

**MA. ROSARIO SANTOS-CONCIO, MA. SOCORRO V. VIDANES,
MARILOU ALMADEN, CIPRIANO LUSPO, MORLY STEWART NUEVA,
HAROLD JAMES NUEVA, NORBERT VIDANES, FRANCISCO RIVERA,
MEL FELICIANO, an...**

G.R. No. 175057. January 29, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On challenge via petition for review on certiorari are the Court of Appeals May 24, 2006 Decision and October 10, 2006 Resolution[1] in CA-G.R. SP No. 93763 dismissing herein petitioners' petition for certiorari and prohibition that sought to (i) annul respondent Department of Justice (DOJ) Department Order Nos. 90[2] and 165[3] dated February 8, 2006 and March 8, 2006, respectively, and all orders, proceedings and issuances emanating therefrom, and (ii) prohibit the DOJ from further conducting a preliminary investigation in what has been dubbed as the "Ultra Stampede" case.

In the days leading to February 4, 2006, people started to gather in throngs at the Philsports Arena (formerly Ultra) in Pasig City, the publicized site of the first anniversary episode of "Wowowee," a noontime game show aired by ABS-CBN Broadcasting Corporation (ABS-CBN). With high hopes of winning the bonanza, hundreds queued for days and nights near the venue to assure themselves of securing tickets for the show. Little did they know that in taking a shot at instant fortune, a number of them would pay the ultimate wager and place their lives at stake, all in the name of bagging the prizes in store.

Came the early morning of February 4, 2006 with thousands more swarming to the venue. Hours before the show and minutes after the people were allowed entry through two entry points at six o'clock in the morning, the obstinate crowd along Capt. Javier Street jostled even more just to get close to the lower rate pedestrian gate. The mad rush of the unruly mob generated much force, triggering the horde to surge forward with such momentum that led others to stumble and get trampled upon by the approaching waves of people right after the gate opened. This fatal stampede claimed 71 lives, 69 of whom were women, and left hundreds wounded[4] which necessitated emergency medical support and prompted the cancellation of the show's episode.

The Department of Interior and Local Government (DILG), through then Secretary Angelo Reyes, immediately created an inter-agency fact-finding team[5] to investigate the circumstances surrounding the stampede. The team submitted its report[6] to the DOJ on February 7, 2006.

By Department Order No. 90 of February 8, 2006, respondent DOJ Secretary Raul Gonzalez (Gonzalez) constituted a Panel (Evaluating Panel)[7] to evaluate the DILG Report and "determine whether there is sufficient basis to proceed with the conduct of a preliminary investigation on the basis of the documents submitted."

The Evaluating Panel later submitted to Gonzalez a February 20, 2006 Report[8] concurring with the DILG Report but concluding that there was no sufficient basis to proceed with the conduct of a preliminary investigation

in view of the following considerations:

a)

No formal complaint/s had been filed by any of the victims and/or their relatives, or any law enforcement agency authorized to file a complaint, pursuant to Rule 110 of the Revised Rules of Criminal Procedure;

b)

While it was mentioned in the Fact-Finding Report that there were 74 deaths and 687 injuries, no documents were submitted to prove the same, e.g. death certificates, autopsy reports, medical certificates, etc.;

c)

The Fact-Finding Report did not indicate the names of the persons involved and their specific participation in the “Ultra Incident”;

d)

Most of the victims did not mention, in their sworn statements, the names of the persons whom they alleged to be responsible for the “Ultra Incident”.[9]

Respondent National Bureau of Investigation-National Capital Region (NBI-NCR), acting on the Evaluating Panel’s referral of the case to it for further investigation, in turn submitted to the DOJ an investigation report, by a March 8, 2006 transmittal letter (NBI-NCR Report[10]), with supporting documents recommending the conduct of preliminary investigation for Reckless Imprudence resulting in Multiple Homicide and Multiple Physical Injuries[11] against petitioners and seven others[12] as respondents.

Acting on the recommendation of the NBI-NCR, Gonzalez, by Department Order No. 165 of March 8, 2006, designated a panel of state prosecutors[13] (Investigating Panel) to conduct the preliminary investigation of the case, docketed as I.S. No. 2006-291, “NCR-NBI v. Santos-Concio, et al.,” and if warranted by the evidence, to file the appropriate information and prosecute the same before the appropriate court. The following day or on March 9, 2006, the Investigating Panel issued subpoenas[14] directing the therein respondents to appear at the preliminary investigation set on March 20 and 27, 2006.

At the initial preliminary investigation, petitioners sought clarification and orally moved for the inhibition, disqualification or desistance of the Investigating Panel from conducting the investigation.[15] The Investigating Panel did not formally resolve the motion, however, as petitioners manifested their reservation to file an appropriate motion on the next hearing scheduled on March 27, 2006, without prejudice to other remedies.[16]

On March 23, 2006, petitioners filed a petition for certiorari and prohibition with the Court of Appeals which issued on March 27, 2006 a Resolution[17] granting the issuance of a temporary restraining order,[18] conducted on April 24, 2006 a hearing on the application for a writ of preliminary injunction, and subsequently promulgated the assailed two issuances.

In the meantime, the Investigating Panel, by Resolution[19] of October 9, 2006, found probable cause to indict the respondents-herein petitioners for Reckless Imprudence resulting in Multiple Homicide and Physical Injuries, and recommended the conduct of a separate preliminary investigation against certain public officials.[20] Petitioners’

Motion for Reconsideration[21] of the said October 9, 2006 Resolution, filed on October 30, 2006 “with abundance of caution,” is pending resolution, and in the present petition they additionally pray for its annulment.

In asserting their right to due process, specifically to a fair and impartial preliminary investigation, petitioners impute reversible errors in the assailed issuances, arguing that:

Respondents have already prejudged the case, as shown by the public declarations of Respondent Secretary and the Chief Executive, and have, therefore, lost their impartiality to conduct preliminary investigation.

Respondents have already prejudged the case as shown by the indecent haste by which the proceedings were conducted.

The alleged complaint-affidavits filed against Petitioners were not under oath.

The supposed complaint-affidavits filed against Petitioners failed to state the acts or omissions constituting the crime.

Although Respondents may have the power to conduct criminal investigation or preliminary investigation, Respondents do not have the power to conduct both in the same case.[22] (Emphasis and underscoring supplied)

The issues shall, for logical reasons, be resolved in reverse sequence.

On the Investigatory Power of the DOJ

In the assailed Decision, the appellate court ruled that the Department Orders were issued within the scope of authority of the DOJ Secretary pursuant to the Administrative Code of 1987[23] bestowing general investigatory powers upon the DOJ.

Petitioners concede that the DOJ has the power to conduct both criminal investigation and preliminary investigation but not in their case,[24] they invoking *Cojuangco, Jr. v. PCGG*.[25] They posit that in *Cojuangco*, the reshuffling of personnel was not considered by this Court which ruled that the entity which conducted the criminal investigation is disqualified from conducting a preliminary investigation in the same case. They add that the DOJ cannot circumvent the prohibition by simply creating a panel to conduct the first, and another to conduct the second.

In insisting on the arbitrariness of the two Department Orders which, so they claim, paved the way for the DOJ’s dual role, petitioners trace the basis for the formation of the five-prosecutor Investigating Panel to the NBI-NCR Report which was spawned by the supposed criminal investigation[26] of the Evaluating Panel the members of which included two, albeit different, prosecutors. While petitioners do not assail the constitution of the Evaluating Panel,[27] they claim that it did not just evaluate the DILG Report but went further and conducted its own criminal investigation by interviewing witnesses, conducting an ocular inspection, and perusing the evidence.

Petitioners’ position does not lie. *Cojuangco* was borne out of a different factual milieu.

In *Cojuangco*, this Court prohibited the Presidential Commission on Good Government (PCGG) from conducting a preliminary investigation of the complaints for graft and corruption since it had earlier found a prima facie case – basis of its issuance of sequestration/freeze orders and the filing of an ill-gotten wealth case involving the same transactions. The Court therein stated that it is “difficult to imagine how in the conduct of such preliminary investigation the PCGG could even make a turn about and take a position contradictory to its earlier findings of a prima facie case,” and so held that “the law enforcer who conducted the criminal investigation,

gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be

allowed to conduct the preliminary investigation of his own complaint.”[28] The present case deviates from Cojuangco.

The measures taken by the Evaluating Panel do not partake of a criminal investigation, they having been done in aid of evaluation in order to relate the incidents to their proper context. Petitioners’ own video footage of the ocular inspection discloses this purpose. Evaluation for purposes of determining whether there is sufficient basis to proceed with the conduct of a preliminary investigation entails not only reading the report or documents in isolation, but also deems to include resorting to reasonably necessary means such as ocular inspection and physical evidence examination. For, ultimately, any conclusion on such sufficiency or insufficiency needs to rest on some basis or justification.

Had the Evaluating Panel carried out measures partaking of a criminal investigation, it would have gathered the documents that it enumerated as lacking. Notatu dignum is the fact that the Evaluating Panel was dissolved *functus officio* upon rendering its report. It was the NBI, a constituent unit[29] of the DOJ, which conducted the criminal investigation. It is thus foolhardy to inhibit the entire DOJ from conducting a preliminary investigation on the sheer ground that the DOJ’s constituent unit conducted the criminal investigation.

Moreover, the improbability of the DOJ contradicting its prior finding is hardly appreciable. It bears recalling that the Evaluating Panel found no sufficient basis to proceed with the conduct of a preliminary investigation. Since the Evaluating Panel’s report was not adverse to petitioners, prejudgment may not be attributed “vicariously,” so to speak, to the rest of the state prosecutors. Partiality, if any obtains in this case, in fact weighs heavily in favor of petitioners.

On the Alleged Defects of the Complaint

On the two succeeding issues, petitioners fault the appellate court’s dismissal of their petition despite, so they claim, respondents’ commission of grave abuse of discretion in proceeding with the preliminary investigation given the fatal defects in the supposed complaint.

Petitioners point out that they cannot be compelled to submit their counter-affidavits because the NBI-NCR Report, which they advert to as the complaint-affidavit, was not under oath. While they admit that there were affidavits attached to the NBI-NCR Report, the same, they claim, were not executed by the NBI-NCR as the purported complainant, leaving them as “orphaned” supporting affidavits without a sworn complaint-affidavit to support.

These affidavits, petitioners further point out, nonetheless do not qualify as a complaint[30] within the scope of Rule 110 of the Rules of Court as the allegations therein are insufficient to initiate a preliminary investigation, there being no statement of specific and individual acts or omissions constituting reckless imprudence. They bewail the assumptions or conclusions of law in the NBI-NCR Report as well as the bare narrations in the affidavits that lack any imputation relating to them as the persons allegedly responsible.

IN FINE, petitioners contend that absent any act or omission ascribed to them, it is unreasonable to expect them to confirm, deny or explain their side.

A complaint for purposes of conducting a preliminary investigation differs from a complaint for purposes of instituting a criminal prosecution. Confusion apparently springs because two complementary procedures adopt the usage of the same word, for lack of a better or alternative term, to refer essentially to a written charge. There should be no confusion about the objectives, however, since, as intimated during the hearing before the appellate court, preliminary investigation is conducted precisely to elicit further facts or evidence.[31] Being generally inquisitorial, the preliminary investigation stage is often the only means of discovering the persons who may be

reasonably charged with a crime, to enable the preparation of a complaint or information.[32]

Consider the following pertinent provision of Rule 112 of the Revised Rules on Criminal Procedure:

SEC. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.[33] (Emphasis and underscoring supplied)

As clearly worded, the complaint is not entirely the affidavit of the complainant, for the affidavit is treated as a component of the complaint. The phraseology of the above-quoted rule recognizes that all necessary allegations need not be contained in a single document. It is unlike a criminal “complaint or information” where the averments must be contained in one document charging only one offense, non-compliance with which renders it vulnerable to a motion to quash.[34]

The Court is not unaware of the practice of incorporating all allegations in one document denominated as “complaint-affidavit.” It does not pronounce strict adherence to only one approach, however, for there are cases where the extent of one’s personal knowledge may not cover the entire gamut of details material to the alleged offense. The private offended party or relative of the deceased may not even have witnessed the fatality,[35] in which case the peace officer or law enforcer has to rely chiefly on affidavits of witnesses. The Rules do not in fact preclude the attachment of a referral or transmittal letter similar to that of the NBI-NCR. Thus, in *Soriano v. Casanova*,[36] the Court held:

A close scrutiny of the letters transmitted by the BSP and PDIC to the DOJ shows that these were not intended to be the complaint envisioned under the Rules. It may be clearly inferred from the tenor of the letters that the officers merely intended to transmit the affidavits of the bank employees to the DOJ. Nowhere in the transmittal letters is there any averment on the part of the BSP and PDIC officers of personal knowledge of the events and transactions constitutive of the criminal violations alleged to have been made by the accused. In fact, the letters clearly stated that what the OSI of the BSP and the LIS of the PDIC did was to respectfully transmit to the DOJ for preliminary investigation the affidavits and personal knowledge of the acts of the petitioner. These affidavits were subscribed under oath by the witnesses who executed them before a notary public. Since the affidavits, not the letters transmitting them, were intended to initiate the preliminary investigation, we hold that Section 3(a), Rule 112 of the Rules of Court was substantially complied with.

Citing the ruling of this Court in *Ebarle v. Sucaldito*, the Court of Appeals correctly held that a complaint for purposes of preliminary investigation by the fiscal need not be filed by the offended party. The rule has been that, unless the offense subject thereof is one that cannot be prosecuted de oficio, the same may be filed, for preliminary investigation purposes, by any competent person. The crime of estafa is a public crime which can be initiated by “any competent person.” The witnesses who executed the affidavits based on their personal knowledge of the acts committed by the petitioner fall within the purview of “any competent person” who may institute the complaint for a public crime. x x x[37] (Emphasis and underscoring supplied)

A preliminary investigation can thus validly proceed on the basis of an affidavit of any competent person, without the referral document, like the NBI-NCR Report, having been sworn to by the law enforcer as the nominal complainant. To require otherwise is a needless exercise. The cited case of *Oporto, Jr. v. Judge Monserate*[38] does not appear to dent this proposition. After all, what is required is to reduce the evidence into affidavits, for

while reports and even raw information may justify the initiation of an investigation, the preliminary investigation stage can be held only after sufficient evidence has been gathered and evaluated which may warrant the eventual prosecution of the case in court.[39]

In the present case, there is no doubt about the existence of affidavits. The appellate court found that “certain complaint-affidavits were already filed by some of the victims,”[40] a factual finding to which this Court, by rule, generally defers.

A complaint for purposes of conducting preliminary investigation is not required to exhibit the attending structure of a “complaint or information” laid down in Rule 110 (Prosecution of Offenses) which already speaks of the “People of the Philippines” as a party,[41] an “accused” rather than a respondent,[42] and a “court” that shall pronounce judgment.[43] If a “complaint or information” filed in court does not comply with a set of constitutive averments, it is vulnerable to a motion to quash.[44] The filing of a motion to dismiss in lieu of a counter-affidavit is proscribed by the rule on preliminary investigation, however.[45] The investigating officer is allowed to dismiss outright the complaint only if it is not sufficient in form and substance or “no ground to continue with the investigation”[46] is appreciated.

The investigating fiscal, to be sure, has discretion to determine the specificity and adequacy of averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry, or proceed with the investigation if the complaint is, in his view, in due and proper form. It certainly is not his duty to require a more particular statement of the allegations of the complaint merely upon the respondents’ motion, and specially where after an analysis of the complaint and its supporting statements he finds it sufficiently definite to apprise the respondents of the offenses which they are charged. Moreover, the procedural device of a bill of particulars, as the Solicitor General points out, appears to have reference to informations or criminal complaints filed in a competent court upon which the accused are arraigned and required to plead, and strictly speaking has no application to complaints initiating a preliminary investigation which cannot result in any finding of guilt, but only of probable cause.[47] (Italics and ellipses in the original omitted; underscoring supplied)

Petitioners’ claims of vague allegations or insufficient imputations are thus matters that can be properly raised in their counter-affidavits to negate or belie the existence of probable cause.

On the Claim of Bias and Prejudgment

On the remaining issues, petitioners charge respondents to have lost the impartiality to conduct the preliminary investigation since they had prejudged the case, in support of which they cite the “indecent” haste in the conduct of the proceedings. Thus, they mention the conduct of the criminal investigation within 24 working days[48] and the issuance of subpoenas immediately following the creation of the Investigating Panel.

Petitioners likewise cite the following public declarations made by Gonzalez as expressing his conclusions that a crime had been committed, that the show was the proximate cause, and that the show’s organizers are guilty thereof:

February 6, 2006: “[] should have anticipated it because one week na iyan e. The crowds started gathering since one week before. This is simply negligence x x x on the part of the organizers.”

February 14, 2006: “I think ABS-CBN is trying to minimize its own responsibility and it’s discernible from the way by which talk shows nila being conducted on people who talk about liabilities of others.

“The reason for this incident was the program. If there was no program, there would have been no stampede. There would have been no people. There would have been no attempt by people to queue there for days and rush for the nearest entry point.”

March 20, 2006: "I'll bet everything I have that they are responsible at least on the civil aspect." [49]
(Emphasis in the original)

Continuing, petitioners point out that long before the conclusion of any investigation, Gonzalez already ruled out the possibility that some other cause or causes led to the tragedy or that someone else or perhaps none should be made criminally liable; and that Gonzalez had left the preliminary investigation to a mere determination of who within ABS-CBN are the program's organizers who should be criminally prosecuted.

Petitioners even cite President Arroyo's declaration in a radio interview on February 14, 2006 that "[y]ang stampede na iyan, Jo, ay isang trahedya na pinapakita yung kakulangan at pagkapabaya... nagpabaya ng organisasyon na nag-organize nito."

To petitioners, the declarations admittedly [50] made by Gonzalez tainted the entire DOJ, including the Evaluating and Investigating Panels, since the Department is subject to the direct control and supervision of Gonzalez in his capacity as DOJ Secretary who, in turn, is an alter ego of the President.

Petitioners thus fault the appellate court in not finding grave abuse of discretion on the part of the Investigating Panel members who "refused to inhibit themselves from conducting the preliminary investigation despite the undeniable bias and partiality publicly displayed by their superiors." [51]

Pursuing, petitioners posit that the bias of the DOJ Secretary is the bias of the entire DOJ. [52] They thus conclude that the DOJ, as an institution, publicly adjudged their guilt based on a pre-determined notion of supposed facts, and urge that the Investigating Panel and the entire DOJ for that matter should inhibit from presiding and deciding over such preliminary investigation because they, as quasi-judicial officers, do not possess the "cold neutrality of an impartial judge." [53]

Responding to the claim of prejudgment, respondents maintain that the above-cited statements of Gonzalez and the President merely indicate that the incident is of such nature and magnitude as to warrant a natural inference that it would not have happened in the ordinary course of things and that any reasonable mind would conclude that there is a causal connection between the show's preparations and the resultant deaths and injuries.

Petitioners' fears are speculative.

Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot per se be instantly attributed to an injudicious performance of functions. [54] For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, [55] with particular regard of the circumstances peculiar to each case.

The presumption of regularity [56] includes the public officer's official actuations in all phases of work. [57] Consistent with such presumption, it was incumbent upon petitioners to present contradictory evidence other than a

mere tallying of days or numerical calculation. [58] This, petitioners failed to discharge. The swift completion of the Investigating Panel's initial task cannot be relegated as shoddy or shady without discounting the presumably regular performance of not just one but five state prosecutors.

As for petitioners' claim of undue haste indicating bias, proof thereof is wanting. The pace of the proceedings is anything but a matter of acceleration. Without any objection from the parties, respondents even accorded petitioners a preliminary investigation even when it was not required since the case involves an alleged offense where the penalty prescribed by law is below Four Years, Two Months and One Day. [59]

Neither is there proof showing that Gonzalez exerted undue pressure on his subordinates to tailor their decision

with his public declarations and adhere to a pre-determined result. The Evaluating Panel in fact even found no sufficient basis, it bears emphatic reiteration, to proceed with the conduct of a preliminary investigation, and one member of the Investigating Panel even dissented to its October 9, 2006 Resolution.

To follow petitioner's theory of institutional bias would logically mean that even the NBI had prejudged the case in conducting a criminal investigation since it is a constituent agency of the DOJ. And if the theory is extended to the President's declaration, there would be no more arm of the government credible enough to conduct a criminal investigation and a preliminary investigation.

On petitioners citation of *Ladlad v. Velasco*[60] where a public declaration by Gonzalez was found to evince a "determination to file the Information even in the absence of probable cause,"[61] their attention is drawn to the following ruling of this Court in *Roberts, Jr. v. Court of Appeals*:[62]

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule x x x enumerated in *Brocka vs. Enrile* (192 SCRA 183, 188-189 [1990]) x x x. In these exceptional cases, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation x x x.[63] (Emphasis and underscoring supplied)

Even assuming *arguendo* that petitioners' case falls under the exceptions enumerated in *Brocka*, any resolution on the existence or lack of probable cause or, specifically, any conclusion on the issue of prejudgment as elucidated in *Ladlad*, is made to depend on the records of the preliminary investigation. There have been, as the appellate court points out, no finding to speak of when the petition was filed, much less one that is subject to judicial review due to grave abuse.[64] At that incipient stage, records were wanting if not nil since the Investigating Panel had not yet resolved any matter brought before it, save for the issuance of subpoenas. The Court thus finds no reversible error on the part of the appellate court in dismissing petitioners' petition for certiorari and prohibition and in refraining from reviewing the merits of the case until a ripe and appropriate case is presented. Otherwise, court intervention would have been only pre-emptive and piecemeal.

Oddly enough, petitioners eventually concede that they are "not asking for a reversal of a ruling on probable cause." [65]

A word on the utilization by petitioners of the video footages provided by ABS-CBN. While petitioners deny wishing or causing respondents to be biased and impartial,[66] they admit[67] that the media, ABS-CBN included, interviewed Gonzalez in order to elicit his opinion on a matter that ABS-CBN knew was pending investigation and involving a number of its own staff. Gonzalez's actuations may leave much to be desired; petitioners' are not, however, totally spotless as circumstances tend to show that they were asking for or fishing from him something that could later be used against him to favor their cause.

A FINAL WORD. The Court takes this occasion to echo its disposition in *Cruz v. Salva*[68] where it censured a fiscal for inexcusably allowing undue publicity in the conduct of preliminary investigation and appreciated the press for wisely declining an unusual probing privilege. Agents of the law ought to recognize the buoys and bounds of prudence in discharging what they may deem as an earnest effort to herald the government's endeavor in solving a case.

WHEREFORE, the petition is DENIED.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] [Former] Special Thirteenth Division composed of Justice Lucas P. Bersamin, acting chairman; Justice Lucenito N. Tagle, acting senior member; and Justice Arturo G. Tayag, junior member and ponente.

[2] Rollo, p. 137.

[3] Id. at 243.

[4] Id. at 181-200.

[5] Headed by DILG Undersecretary Marius Corpus, the team had the authority to summon and interview any person who can shed light on the incident, require the submission of any and all relevant documents, and to enlist the assistance of any other government agencies. CA rollo, p. 64.

[6] Rollo, pp. 132-135.

[7] Composed of respondents Senior State Prosecutor Joselita De Claro-Mendoza as chairperson, and State Prosecutor Merba Waga, NBI-NCR Regional Director Atty. Ruel Lasala and NBI Investigating Agent Atty. Arnold Rosales as members.

[8] Rollo, pp. 136, 138-174. The Evaluating Panel concurred with the DILG's findings as regards the venue, security arrangements, crowd control management and coordination, and contingency/emergency plans and medical response.

[9] Rollo, p. 170.

[10] Id. at 175-242.

[11] Revised Penal Code, Art. 365 in relation to Arts. 249, 263, 265 & 266, as amended.

[12] [Ma. Rosario] "Charo" Santos-Concio (Executive Vice President of ABS-CBN Broadcasting Corp. and Head of ABS-CBN's Entertainment Group); Maria Socorro V. Vidanes (Senior Vice President of the Television Production Department of ABS-CBN's Entertainment Group); Marilou Almaden (Business Unit Head and Executive Producer of ABS-CBN in charge of supervision of entertainment shows); Cipriano "Rene" Luspo (Assistant Vice President and Head of Security of ABS-CBN); Morly Stewart [Nueva] (Executive Producer and Manager of the Wowowee show); Harold James Nueva (Associate Producer for Sets & Technicals of the Wowowee show); Norbert Vidanes (Director of the Wowowee show); Fran[c]isco B. Rivera (Location Manager of ABS-CBN); Mel Feliciano (Assistant Director of the Wowowee show); Jean Owen [Ercia] (Floor Director of the Wowowee show); together with Wilfredo "Willy" B. Revillame (Host of the Wowowee show); Rey Cayabyab (Assistant Location Manager and Security Coordinator); Jess Velardo (Building Administrator of the Philsports Complex); Erlinda S. Reis (Booking and Events Coordinator of the Philsports Complex); Rosenbar O. Vilorio (Staff Director for Operations of Goldlink Security and Allied Services, Inc.); Wilfron Onanad (Security-in-Charge of Goldlink Security and Allied Services, Inc.); and Chito Payumo (Security-in-Charge of Goldlink Security and Allied Services, Inc.), id. at 175.

[13] Composed of respondents Senior State Prosecutor Leo B. Dacera III as chairperson, and Senior State Prosecutor Deana P. Perez, State Prosecutors Ma. Emilia L. Victorio, Eden S. Wakay-Valdes and Peter L. Ong as members.

[14] Rollo, pp. 615-624.

[15] Id. at 257-260, 266 et seq.

[16] Id. at 278, 289-291.

[17] Id. at 367-370. Per Justice Arturo G. Tayag, with Justice Jose L. Sabio, Jr. and Justice Noel G. Tijam (vice Justice Jose C. Mendoza) concurring.

[18] Id. at 371-372.

[19] Id. at 753-822. With a lone dissent by Investigating Panel Member State Prosecutor Peter Ong, the Resolution bears the recommending approval of Assistant Chief State Prosecutor Richard Anthony Fadullon and approval of Assistant Chief State Prosecutor Miguel Gudio, Jr. for the Chief State Prosecutor.

[20] Pasig City Mayor Vicente Eusebio; Pasig City Police Chief P/S Supt. Raul Z. Medina; Pasig City PCP 15 Station Commander P/S Insp. Henry N. Asuela; Pasig City Traffic and Parking Management Office Chief P/Insp. Khaddafy Bitor; Philsports Complex Chief Security Officer Arnulfo Awa; Philsports Complex Security Coordinator Eugenio Cabigas; and Oranbo Barangay Chairman Richard Pua.

[21] Rollo, pp. 823-905. Petitioners allege that they also filed an “Urgent Motion to Reopen Case and/or Reinvestigation with Motion for Issuance of Subpoenae.”

[22] Id. at 55-56.

[23] Executive Order No. 292, Book IV, Title III, Chapter 1 reads:

SECTION 1. Declaration of Policy.— It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and members of indigenous cultural minorities; and provide free legal services to indigent members of society.

SEC. 2. Mandate.— The Department shall carry out the policy declared in the preceding section.

SEC. 3. Powers and Functions.— To accomplish its mandate, the Department shall have the following powers and functions:

x x x x

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;

x x x x. (Emphasis and underscoring supplied)

[24] Rollo, p. 84.

[25] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

[26] Petitioners classify this as the “second” criminal investigation, followed by the one conducted by the NBI-NCR and preceded by that of the DILG. The latter two, petitioners do not question. Rollo, pp. 85-86, 411.

[27] Petitioners stated that “if [the Evaluating Panel] had just done that, evaluated the report, look[ed] at the four corners, there would have not been no [sic] problem.” Id. at 414.

[28] Cojuangco, Jr. v. PCGG, *supra* at 254.

[29] EXECUTIVE ORDER No. 292, Book IV, Title III, Chapter 1, Sec. 4.

[30] Vide rollo, pp. 546-547.

[31] Rollo, p. 541.

[32] Paderanga v. Drilon, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.

[33] RULES OF COURT, Rule 112, Sec. 3, par. (a).

[34] Rules of Court, Rule 117, Sec. 3 (f) in relation to Rule 110, Sec. 13.

[35] As the appellate court pointed out, for obvious reasons the victims who died could no longer sign the complaint; rollo, pp. 549-550.

[36] G.R. No. 163400, March 31, 2006, 486 SCRA 431.

[37] *Id.* at 438-439; Tayaban v. People, G.R. No. 150194, March 6, 2007, 517 SCRA 488, 502-503; Rules of Court, Rule 110, Sec. 3, where it is unlike a “complaint” which is “x x x subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.”

[38] 408 Phil. 561 (2001). Both Oporto and the prior en banc case of *People v. Historillo* (389 Phil. 141 [2000]) rely on *U.S. v. Bibal* (4 Phil. 369 [1905]) in holding that the lack of oath (even) in a criminal complaint does not invalidate the judgment of conviction since the want of an oath is a mere defect in form which does not affect the substantial rights of the defendant on the merits. Oporto, however, involved an administrative case concerning the proper issuance of a warrant of arrest in a criminal case not requiring a preliminary investigation, in which case the judge needs to personally examine in writing and under oath the complainant and witnesses, which could not have been done absent any sworn statement.

[39] Vide *Olivas v. Office of the Ombudsman*, G.R. No. 102420, December 20, 1994, 239 SCRA 283, 294-295.

[40] Rollo, p. 121, citing TSN taken during the proceedings at the Court of Appeals on April 24, 2006, at 95-98, 108-119 (rollo, pp. 467-470, 480-491).

[41] Vide Rules of Court, Rule 110, Sec. 2.

[42] *Id.* at Secs. 6-7.

[43] *Id.* at Sec. 9.

[44] Vide Rules of Court, Rule 117, Sec. 3 (a) in relation to Rule 110, Secs. 6-11.

[45] *Id.*, Rule 112, Sec. 3, par. (c).

[46] *Id.* at par. (b).

[47] *Cinco v. Sandiganbayan*, G.R. Nos. 92362-67, October 15, 1991, 202 SCRA 726, 734; vide *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176.

[48] Inclusive of February 4, 2006 (Saturday) when the DILG’s fact-finding team was created up to the submission of the NBI-NCR Report on March 8, 2006.

[49] Vide rollo, p. 36.

[50] Vide *id.* at 495-496, but declining to interpret the context under which the statements were made.

[51] Rollo, p. 69.

[52] Id. at 38.

[53] Id. at 57 citing *Cruz v. People*, G.R. No. 108738, June 27, 1994, 233 SCRA 439, 449-450.

[54] Vide *Gala v. Ellice Agro-Industrial Corporation*, 463 Phil. 846, 858-859 (2003) citing *People v. Mercado*, 400 Phil. 37 (2000).

[55] Vide id.

[56] RULES OF COURT, Rule 131, Sec. 3 (m).

[57] *De Chavez v. Office of the Ombudsman*, G.R. Nos. 168830-31, February 6, 2007, 514 SCRA 638, 652. Cf. *Ribaya v. Binamira-Parcia*, A.M. No. MTJ-04-1547, April 15, 2005, 456 SCRA 107, 119 where the judge issued a warrant of arrest on the same day the complaint was filed.

[58] Cf. *Ribaya v. Binamira-Parcia*, A.M. No. MTJ-04-1547, April 15, 2005, 456 SCRA 107, 119 where the judge issued a warrant of arrest on the same day the complaint was filed.

[59] Rollo, p. 937; Rules of Court, Rule 112, Sec. 1 in relation to REVISED PENAL CODE, Art. 365. Vide *People v. De Los Santos*, G.R. No. 131588, March 27, 2004, 355 SCRA 415.

[60] G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318.

[61] Id. In that case, Gonzalez categorically stated, “We [the DOJ] will just declare probable cause, then it’s up to the [C]ourt to decide . . .”

[62] 324 Phil. 568 (1996).

[63] Id. at 615-616.

[64] Id. at 30.

[65] Rollo, p. 965.

[66] Id. at 97.

[67] Id. at 63-64.

[68] 105 Phil. 1151 (1959).

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