ecosystems management; soil & water management  |
| National Water Resources Board (NWRB)                  | Regulation              | Water conservation & allocation   |
| Department of Public Works and Highways (DPWH)         | Regulation; Development | Flood control; landslide mitigation; irrigation & drainage  |
| Department of National Defense (DND)                   | Development             | Disaster preparation & response   |
| Department of Social Welfare and Development (DSWD)    | Development             | Disaster relief   |
| Department of Health (DOH)                             | Regulation              | Sanitation; pollution control   |
| Department of Science and Technology (DOST)            | Regulation; Development | Earthquake, typhoon, climate forecasting; research & development  |

SOURCE: BEN S. MALAYANG II, "MUSINGS ON AN OTHERWISE NOT AMUSING MATTER OF CORRUPTION IN THE ENVIRONMENT SECTOR."

This clash came to the fore in the mid-1990s when local government officials in Rizal used the Local Government Code to challenge the LLDA's jurisdiction over municipal lake waters; the town mayors eventually lost in the Supreme Court.

Local officials, however, can impose their will through other ways. When the LLDA refused to grant a disputed Laguna Lake fishpen a permit, Rizal governor Casimiro Ynares ordered the agency evicted from its offices in the provincial capitol. A PCIJ investigation showed that the case involved more than a conflict over jurisdiction, but a possible conflict of interest. Copies of deposited checks showed that the governor himself had been paying the fishpen fees, giving credence to the LLDA's allegation that the controversial fishpen was owned by Ynares.

Helping the layperson navigate through the thicket of regulations to pinpoint accountability are environmental law organizations such as *Tanggol Kalikasan* and the Legal Rights Center, and Websites such as [www.bwf.org](http://www.bwf.org), which has the most comprehensive on-line catalog of environmental laws.

### 3. How does the DENR work?

As the agency with the most responsibility over the environment and natural resources (although not the only one as the previous section explains), understanding the DENR is a prerequisite for investigating environmental corruption.

There are three main bureaus: the Forestry Management Bureau, Mines and Geological Sciences Bureau, and the Environmental Management Bureau. All three issue clearances and licenses to develop or extract resources. Countless businesses have to deal with bureaucrats at many levels in these offices in the processing of requirements, creating fertile conditions for corruption.

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**4. Does it have a permit?**

This is one of the first questions that should be asked of any development or industrial project, or any commercial activity involving extraction of a resource, the most common of which are wood products, sand and gravel, and minerals.

The lack of a permit would be an issue in itself. Having one should mean the existence of documents submitted to the DENR containing project information that would be useful to any investigator. Since these are public documents, the DENR is obliged to give access to anyone who requests them. The submissions should tell whether any shortcuts were made or prevailing project site conditions were misrepresented.

Almost any commercial enterprise larger than a small business is required to undergo an Environmental Impact Assessment (EIA) as a basis for the government's issuance of an Environmental Compliance Certificate, essentially clearance to operate from the DENR.

The complexity of EIA-related documents may require the services of an expert. Since the DENR has been enforcing this requirement more strictly in the last decade, consultants now abound in many universities and specialized firms to meet the increased demand among business firms for technical expertise. Some are willing to be approached gratis by journalists seeking friendly advice.

The process involved in securing an ECC is usually so long, tedious, and costly that the temptation is strong for a proponent to either ignore the requirement altogether or to short-circuit the procedure through bribery or name-dropping.

While former DENR secretary Cerilles was undergoing confirmation proceedings in Congress, a simple query made by a reporter to the DENR revealed that his rubber processing plant in Zamboanga del Norte had no

ECC. When this was exposed in the press, the DENR suddenly became a paragon of efficiency and processed the document nearly overnight.

**5. Why and how was a permit granted?**

Just because a commercial enterprise has a license does not mean everything is legitimate. Seemingly routine permits can turn out to have unlawful origins and extraordinary implications, if one simply asks how they came to be.

While I was in the DENR corridors one day trawling for news, a clerk handed me a piece of paper. "*Pag-aralan mo ito* (Study this)," he told me ominously. The sheet of paper was a document that gave a "temporary allowable cut" to a suspended logging company in Mindanao, in effect permitting it to log 10,000 cubic meters of timber (worth about P70 million). It was signed by DENR secretary Alcala.

On its surface, the permit looked legal. Permits are issued by the DENR every day. But since logging is always a hot issue, I asked around and looked up the terms found in the permit in my book of DENR regulations. One of the first things I learned was that there was no such thing as a "temporary allowable cut," only an *annual* allowable cut, issued each year by the DENR if the timber concessionaire meets the conditions of its Timber License Agreement (TLA).

Further investigation and interviews with DENR staff revealed that (1) the permit had been signed without going through the usual bureaucratic channels, (2) the secretary's legal consultant had lobbied for this permit, and (3) the logging company that received this blessing was located near the lawyer's hometown of Dapitan. Perhaps not coincidentally, the permit was issued during the 1995 election campaign, when the secretary's legal consultant was running for office in his hometown and perhaps needed funds for his campaign.

## Guide Questions for Investigating the Environment

That piece of paper furnished by a clerk opened a can of worms. The investigation led to a group of DENR personnel based at the office of the secretary who had bypassed normal procedures to push through a series of orders authorizing various logging companies to log or transport timber.

After the investigation was published, Alcala was transferred out of the DENR and his personal staff of appointees followed.

The next DENR secretary had the first permit officially investigated, then rescinded, and the logging company's TLA canceled. The company had been allowed to log an area about the size of Metro Manila.

### 6. Who knows what?

One must get to know where papers go in a bureaucracy, who gets to see them, who the signing authorities are, and basically who does what. Personal contacts are key on any beat.

What may be overlooked, however, is the importance of rank-and-file employees—the ones who overhear phone conversations, process the papers, record them in ledgers, file them, and take them to the boss for signing. It would be wise, therefore, to befriend low-level bureaucrats, secretaries, clerks, even drivers. Some of them may eventually share critical information out of friendship or a desire to expose shenanigans. More than a few may even innocently answer prying questions, without realizing the importance of what they are divulging.

In a department like the DENR, there are many good-hearted employees who are plainly disgusted with what their superiors or colleagues are doing. Often, they only need to be asked for information on who's trying to influence whom, or for help in extracting a controversial document.

One should check in with those sources regularly. Whenever one's vital information comes from, one must protect one's sources. Their jobs, even their lives, could depend on that assurance.

**7. Where is the paper trail?**

When covering any office or department, one must draw a mental picture—or better yet, draw it on a piece of paper—of how the office works, and who reports to whom. It would be wise to diagram the route a permit takes before it is signed and issued to a proponent, and then to identify on the map the potential points of transaction and corruption.

Lack of transparency is a common obstacle in many bureaucracies. If an office or official has something to hide, chances are that documents won't just be volunteered. This is why government's habitual vows of transparency and accountability must be enforced through office-by-office policies of public access to information.

In the course of doing a story about the National Power Corporation's (Napocor) disposal of the highly toxic polychlorinated biphenyls (PCBs), PCIJ investigators could not get basic inventory data from the company through the usual requests. We received a response only after a strong (but diplomatic) letter invoking the Constitution and threatening court action.

Enterprising reporters will find ways to coax their sources and extract important information they need to complete a story. But to enable all reporters to do their jobs, and for the sake of the public interest, reporters should also use their leverage to formally insist that permits, licenses, surveys, and studies be routinely made part of the public domain.

At one point in the DENR, enlightened officials started to post even pending applications for permits on the

## Guide Questions for Investigating the Environment

department's bulletin boards. But that practice did not last long. Such a policy would not only help journalists and other investigators do their jobs, but prevent corruption in the first place by reminding those involved in the transaction—both in the government and in the private sector—that the public knows who they are.

Government practices that promote true transparency make the special methods of journalists and investigators to get even basic information less necessary. If corruption is a festering wound on society, sunshine is still the best disinfectant.

## Navigating the DENR Maze

One may take some time to become truly familiar with all the offices of the DENR, which is among the most powerful agencies in the government for reasons explained early in this chapter. But the most powerful bureaus, and therefore perhaps the most prone to corruption, are the following:

**The Office of the Secretary**—This is the last stop for documents, licenses, and personal lobbying. Some DENR secretaries have been known to retain “confidential” staff who are not part of the official *plantilla* and thus not easily made accountable for their actions in this nerve center and clearinghouse. Since the secretary signs so many documents, he is dependent on office staff work to make sure everything is in order.

**Forest Management Bureau**—For decades, the FMB was the gateway to timber riches. But the times have diminished its influence; the most significant change has been the decline of the country's commercial forest area, making this office a less lucrative locus of corruption.

A controversial order from Secretary Heherson Alvarez (Memo Order 02 2002) transferred from the FMB to the office of the undersecretary for field operations the power to approve a range of commercial timber permits, such as the Integrated Forest Management Agreement. But the bureau retains influence through its powers to investigate and classify forest lands.

**Lands Management Bureau**—This office has jurisdiction over public agricultural lands, and thus has influence over classification and the regulation of access to these lands by private individuals and corporations.

**Mines and Geo-sciences Bureau**—This office holds the power to issue financial technical assistance agreements (FTAA) to mining corporations and permits for large-scale quarrying. But its concurrent mandate to encourage investment in the mining industry sets this bureau up to be a poor regulator.

The Local Government Code of 1991 devolved some powers over natural resources to local governments. Among these are:

- the power to issue permits for small-scale quarrying (five hectares or less)

*Navigating the DENR maze*

- the power to issue permits for social forestry projects
- the power to issue permits for fishing boats and fishpens for municipal waters (Beyond the municipal waters, the Bureau of Fisheries and Aquatic Resources is in charge.)

## COMBATING CORRUPTION

### How Government Fights Malfeasance

Luz Rimban

To succeed in the fight against corruption, society must be able to show that wrongdoing comes with risks and retribution—that public officials can be suspended, demoted, dismissed from office, or forever barred from holding government positions; that their ill-gotten wealth can be confiscated; and that both private citizens and public servants can go to jail.

Government has a well-equipped arsenal to fight graft and corruption; there are numerous laws, and agencies and offices to implement them. Prosecution, however, is not the only weapon available to government. There are also laws and agencies that prescribe the detection and prevention of corruption.

The main mechanisms for holding public officials accountable are the Ombudsman, the chief anti-graft agency of government, and the Sandiganbayan, the anti-graft court. These are the bodies created by the 1987 Constitution to enforce the provision that “Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”

There are also the constitutional commissions: the Commission on Audit (COA), the government’s financial

watchdog, and the Civil Service Commission (CSC), which watches over civil servants. Like the Ombudsman, these agencies are given fiscal autonomy by the Constitution and are allowed to promulgate their own rules. These powers enable them to operate independently of, and without interference from, the three branches of government—the legislative, the executive, and the judiciary.

These Constitutional bodies were created to ensure that people of high integrity run government efficiently and honestly. Taken together, says CSC chairperson Karina Constantino-David, they cover practically the entire Philippine government and “have enough muscle to fight graft and corruption.” At the same time, however, these bodies are hampered by the lack of resources and manpower, credibility problems, and poor coordination with other offices involved in similar endeavors. They are also hobbled by graft and corruption, the very problem they are supposed to fight.

The legislature is ideally a tool for combating graft and corruption. One of Congress’s roles is to serve as a check and balance to the executive by holding appointive officials accountable for their actions. Legislators are supposed to be the link between the people and their government, so members of Congress have the power not only to make laws, but are also vested with the function of oversight through congressional inquiries. Former US congressman Lee Hamilton describes what congressional oversight can do: “(A) purpose of oversight is to ferret out waste, fraud, and abuse, and to identify personal misconduct or malfeasance on the part of those who conduct the business of government.”

Too often, however, personal and business interests and filial or political affiliations prevent Congress from carrying out this function. The norm has been that lawmakers use their oversight powers to cut deals or wangle concessions from officials in the executive department.

Then there are laws that define measures with which to deal with erring police and military officials and enlisted men, who are also bound by strict codes of discipline. Mechanisms likewise exist for those in the judiciary as well as for other officials and employees elsewhere in the bureaucracy.

This chapter lists the various government bodies tasked with fighting corruption. Investigators can tap them for information on malfeasance. Researchers can also bring to these bodies reports of wrongdoing that they have unearthed. Moreover, these agencies themselves should be subjected to investigation so the public will know how well they are fulfilling their respective mandates.

## **The Office of the Ombudsman**

In other countries, ombudsmen are no more than auditors who investigate government financial transactions and recommend prosecution in case of irregularities, explains retired deputy ombudsman Francisco Villa. But the Philippine Ombudsman is much more powerful than that.

The Constitution gives the Ombudsman the mandate to fight graft and corruption in various ways: through public assistance, graft prevention, investigation, prosecution, and administrative resolution.

Despite the multifaceted nature of the office, the Ombudsman is best known for three functions: investigation, prosecution, and administrative adjudication. This mandate is all-encompassing, as defined by Section 13 of Republic Act 6770, or the Ombudsman Law of 1989: "The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned and -controlled corporations, and enforce their administra-

## The Office of the Ombudsman

tive, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.”

Ombudsman investigators and prosecutors, unlike their counterparts in the Department of Justice or the regular courts, can investigate persons and agencies if there is suspicion of wrongdoing. They need not wait for citizens to come forward and complain. They can also act on anonymous complaints.

After conducting an investigation, the Ombudsman can decide whether there is ground for legal action, who the respondents are, and whether the case to be filed is civil, criminal, or administrative. The Ombudsman determines how a case will proceed and the agency to which it will be referred:

- to the Sandiganbayan, for civil and criminal cases against officials belonging to Salary Grade 27 or officials with the equivalent rank of regional director or higher;
- to the regular courts, for civil and criminal cases of lower-ranking officials and employees; or
- to the Civil Service Commission or concerned government agencies, for administrative action.

The Ombudsman Law gives it primary jurisdiction over Sandiganbayan cases or those against high-ranking officials. The Ombudsman also gives preference to cases which involve huge sums of money and property. The Office of the Ombudsman acts as a prosecutor for these cases.

In civil cases (cases where there is an aggrieved party or crimes against persons) and criminal cases (crimes against the state) to be filed against lower-ranking officials, the Ombudsman is guided by Republic Act 7691, the law which defines the jurisdiction of Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Courts. [See Chapter 7,

"Investigating the Courts."] Cases may go to any of these courts, depending on the penalty to be meted out to the offender, as well as the amount involved. The Ombudsman may also deputize regular prosecutors in such cases.

The Ombudsman has vast powers, and they are not limited to investigation and prosecution. In fact, its critics say, if the Ombudsman would implement the law to the letter, then half the battle against graft and corruption would be won. The Ombudsman Law allows the office to:

- investigate and file charges against public officials and employees suspected of wrongdoing, or those who fail to prevent wrongdoing;
- order any government employee or official remiss in his duties to do his job, or stop, prevent, and remedy improper and abusive acts. It can also direct the heads of agencies concerned to impose sanctions on such officials or employees.
- enforce disciplinary authority over all elected and appointive officials of government, including all agencies and government-owned and controlled corporation. Not covered by the Ombudsman's disciplinary authority are members of Congress and the judiciary and those who can be removed only through impeachment.
- seek assistance from any official, employee or agency in the conduct of its inquiries, and ask government agencies to provide it with documents and records pertaining to government transactions.
- conduct studies on government inefficiency, red tape, fraud and corruption and propose steps to eliminate these. The Ombudsman can also assist in implementing educational programs on corruption prevention and make available its materials to college and post-graduate students.
- gain access to and examine bank records as part of its powers to issue *subpoenas* and *subpoenas*

## The Office of the Ombudsman

- *duces tecum* and to take testimony required for investigations.
- take steps to investigate and prosecute those suspected of amassing ill-gotten wealth gained after February 25, 1986 and to initiate recovery of this wealth.

The Ombudsman is structured to cover the entire country, as well as the breadth of the bureaucracy. Apart from an overall deputy ombudsman overseeing all the offices under the Ombudsman, there is a deputy ombudsman for Luzon who is stationed in Metro Manila, a deputy ombudsman for the Visayas based in Cebu City, and one for Mindanao in Davao City. The Ombudsman may create offices in cities and municipalities that operate under the jurisdiction of deputy ombudsmen.

There is a deputy ombudsman for the military. Resident ombudsmen are also assigned to government departments and government-owned and -controlled corporations that are considered graft-prone. These include the following departments: Public Works and Highways, Agriculture, Health, Environment and Natural Resources, and Interior and Local Governments. The National Power Corporation also has a resident ombudsman.

The Constitution provides as well for an Office of the Special Prosecutor that falls directly under the Ombudsman and whose head carries the rank of deputy ombudsman. The special prosecutor investigates and prosecutes criminal cases filed against officials, and is authorized to enter into plea-bargaining agreements.

For cases in Metro Manila, the office that conducts investigations is the Fact-Finding and Intelligence Bureau (FFIB) of the Ombudsman. The deputy ombudsmen in the regions and in the military conduct their own fact-finding work.

The Ombudsman and his deputies are appointed by the President. The selections are made from a list

drawn up by the Judicial and Bar Council (JBC). Those included in the list must have been judges or practicing lawyers for at least 10 years. They are not supposed to have run for any position, whether national or local, in the election immediately preceding their appointments. Above all, they must be persons of recognized probity and independence.

R.A. 6770 also lists measures designed to prevent partiality and conflict of interest among the Ombudsman and his deputies: they must not hold any other office, practice any other profession, or engage in business; they should have no political plans—they are not qualified to run for any elective office in the election held just before they leave office; they are not allowed to appear as counsel before the Ombudsman two years after they leave the office; and neither can their relatives appear as counsel before the Ombudsman within the year after their departure.

Over the years, however, the country's chief graft-busting agency has itself been tainted with allegations of wrongdoing. Impeachment complaints have been filed thrice against Ombudsman Aniano Desierto during his seven-year term on the charge of betrayal of the public trust. Each time, however, congressmen dismissed the charges against him.

In 1996, Desierto was accused of forging his ex-wife's signature on a deed of sale of conjugal property. He refused to even respond to the charges. Lamented Villa, "We require or demand public officers to answer charges against them. But the prober himself was accused by a congressman of Parañaque of falsification and bribery, yet he refused to answer."

Five years later, in late 2001, the former lawyer of a wealthy Filipino-Chinese businessman claimed he had bribed the Ombudsman to drop the charges against his client. A few months later, in early 2002, Desierto was again accused of dismissing a case against government

## The Office of the Ombudsman

officials involved in granting a P5-billion tax credit to companies owned by a textile magnate.

The impeachment cases against Desierto have sullied the already unsavory reputation of the Ombudsman. Among those disillusioned with the country's chief graftbuster are the National Corruption Prevention Units (NACPU), a network of citizens groups formed in 1987 by the late Deputy Ombudsman Jose C. Colayco to assist the Ombudsman in filing and investigating erring public officials.

The CPUs were envisioned to be the "eyes and ears" of the Ombudsman in the community. More than 200 organizations—barangay associations, government workers' unions, and nongovernmental organizations (NGOs)—were accredited as CPUs all over the country. The Ombudsman also tapped the youth by forming JGUs or Junior Graftwatch Units, designed to attract idealistic youth to help combat graft and corruption.

CPUs and JGUs are supposed to help the Ombudsman gather evidence against corrupt government officials and employees, but some of these organizations have been frustrated by the Ombudsman's inaction on, or even dismissal of, cases despite overwhelming evidence against suspected offenders.

Lawyer Eliseo Ocampo, former NACPU chairman, cites at least three cases where his group, during the term of Desierto as Ombudsman, compiled evidence against public officials, one of them a commissioner of the Bureau of Internal Revenue. "After filing, collecting evidence, filing all these charges, spending time, money and effort doing all these things, the charges were just dismissed! We were not even informed," complains Ocampo, who left the CPU after he sensed that the citizens groups were only being used to "polish the image" of the Ombudsman.

## The Sandiganbayan

The special court created to hear criminal and civil cases of graft and corruption is the Sandiganbayan, which is equivalent in rank to the Court of Appeals. Its jurisdiction is limited to cases involving violations of the following:

- R.A. 3019 (Anti-Graft and Corrupt Practices Act);
- R.A. 1379 (Forfeiture of Illegally Acquired Property);
- Revised Penal Code listing crimes committed by public officials—bribery, indirect bribery, and corruption of public officials; and
- R.A. 9160 (Anti-Money Laundering Act), a new addition to the Sandiganbayan's jurisdiction.

Republic Act 8249 limits the jurisdiction of the Sandiganbayan to high-ranking officials. The Sandiganbayan tries cases only when the accused belong to salary grade 27 or the rank of regional director or higher. Cases of lower-ranking officials go to the regular courts.

Included in the Sandiganbayan's jurisdiction are local government officials, foreign affairs officials with the rank of consul and higher, naval captains, air force captains and military officers of higher rank, provincial directors of the Philippine National Police (PNP) and higher, prosecutors in towns and cities and in the Ombudsman, and heads of government-owned and -controlled corporations.

Others who fall under the jurisdiction of the Sandiganbayan are members of Congress and its officials belonging to salary grade 27, members of the judiciary, and heads and members of Constitutional commissions.

The regular courts, however, have jurisdiction over private individuals named as co-principals, accomplices, or accessories in graft cases.

## The Sandiganbayan

Since the Sandiganbayan was created in February 1979, it has handled nearly 30,000 cases. In the 10-year period from 1991 to 2000, the amounts involved in these cases totaled almost P12 billion, arising mainly from falsification, malversation, and estafa cases, and violations of R.A. 3019. This figure, though staggering, is a mere drop in the bucket compared with the actual amounts believed to have been lost to graft and corruption during that period.

Convictions at the Sandiganbayan depend on how well the Office of the Ombudsman builds its cases and presents evidence against grafters in government. Through the years, the Ombudsman's lawyers and prosecutors have been repeatedly censured for being ill-prepared, uninformed, or unfamiliar with cases they handle. The trial of former president Joseph Estrada is replete with displays of apparent ineptitude on the part of Ombudsman prosecutors appearing before the Sandiganbayan. In one instance, Sandiganbayan presiding judge Francis Garchitorena prevented two key Ombudsman witnesses from testifying in the perjury case against Estrada. The witnesses were to have told the court that Estrada had P47 million in two banks. But the charge sheet for perjury, arising mainly from Estrada's misdeclaration of his statement of assets and liabilities, failed to mention the bank accounts on which the witnesses were to testify.

Garchitorena does not hide his frustration over the work of the Ombudsman. In an interview with the Philippine Center for Investigative Journalism (PCIJ) in 1998, he said: "There is an obligation during the preliminary investigation to draw out as much proof as you can by the means available to you, and to compel the production of evidence and to make sure they are preserved. But there is an appalling lack of enthusiasm to do that. And our dismissal rate of in excess of 50 percent demonstrates how poorly presented the cases are."

## **Cases in the Regular Courts: Coordination between the Ombudsman and the Department of Justice**

Lower-ranking officials and employees are tried in the regular courts. The Ombudsman deputizes regular prosecutors who are under the supervision of the Department of Justice (DOJ).

There may be instances when citizens go directly to the police or to the National Bureau of Investigation (NBI) to report offenses committed by public officials and employees. These cases are then brought directly to the city or provincial prosecutors, who may also directly receive complaints on civil cases.

The Ombudsman and the DOJ acknowledge that conflicts may arise over jurisdiction and procedures in the filing of cases, not to mention conflicts in the handling of preliminary investigations, drafting of resolutions, complaints and charges, and even in the actual prosecution.

To avoid delays that could result from these conflicts, the Ombudsman and the DOJ came up with Ombudsman-DOJ Joint Circular No. 95-001 series of 1995, which defined areas of cooperation and coordination and delineated the functions and powers of each body.

The joint circular clarified four main points:

1. That the Office of the Ombudsman has control and supervision over all preliminary investigations and prosecution of offenses committed by public officials and employees if these offenses are committed "in relation to office," or offenses committed while in the performance of their duties. This is the case no matter the rank of the respondents (whether cognizable by the Sandiganbayan or by the regular courts), and whether the cases are being handled by the Ombudsman or by the city or provincial prosecutor.

### The Civil Service Commission

2. For offenses not in relation to office, and committed by lower-ranking officials (cognizable by the regular courts), it is the office of the city or provincial prosecutor that will investigate and prosecute.
3. It is the responsibility of the investigating officer who conducted the preliminary investigation to prepare the complaint or criminal charge, which is to be forwarded to the appropriate authority.
4. Provincial or city prosecutors are required to submit to the Office of the Ombudsman every month a list of complaints filed before their office against public officers and employees, no matter the nature of the complaint. This requirement is to help the Ombudsman keep track of all investigations and prosecutions of public officials and employees.

Ombudsman Administrative Order No. 13 series of 1996 also lists regulations in the handling of Ombudsman cases for the guidance of prosecutors under the Ombudsman and the DOJ.

### The Civil Service Commission

The CSC calls itself "the central personnel agency of government." It makes sure that the country's 1.2 million civil servants comply with the standards required of them under the Administrative Code and the Civil Service Law, as well as the Code of Conduct and Ethical Standards for Public Officials and Employees.

The CSC handles cases when civil servants violate administrative rules and regulations. Cases that come to its attention may be either filed directly by citizens or referred by the Ombudsman.

The CSC exercises its authority over civil servants through the heads of departments, agencies, bureaus, and offices in government who are responsible for personnel administration in their respective agencies.

When warranted, the CSC may ask the concerned office to organize a civil service unit to attend to personnel matters.

In administrative cases, complainants cannot hide behind the cloak of anonymity. Unlike the Office of the Ombudsman, the CSC can investigate complaints against erring civil servants only when there is a written complaint, "subscribed and sworn to by the complainant." The rule on formal complaints is waived only when the complaint is "initiated by the disciplining authority."

The Administrative Code lists 30 grounds for disciplinary action against civil servants. A number of these can be invoked on civil servants suspected of graft and corrupt practices.

The CSC may conduct its own investigations of cases, or it can ask the head of a department or agency to do so. Heads of departments and agencies may also initiate investigations and decide on the cases. On all appeals, it is the CSC that renders the decisions.

Section 48 of Book Five of the Administrative Code lists the procedure for administrative cases against nonpresidential appointees. Department secretaries, or heads of agencies, local government chiefs, or regional directors of the CSC may initiate proceedings against their subordinates or nonpresidential appointees based on sworn written complaints.

- If there is prima facie evidence, the disciplining authority informs the respondent about the complaint, shows him the documents filed or submitted, and asks him to answer the complaint. The respondent is given not less than 72 hours to submit his answer, along with his own sworn statement and other documents.
- If the respondent's answer satisfies the disciplining authority, the case can be dismissed.

## The Civil Service Commission

- If the respondent's answer is not satisfactory, the disciplining authority conducts a formal investigation.
- The investigation must be started within five to ten days from the day the respondent's answer is received by the disciplining authority, and should be finished within 30 days unless an extension is necessary.
- A decision on the case must be made within 30 days after the investigation is completed.

Investigations in administrative cases are not judicial proceedings and therefore do not follow the technical procedures that go with legal cases.

In theory, the term *civil servant* refers to both career and noncareer service employees in government. Positions classified as Career Executive Service may go as high as department undersecretaries and their subordinates. When faced with administrative sanctions, higher-ranking career service officials may find ways to skirt CSC sanctions.

David notes that the CSC may be rendered helpless by such cases. "We can be very strict about all forms of dishonesty in the public service; we can be very strict with the small fry, but we don't cover the big fish," she says. She cites the case of a government agency director who was recommended for dismissal from the service for faking her own civil service examination records. The director brought her case to the Court of Appeals, which overturned the CSC recommendation.

Because of that experience, the CSC refocused its efforts on prevention, rather than prosecution. For the past few years, it has been waging the "*Mamamayan Muna, Hindi Mamaya Na*" campaign which encourages the public to demand prompt and courteous service from civil servants, in the process deterring those who move only

when given grease money. The campaign rewards upright civil servants with its *Gantimpala Agad* Awards.

The CSC has also institutionalized the filing by civil servants of their Statements of Assets and Liabilities. These statements are now computerized, making it easier for the Commission to detect conflicts of interest and unexplained wealth in civil servants. The CSC also conducts personnel audits to measure bureaucratic efficiency.

David has likewise organized teams tasked with producing time-and-motion studies to determine what makes corruption thrive in various agencies. These teams scrutinize the physical layout of offices to determine whether the positioning of desks or work stations, for example, if they are hidden from view and therefore can be used as centers for payoffs, is conducive to graft and corruption.

The CSC maintains a Website ([www.csc.gov.ph](http://www.csc.gov.ph)) that contains updates on the Commission's rules and regulations, its decisions on key cases, and its programs.

### **Presidential Anti-graft Commission**

The venue for filing administrative complaints against presidential appointees is the Presidential Anti-Graft Commission (PAGC), an agency directly under the Office of the President. It is the latest incarnation of an agency that over the past 50 years has been reinvented by a succession of presidents wanting to create a venue for investigating complaints against their own appointees.

Many of the complaints acted upon by the Commission are anonymous, filed by concerned citizens or government employees. "Notwithstanding the absence of identified complainants, if the complaints contained specifics and were found meritorious, the Commission took cognizance of these cases availing of its authority to investigate on its own cases of corruption, and of its

## The Commission on Audit

power to issue subpoenas in order to secure the necessary evidence," says Eufemio Domingo, who chaired the Presidential Commission Against Graft and Corruption (PCAGC), the anti-graft agency during the Ramos years.

When investigating cases, the PAGC follows a procedure similar to that which covers disciplinary action on nonpresidential appointees in the Administrative Code, but it may also supplement this with the Rules of Court.

Before ordering a formal investigation, the commission first evaluates the complaint. The respondent is asked to file a counter-affidavit within five days after s/he is notified of the order for formal investigation. After completing its probe, the PAGC then comes up with its findings and recommendations and transmits these, along with all other pertinent documents, to the Office of the President. The President has the final say on the case.

The PAGC may either recommend that the respondent be cleared of the charge against him or her, or that s/he be punished, the penalties ranging from a reprimand to suspension to dismissal from service. In the end, the President may decide to retain the appointee, even if s/he is found guilty, as has been the case in the past.

Recently, the PAGC has taken another tack in fighting corruption: it has forged closer working relationships with civil society. PAGC Commissioner Teresita D. Baltazar says the Commission is working with the NGO Procurement Watch, which keeps tabs of government contracts and purchases.

## The Commission on Audit

The COA has been called the "watchdog of the treasury," and government auditors, the guardians and protectors of the public fund. This office makes sure government spends money wisely, collects the correct amount of revenues, and detects fraud in government transactions.

Section 3, Article IX-D, of the 1987 Constitution says: "No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit."

The 1987 Constitution mandates the COA to "examine, audit and settle" all government revenue and expenditure, as well as other funds, property and resources of government. Hence, aside from a financial audit, COA also conducts compliance audits and performance or value-for-money audits.

A compliance audit basically determines whether government spending or revenues followed rules and procedures. A financial audit entails an auditor's judgment on whether an agency's financial statements are valid and comply with accounting rules. A performance or value-for-money audit examines an agency's output and determines whether the agency used public funds and resources wisely.

COA auditors may recommend the filing of cases against those suspected of committing fraud or graft and corruption. Citizens are also encouraged to report anomalies. Recently, the COA put up an online complaints mechanism through the Fraud Alert section in its Website, [www.coa.gov.ph](http://www.coa.gov.ph).

Theoretically, the COA, through resident auditors in various agencies, is supposed to examine how all government funds are spent. Certain funds, however, are not subject to thorough scrutiny by regular auditors. These include intelligence and discretionary funds, also known as miscellaneous and extraordinary funds at the disposal of government agencies. In 1986, then COA chairman Teofisto Guingona signed a memorandum circular stating that: "All transactions involving the national security, intelligence, confidential and discretionary funds of all agencies, government-owned and -controlled corporations including subsidiaries and local government units

## The Commission on Audit

within Metro Manila shall be submitted to the Chairman, Commission on Audit." This directive gave the COA chairman discretion on the auditing of such funds.

Another memorandum circular issued in 1989 clarified a provision in the budget law on the controversial discretionary funds, which the COA has labeled "miscellaneous and extraordinary funds." When Congress enacted into law the General Appropriations Act that year, lawmakers inserted Section 19 which authorized national government officials to use funds "for miscellaneous and extraordinary expenses." Because the term was vague and prone to various interpretations, it was also vulnerable to abuse.

A circular from the COA commissioners at that time defined what "miscellaneous and extraordinary expense" through a list of items that could be covered. These included "meetings, seminars and conferences; official entertainment; public relations; contributions to civic and charitable institutions... and other expenses not supported by the regular budget allocation." The COA argued that government officials needed flexibility on the question of how and where to use their budgets.

The fund became even more controversial because of the ruling that come audit time, in case no receipts are available to support the expenditure, the official concerned could simply issue a certification that the funds were spent for the purposes for which they were intended under Section 19 of the General Appropriations Act of 1989 or Republic Act 6688.

Although there is no mention of intelligence or discretionary funds in the COA rules revised in 1997, these may be covered by other rules and regulations contained in the numerous memoranda, circulars, and other communications issued by the Commission. Thus, citizens who may have questions about the disbursement or audit of funds would do well to consult these forms of COA communications.

## Inter-Agency Anti-Graft Coordinating Council (IAAGCC)

Although the COA does not have the power to prosecute those suspected of fiddling with government funds, it does have the power to investigate questionable disbursements or transactions, to summon witnesses and to take their testimony, and to issue subpoenas *ad testificandum* and *duces tecum* in the course of an investigation.

COA personnel also assist in the criminal prosecution of respondents charged with fraud or graft and corruption. A COA auditor may appear as a witness, and audit reports and other documents gathered by the commission may serve as evidence for the prosecution.

The COA, however, has encountered problems with other agencies of government. Lawyer Alexander Rodriguez of the Commission on Audit reveals that in the past, lawyers of the NBI, which is also called in to investigate graft and corruption cases, would dismiss COA reports as irrelevant or immaterial. COA accountants would clash with NBI lawyers because "we used to differ in the appreciation of facts," Rodriguez says. "NBI lawyers could not appreciate accounting and auditing reports." That problem was resolved with the creation of the Inter-Agency Anti-Graft Coordinating Council (IAAGCC).

### **Inter-Agency Anti-Graft Coordinating Council (IAAGCC)**

Government agencies involved in the fight against corruption often collide with each other because of overlapping functions and mandates, thus undermining each other's credibility and effectiveness. To iron out conflicting responsibilities, six agencies of government coalesced in 1997 to form the IAAGCC.

The Council was initially composed of the Office of the Ombudsman, the COA, the CSC, the NBI, and the PCAGC. The Department of Justice joined the council in 1998.

**Inter-Agency Anti-Graft Coordinating Council (IAAGCC)**

In a memorandum of agreement signed on June 11, 1997, the heads of these agencies pledged that their offices would:

- coordinate with one another,
- undertake interagency skills training programs, and
- promote interagency conferences.

The council has a three-tiered structure. Below the Council, which is composed of the heads of the member-agencies, are the Inter-Agency Consultative Committee that drafts policies, and a subcommittee tasked to perform specific functions to serve as the technical working group. From 1997 until 2002, COA acted as the Council secretariat.

The Council is the closest the government has come to a concerted campaign against graft and corruption. But membership and participation in the council are largely voluntary, and the organization itself is only a semiofficial body with hardly any government recognition. The Council itself is composed of all heads of agencies, but according to the COA's Rodriguez, it has been almost impossible to get all these officials together in one meeting.

Neither Rodriguez nor former PAGC chair Domingo can remember a meeting where all heads of government agencies were present. "It's always been difficult to set meetings with the heads of agencies. They're always very busy," says Domingo. Rodriguez, who was detailed to the Council by COA Commissioner Emmanuel Dalman whose office is the lead agency in the IAAGCC, says coordinating the hectic schedules of all heads is almost impossible. There is the added problem of the rapid changes of leadership in these agencies; their chiefs may not like the anticorruption concept and simply ignore the meetings. As a result, the Council has had difficulty moving forward.

Member-agencies are autonomous and work independently of each other despite their pledge to share information and resources so as to enhance each other's successes.

"IAAGCC is like *chopsuey*; the anti-graft effort is really dispersed," complains Domingo, who once headed the COA. He says he would have wanted an Independent Anti-Corruption Commission with more teeth, similar to what Hongkong has.

PAGC Commissioner Baltazar reveals that in early 2002, there was an attempt to revive the IAAGCC so that it could implement the agenda for good government drawn up during the National Socio-Economic Summit of 2001. The only clear outcome of that meeting was the turnover of secretariat duty from the COA to the CSC. "Unfortunately, nothing has been heard from the IAAGCC since then," Baltazar adds.

### Legislative Oversight Function

Congress has at its disposal a number of tools with which to check on graft and corruption in the executive branch. An example is the budget process, which in theory gives lawmakers an opportunity to review how a particular government agency seeking approval for funding spent the previous year's fund, and whether it deserves next year's fund.

In reality, however, lawmakers use the budget process for their own purposes. An example would be the Budget Law of 1989 mentioned earlier, in which lawmakers allowed the appropriation of funds for the vaguely worded "miscellaneous and extraordinary expenses."

Much of the decision making that goes into crafting the national budget comes from Congress, specifically the House of Representatives where the President first submits his or her budget for approval. The Constitution states: "All appropriation, revenue or tariff bills shall

## Legislative Oversight Function

originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments." Although the final word on the budget belongs to the President, disagreements between Congress and the Chief Executive have not been difficult to iron out.

Over time, Congress has repeatedly displayed its immense powers over the national purse, especially the lawmakers' power to allocate public funds for themselves. The PCIJ book *Pork and Other Perks* tells the story of the budget deliberations for the year 1998, when the country was reeling from the devastation caused by the 1997 financial crisis. Finance officials had proposed an austere budget that would enable government to save P1 billion. After passing through Congress, government ended up bracing for a deficit because the lawmakers had given themselves an almost 200-percent increase in pork barrel funds.

The power to make congressional insertions has allowed lawmakers to get away with such abuses. In 1996, news reports revealed how the House committee on appropriation, the committee in charge of budget deliberations, gave itself huge cuts from the budget labeled as Congressional Initiative Allocations, supposedly a fund intended for projects to benefit the lawmakers' constituents. That year, the committee chairperson allocated P3 billion for himself.

### The Commission on Appointments

Another tool that is misused by the legislature is its power to scrutinize and to approve or reject persons named by the President to key positions in government. This is done through the Commission on Appointments or CA, which is composed of 25 members—13 from the Senate and 12 from the House of Representatives. It reviews the nominations of Cabinet appointees, heads of Constitutional and presidential commissions, as well as colonels and higher-ranking military officials, and the top brass of the Department of Foreign Affairs. Dur-

ing its confirmation hearings, the CA entertains objections and criticisms from the public of officials under scrutiny and then votes to either confirm or reject them.

Presidential nominees are supposed to submit to the CA a variety of documents detailing, among others, their personal background, educational attainment, and statements of assets and liabilities. The CA's Appointments Review and Investigation Division, or ARID, also prepares a report on the nominee for the CA members' perusal. But a PCIJ investigation found that CA members hardly bother to read documents pertaining to a candidate and show interest in a presidential nominee only when they need favors from him or her. The fate of a presidential nominee is usually determined, not by the Commission on Appointments itself, but by whoever is president, with the help of members of the ruling party in the CA.

PCIJ's investigation showed that in reality there is very little serious scrutiny of presidential nominees. When former energy secretary Mario Tiaoqui faced the CA, ARID noted in its report that he declared an annual income of only P70,000 from 1994 to 1996, and P75,000 in 1997. Yet in 1995, he managed to take out a loan of P35.5 million. No one bothered to ask how Tiaoqui, who holds an MBA from Cornell University and lives in posh Dasmariñas Village, could be earning workers' wages and how, on that kind of income, he could take out or pay back a multimillion-peso loan. Although one CA member reportedly tried to inquire about this, his questions were quickly drowned out and forgotten when his colleagues chose to change the subject.

At worst, the CA can turn the tables on people and groups who dare object to presidential appointees, which was what happened to NGOs opposing the nomination of former congressman Antonio Cerilles as secretary of environment and natural resources. Shortly after testifying against Cerilles at the CA, Haribon and four other NGOs were warned by a member that they

## Legislative Oversight Function

would themselves be investigated for "misleading the commission about their true corporate status." The lawmaker accused the NGOs of delinquency in their obligations to the Securities and Exchange Commission, after he supposedly investigated their SEC records.

**Blue Ribbon Committee**

Any committee of Congress, whether in the House of Representatives or the Senate, can call for an inquiry into matters of graft and corruption in the executive department. But Congress's most powerful tool in checking corruption in the executive branch, the Senate Blue Ribbon Committee, also known as the Committee on Accountability of Public Officers and Investigations, has the power to investigate "in aid of legislation" official corruption, crime, or wrongdoing. Any member of the Senate can bring to the chamber's attention, in the form of a resolution, any matter of public interest for investigation by the committee.

In its 50-year existence, the committee has looked into high-profile and controversial cases involving the highest officials of government.

When the Blue Ribbon committee looked into the misuse by the National Centennial Commission of more than P9 billion in private and public funds, it summoned former president Ramos to testify. It was "the first time in Philippine history that a former president of the Republic appeared before a congressional committee in answer to its summons," says committee secretary Emilia Pueyo.

Not even incumbent presidents are spared the attention of the Blue Ribbon Committee. In 2000, it looked into charges by Sr. Christine Tan of the Religious of the Good Shepherd (RGS), then newly resigned from the Philippine Charity Sweepstakes Office, that President Joseph Estrada, First Lady Luisa Ejercito, and their son, San Juan Mayor Jose "Jinggoy" Estrada, had misused

PCSO funds and resources. Much later, the committee also started the investigation into the allegations of then Ilocos Sur governor Luis 'Chavit' Singson that the Estradas were receiving payoffs from the illegal numbers game *jueteng*.

Unlike a court of law, however, the Blue Ribbon Committee is not bound by judicial procedure, nor is it required to find guilt beyond reasonable doubt, Pueyo clarifies. Most of its investigations do result in recommendations for prosecution, as in the "centennial scam" for which Ramos, former vice president Salvador Laurel, and four Cabinet members were recommended for prosecution by the Committee.

But it is not the committee's job to hand over documents or to pursue the case at the Office of the Ombudsman. The lack of staff prevents the committee from following through and keeping track of cases once they have been reported out.

While it does not guarantee that wrongdoers will be brought to justice, the Senate's premier committee does succeed in drawing wide media coverage to its investigations. Its hearings, however, have been branded as inquisitorial, with committee members accused of playing up to the media and of abusing their powers, rather than trying to get to the bottom of the issues.

Over the years, the Blue Ribbon Committee has shamed many public servants or private individuals whom it summoned to testify. Former Senator Rene Saguisag once said of the body: "The Constitution really authorizes investigation in aid of legislation. However, I have been the most vocal senator about the way we use, or misuse, this power. I'd have thought we would be more sparing in our use of it. And we would be more prepared when we summon people for questioning. But we seem to be merely badgering the people we invite."

Some 14 years later, in 2001, Filipinos saw live on na-

tional television just what the Blue Ribbon Committee was capable of doing when it conducted an inquiry into the alleged drug-dealing and money-laundering activities of Sen. Panfilo Lacson. Among the witnesses was a former police asset named Ador Mawanay who linked not only Lacson but other senators as well to illegal activities. When Sen. Loren Legarda questioned Mawanay about his allegations that she purchased smuggled cellular phones, his answers failed to satisfy her.

Incensed, she had Mawanay held for contempt citing Section 6 Article 6 of the Rules of the Blue Ribbon Committee which states: "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 of that contempt." Mawanay was immediately taken to the Senate detention center.

Legarda and the other senators drew public criticism for their treatment of the witness, and two days later decided to release him even without "purging himself of that contempt." The Blue Ribbon Committee never again took up the issue of Legarda's alleged purchase of smuggled cell phones.

### **Congressional Ethics Committees**

The public is powerless against the abuse of the powers that lawmakers have at their disposal.

The public's only recourse would be the Ethics Committees of both the Senate and the House of Representatives. The hearings of this Committee are triggered by resolutions seeking investigations into reports of wrongdoing by the legislator's colleagues. History shows, however, that this Committee, whether in the Senate or the House, repeatedly failed to act on lawmakers' misdeeds.

One of the more controversial cases to go before the House Ethics Committee was that of Nueva Ecija Rep. Nicanor de Guzman in the 1990s. He was accused of smuggling into the country from the United States hundreds of firearms which were hidden inside a *balikbayan* box. The public outcry forced the committee to summon de Guzman for an inquiry. But the lawmaker jumped the gun on the committee by resigning his seat. The courts later found de Guzman guilty and sentenced him to life imprisonment for gun running. He served time, but was released years later due to failing health.

As a rule, the House, through the Ethics Committee, glosses over its members' misdeeds or launches token investigations of them, but hardly metes out any sanctions or penalties. Twice in the past, the Committee has failed to investigate allegations of bribe taking.

In 1996, Quezon City Rep. Michael Defensor claimed to have received a P200,000 bribe from Benpres Holdings, the parent company of First Philippine Holdings, which was vying for a contract to rehabilitate the North Luzon Expressway. The House Ethics Committee investigated the allegation, but the inquiry turned into an investigation of Defensor himself, who backed down from his allegations, saying he could not go against a giant like Benpres, which also owns the broadcast network ABS-CBN and the utilities firm Meralco.

In 2000, party-list representatives Renato Magtubo and Etta Rosales accused the House leadership of giving each congressman bribes amounting to as much as P500,000 in exchange for approval of the Omnibus Power Bill. Both lawmakers sought an independent investigation of their allegations and refused to recognize the authority of the House Ethics Committee, saying that the majority of the 25-member committee were likely recipients of the payola. No independent investigation of the matter was ever conducted.

In November 2001, the House Ethics Committee inves-

tigated five congressmen who had been named in a news report as alleged recipients of P2 million each from telecommunications companies Globe and Smart, which were then being probed by the House and Senate on Transportation and Communication for their plan to reduce the number of free text messages allowed to subscribers.

Instead of interrogating the lawmakers, the committee picked on the writer of the story, journalist Tita Valderrama, and forced her to divulge her sources. Worse, instead of inhibiting themselves from the hearing, three of the five lawmakers took turns interrogating Valderrama and forcing her to reveal her sources. Even while the hearings were in progress, one of them filed a libel suit against Valderrama and her paper *The Journal*. Valderrama, whose editors initially refused to allow her to appear for fear she would only be ridiculed and who had to be subpoenaed themselves to appear before the committee, refused to respond to the lawmakers' questions. They invoked their right against self-incrimination in light of the libel suit. Since the investigation was getting nowhere, the House Ethics Committee decided to end it, but not the filing of the libel suit.

At the Senate, the Ethics Committee failed to investigate Senators John Osmeña and Tessie Aquino-Oreta who publicly admitted to having received a P1 million each as their share in former President Estrada's winnings from a high-stakes game of *mahjong* with cronies. The two lawmakers claimed they gave their *balato* to charity, and made a show of giving the money back. Reacting to a public outcry that the two lawmakers be investigated, the Senate Ethics Committee said it was looking into the possibility of an inquiry into the *balato* fiasco. It never did conduct an investigation.

In late 2001, the Senate Ethics Committee cleared Sen. Renato Cayetano of the allegation that he had profited from the sale of stocks of BW Resources at a time when the Senate was already investigating the firm for al-

leged insider trading. Dante Tan, a crony of former president Joseph Estrada, headed BW Resources at that time. During Estrada's impeachment trial, Cayetano himself admitted having invested in BW and having raked in profits of P60 to P70 million pesos. The Senate Ethics Committee launched an investigation into Cayetano's impropriety, but it eventually dropped it and cleared the senator, purportedly because the Committee could not get Tan to appear and substantiate the allegation.

### **National Police Commission (Napolcom)**

When police officers are abusive, they should be made to account for their misdeeds not only to the public but also to their organization, which is supposed to enforce strict standards of discipline. There are disciplinary measures internal and external to the organization which the erring cop will have to face.

Police officials at various levels exercise disciplinary authority over their subordinates. The chief of police of a town or city can act on citizens' complaints and impose administrative sanctions on members of the force found guilty of wrongdoing, provided the cases involve a penalty of not more than 15 days' suspension.

The provincial director, the police regional director, and the Philippine National Police (PNP) chief all have the power to summarily dismiss members found guilty of any of the grave offenses listed in Section 42 of Republic Act 6975, the law that created PNP. The police force also has an Internal Affairs Service integrated into the various levels of the organization, which serves as its watchdog. The Internal Affairs Service may also recommend the criminal prosecution of erring policemen and women.

In the first 10 months of 2001, the police commands all over the country filed charges against 9,206 police officers for a variety of offenses. Of this number, nearly 6,000 cases were resolved, resulting in the dismissal of only

National Police Commission (Napolcom)

590 cops and the suspension of almost 2,000. The figures exclude other cases filed or pending before the Internal Affairs Service.

The PNP has made sure due process is given to members facing charges, says lawyer Verulo Mapanao, director for legal affairs of the Napolcom, specially after a mass dismissal of police officials in the early 1990s created an administrative nightmare for the PNP. That was the time Interior and Local Government Secretary Rafael Alunan launched Complan Pagbabago, a commitment of President Fidel Ramos to purge the police force of misfits and scalawags. Fifty-six police generals were forced out of the service through retirement or resignation. But the plan backfired. "When they went to court, some were able to return, simply because they were able to prove that there was an absence of due process," narrates Mapanao.

The public also has a mechanism for complaints against erring policemen in the People's Law Enforcement Boards or PLEBs headed by city and municipal mayors. Each board is composed of three members of the community with a reputation for probity and integrity who are named to the board by the local Peace and Order Council, a member of the city or municipal council, and the concerned *barangay* captain. The PLEBs may impose penalties ranging from suspension of not more than 90 days, to demotion and dismissal. Decisions made by the PLEB may be appealed to the Napolcom's Regional Appellate Boards.

There are 1,500 currently functioning PLEBs throughout the country. Their total caseload in 2001 was 2,355, less than the 2,923 the previous year. Mapanao attributes the small number of PLEB caseloads to the lack of incentive, of competence, and even of security in the boards to deal with matters of police discipline. "The PLEBs are investigating members of the PNP who are armed," Mapanao declares. "Board members have no compensation. More often than not, the local

government does not give any support, financial or administrative."

Board members may also be unfamiliar with procedural and legal matters, a problem in cases where there is no lawyer around. "How do you expect them to rule on certain issues presented, specially if the complainant or respondent is represented by a lawyer. How do they appreciate the pieces of evidence presented to them?" Mapanao asks.

Policemen and women facing charges before administrative bodies of the PNP are protected against the filing of multiple cases or what is known as forum shopping. A PNP administrative body will entertain a case if it is the only body hearing a complaint.

### **The Armed Forces of the Philippines**

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With the restoration of civilian supremacy over the military and the repeal of P.D 1822, civilian courts were given jurisdiction over military men believed to have violated anti-graft and corruption laws.

With the enactment of Republic Act 8249, high-ranking officers of the Armed Forces—army and air force colonels, navy captains, and officers of higher rank—are now given their day in court at the Sandiganbayan. Lower-ranking officers or enlisted personnel on the other hand will be tried in the regular courts.

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## The Judiciary

Military, who will then determine whether there is cause for legal action, and where the cases should be filed.

## The Judiciary

Members of the judiciary are not exempt from charges of graft and corruption. Like men in uniform, they are expected to adhere to strict standards of ethics as dispensers of justice.

Section 6, Article VIII, of the Constitution gives the Supreme Court "administrative supervision over all courts and the personnel thereof." The Supreme Court sitting *en banc* exercises disciplinary authority over judges in the lower courts, including those in the regular courts, special courts, the Court of Appeals, and the Sandiganbayan.

Investigations against these judges are "private and confidential," although a recent amendment to Rule 140 of the Rules of Court, which defines disciplinary action against judges, allows a copy of the decision or resolution of the court to be made part of the judge's record at the Office of the Court Administrator.

Citizens may file complaints against judges for offenses ranging from "serious," to "less serious or light."

Under "serious charges" fall bribery, dishonesty, and violations of R.A. 3019 or the Anti-graft and Corrupt Practices Act, and violations of the Code of Judicial Conduct. Serious offenses come with penalties ranging from suspension without pay, to fines, to dismissal from the service, and disqualification from public office.

"Less serious charges" include receiving additional or double compensation not authorized by law or the unauthorized practice of law, for which the respondent may be suspended without pay for no more than three months, or fined not more than P20,000.

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