

RICHARD A. CAMBE, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, LEVITO D. BALIGOD, AND FIELD INVESTIGATION OFFICE, RESPONDENTS.*G.R. Nos. 212014-15. December 06, 2016*

Ponente: PERLAS-BERNABE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-212014-15/>**PERLAS-BERNABE, J.:**

Before this Court are consolidated petitions[1] filed by petitioners Senator Ramon "Bong" Revilla, Jr. (Sen. Revilla), Richard A. Cambe (Cambe), Janet Lim Napoles (Napoles or Janet Napoles), John Raymund De Asis (De Asis), and Ronald John Lim (Lim), which commonly assail the Joint Resolution[2] dated March 28, 2014 and the Joint Order[3] dated June 4, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0316 and OMB-C-C-13-0395 finding probable cause to indict them, along with several others, for the crimes of Plunder, defined and penalized under Section 2 in relation to Section 1 (d) (1), (2), and (6) of Republic Act No. (RA) 7080,[4] as amended (one [1] count) and/or of violation of Section 3 (e) of RA 3019[5] (sixteen [16] counts).

Further assailed are: (1) by Cambe,[6] the Ombudsman's Joint Order[7] dated March 14, 2014, which denied Cambe's Supplemental Counter-Affidavit with Second Motion to Suspend Proceedings[8] (2) by Sen. Revilla,[9] the Ombudsman's Order[10] dated May 15, 2014 which denied Sen. Revilla's Omnibus Motion[11] to re-conduct the preliminary investigation, among others; and (3) by petitioners Mario L. Relampagos (Relampagos), Rosario Salamida Nuñez (Nuñez), Lalaine Narag Paule (Paule), and Marilou Dialino Bare (Bare),[12] the Resolutions dated November 13, 2014[13] and May 13, 2015[14] of the Sandiganbayan which affirmed the finding of probable cause against them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280.

The Facts

Petitioners are all charged as co-conspirators for their respective participations in the illegal pillaging of public funds sourced from the Priority Development Assistance Fund (PDAF) of Sen. Revilla for the years 2006 to 2010,[15] in the total amount of P517,000,000.00.[16] The charges are contained in two (2) complaints, namely: (1) a Complaint for Plunder[17] filed by the National Bureau of Investigation (NBI) and Atty. Levito D. Baligod on September 16, 2013, docketed as OMB-C-C-13-0316; and (2) a Complaint for Plunder and violation of Section 3 (e) of RA 3019[18] filed by the Field Investigation Office of the Ombudsman (FIO) on November 18, 2013, docketed as OMB-C-C-13-0395, both before the Ombudsman. Briefly stated, petitioners were implicated for the following acts:

(a) Sen. Revilla, as Senator of the Republic of the Philippines, for authorizing the illegal utilization, diversion, and disbursement of his allocated PDAF through his endorsement of fraudulent Non-Governmental Organizations (NGOs) created and controlled by Napoles's JLN (Janet Lim Napoles) Corporation[19] in relation to "ghost" PDAF-funded projects,[20] and for receiving significant portions of the diverted PDAF funds as his "commission" or "kickback";[21]

(b) Cambe, as Chief of Staff of Sen. Revilla during the times material to this case, for processing the utilization, diversion, and disbursement of Sen. Revilla's PDAF,[22] and for personally receiving his own "commission" or "kickback" from the diverted funds;[23]

(c) Napoles, as the mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Sen. Revilla's PDAF through: (1) the commencement via "business propositions" with the legislator regarding his allocated PDAF; (2) the creation and operation of JLN-controlled NGOs to serve as "conduits" for "ghost" PDAF-funded projects; (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs; (4) the falsification and machinations used in securing funds from the various implementing agencies (IAs) and in liquidating disbursements; and (5) the remittance of Sen. Revilla's PDAF for misappropriation;[24]

(d) Lim and De Asis, as staff employees of Napoles, for assisting in the fraudulent processing and releasing of the PDAF funds to the JLN--controlled NGOs[25] through, among others, their designation as Presidents/Incorporators[26] of JLN-controlled NGOs, namely, Kaupdanan Para sa Mangunguma Foundation, Inc. (KPMFI)[27] and Ginintuang Alay sa Magsasaka Foundation, Inc. (GAMFI),[28] respectively, and for eventually remitting the PDAF funds to Napoles's control;[29] and

(e) Relampagos, Nuñez, Paule, and Bare (Relampagos, et al.), as employees of the Department of Budget and Management (DBM), for participating in the misuse or diversion of Sen. Revilla's PDAF, by acting as "contacts" of Napoles within the DBM, and thereby, assisting in the release of the Special Allotment Release Orders (SAROs) and Notices of Cash Allocation (NCAs) covering Sen. Revilla's PDAF.[30]

As alleged, the PDAF scheme commences with Napoles meeting with a legislator - in this case, Sen. Revilla - with the former giving an offer to "acquire" his PDAF allocation in exchange for a "commission" or "kickback" amounting to a certain percentage of the PDAF.[31] Upon their agreement on the conditions of the PDAF acquisition, including the project for which the PDAF will be utilized, the corresponding IA tasked to implement the same, and the legislator's "commission" or "kickback" ranging from 40-60% of either the project cost or the amount stated in the SARO,[32] the legislator would then write a letter addressed to the Senate President for the immediate release of his PDAF, who in turn, will endorse such request to the DBM for the release of the SARO.[33] By this time, the initial advance portion of the "commission" would be remitted by Napoles to the legislator.[34] Upon release of the SARO, Napoles would then direct her staff - including whistleblowers Benhur Luy (Luy), Marina Sula (Sula), and Merlina Suñas (Suñas) to prepare PDAF documents containing, inter alia, the preferred JLN-controlled NGO that will be used as a "conduit" for the implementation of the project, the project proposals of the identified NGO, and the endorsement letters to be signed by the legislator and/or his staff, all for the approval of the legislator;[35] and would remit the remaining portion or balance of the "commission" of the legislator, which is usually delivered by her staff, Lim and De Asis.[36] Once the documents are approved, the same would be transmitted to the IA which would handle the preparation of the Memorandum of Agreement (MOA) to be executed by the legislator's office, the IA, and the chosen NGO.[37] Thereafter, the DBM would release the NCA[38] to the IA concerned, the head/official of which, in turn, would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a ten percent (10%) share in the project cost.[39] Among those tasked by Napoles to pick up the checks and deposit them to the bank accounts of the NGO concerned were Luy, Suñas, and De Asis.[40] Once the funds are in the account of the JLN-controlled NGO, Napoles would then call the bank to facilitate the withdrawal thereof.[41] Upon withdrawal of the said funds by Napoles's staff, the latter would bring the proceeds to the office of JLN Corporation for accounting.[42] Napoles would then decide how much will be left in the office and how much will be brought to her residence in Taguig City. De Asis, Lim, Luy, and Suñas were the ones instructed to deliver the money to

Napoles's residence.[43] Finally, to liquidate the disbursements, Napoles and her staff would manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports, and similar documents that would make it appear that the PDAF-funded projects were implemented when, in fact, they were not since they were actually inexistent or, in other words, "ghost" projects.[44] Under this *modus operandi*, Sen. Revilla, with the help of petitioners, among others, allegedly funneled his PDAF amounting to around P517,000,000.00[45] to the JLN-controlled NGOs and, in return, received "commissions" or "kickbacks" amounting to at least P224,512,500.00[46]

In the Orders dated November 19, 2013[47] and November 29, 2013,[48] the Ombudsman directed petitioners, along with several others, to submit their respective counter-affidavits, to which petitioners complied with, except for Napoles and Lim.[49]

In his defense, Revilla filed his Counter-Affidavit dated January 16, 2014, contending that: (a) his and Cambe's signatures in the PDAF documents were forgeries; (b) the utilization of his PDAF had "always been regular and above-board"; (c) his involvement in the release of his PDAF is limited; and (d) there is "no credible proof" to show that he committed said illegal acts and that conspiracy exists between him and all the other persons involved in the PDAF scam.[50]

Cambe, on the other hand, filed his Counter-Affidavit dated January 20, 2014 and Supplemental Counter-Affidavit dated March 12, 2014, maintaining that: (a) his signatures in the PDAF documents were all forgeries; and (b) he did not receive any money from Sen. Revilla's PDAF nor connive with any of the alleged co-conspirators to acquire ill-gotten wealth.[51]

For his part, De Asis filed his Counter-Affidavit dated January 16, 2014, admitting that: (a) he was an employee of the JLN Corporation; (b) he did pick up checks for JLN-controlled NGOs; and (c) he was an incorporator in one of the JLN-controlled NGOs; but denying that he personally benefited from the supposed misuse of Sen. Revilla's PDAF.[52]

Meanwhile, Relampagos, et al., in their separate Counter-Affidavits dated December 13, 2013, contended that: (a) there is no probable cause and factual or legal basis to indict them for the offenses charged; and (b) the criminal complaints did not specifically mention their names as among those who allegedly participated in the misuse of Sen. Revilla's PDAF.[53]

Pending resolution of the Ombudsman cases, Sen. Revilla and Cambe separately moved for the suspension of the preliminary investigation[54] on the criminal complaints, which were, however, denied by the Ombudsman in a Joint Order[55] dated January 28, 2014, holding that no prejudicial question exists to warrant the suspension of the preliminary investigation proceedings.[56]

Cambe filed another motion[57] to suspend proceedings of the preliminary investigation, claiming that the filing of the criminal complaints was premature since the Commission on Audit (COA) had yet to issue an Order of Execution in relation to the Notices of Disallowance[58] (NDs) against Sen. Revilla's Office, docketed as Special Audits Office (SAO) ND Nos. NLDC-2014-013-PDAF(07-09) to 020-PDAF(07-09). The said motion was, again, denied by the Ombudsman in a Joint Order[59] dated March 14, 2014 (March 14, 2014 Joint Order). Thus, Cambe elevated the matter to this Court via a petition for certiorari, docketed as G.R. Nos. 212014-15.

Meantime, Sen. Revilla filed a Motion to be Furnished Copies of Motions, Pleadings, and Other Submissions (Motion to be Furnished),[60] praying that he be furnished with copies of all the counter-affidavits filed by the parties in this case, which was denied by the Ombudsman in an Order[61] dated March 11, 2014. His motion for reconsideration[62] thereof was likewise denied by the Ombudsman in an Order[63] dated March 27, 2014.

Sen. Revilla likewise filed a Motion for Voluntary Inhibition (Of the Special Panel of Investigators),[64] which was also denied by the Ombudsman in an Order[65] dated March 7, 2014. His motion for reconsideration[66] thereof was further denied in an Order[67] dated May 9, 2014.

In a Joint Resolution[68] dated March 28, 2014 (March 28, 2014 Joint Resolution), the Ombudsman found probable cause to indict, among others, petitioners Sen. Revilla, Cambe, Napoles, De Asis, and Lim of one (1) count of Plunder,[69] and all the petitioners (along with several others), except Lim, of sixteen (16) counts of violation of Section 3 (e) of RA 3019.[70]

The Ombudsman found that the diversion and/or misuse of Sen. Revilla's PDAF was coured through a complex scheme involving various participants from Sen. Revilla's Office, the DBM, the IAs, and the JLN--controlled NGOs. The Ombudsman then went on to conclude that through the said scheme, they were able to siphon out government funds in the aggregate amount of P517,000,000.00, with at least P224,512,500.00 received by Sen. Revilla.[71]

Thus, the Ombudsman held that probable cause exists against Sen. Revilla, Cambe, Napoles, De Asis, and Lim for Plunder, considering that: (a) Sen. Revilla was a public officer at the time material to the charges; (b) with the help of his co-accused, who are public officers and private individuals, Sen. Revilla amassed, accumulated, or acquired ill-gotten wealth through their intricate modus operandi as described above; and (c) such ill-gotten wealth amounted to at least P224,512,500.00,[72] way more than the threshold amount of P50,000,000.00 required in the crime of Plunder.[73]

In the same manner, the Ombudsman established probable cause to indict all the petitioners (along with several others), except Lim, for violation of Section 3 (e) of RA 3019 in light of the following: (a) Sen. Revilla, Cambe, and Relampagos, et al. are all public officers, while private individuals Napoles and De Asis all conspired with these public officers; (b) said public officers exhibited manifest partiality to Napoles and her cohorts by favoring her controlled NGOs without the benefit of public bidding and without having been authorized by an appropriation law or ordinance, as legally mandated; (c) said public officers likewise exhibited their bad faith by unduly benefiting from the "ghost" PDAF-funded projects through the receipt of "commissions," "kickbacks," and the like; and (d) their collective acts caused undue injury to the government in the aggregate amount of P517,000,000.00.[74]

Aggrieved, all the petitioners separately moved for the reconsideration[75] of the March 28, 2014 Joint Resolution. Specifically, Sen. Revilla, in his motion for reconsideration,[76] pointed out that the Ombudsman's use of the counter-affidavits, which documents he prayed to be furnished with in his denied Motion to be Furnished, was a grave violation of his constitutionally guaranteed right to due process.

Pending resolution of the aforesaid motions for reconsideration, the Ombudsman issued a Joint Order[77] dated May 7, 2014 granting Sen. Revilla's Motion to be Furnished, but only with respect to the counter--affidavits of his six (6) co-respondents.[78] He was also directed to file his comment thereon. Dissatisfied, Sen. Revilla then filed an Omnibus Motion[79] dated May 13, 2014 praying for the: (a) partial reconsideration of the May 7, 2014 Joint Order; (b) recall of the March 28, 2014 Joint Resolution; and (c) re-conduct of the preliminary investigation and reconstitution of another special panel of investigators.[80] The said Omnibus Motion having been denied by the Ombudsman in an Order[81] dated May 15, 2014, Sen. Revilla elevated the matter to this Court via a petition for certiorari, docketed as G.R. Nos. 212427-28.

On June 4, 2014, the Ombudsman issued a Joint Order[82] (June 4, 2014 Joint Order) denying petitioners' motions for reconsideration for lack of merit and, thereby, affirming the March 28, 2014 Joint Resolution with minor modifications to correct clerical errors.[83] These Ombudsman's issuances led to the filing of certiorari

petitions before this Court, docketed as G.R. Nos. 212694-95, G.R. Nos. 212794-95, G.R. Nos. 213477-78, G.R. Nos. 213532-33, and G.R. Nos. 213536-37.

Consequently, on June 6 and 9, 2014, Informations were filed by the Ombudsman before the Sandiganbayan, charging: (a) Sen. Revilla, Cambe, Napoles, De Asis, and Lim of one (1) count of Plunder, docketed as Criminal Case No. SB-14-CRM-0240;^[84] and (b) all the petitioners (along with several others), except Lim, of sixteen (16) counts of violation of Section 3 (e) of RA 3019, docketed as Criminal Case Nos. SB-14-CRM-0267 to 0282.^[85]

To forestall the service of the warrant of arrest against him, Sen. Revilla filed on June 13, 2014, a Motion for Judicial Determination of Probable Cause and Deferment and/or Suspension of Proceedings.^[86] Likewise, Relampagos, et al. moved that the Sandiganbayan declare lack of probable cause against them and suspend proceedings.^[87]

On June 19, 2014, the Sandiganbayan issued a Resolution, finding probable cause against petitioners and their co-accused and, thereby, issued the corresponding warrants of arrest against them.^[88]

Thereafter, Relampagos, et al. filed an Omnibus Motion for Reconsideration of the Resolution Dated 19 June 2014 with Motion to Recall Warrants of Arrest and to Defer Arraignment.^[89]

In a Resolution^[90] dated August 28, 2014, the Sandiganbayan partially granted the said motion, and dismissed Criminal Case Nos. SB-14-CRM-0267, 0270, 0271, 0274, 0277, 0278, 0281, and 0282 in so far as Relampagos, et al. were concerned for the reason that the SAROs pertinent to these criminal cases were not issued or signed by Relampagos, et al., but by then DBM Secretary Rolando Andaya. However, the Sandiganbayan ordered the prosecution to present additional evidence to establish the existence of probable cause against them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280.

The dismissal of Criminal Case Nos. SB-14-CRM-0267, 0270, 0271, 0274, 0277, 0278, 0281, and 0282 against Relampagos, et al. was appealed^[91] by the prosecution, but was denied by the Sandiganbayan in a Resolution^[92] dated November 13, 2014. In the same Resolution, the Sandiganbayan affirmed the finding of probable cause against Relampagos, et al. in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280 on the ground that the defenses they raised were evidentiary in character.^[93] In particular, the Sandiganbayan held that the issue of whether the IA's endorsement was indispensable before the SARO can be issued is a matter of evidence to be threshed out during trial.^[94]

Hence, Relampagos, et al. filed a motion for partial reconsideration^[95] citing DBM Circular Letter No. 2015-1, s. of 2015,^[96] which supposedly clarified that the IAs' endorsements are no longer required before the issuance of the corresponding SARO. The said motion was denied by the Sandiganbayan in a Resolution^[97] dated May 13, 2015, pointing out that said DBM Circular was issued only after the Ombudsman's issuance of the March 28, 2014 Joint Resolution.^[98] Thus, Relampagos, et al. elevated the issue before the Court via a petition for certiorari, docketed as G.R. Nos. 218744-59.

The Issue Before This Court

The core issue in this case is whether or not the findings of probable cause against all petitioners should be upheld.

The Court's Ruling

All petitions are bereft of merit.

I. Cambe's Motion to Suspend Proceedings.

At the outset, the Court traverses the procedural issue raised by Cambe in his petition in G.R. Nos. 212014-15. In particular, Cambe seeks to annul and set aside the Ombudsman's March 14, 2014 Joint Order which denied his motion to suspend proceedings, arguing that the COA's issuance of an Order of Execution is a condition precedent to the filing of the criminal complaints against him. This relates to the twelve (12) NDs received by the Office of Sen. Revilla on January 14, 2014 and February 4, 2014 pertaining to expenditures charged against his PDAF during the period 2007 to 2009, docketed as SAO ND Nos. TRC-2013-016-PDAF(07-09) to 019-PDAF(07-09)[99] and NLDC-2014-013-PDAF(07-09) to 020-PDAF(07-09),[100] respectively, which Cambe claims should first attain finality; otherwise, the filing of the criminal complaints would be premature pursuant to the COA's 2009 Revised Rules of Procedure.[101]

The Court disagrees.

The administrative aspect of the cases against Cambe and Sen. Revilla in relation to the COA's audit is clearly separate and distinct from the criminal aspect covering the charges of Plunder and/or of violation of Section 3 (e) of RA 3019 against them. Hence, the incidents related to it should have no effect on the filing of the latter. In *Villaseñor v. Sandiganbayan*,[102] this Court explained that:

[T]here are three kinds of remedies that are available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative [and that] [t]hese remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.

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It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of criminal proceedings.[103]

In *Reyna v. COA (Reyna)*,[104] this Court particularly declared that "[t]he criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA." [105]

Cambe's reliance on Section 6, Rule XIII of the 2009 Revised Rules of Procedure of the COA is misplaced. As worded, the provision only accounts for the possibility of the filing of criminal charges upon referral of the audit findings to the Ombudsman:

Section 6. Referral to the Ombudsman. - The Auditor shall report to his Director all instances of failure or refusal to comply with the decisions or orders of the Commission contemplated in the preceding sections. The COA Director shall see to it that the report is supported by the sworn statement of the Auditor concerned, identifying among others, the persons liable and describing the participation of each. He shall then refer the matter to the Legal Services Sector who shall refer the matter to the Office of the Ombudsman or other appropriate office for the possible filing of appropriate administrative or criminal action.

Nowhere does the provision state any delimitation or precondition to the filing of such criminal charges. As correctly pointed out by the Ombudsman, "an audit disallowance may not necessarily result in the imposition of disciplinary sanctions or criminal prosecution of the responsible persons. Conversely, therefore, an administrative or criminal case may prosper even without an audit disallowance. Verily, Rule XIII, Section 6 is consistent with the ruling in [Reyna] that a proceeding involving an audit disallowance is distinct and separate from a preliminary investigation or a disciplinary complaint." [106]

In fine, the Ombudsman did not gravely abuse its discretion in promulgating its March 14, 2014 Joint Order which denied Cambe's motion to suspend proceedings. Perforce, Cambe's petition in G.R. Nos. 212014-15 is

dismissed. That being said, the Court now proceeds to resolve the main substantive issue anent the presence of probable cause against all petitioners.

II. Parameters of Review.

Time and again, this Court's consistent policy has been to maintain non-interference in the Ombudsman's determination of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only in respect for the investigatory and prosecutory powers granted by the 1987 Constitution to the Office of the Ombudsman, but upon practicality as well.[107]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[108]

Probable cause simply means "such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean 'actual and positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief."[109] "[T]hus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice."[110]

In determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "only facts sufficient to support a prima facie case against the [accused] are required, not absolute certainty."[111] In this case, the petitioners were charged with the crimes of Plunder and/or violations of Section 3 (e) of RA 3019. Plunder, defined and penalized under Section 2[112] of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)[113] thereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (P50,000,000.00).[114] On the other hand, the elements of violation of Section 3 (e)[115] of RA 3019 are: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[116] In determining probable cause therefor, only a showing of the ostensible presence of these elements is required.

It should be borne in mind that probable cause is determined during the context of a preliminary investigation which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it."[117] It "is not the occasion for the full and exhaustive display of the prosecution's evidence."[118] Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."[119] Accordingly, "owing to the initiatory nature of preliminary investigations, the technical rules of evidence should not be applied in the course of its proceedings."[120] In this light, and as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay,"[121] and that even an invocation of the rule on *res inter alios acta* at this stage of the proceedings is improper.[122]

Guided by these considerations, the Court finds that the Ombudsman did not gravely abuse its discretion in

finding probable cause to indict Sen. Revilla, Cambe, Napoles, De Asis, and Lim of one (1) count of Plunder, and all the petitioners, except Lim, of sixteen (16) counts of violation of Section 3 (e) of RA 3019.

III. Probable Cause Against Sen. Revilla.

First, in G.R. Nos. 212694-95, Sen. Revilla seeks to annul the March 28, 2014 Joint Resolution and the June 4, 2014 Joint Order of the Ombudsman finding probable cause against him for the crimes charged. Among others, Sen. Revilla faults the Ombudsman for allegedly disregarding his defense of forgery, and further contends that in the absence of other competent testimony, the Ombudsman cannot consider the whistleblowers' testimonies who purportedly were his co-conspirators in the PDAF scam, pursuant to the *res inter alios acta* rule.

The petition holds no water.

The finding of probable cause against Sen. Revilla is amply supported by the evidence on record. At the forefront are the PDAF documents, consisting of the written endorsements signed by Sen. Revilla^[123] himself requesting the IAs to release his PDAF funds to the identified JLN--controlled NGOs, as well as other documents that made possible the processing of his PDAF, e.g., the MOAs executed by the legislator's office, the IA, and the chosen NGO. All these documents - even those not actually signed by Sen. Revilla - directly implicate him for the crimes charged, as they were nonetheless, all issued under the authority of his Office as Senator of the Republic of the Philippines. In *Belgica v. Ochoa (Belgica)*,^[124] this Court observed that "the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post--enactment phases of project implementation."^[125] "At its core, legislators - may it be through project lists, prior consultations or program menus - have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations."^[126] It is through this mechanism that individual legislators, such as Sen. Revilla, were able to practically dictate the entire expenditure of the PDAF allocated to their offices throughout the years.

In particular, the Ombudsman details that "the NGO endorsed by the legislator would be among those organized and controlled by Napoles. In fact, these NGOs were specifically set by Napoles for the x x x purpose [of having the PDAF funds released]."^[127] Napoles's staff would then "prepare the PDAF documents for the approval of the legislator and reflecting the preferred NGO to implement the undertaking."^[128] These documents "are transmitted to the IA which, in turn, handles the preparation of the MOA relating to the project, to be executed by the legislator's office, the IA[,] and the NGO concerned." "The projects are authorized as eligible under the DBM's menu for pork barrel allocations. [However,] [i]t bears noting that the NGO is directly endorsed by the legislator [and that] [n]o public bidding or negotiated procurement [took] place."^[129] As such, there was a defiance of Government Procurement Policy Board (GPPB) Resolution No. 012-2007 which states that:

4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive bidding or negotiated procurement under Section 53(j) of the [IRR-A]. (Emphasis and underscoring supplied)

Anent Sen. Revilla's claim that his signatures in the documentary evidence presented were forged, it must be emphasized that "the findings of the x x x prosecutor [on the issue of forgery] should be ventilated in a full-blown trial[.] [This] is highlighted by the reality that the authenticity of a questioned signature cannot be determined solely upon its general characteristics, or its similarities or dissimilarities with the genuine signature. The duty to determine the authenticity of a signature rests on the judge who must conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity. [As such], Section 22 of Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting with writings admitted or treated as genuine by the party against whom the evidence is offered, or

proved to be genuine." [130] Accordingly, Sen. Revilla's evidence of forgery, including the findings of his purported handwriting experts, Rogelio G. Azores (Azores) [131] and Forensic Document Examiner Atty. Desiderio A. Pagui, (Pagui) [132] cannot be readily credited at this stage of the proceedings.

Besides, the Ombudsman aptly observed that Azores and Pagui admittedly used mere photocopies of the PDAF documents in their handwriting analyses. [133] In *Heirs of Gregorio v. Court of Appeals*, [134] this Court ruled that "[w]ithout the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery," and that "[a] comparison based on a mere [photo] copy or reproduction of the document under controversy cannot produce reliable results." [135] Furthermore, it may not be amiss to state that the credibility of Azores and Pagui as handwriting experts has yet to be tested. They still have to authenticate their findings and be subjected to cross-examination. Without a doubt, the prosecution should also be given a chance to properly contest Azores and Pagui's findings with evidence of its own. It could all too well present its own handwriting experts during trial to rebut such findings.

It is significant to emphasize that the Ombudsman had thoroughly passed upon the veracity of Sen. Revilla's signatures on the PDAF documents. As explicitly stated in the March 28, 2014 Joint Resolution: "[a]t all events, the Special Panel members, after a prima facie comparison with their naked eyes of the questioned signatures appearing in the PDAF documents and the original signatures of [Sen.] Revilla and Cambe in their respective counter-affidavits, opine that both sets of signatures, which bear the same style and flourish, were written by one and the same hands." [136] Verily, the Ombudsman's own factual finding on the absence of forgery, at least for the purpose of determining probable cause, should be regarded with utmost respect. "[F]indings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence," [137] as in this case.

The Ombudsman's finding on the absence of forgery further gains credence in light of the July 20, 2011 Letter [138] signed by Sen. Revilla submitted to the COA (Confirmation Letter). The letter evinces on its face that Sen. Revilla had confirmed the authenticity of his and Cambe's signatures appearing on the PDAF documents:

After going through these documents and initial examination, it appears that the signatures and/or initials on these documents are my signatures or that of my authorized representative. [139]

The Ombudsman further noted that the Confirmation Letter appeared to have originated from Sen. Revilla's Office because it was issued Bar code/Reference No. 0-2011-13079. [140]

At this juncture, it deserves mentioning that while Luy indeed admitted that there were times that the whistleblowers would forge the signatures of the legislators in the PDAF documents, he, however, explicitly qualified that such forgeries were made "[w]ith the approval of Ms. Napoles kasi sila po ang nag-uusap":

Sen. Escudero: Ang tanong ko, finorge or may finorge na ba kayong pirma ng senador o congressman dahil pinepeke nga 'yong beneficiary, 'di ba, galing sa listahan ng kung sino. x x x.

Mr. Luy: With the approval of Ms. Napoles kasi sila po ang nag-uusap, mav pagkakataon po na fino-forge po.

Sen. Escudero: May pagkakataong fino-forge [ninyo] ang pirma ng mambabatas?

Mr. Luy: Opo. [141]

Luy's testimony therefore explicates that although the whistleblowers would sometimes forge the legislators' signatures, such were made with the approval of Napoles based on her prior agreement with the said legislators. It is not difficult to discern that this authorization allows for a more expedient processing of PDAF funds since the documents required for their release need not pass through the legislator's respective offices. It is also apparent that this grant of authority gives the legislators room for plausible deniability: the forging of signatures may serve

as a security measure for legislators to disclaim their participation in the event of discovery. Therefore, Luy's testimony completely makes sense as to why the legislators would agree to authorize Napoles and her staff to forge their signatures. As such, even if it is assumed that the signatures were forged, it does not mean that the legislators did not authorize such forgery.

The testimonies of the whistleblowers which the prosecution submitted before the Ombudsman - are, in fact, the most integral evidence against Sen. Revilla, since they provide a detailed account on the inner workings of the PDAF scam to which Sen. Revilla was directly involved. It should be pointed out that, of all the Senators, only the Offices of Sen. Revilla, Sen. Juan Ponce Enrile (Sen. Enrile), and Sen. Jinggoy Estrada (Sen. Estrada) were explicitly implicated^[142] to have dealt with Napoles in the plunder of their PDAF. Also, it is apparent that whistleblowers Suñas, Sula, and Luy had personal knowledge of the conspiracy since they were employees of JLN Corporation - the epicenter of the entire PDAF operation and in their respective capacities, were individually tasked by Napoles to prepare the pertinent documents, liquidate the financial transactions, follow up the release of the NCAs with the DBM, and/or facilitate the withdrawal of PDAF funds deposited in the NGOs' accounts.^[143]

Among others, it is interesting to note that, as per Luy's testimony, Sen. Revilla was given his own codename, same as the other involved legislators with whom Napoles transacted with:

58.

T: Maaari mo bang linawin itong sinasabi mong "codename"?

S: Ang pangalan pong taong [tumanggap] ng pera ang nilalagay ko sa voucher pero minsan po ay codename ang nilalagay ko.

59.

T: Sino ang nagbigay ng "codename"?

S: Si Madame JANET LIM NAPOLES po ang nagbigay ng codename kasi daw po ay sa gobyerno kami nagta-transact.

60.

T: Maaari mo bang sabihin kung anu-ano ang mga "codenames" ng mga ka-transact ni JANET LIM NAPOLES na pulitiko o kanilang [Chief of Staff]?

S: Opo. "TANDA" kay Senator Juan Ponce Enrile, "SEXY/ANAK/KUYA" kay Senator Jinggoy Estrada, "POGI" kay Senator Bong Revilla, "GUERERA" kay Congressman Rizalina Seachon-Lanete, "BONJING" kay Congressman RODOLFO PLAZA, "BULAKLAK" kay Congressman SAMUEL DANGWA, "SUHA" kay Congressman ARTHUR PINGOY, at "KURYENTE" kay Congressman EDGAR VALDEZ. Mayroon pa po ibang codename nasa records ko. Sa ngayon po ay sila lang po ang aking naalala.^[144]

As observed by this Court in the Reyes case, "the names of the legislators to whom the PDAF shares were disbursed x x x were identified by the use of 'codenames.' These 'codenames,' which were obviously devised to hide the identities of the legislators involved in the scheme, were known by a select few in the JLN Corporation,"^[145] such as the whistleblowers. The level of detail of the whistleblowers' narration of facts would surely impress upon a reasonable and prudent mind that their statements were not merely contrived. In addition, the fact that they had no apparent motive as to why Sen. Revilla, among all others, would be drawn by the whistleblowers, into such a high-profile case of plunder should likewise be taken into account. Further, in Reyes, this Court observed that:

[W]histleblower testimonies - especially in corruption cases, such as this - should not be condemned, but rather, be welcomed as these whistleblowers risk incriminating themselves in order to expose the perpetrators and bring them to justice. In *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 (Antonio Rosete, et al. v. Securities and Exchange Commission, et al.)* [590 Phil. 8, 49-50 (2008)], the Court gave recognition and appreciation to whistleblowers in corruption cases, considering that corruption is often done in secrecy and it is almost inevitable to resort to their testimonies in order to pin down the crooked public officers.[146]

Sen. Revilla opposes the admission of the whistleblowers' testimonies based on the *res inter alios acta* rule. However, in *Reyes*, citing *Estrada v. Ombudsman*,[147] this Court had unanimously ruled that the testimonies of the same whistleblowers against Jo Christine and John Christopher Napoles, children of Janet Napoles who were also charged with the embezzlement of the PDAF, are admissible in evidence, considering that technical rules of evidence are not binding on the fiscal during preliminary investigation. This Court was unequivocal in declaring that the objection on *res inter alios acta* should falter:

Neither can the Napoles siblings discount the testimonies of the whistleblowers based on their invocation of the *res inter alios acta* rule under Section 28, Rule 130 of the Rules on Evidence, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another, unless the admission is by a conspirator under the parameters of Section 30 of the same Rule. To be sure, the foregoing rule constitutes a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings. In *Estrada*, the Court sanctioned the Ombudsman's appreciation of hearsay evidence, which would otherwise be inadmissible under technical rules on evidence, during the preliminary investigation "as long as there is substantial basis for crediting the hearsay." This is because "such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties." Applying the same logic, and with the similar observation that there lies substantial basis for crediting the testimonies of the whistleblowers herein, the objection interposed by the Napoles siblings under the evidentiary *res inter alios acta* rule should falter. Ultimately, as case law edifies, "[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation," as in this case.[148] (Emphases and underscoring supplied)

Absent any countervailing reason, the rule on *stare decisis*[149] mandates a similar application of the foregoing ruling to this case.

In any event, even if it is assumed that the rule on *res inter alios acta* were to apply during preliminary investigation, the treatment of the whistleblowers' statements as hearsay is bound by the exception on independently relevant statements. "Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact." [150] Undoubtedly, the testimonies of the whistleblowers are independently relevant to prove the involvement of Sen. Revilla and his co-accused in the present controversy, considering their respective participations in the entire PDAF scam. Therefore, the statements made by whistleblowers Suñas, Sula, and Luy, who were employees of JLN Corporation and privy to the financial transactions of Napoles concerning, among others, Sen. Revilla's PDAF, should be given consideration as they are directly, if not circumstantially, relevant to the issue at hand.

To add, the prosecution also presented Luy's ledger entries which corroborate his testimony that Sen. Revilla dealt with Napoles and received PDAF kickbacks. Luy's records disclose that the kickbacks amounted to "at least P224,512,500.00: P10,000,000.00 for 2006; P61,000,000.00 for 2007; P80,000,000.00 for 2008; P40,000,000.00 for 2009; and P33,512,500.00 for 2010." [151]

Relatedly, it should be clarified that the fact that Luy did not personally know Sen. Revilla or that none of the whistleblowers personally saw anyone handing/delivering money to Sen. Revilla does not mean that they did not personally know of his involvement. Because of their functions in JLN Corporation as above-stated, it is evident that they had personal knowledge of the fact that Napoles named Sen. Revilla as one of the select-legislators she transacted with. More significantly, they personally processed the PDAF funds and documents connected with Sen. Revilla's Office, which lasted for a considerable amount of time, i.e., four (4) years [2006-2010 as charged]. As such, their testimonies should not be completely disregarded as hearsay.

In any case, this Court has resolved that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay." [152] The substantial basis for crediting the whistleblowers' testimonies, even if so regarded as hearsay, rests on their key functions in JLN Corporation as above-mentioned, as well as the collective evidence gathered by the prosecution tending to support the same conclusion that Sen. Revilla and his alleged co-conspirators acted in concert to pillage his PDAF funds.

The prosecution further submitted the affidavits of Sen. Revilla's co-respondents which constitute direct evidence that provide an account of Sen. Revilla's involvement, this time from the perspective of certain IA officials.

Among others, National Livelihood Development Corporation Director IV Emmanuel Alexis G. Sevidal, echoed the Ombudsman's finding that "[Sen.] Revilla, through Cambe, [was] responsible for 'identifying the projects, determining the project costs and choosing the NGOs' which was manifested in the letters of [Sen.] Revilla[.]" [153]

For his part, Technology Resource Center (TRC) Deputy, Director General Dennis L. Cunanan (Cunanan) narrated that he met Janet Napoles sometime in 2006 or 2007. According to him, Napoles introduced herself as "the representative of certain legislators who supposedly picked TRC as a conduit for PDAF-funded projects"; at the same occasion, Napoles told him that "her principals were then Senate President [Enrile], [Sen. Revilla], [and] [Sen. Estrada.]" Cunanan further averred that he "often ended up taking and/or making telephone verifications and follow-ups and receiving legislators or their staff members," all in connection with PDAF projects. In addition, Cunanan even conveyed that Luy would occasionally go to his office to pressure him to expedite the release of the PDAF funds by calling the offices of the legislators concerned. [154]

Cunanan's statements were further corroborated by TRC Department Manager III Francisco B. Figura (Figura), who averred that legislators would "highly recommend" NGOs/foundations as conduit implementors and that if TRC disagreed with their recommendations, said legislators would feel insulted and take away their PDAF from TRC, resulting in the latter losing the chance to earn service fees. [155] According to Figura, this set up rendered TRC officials powerless to disregard the wishes of Sen. Revilla especially on the matter of public bidding for the PDAF projects. [156]

At this juncture, this Court would like to dispel the notion that due process rights were violated when Sen. Revilla was denied copies of the counter-affidavits of his co-respondents in the preliminary investigation proceedings before the Ombudsman as he argues in G.R. Nos. 212427-28. This matter was already resolved in the similar case of Estrada, where this Court said:

Both the Revised Rules of Criminal Procedure and the Rules of Procedure of the Office of the Ombudsman require the investigating officer to furnish the respondent with copies of the affidavits of the complainant and affidavits of his supporting witnesses. Neither of these Rules require the investigating officer to furnish the respondent with copies of the affidavits of his [co-respondents]. The right of the respondent is only "to examine the evidence submitted by the complainant," as expressly stated in Section 3 (b), Rule 112 of the Revised Rules of Criminal Procedure. This Court has unequivocally ruled in Paderanga that "Section 3, Rule 112 of the Revised Rules of Criminal Procedure expressly provides that the respondent shall only have the

right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties, or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine." Moreover, Section 4 (a, b and c), of Rule II of the Ombudsman's Rule of Procedure, read together, only require the investigating officer to furnish the respondent with copies of the affidavits of the complainant and his supporting witnesses. There is no law or rule requiring the investigating officer to furnish the respondent with copies of the affidavits of his co-respondents.[157]

In any event, the Ombudsman in this case went beyond its legal duty and eventually granted Sen. Revilla's requests to be furnished with said counter-affidavits, and even afforded him the opportunity to comment thereto.[158] Thus, there is more reason to decline his flawed claims of denial of due process. Case law statethat the touchstone of due process is the opportunity to be heard,[159] which was undeniably afforded to Sen. Revilla in this case.

The findings of the COA in its SAO Report No. 2012-2013 (COA report)[160] also buttress the finding of probable cause against Sen.Revilla. This report presents'in detail the various irregularities in the disbursement of the PDAF allocations of several legislators in the years 2007 to 2009, such as: (a) the IAs not actually implementing the purported projects, and instead, directly releasing the funds to the NGOs after deducting a "management fee," which were done at the behest of the sponsoring legislator, including Sen. Revilla; (b) the involved NGOs did not have any track record in the implementation of government projects, provided fictitious addresses, submitted false documents, and were selected without any public bidding and complying with COA Circular No. 2607-001 and GPPB Resolution No. 12-2007; and (c) the suppliers who purportedly provided supplies to the NGOs denied ever dealing with the latter. Resultantly, the COA Report concluded that the PDAF-funded projects of Sen. Revilla were "ghost" or inexistent.[161]

The findings in the COA report were further corroborated by the field verifications conducted by the Field Investigation Office - Office of the Ombudsman (FIO) to determine whether or not Sen. Revilla's PDAF was indeed utilized for its intended livelihood projects. In the course of investigation, it was revealed that the mayors and municipal agriculturists, who had reportedly received livelihood assistance kits/packages, purportedly procured through Sen. Revilla's PDAF, actually denied receiving the same and worse, were not even aware of any PDAF-funded projects intended for their benefit. Moreover, the signatures on the certificates of acceptance and delivery reports were forged, and in fact, the supposed beneficiaries listed therein were neither residents of the place where they were named as such; had jumbled surnames; deceased; or even downright fictitious. The foregoing led the FIO to similarly conclude that the purported livelihood projects were "ghost" projects, and that its proceeds amounting to P517,000,000.00 were never used for the same.[162]

Taking together all of the above-stated pieces of evidence, the COA and FIO reports tend to prima facie establish that irregularities had indeed attended the disbursement of Sen. Revilla's PDAF and that he had a hand in such anomalous releases, being the head of Office which unquestionably exercised operational control thereof. As the Ombudsman correctly observed, "[t]he PDAF was allocated to him by virtue of his position as a Senator, and therefore he exercise[d] control in the selection of his priority projects and programs. He indorsed [Napoles's] NGOs in consideration for the remittance of kickbacks and commissions from Napoles. Compounded by the fact that the PDAF-funded projects turned out to be 'ghost projects', and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts, [there is probable cause to show that] Revilla thus unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines." [163] Hence, he should stand trial for violation of Section 3 (e) of RA 3019. For the same reasons, it is apparent that ill-gotten wealth in the amount of at least P50,000,000.00 (i.e., P224,512,500.00) were amassed, accumulated or acquired through a combination or series of overt acts stated in Section 1 of the Plunder Law.

Therefore, Sen. Revilla should likewise stand trial for Plunder.

Besides, case law holds^[164] that once the trial court finds probable cause, which results in the issuance of a warrant of arrest (as the Sandiganbayan in this case, with respect to Sen. Revilla and his co-petitioners^[165]), any question on the prosecution's conduct of preliminary investigation becomes moot.

In fine, Sen. Revilla's petitions in G.R. Nos. 212427-28 and G.R. Nos. 212694-95 are dismissed for lack of merit.

IV. Probable Cause Against Cambe.

The same conclusion obtains with respect to the petition of Cambe in G.R. Nos. 212794-95 assailing the Ombudsman's finding of probable cause against him, as well as its failure to furnish him copies of his co-respondents' counter-affidavits.

The above-discussed pieces of evidence are all equally significant to establish probable cause against Cambe. There is no dispute that Cambe was Sen. Revilla's trusted aide, being his Chief of Staff. By such authority, he also exercised operational control over the affairs of Sen. Revilla's office, including the allocation of his PDAF. In fact, Cambe's signatures explicitly appear on several PDAF documents, such as the MOAs allowing the IAs to transfer Sen. Revilla's PDAF funds allocated for certain projects to various JLN-controlled NGOs.^[166]

Moreover, Cambe was personally identified by the whistleblowers to have received PDAF money for himself and for Sen. Revilla. As recounted by Luy, Cambe was the one who would go to Napoles's office and receive cash from the latter in the aggregate amount of P224,512,500.00 representing Sen. Revilla's "commissions" or "kickbacks" coming from the PDAF scam. The cash would come either from Luy's vault or from Napoles herself.^[167] In simple terms, Cambe allegedly acted as a liaison between Sen. Revilla and Napoles.

For the same reasons above-discussed, there should be no valid objection against the appreciation of the PDAF documents and whistleblowers' testimonies as evidence to establish probable cause against Cambe at this stage of the proceedings. He also has no right to be furnished copies of the counter-affidavits, of his co-respondents. Thus, this Court holds that Cambe should likewise stand trial for the crimes charged, and his petition in G.R. Nos. 212014-15 be dismissed.

V. Probable Cause Against Napoles.

In G.R. Nos. 213536-37, Janet Napoles similarly seeks to nullify the Ombudsman's March 28, 2014 Joint Resolution and June 4, 2014 Joint Order finding probable cause against her for Plunder and for violation of Section 3 (e) of RA 3019. Essentially, she argues that the complaints did not establish the specific acts of the crimes she supposedly committed. She likewise contends that since she is not a public officer, she cannot be subjected to prosecution by the Ombudsman before the Sandiganbayan.

Napoles's arguments are untenable.

Records clearly show that Napoles, in all reasonable likelihood, played an integral role in the illegal utilization, diversion, and disbursement of Sen. Revilla's PDAF. In fact, she was tagged as the mastermind of the entire PDAF scam. As outlined by the Ombudsman, Napoles would approach legislators, such as Sen. Revilla, and "offer to 'acquire' his x x x PDAF allocation in exchange for a 'commission' or kickback amounting to a certain percentage of the PDAF."^[168] Once Napoles was informed of the availability of Sen. Revilla's PDAF, she and/or her staff would prepare listings of the available projects specifically indicating the IAs which would carry out the same. After the listings are released by Sen. Revilla's Office, Napoles would then give a down payment from her own pockets for delivery to Sen. Revilla, or in case of his unavailability, to Cambe who would receive the same on Sen. Revilla's behalf. Once the SARO and/or the NCA regarding said project is released, Napoles would then

deliver the promised "kickbacks" to Sen. Revilla. Thereafter, Sen. Revilla and/or Cambe would endorse Napoles's NGOs to undertake the PDAF-funded projects, all of which turned out to be "ghost" or "inexistent;" thus, allowing Napoles and her cohorts to pocket the PDAF allocation.[169]

Based on the evidence in support thereof such as the PDAF documents, whistleblowers' testimonies, the accounts of the IA officials, and the COA report, as well as the field verifications of the FIO, Ombudsman, this Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has been prima facie established that she, in conspiracy with Sen. Revilla, Cambe, and other personalities, was significantly involved in the afore-described modus operandi to obtain Sen. Revilla's PDAF amounting to at least P50,000,000.00 in "kickbacks." In the same manner, there is probable cause against Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that their conspiracy to illegally divert PDAF Funds to "ghost" projects caused undue prejudice to the government.

That a private individual, such as Napoles, could not be charged for Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers is a complete misconception. It has been long-settled that while the primary offender in the aforesaid crimes are public officers, private individuals may also be held liable for the same if they are found to have conspired with said officers in committing the same. This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all.[170] In this case, since it appears that Napoles has acted in concert with public officers in the systematic pillaging of Sen. Revilla's PDAF, the Ombudsman correctly indicted her as a co-conspirator for the aforementioned crimes.

Thus, Napoles's petition in G.R. Nos. 213536-37 is dismissed.

VI. Probable Cause Against De Asis.

In G.R. Nos. 213477-78, De Asis accuses the Ombudsman of gravely abusing its discretion in finding probable cause against him for Plunder and violations of Section 3 (e) of RA 3019, contending, inter alia, that the performance of his functions as driver and messenger of Napoles hardly constitutes overt acts of the aforesaid crimes or a willful participation thereof. In this regard, he asserts that as a mere high school graduate and former security guard, it is highly unimaginable for him to conspire with his employer and other high-ranking government officials to commit the aforesaid crimes.

The petition has no merit.

Records show that De Asis was designated as the President/Incorporator[171] of KPMFI which was one of the many NGOs controlled by Napoles that was used in the embezzlement of Sen. Revilla's PDAF allocations.[172] Moreover, whistleblowers Luy and Suñas explicitly named De Asis as one of those who prepared money to be given to the lawmaker.[173] Said whistleblowers even declared that De Asis, among others, received the checks issued by the IAs to the NGOs and deposited the same in the bank; and that, after the money is withdrawn from the bank, he was also one of those tasked to bring the money to Janet Napoles's house.[174] Indeed, the foregoing prove to be well-grounded bases to believe that, in all probability, De Asis conspired with the other co-accused to commit the crimes charged.

To refute the foregoing allegations, De Asis presented defenses which heavily centered on his perceived want of criminal intent, as well as the alleged absence of the elements of the crimes charged. However, such defenses are evidentiary in nature, and thus, are better ventilated during trial and not during preliminary investigation. To stress, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.[175]

In sum, the Ombudsman did not gravely abuse its discretion in finding probable cause to indict De Asis for the crimes charged. Consequently, his petition in G.R. Nos. 213477-78 is dismissed.

VII. Probable Cause Against Lim.

In G.R. Nos. 213532-33, Lim argues that the Ombudsman gravely abused its discretion in finding probable cause against him for Plunder. According to him, the criminal complaints do not allege a specific action he committed that would demonstrate his involvement for the crime charged.

Lim's contention is without merit.

As correctly pointed out by the Ombudsman, whistleblowers Luy and Suñas narrated that over the course of the perpetuation of the PDAF scam, they, along with the other staff of Napoles - which includes Lim - would prepare, and thereafter deliver, the kickbacks intended for Sen. Revilla.[176] The preparation and delivery of kickbacks to the legislator and/or his trusted staff are indeed overt acts that relate to his involvement in the PDAF scheme. To note, even if it is assumed that Lim only prepared the money and did not deliver the same as he claims,[177] the act of preparation is still connected to the common objective of the conspiracy. Accordingly, this establishes the existence of probable cause against him for the crime charged. Hence, his petition in G.R. Nos. 213532-33 is likewise dismissed.

VIII. Probable Cause Against Relampagos, et al.

Meanwhile, in G.R. Nos. 218744-59, DBM employees Relampagos, Nuñez, Paule, and Bare assail the Sandiganbayan Resolutions dated November 13, 2014[178] and May 13, 2015[179] which judicially found probable cause against them for eight (8) counts of violation of Section 3 (e) of RA 3019, thereby affirming the Ombudsman's earlier finding of probable cause against them (at least for the said eight [8] counts that were affirmed). In particular, they argue that: (a) they cannot be faulted for issuing the SAROs without prior IA endorsement as it was authorized under the General Appropriations Acts (GAAs) for the years 2007 to 2009; and (b) there was no "undue haste" in the issuance of the said SAROs as the DBM itself prescribes shorter periods in the processing of the same.[180]

Relampagos, et al.'s arguments fail to persuade.

As pointed out by the Ombudsman and the Sandiganbayan, some of the SAROs and NCAs issued in the perpetuation of the PDAF scam were issued by the Office of Relampagos as DBM Undersecretary, where Nuñez, Paule, and Bare are all working - a finding that they themselves did not dispute.[181] More significantly: (a) whistleblower Luy positively identified Relampagos, et al. as Napoles's "contact persons" in the DBM; and (b) the COA Report found irregularities in their issuances of the aforesaid SAROs and NCAs.[182] Ostensibly, these circumstances show Relampagos et al.'s manifest partiality and bad faith in favor of Napoles and her cohorts that evidently caused undue prejudice to the Government. Thus, they must stand trial for violation of Section 3 (e) of RA 3019.

As to their contentions that there was no "undue haste" in the issuance of the said SAROs as the GAAs for the years 2007 to 2009 authorized such issuances even without prior IA endorsement and that the DBM itself prescribes a shorter processing time for the same, suffice it to say that these are matters of defense that are better ventilated in a full-blown trial. The timing of the SARO releases by these DBM officials, as well as any deviations from legal procedure are but part of a multitude of factors to be threshed out during trial in order to determine their exact culpability. Verily, the confines of a preliminary investigation do not yet allow a full exposition of the parties' claims. Relampagos, et al.'s petition in G.R. Nos. 218744-59 is therefore dismissed.

Conclusion

Case law states that "the Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof." [183] In the review of the Ombudsman's determination of probable cause, we are guided by this Court's pronouncement in *Vergara v. Ombudsman*, [184] where it was ruled that:

[C]ourts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction. [185]

Meanwhile, with respect to the Sandiganbayan's judicial determination of probable cause, this Court, in *Delos-Santos Dio v. Court of Appeals*, [186] enlightens that:

[A] judge's discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly inferred from the evidence presented and not when its existence is simply doubtful. After all, it cannot be expected that upon the filing of the information in court the prosecutor would have already presented all the evidence necessary to secure a conviction of the accused, the objective of a previously-conducted preliminary investigation being merely to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. [187]

In this case, the Ombudsman (and the Sandiganbayan as to *Relampagos, et al.*) did not err in finding probable cause against all the petitioners. Their findings are fully supported by the evidence on record and no semblance of misapprehension taints the same. Moreover, this Court cannot tag key documentary evidence as forgeries and bar testimonies as hearsay at this stage of the proceedings; otherwise, it would defy established principles and norms followed during preliminary investigation. Jurisprudence teaches us that "[i]n dealing with probable cause[,] at the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved." [188] Overall, based on the foregoing disquisitions, the standard of probable cause was adequately hurdled by the prosecution in this case. As such, no grave abuse of discretion was committed by the Ombudsman and the Sandiganbayan in the proceedings *a quo*. All the petitioners should therefore stand trial for the crimes they were charged.

WHEREFORE, the petitions are DISMISSED for lack of merit. The findings of probable cause against all petitioners are hereby AFFIRMED and the Sandiganbayan, as trial court, is DIRECTED to commence/continue with the necessary proceedings in these cases with deliberate dispatch.

SO ORDERED.

Sereno, C. J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes, and Leonen, JJ., concur.

Velasco, Jr., J., Please Dissenting Opinion.

Jardeleza, J., No part prior OSG action.

Caguioa, J., On leave but left my vote.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on December 6, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 6, 2017 at 2:20 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Pertains to the following petitions: (a) petition in G.R. Nos. 212694-95 filed by Revilla; (b) petition in G.R. Nos. 212794-95 filed by Cambe; (c) petition in G.R. Nos. 213477-78 filed by De Asis; (d) petition in G.R. Nos. 213532-33 filed by Ronald John Lim; (e) petition in G.R. Nos. 213536-37 filed by Napoles.

[2] Rollo (G.R. Nos. 212694-95), Vol. I, pp. 84-223.

[3] Id. at 224-278.

[4] Entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER," approved on July 12, 1991, as amended by, among others, Section 12 of RA 7659, entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

[5] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

[6] Pertains to the petition in G.R. Nos. 212014-15.

[7] Rollo (G.R. Nos. 212014-15), Vol. I, pp. 32-36.

[8] See Supplemental Counter-Affidavit with Second Motion to Suspend Proceedings dated March 12, 2014; rollo (G.R. Nos. 212794-95), Vol. VIII, pp. 4486-4494.

[9] Pertains to the petition in G.R. Nos. 212427-28.

[10] Rollo (G.R. Nos. 212427-28), Vol. I, pp. 42-44.

[11] Id. at 45-60

[12] Pertains to the petition in G.R. Nos. 218744-59.

[13] Rollo (G.R. Nos. 218744-59), Vol. I, pp. 49-54.

[14] Id. at 55-59.

[15] See rollo (G.R. Nos. 212694-95), Vol. I, p. 89.

[16] Id. at 97.

[17] Rollo (G.R. Nos. 212427-28), Vol. I, pp. 201-220.

[18] Id. at 222-371.

[19] See rollo (G.R. Nos. 212694-95), Vol. I, p. 96-97.

[20] See id. at 113 and 115.

[21] Id. at 117, 186 and 188-189. See also rollo (G.R. Nos. 212427-28), Vol. I, pp. 352 and 356.

[22] Id. at 177 and 188-189.

[23] See rollo (G.R. Nos. 212427-28), Vol. I, pp. 352 and 356-357.

[24] See rollo (G.R. Nos. 212694-95), Vol. I, pp. 93-96 and 148-152. See also *Reyes v. Ombudsman*, G.R. Nos. 212593-94, G.R. Nos. 213163-78, G.R. Nos. 213540-41, et al., March 15, 2016.

[25] See id. at 188-189 and 192.

[26] See rollo (G.R. Nos. 212794-95), Vol. VII, pp. 4191 and 4167.

[27] See rollo (G.R. Nos. 212427-28), Vol. I, p. 202.

[28] See id.

[29] See id. at 213-214.

[30] See rollo (G.R. Nos. 212694-95), Vol. I, p. 191.

[31] Id. at 148.

[32] See id. at 94.

[33] "A SARO x x x is "[a] specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or is subject to separate approval or clearance by competent authority." (*Belgica v. Ochoa*, 721 Phil. 416, 577-578 [2013])

[34] See rollo (G.R. Nos. 212694-95), Vol. I, pp. 148-149. See also id. at 95.

[35] Id. at 150.

[36] Id. at 149-150 and 188.

[37] Id. at 150.

[38] Notice of Cash Allocation (NCA). Cash authority issued by the DBM to central, regional and provincial offices and operating units through the authorized government servicing banks of the MDS,* to cover the cash requirements of the agencies.

*MDS stands for Modified Disbursement Scheme. It is a procedure whereby disbursements by NG agencies chargeable against the account of the Treasurer of the Philippines are effected through GSBs.**

** GSB stands for Government Servicing Banks. (*Belgica v. Ochoa*, *supra* note 33, at 578.)

[39] See rollo (G.R. Nos. 212694-95) pp. 96 and 151.

[40] *Id.* at 151.

[41] *Id.*

[42] See *id.*

[43] See rollo (G.R. Nos. 212427-28), Vol. I, pp. 214 and 354.

[44] See rollo (G.R. Nos. 212694-95), Vol. I, pp. 151-152.

[45] See *id.* at 167.

[46] See *id.* at 187.

[47] Not attached to the rollos.

[48] Not attached to the rollos.

[49] See rollo (G.R. Nos. 212694-95), Vol. I, p. 119.

[50] *Id.* at 120.

[51] *Id.* at 120-121.

[52] *Id.* at 138.

[53] *Id.* at 137-138.

[54] See Sen. Revilla's Motions to Suspend Preliminary Investigation both dated January 15, 2014 (rollo [G.R. Nos. 212694-95], Vol. II, pp. 595-612 and 614-631); and Cambe's Motion to Suspend Proceedings Based on Prejudicial Question with Counter-Affidavit (rollo [G.R. Nos. 212794-95], Vol. VIII, pp. 4338-4362), respectively.

[55] Rollo (G.R. Nos. 212694-95), Vol. II, pp. 748-760.

[56] See rollo (G.R. Nos. 212694-95), Vol. I, p. 121.

[57] See Supplemental Counter-Affidavit with Second Motion to Suspend Proceedings dated March 12, 2014; rollo (G.R. Nos. 212794-95), Vol. VIII, pp. 4486-4494.

[58] *Id.* at 4495-4543.

[59] Rollo (G.R. Nos. 212014-15), Vol. I, pp. 32-36.

[60] Rollo (G.R. Nos. 212427-28), Vol. II, pp. 687-691.

[61] *Id.* at 693-694.

[62] *Id.* at 695-699.

[63] *Id.* at 701-703.

[64] *Id.* at 786-799.

[65] *Id.* at 801-808.

[66] Id. at 809-818.

[67] Id. at 820-823.

[68] Rollo (G.R. Nos. 212694-95), Vol. I, pp. 84-223.

[69] Id. at 211-212.

[70] Id. at 212-217.

[71] See id. at 148-155, 167, and 187.

[72] Erroneously mentioned as "P242,512,500.00." This was modified in the Joint Order dated June 4, 2014 (see id. at 212).

[73] See id. at 173-189.

[74] See id. at 155-173.

[75] See id. at 224-225.

[76] See Motion for Reconsideration (Of the Joint Resolution dated 28 January 2014 [sic]) dated April 7, 2014; rollo (G.R. Nos. 212427-28), Vol. II, pp. 707-758.

[77] Rollo (G.R. No. 212427-28), Vol. I, pp. 62-63.

[78] See id. at 12. See also rollo (G.R. Nos. 212694-95), Vol. I, pp. 250. Namely: Dennis L. Cunanan, Francisco B. Figura, Gondelina G. Amata, Gregoria G. Buenaventura, Emmanuel Alexis G. Sevidal, and Ofelia E. Ordoñez.

[79] Rollo (G.R. Nos. 212427-28), Vol. I, pp. 45-60.

[80] Id. at 57.

[81] Id. at 42-44.

[82] Rollo (G.R. Nos. 212694-95), Vol. I, pp. 224-278.

[83] See id. at 272-275.

[84] Not attached to the rollos.

[85] See rollo (G.R. Nos. 218744-59), Vol. I, pp. 251-298.

[86] Not attached to the rollos.

[87] See rollo (G.R. Nos. 218744-59), Vol. I, pp. 299-305 and 306-314.

[88] Id. at 349-352.

[89] Id. at 353-394.

[90] Id. at 480-487.

[91] See Motion for Partial Reconsideration (RE: Resolution promulgated on August 28, 2014) dated September 1, 2014; id. at 488-499.

[92] Id. at 49-54.

[93] See id. at 51-53.

[94] Id. at 52.

[95] See Motion for Partial Reconsideration (Re: Resolution dated 13 November 2014) dated February 4, 2015; rollo (G.R. Nos. 218744-59), Vol. II, pp. 650-668.

[96] See id. at 655-659.

[97] Rollo (G.R. Nos. 218744-59), Vol. I, pp. 55-59.

[98] See id. at 57-59.

[99] Rollo (G.R. Nos. 212794-95), Vol. VIII, pp. 4357-4358.

[100] Id. at 4495-4543.

[101] Id. at 4357 and 4489-4491.

[102] 571 Phil 373 (2008).

[103] Id. at 381-382; emphases and underscoring supplied, citations omitted.

[104] 657 Phil 209 (2011).

[105] Id. at 235.

[106] Rollo (G.R. No. 212014-15), Vol. I, p. 35.

[107] Ciron v. Gutierrez, G.R. Nos. 194339-41, April 20, 2015, 756 SCRA 110, 119, citing Tetangco v. Ombudsman, 515 Phil. 230, 234-235 (2006).

[108] Id. at 118-119.

[109] See Reyes v. Ombudsman, supra note 24, citing Fenequito v. Vergara, Jr., 691 Phil. 335, 345 (2012); emphasis and underscoring supplied.

[110] See id.

[111] Shu v. Dee, 734 Phil. 204, 215 (2014); emphasis and underscoring supplied.

[112] Section 2 of RA 7080, as amended, reads in full:

Section 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[113] Section 1 (d) of RA 7080, as amended, provides:

Section 1. Definition of Terms. - As used in this Act, the term -

x x x x

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

- 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
- 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
- 4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- 5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- 6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[114] *Enrile v. People*, G.R. No. 213455, August 11, 2015, 766 SCRA 1, 50-51.

[115] Section 3 (e) of RA 3019 reads:

Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[116] *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015, 773 SCRA 434, 446.

[117] *Id.* at 445; emphasis and underscoring supplied.

[118] *Id.* at 446.

[119] *Id.*, citing *Lee v. KBC Bank N.V.*, 624 Phil. 115, 126-127 (2010).

[120] *Id.* at 449.

[121] *Id.*, citing *Estrada v. Ombudsman*, G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 51.

[122] See *Reyes v. Ombudsman*, *supra* note 24.

[123] The following are some of the PDAF documents (bearing the signature of Sen. Revilla) attached to the

records of these cases: (1) letters dated April 10, 2007 and November 27, 2007 addressed to Director General Antonio Y. Ortiz (Dir. Gen. Ortiz), Technology and Livelihood Resource Center (TLRC or TRC) (see rollo [G.R. Nos. 212014-15], Vol. II, pp. 525 and 660); (2) letter dated October 23, 2009 addressed to President Gondelina G. Amata (Pres. Amata), National Livelihood Development Corporation (see rollo [G.R. Nos. 212014-15], Vol. III, p. 1760); (3) letter dated November 27, 2007 addressed to then Secretary Arthur C. Yap, Department of Agriculture (see rollo [G.R. Nos. 212794-95], Vol. III, p. 1114); (4) letter dated December 16, 2008 addressed to Dir. General Ortiz (see rollo [G.R. Nos. 212794-95], Vol. III, p. 1512); (5) letter dated April 28, 2009 addressed to Pres. Amata (see rollo [G.R. Nos. 212794-95], Vol. IV, p. 1916); and (6) letters dated February 27, 2009 and August 17, 2009 addressed to Pres. Amata (see rollo [G.R. Nos. 212794-95], Vol. V, pp. 2502 and 2842).

[124] *Supra* note 33.

[125] *Id.* at 538.

[126] *Id.* at 539.

[127] See rollo (G.R. Nos. 212694-95), Vol. I, pp. 149-150.

[128] *Id.* at 150.

[129] *Id.*; emphasis and underscoring supplied.

[130] *Shu v. Dee*, *supra* note 111, at 526; emphases and underscoring supplied.

[131] See Examination Report dated October 7, 2013; rollo (G.R. Nos. 212694-95), Vol. II, pp. 370-374.

[132] See Item (Q) in Report No. 09-10/2013; *id.* at 397-419.

[133] Rollo (G.R. Nos. 212694-95), Vol. I, p. 196.

[134] 360 Phil. 753 (1998).

[135] *Id.* at 763. See also rollo (G.R. Nos. 212694-95), Vol. I, p. 196.

[136] Rollo (G.R. Nos. 212694-95), Vol. I, p. 201; emphasis and underscoring supplied.

[137] *Mira v. Vda. de Erederos*, 721 Phil. 772, 784 (2013); emphasis supplied.

[138] Rollo (G.R. Nos. 212794-95), Vol. III, p. 1552. (Dated as March 21, 2012 in the March 28, 2014 Joint Resolution; rollo [G.R. Nos. 212694-95], Vol. I, p. 194.)

[139] See *id.*; emphasis and underscoring supplied.

[140] Rollo (G.R. Nos. 212694-95), Vol. I, pp. 194-195.

[141] See *id.* at 43.

[142] See portions of the following testimonies of the whistleblowers: (1) Karagdagang Sinumpaang Salaysay of Suñas (rollo [G.R. Nos. 212794-95], Vol. VII, pp. 3930 and 3933-3936); (2) Karagdagang Sinumpaang Salaysay of Luy (rollo [G.R. Nos. 212794-95], Vol. VII, pp. 3996 and 3998); and (3) Karagdagang Sinumpaang Salaysay of Sula (rollo [G.R. Nos. 212794-95], Vol. VI, p. 3309).

[143] See rollo (G.R. Nos. 212694-95), Vol. I, pp. 150-151.

[144] Rollo (G.R. Nos. 212794-95), Vol. VII, p. 3998; emphasis and underscoring supplied.

[145] See *Reyes v. Ombudsman*, *supra* note 24.

[146] See *id.*, citations omitted.

[147] *Supra* note 121.

[148] See *Reyes v. Ombudsman*, *supra* note 24, citations omitted.

[149] *Stare decisis non quita et movere* (or simply, *stare decisis*) which means "follow past precedents and do not disturb what has been settled" is a general procedural law principle which deals with the effects of previous but factually similar dispositions to subsequent cases. The focal point of *stare decisis* is the doctrine created. The principle, entrenched under Article 8 of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue. (See *Belgica v. Ochoa*, 721 Phil. 416, 528-530 [2013].)

[150] *People v. Estibal*, G.R. No. 208749, November 26, 2014, 743 SCRA 215, 240, citing *People v. Velasquez*, 405 Phil. 74, 99-100 (2001).

[151] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 117.

[152] See *Reyes v. Ombudsman*, *supra* note 24, citing *Estrada v. Ombudsman*, *supra* note 121, at 51.

[153] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 124-125.

[154] See *id.* at 132-133.

[155] *Id.* at 134.

[156] *Id.* at 135.

[157] See *Estrada v. Ombudsman*, *supra* note 121, at 67; emphasis and underscoring supplied.

[158] See May 7, 2014 Joint Order; *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 62-62a.

[159] See *Reyes v. Ombudsman*, *supra* note 24, citing *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 286.

[160] Referred to as "COA Report 2007-2009" in the March 28, 2014 Joint Resolution; see *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 113-114.

[161] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 113-115.

[162] *Id.* at 112-113.

[163] *Id.* at 186.

[164] See *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016.

[165] See *rollo* (G.R. Nos. 218744-59), Vol. I, pp. 349-352.

[166] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 103-104.

[167] See *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 352 and 356-357. See also *rollo* (G.R. Nos. 212794-95), Vol. VII, p. 4000.

[168] See rollo (G.R. Nos. 212694-95), Vol. I, p. 148.

[169] See *Modus Operandi*, id. at 148-152.

[170] *Reyes v. Ombudsman*, supra note 24, citing *People v. Nazareno*, 698 Phil. 187, 193 (2012).

[171] Rollo (G.R. Nos. 212427-28), Vol. I, p. 209. See also rollo (G.R. Nos. 212794-95), Vol. VII, p. 4191.

[172] See id. at 209.

[173] See rollo (G.R. No. 212794-95), Vol. VI, p. 3292-3294 and 3326.

[174] Id. at 3294-3295.

[175] See *Lee v. KBC Bank N.V.*, supra note 119, at 126.

[176] See Joint Resolution dated March 28, 2014 (rollo [G.R. Nos. 212694-95], Vol. I, pp. 105-106). See also paragraph 4.1 of Luy and Suñas's *Pinagsamang Salaysay* dated September 11, 2013 (rollo [G.R. No. 212794-95], Vol. VI, p. 3292), which reads:

4.1.

Kakausapin ni Gng. Napoles ang lawmaker na makakapag-bigay ng pondo, at pagkakasunduan nila ang komisyon o kickback na dapat matanggap ng kausap niya. A/am namin ito dahil sinasama niya kami noon sa ilang meetings niya sa mga lawmakers, at ito rin ang kinagawian na sa mga sumunod niyang mga transaksyon. At nakokompirma namin ito tuwing nag-uutos si Gng. Napoles sa amin na maglianda o magpada/a ng pera para sa mga nakausap niya. Ang kasama namin na /aging naghahanda ng pera ay sina Ronald John Lim x x x.

[177] Rollo (G.R. No. 213532-33) Vol. I, pp. 19-20.

[178] Rollo (G.R. Nos. 218744-59), Vol. I, pp. 49-54.

[179] Id. at 55-59.

[180] See id. at 12-15.

[181] See rollo (G.R. Nos. 212694-95), Vol. I, p. 107. See also rollo (G.R. Nos. 218744-59), Vol. I, p. 53.

[182] See rollo (G.R. Nos. 218744-59), Vol. I, p. 53.

[183] *Ganaden v. Ombudsman*, 665 Phil. 224, 232 (2011).

[184] 600 Phil. 26 (2009).

[185] Id. at 45.

[186] 712 Phil. 288 (2013).

[187] Id. at 309.

[188] See *Reyes v. Ombudsman*, supra note 24, citing *Brinegar v. United States*, 338 U.S. 160 (1949).

CONCURRING AND DISSENTING OPINION

VELASCO, JR., J.:

I concur with the majority in sustaining the finding of probable cause against Janel Lim Napoles (Napoles), Ronald John Lim (Lim) and John Raymund de Asis (De Asis).

I, however, dissent from the majority's conclusion that there is probable cause to indict Sen. Ramon "Bong" Revilla, Jr. (Revilla), Richard A. Cambe (Cambe), Mario L. Relampagos (Relampagos), Rosario S. Nuñez (Nuñez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare).

FACTUAL ANTECEDENTS

As culled from the Joint Resolution dated March 28, 2014 issued by the Ombudsman in OMB-C-C13-0316 and OMB-C-C-13-0395, the issuance that has invariably spawned the consolidated special civil actions at bar, the relevant factual antecedents are as follows:

On March 22, 2013, National Bureau of Investigation (NBI) agents rescued Benhur Luy (Luy) who would claim having been illegally detained in connection with the discharge of his responsibilities as the "lead employee" of the Janet Lim Napoles Corporation (JLN). JLN was supposedly involved in overseeing the anomalous implementation of several projects funded from the Priority Development Assistance Fund (PDAF).

The NBI's investigation that followed focused on the adverted irregularities surrounding the PDAF of certain lawmakers, acting in connivance with individuals in and out of government and non-governmental organizations (NGOs). Interviewed during the probe, were Luy and other JLN employees, Marina Sula (Sula) and Merlina Suñas (Suñas).

After its investigation, the NBI filed with the Office of the Ombudsman (OOMB) a complaint, docketed as OMB-C-C-13-0316 (the NBI complaint), charging, inter alia, the herein petitioners, namely: 1) Sen. Ramon "Bong" Revilla, Jr. (Revilla); 2) Richard A. Cambe, a member of his Senate staff; 3) Janet Lim Napoles (Napoles); 4) Ronald John B. Lim (Lim); 5) John Raymund S. De Asis (De Asis); and 6) Mario L. Relampagos (Relampagos), Rosario S. Nuñez (Nuñez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare) with Plunder. Thereat, the NBI alleged that Revilla, through Cambe, received a total of P224,512,500.00 from Napoles for supposedly allowing the latter to divert Revilla's PDAF from 2006 to 2010 to her controlled non-governmental organizations (NGOs) with the help of the other respondents therein.

Based on similar allegations, the Field Investigation Office (FIO) of the OOMB thereafter filed another complaint for violation of Sec. 3(e) of the Anti-Graft and Corrupt Practices Act against, among other individuals, Revilla, Napoles, Cambe, and De Asis (FIO Complaint).

Docketed as OMB-C-C-13-0395, the FIO Complaint cites COA (Commission on Audit) SAO (Special Audits Office) Report No. 2012-03, on PDAF allocations and disbursements covering 2007-2009. Mentioned in the FIO Complaint are supposed letters from COA to Revilla and vice versa, bearing on the authenticity of his signature or Cambe's appearing on the documents appended to the letter, i.e., letters to the head of Implementing Agencies (IAs), memoranda of agreement (MOA), and project proposals, inspection/acceptance/disbursement papers relating to his PDAF. ("PDAF Documents").

In separate or joint counter-affidavits submitted in compliance with the OOMB orders, the above-named respondents, proffered the following defenses or inculpatory statements, the gist of which are as summarized below. Other related incidents are as indicated.

1. Relampagos, Nuñez, Paule, and Bare, who were identified by Luy as Napoles' "contacts" in the Department of Budget and Management (DBM) who helped expedite the release of the Special Allotment Release Orders

(SAROs) relating to the PDAF, alleged they are not mentioned in the NBI Complaint as participants in the PDAF misuse.

2. De Asis admits that, as employee of JLN Group from 2006-2010, serving as driver/bodyguard/messenger for Napoles he used, per her instructions, to pick up checks for Napoles-affiliated government organizations. But he denies having any knowledge in setting-up or managing firms that supposedly received PDAF.

3. As in his later pleadings and submissions, Revilla alleged that his or Cambe's signatures in the PDAF Documents thus submitted by the NBI and the FIO are all forgeries as shown in the independent and separate reports of two handwriting experts, Atty. Desiderio Pagni and Mr. Rogelio Azores. Sen. Revilla drew attention to the fact that not one of complainants' witnesses testified about his receipt of money as kickback or commission from Napoles. He stressed that the complainants have neither identified the "overt act" of the crimes he committed nor the so-called ill-gotten wealth he has allegedly accumulated. Revilla rued the lack of admissible proof to support the contentions that he conspired with Napoles and her employees.

Revilla would stress too that his limited involvement in the PDAF release started and ended with his letter to the Senate President and a Senate committee identifying the projects for his PDAF.

4. Cambe denies, as he would later deny, any involvement in the PDAF scam or in the conspiracy involving the PDAF. He tagged as forgeries his purported signature appearing in certain PDAF documents. He would echo Revilla's line on the absence in the complaints of averments of the "overt or criminal acts" constitutive of Plunder case filed against him.

Napoles, Lim, and five others opted not to file their counter-affidavits.

In related moves, Revilla and Cambe sought the suspension of the preliminary investigation on the NBI and FIO complaints, pleading that a civil case previously filed to nullify the PDAF Documents presents a prejudicial question to the criminal proceedings. In the Joint Order dated January 28, 2014, as later reiterated, however, the Ombudsman denied the motions holding that the desired suspension is unwarranted, falsification not being an essential element of either crime involved, besides which there are other pieces of evidence in support of the complaints thus filed.

Raising an entirely distinct issue, Cambe filed a second motion to suspend proceedings on the ground that the filing of the criminal cases is premature. He argued that non-compliance with the COA Order of Execution (COE) is a pre-condition or a condition precedent to the filing of the charges against him. However, the Ombudsman denied this second motion in its Joint Order dated March 14, 2014, now being challenged in G.R. Nos. 212014-15.

On February 11, 2014, Revilla interposed a Motion to be Furnished Copies of Motions, Pleadings, and other Submissions filed in relation to the criminal complaints against him including the Counter-Affidavits of the other respondents ("Motion to be Furnished"). By Order of March 11, 2014, the Ombudsman denied the motion. Another Order of March 27, 2014 would deny Revilla's motion for reconsideration.

Revilla's subsequent Motion for Voluntary Inhibition (Of the Special Panel of Investigators) met the same adverse fate. So did his motion for motion for reconsideration of the denial order.

The Ombudsman's March 28, 2014 Joint Resolution

By Joint Resolution of March 28, 2014, the Ombudsman found probable cause to charge Revilla and the other petitioners, with plunder and violation of Sec. 3(e) of RA 3019, pertinently disposing in this wise -

WHEREFORE, this Office, through the undersigned:

(a) FINDS PROBABLE CAUSE to indict:

[PLUNDER - 1 Count]

i. Ramon Revilla, Jr., Richard A. Cambe, Janet Lim Napoles, Ronald John Lim and John Raymund de Asis, acting in concert, for PLUNDER (Section 2 in relation to Section 1(d)[d] [2] and [6] of R.A. No. 7080; as amended), in relation to Revilla's ill-gotten wealth in the sum of at least PHP[224],512,500.00, representing kickbacks or commissions received by him from Napoles in connection with [PDAF]-funded government projects and by reason of his office or position;

[VIOLATION OF SECTION 3 (E) OF R.A. 3019 - 16 Counts]

i. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP25,000,000.00 drawn from Revilla's PDAF and cour ed through the [TRC] and Agri Economic Program for Farmers Foundation, Inc. (AEPFFI), as reflected in [DV] x x x;

ii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagbs, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x, Janet Lim Napoles, x x x John Raymund De Asis, Eulogio D. Rodriguez, and Laarni A. Uy, acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP38,500,000.00 drawn from Revilla's PDAF and coursed through the [TRC] and Philippine Social Development Foundation, Inc. (PSDFI), as reflected in DV No. x x x;

iii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP11,640,000.00 drawn from Revilla's PDAF and coursed through the [NABCOR] and Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI), as reflected in DV No. x x x;

iv. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x, Janet Lim Napoles x x x John Raymund De Asis, x x x acting in concert, for VIOLATION (i)F SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounti g to at least PHP24,250,000.00 drawn from Revilla's PDAF and coursed through the NABCOR and MAMFI, as reflected x x x;

v. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare x x x, Janet Lim Napoles x x x, John Raymund De Asis, Eulogio D. Rodriguez, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP38,800,000.00 drawn from Revilla's PDAF and coursed through the NABCOR and x x x (SDPFFI), as reflected in DV No. x x x;

vi. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles x x x, John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP14,550,000.00 drawn from Revilla's PDAF and coursed through the NABCOR and MAMFI, as reflected in DV No. x x x;

vii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x, Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF RA. NO. 3019 in relation to fund releases amounting to at least PHP44,000,000.00 drawn from Revilla's PDAF and coursed through the TRC and SDPFFI, as reflected in x x x;

viii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, Eulogio D. Rodriguez, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least

PHP44,000,000.00 drawn from Revilla's PDAF and coursed through the TRC and SDPFFI, as reflected in DV Nos. x x x;

ix. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP[19,400,000.00] drawn from Revilla's PDAF and coursed through the [NLDC] and x x x (APMFI), as reflected in DV No. x x x;

x. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF RA. NO. 3019 in relation to fund releases amounting to at least PHP30,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and MAMFI, as reflected in DV No. x x x;

xi. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP40,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and MAMFI, as reflected in DV Nos. x x x;

xii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF RA. NO. 3019 in relation to fund releases amounting to at least PHP44,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and AEPFFI, as reflected in DV No. x x x;

xiii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP36,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and APMFI, as reflected in DV No. x x x;

xiv. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP20,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and SDPFFI, as reflected in x x x;

xv. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagps, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP40,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and SDPFFI, as reflected in DV No. x x x; and

xvi. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP45,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and SDPFFI, as reflected in DV No. x x x;

and accordingly RECOMMENDS the immediate filing of the corresponding Informations against them with the Sandiganbayan;

x x x x

(d) DIRECTS the [FIO] to conduct further fact-finding on the criminal, civil and/or administrative liability of Javellana, Mendoza, Ortiz, Cunanan, Amata, Sevidal and other respondents who may have received commissions and/or kickbacks from Napoles in relation to their participation in the scheme subject of these proceedings.

In so holding, the Ombudsman found the existence of conspiracy between and among the petitioners, the officers of the IAs and the DBM to amass ill-gotten wealth, noting particularly in this regard that without Revilla's involvement, Napoles could not have had access to his PDAF allocation. Wrote the Ombudsman on the matter of conspiracy:

Based on the x x x evidence presented, the widespread misuse of the subject PDAF allotted to a legislator was coursed through a complex scheme basically involving "ghost" or inexistent projects allegedly funded by said PDAF. The funds intended for the implementation of the PDAF-funded projects are diverted to the possession and control of Napoles and her co-horts, as well as to the legislator to whom the funds were allotted and his staff, and other participants from the government agencies tasked to implement said inexistent projects.

x x x x

Based on the records, the repeated diversions of PDAF allocated to Senator Revilla, during the period 2006 to 2010, were coursed through the above-described scheme.

In the case of Senator Revilla, the NGOs affiliated and/or controlled by Napoles that undertook to implement the projects to be funded by his PDAF were, among others, x x x. These organizations transacted through persons known to be employees, associates or relatives of Napoles, including witnesses Luy, Sula, and Suñas, as well as respondents x x x De Asis, x x x Lim x x x. Similarly, Cambe, acting on Senator Revilla's behalf, prepared and executed communications with the DBM and implementing agencies, as well as other PDAF-related papers such as MOA and project proposals.

During the time material x x x Senator Revilla issued several endorsement letters to NABCOR, TRC and NLDC, expressly naming the above-mentioned NGOs as his chosen contractor for his PDAF projects x x x.[1]

x x x x

x x x [T]o repeatedly divert substantial funds from the PDAF, access thereto must be made available. This was made possible by x x x Revilla, who chose NGOs affiliated with or controlled by Napoles to implement his PDAF-related undertakings. Cambe then prepared the indorsement letters and similar documentation addressed to the DBM and the [IAs] x x x to ensure that the chosen NGO will, indeed, be awarded the project.

Relampagos, [etc.], as officers of the DBM, were in regular contact with Napoles and her staff. This familiarity between them x x x ensured that the requisite SAROs and NCAs were immediately released by the DBM to the concerned [IAs].

In turn, Ortiz, Cunanan, [et al.,] as officers of the [IAs] involved, prepared, reviewed, and executed the memoranda of agreement concerning the implementation of the projects. They also participated in the processing and approval of the PDAF disbursements to the questionable NGOs. The funds in question could not have been transferred to these entities if not for their certifications, signatures and approvals found in the corresponding disbursement vouchers and checks.

Once the fund releases have been successfully processed by the implementing agencies, x x x De Asis x x x [and] Lim x x x in behalf of the NGOs in question and under the direction of Napoles, would pick up the corresponding checks and deposit them in bank accounts under the name of these entities and over which Napoles had complete and utter control. These sums would later be withdrawn from the banks and brought to the offices of Napoles x x x.

x x x De Asis, x x x again per the direction of Napoles, would prepare the fictitious beneficiaries list and other similar documents for liquidation purposes, that is, to make it appear that the projects were implemented, when, in fact, they were not.

For their participation, in the above-described scheme, Senator Revilla, Javellana, Cunanan, Amata,

Buenaventura and Sevidal received portions of the subject PDAF disbursements from Napoles.[2]

x x x x

As earlier discussed, the sworn statements of witnesses, the DVs, the indorsed/encashed checks, the MOAs with NGOs, the written requests, liquidation reports, confirmation letters and other evidence on record, indubitably indicate that Senator Revilla, Cambe, Relampagos, Nuñez, Paule, Bare, x x x as well as Napoles, x x x De Asis x x x, Lim x x x, conspired with one another to repeatedly raid the public treasury through what appears to be drawing funds from the PDAF allocated to Senator Revilla, albeit for fictitious projects. Consequently, they illegally conveyed public funds in the aggregate amount of PHP517,000,000.00, more or less, to the possession and control of questionable NGOs affiliated with Napoles, thus allowing Senator Revilla to acquire and amass ill-gotten part of the proceeds thereof through kickbacks x x x.[3]

From the March 28, 2014 Joint Resolution, the petitioners timely moved for reconsideration.

Via a Joint Order of May 7, 2014, the OOMB granted Revilla's motion to be furnished, but the grant covered only copies of the counter-affidavits of six (6) of co-respondents. A week later, however, Sen. Revilla filed, but the OOMB via its May 15, 2014 Order denied, an Omnibus Motion wherein he prayed for: (1) the reconsideration of the May 7, 2014 Joint Order; (2) the recall of the March 28, 2014 Joint Resolution; (3) the reconduct of the preliminary investigation; and (4) the reconstitution of another special panel of investigators.

The May 15, 2014 order is now assailed in G.R. No. 212427-28.

In its June 4, 2014 Joint Order, the OOMB denied the petitioners' motions for reconsideration. On June 6 and 9, 2014, the Ombudsman filed before the Sandiganbayan the Informations against Revilla for one (1) count of Plunder and sixteen (16) counts of violation of Sec. 3(e) of RA 3019, which were docketed as Criminal Case Nos. SB 14 CRM 0240 (for Plunder) and SB 14 CRM 0267 to 0282 (for Violation of Sec. 3[e] of RA 3019).

On June 13, 2014, Revilla interposed a Motion for Judicial Determination of Probable Cause and Deferment and/or Suspension of Proceedings. The Sandiganbayan, however, denied the motion and then issued warrants of arrest against Revilla, et al.

In its August 28, 2014 Resolution, the Sandiganbayan dismissed Crim. Case Nos. SB-14-CRM-0267, 0270, 0271, 0274, 0277, 0278, 0281, and 0282 as against the four respondents from the DBM. In the same resolution, however, the anti-graft court ordered the prosecution to present additional evidence to establish the existence of probable cause against them in Crim. Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279; and 0280 (where Relampagos signed the SAROs involved). The prosecution moved for partial reconsideration of the August 28, 2014 Resolution insofar as the dismissal aspect of the issuance is concerned; but the Sandiganbayan denied the motion in its Resolution of November 13, 2014. The Sandiganbayan, however, affirmed the probable cause finding against the four DBM employees in Crim. Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279 and 0280 on the ground that the defenses they raised were evidentiary in character. In particular, the graft court held that the issue of whether the IAs' endorsement was indispensable before a SARO can be issued is a matter of evidence to be threshed out during trial. So too, the court added, is the issue of whether there was actual undue haste in the issuance of the SAROs involved.

Relampagos, et al. moved for the reconsideration of the November 13, 2014 Resolution citing DBM Circular Letter No. 2015-1, s. of 2015, which supposedly clarified that the IAs' endorsements are no longer required before the issuance of the corresponding SARO. But in its May 13, 2015 Resolution, the Sandiganbayan denied the motion pointing out the circular was issued only after the Ombudsman's probable-cause finding resolution.

The above November 13, 2004 Resolution, as reiterated in the May 13, 2015 Resolution, is sought to be

invalidated in G.R. Nos. 213534-35.

It is against the foregoing factual backdrop that the petitioners, save those in G.R. Nos. 212014-15 and G.R. Nos. 2187744-59, presently seek cognate reliefs, each one basically seeking to annul, as having been issued in grave abuse of discretion, the March 28, 2014 Joint Resolution, as effectively affirmed in the June 4, 2014 Joint Order of the Ombudsman and other related issuances she and the Sandiganbayan rendered.

For ease of reference, the assailed Joint Resolution found probable cause to indict the petitioners for plunder and violation of Sec. 3(e) of RA 3019, while the June 4, 2014 Joint Order denied reconsideration of the said joint resolution.

The Petitions

G.R. Nos. 212014-15

Atty. Richard A. Cambe, petitioner

This is a petition for certiorari and prohibition to annul and, set aside the March 14, 2014 Joint Order of the Office of the Ombudsman on the Motion to Suspend Proceedings and to command the Ombudsman from further proceedings in the criminal complaints against Cambe.

To Cambe, the Ombudsman gravely abused her discretion by refusing to dismiss the criminal complaints or at least suspend the proceedings despite non-compliance with a precondition or condition precedent to the filing thereof. According to Cambe, the COE, which should have been preceded by a Notice of Finality of Decision, is a precondition or condition precedent to the filing of the NBI and FIO complaints. However, since the Notices of Disallowance (ND) have not become final and executory at the time of filing of the complaints, the Ombudsman should have dismissed the criminal complaints, or at least, suspended the proceedings for non-compliance of said precondition or condition precedent.

G.R. Nos. 212427-28

Sen. Ramon "Bong" Revilla, Jr., petitioner

Senator Revilla assails in this recourse the OOMB's refusal, via its May 15, 2014 Order, (a) to provide him with the requested counter-affidavits and other submissions subject of his motion to furnish, (b) to re-conduct the preliminary investigation, recall and set aside the March 28, 2014 Joint Resolution and (c) to constitute a different panel of investigators.

Pushing his point, Revilla alleges that the Ombudsman violated his right to due process when, in her March 28, 2014 Joint Resolution, she used nineteen (19) counter-affidavits^[4] of his co-respondents that he had not been previously furnished with, thereby depriving him the opportunity to respond to the allegations therein. Revilla further argues that the Ombudsman's May 7, 2014 Order, belatedly furnishing him six out of the 19 counter-affidavits, with a right to submit a reply, does not cure the underlying fatal infirmity of the proceedings. As the preliminary investigation is a nullity, Revilla adds, the Ombudsman should have recalled its March 28, 2014 Joint Resolution and conducted another preliminary investigation. The senator takes the Ombudsman's refusal to take the twin courses, like her refusal to replace the biased members of the investigating panel as indicia of grave abuse of discretion.

Disputing the senator's posture on denial of due process, the OOMB, the FIO and the NBI, in their Comment, alleged that he vainly eventually furnished copies of the counter-affidavits of his co-respondents. Also, the Ombudsman denied the charge of bias hurled against the Special Panel of Investigators. The public respondents further aver that the fact that the Informations against Revilla have been filed with the Sandiganbayan has

rendered this particular issue moot and academic.

G.R. Nos. 212694-95

Sen. Ramon "Bong" Revilla, Jr., petitioner

Sought to be nullified in this certiorari and prohibition actions are the adverted March 28, 2014 Joint Resolution and June 4, 2014 Joint Resolution of the OOMB. Revilla seeks to nullify the two issuances and eventually annul the Informations for plunder and corrupt practices thus filed with the Sandiganbayan, on the argument that the OOMB, in conducting the preliminary investigation on the NBI and FIO complaints, trampled upon the due process guarantee, particularly his right to be confronted with the accusations and allegations charging him with crime.

Furthermore, Revilla faults the Ombudsman for her finding despite the complete absence of credible inculpatory evidence. He contends that there is absolutely no evidence to support allegations of his having PDAF dealings with Napoles. To him, the complainants have yet to establish the commission of the required overt acts and that all the allegations against him are hearsay, inadmissible evidence.

Revilla asserts that the only thing linking him to the supposed scam are the PDAF documents bearing his forged signatures, the forgery admitted by no less than the complainants' witnesses and affirmed by two independent handwriting experts. In this regard, Revilla maintains that in the absence of contrary competent testimony, the findings of the handwriting experts stand. Invoking the doctrine of *res inter alios acta*, he also argues that absent independent evidence to prove conspiracy, the Ombudsman cannot consider the testimonies of the whistleblowers, who are self-confessed co-conspirators, against Revilla.

In traversal of petitioner Revilla's allegation about being denied due process, respondents OOMB, NBI, FIO and the Office of the Special Prosecutors (OSP) adverted to the fact that the former was furnished with copies of the six incriminating counter-affidavits and given time to comment thereon. As a corollary point, respondents would argue that there were independent, credible and competent pieces of evidence that establish the finding of probable cause against petitioner. They emphasize that out of the 32 PDAF Documents shown to be signed by Revilla, he only contested 16 and the Ombudsman relied on 12 SAROs purportedly signed by Revilla to indict him for plunder and violation of Sec. 3(E), RA 3019.

In his Reply to Comment, Revilla countered that the OOMB should have provided him with all the documents he requested as a person charged of the crime is entitled to be furnished with all evidence, be inculpatory or exculpatory, obtaining in the case. Else the person so charged is deemed denied his constitutional right to due process.

As to the public respondents' assertion that he refuted only a portion of the total number of PDAF Documents as forgeries, Revilla cited a civil complaint he filed wherein he sought the nullification of all the PDAF Documents. Revilla also clarified that there is no question on the regularity of the SAROs as these were forwarded by the Senate to the DBM for the release of the funds. Rather, he emphasized that what he is contesting are the letters to the IAs supposedly containing his endorsements of Napoles' NGOs and the MOAs with them. He reiterates his denial of ever signing any of these endorsement letters and MOAs without which, there is nothing to link him with Napoles.

On February 2, 2015, the Ombudsman herself, through the OSG, filed her Consolidated Comment on the petitions. Among other things, she particularly took stock of Revilla's acts indicating his manifest partiality and evident bad faith as shown by his repeated and direct endorsement of his PDAF-funded projects to Napoles' NGOs without the requisite public bidding and compliance with GPPB Resolution No. 012-200, IRR of R.A.

9184,[5] amended, and National Budget Circular (NBC) No. 476.

G.R. Nos. 212794-95

Atty. Richard A. Cambe

In this petition for certiorari and prohibition, petitioner Cambe also seeks to annul the March 28, 2014 Joint Resolution and the June 4, 2014 Joint Order, claiming the Ombudsman issued them in violation of his right to due process. For one, Cambe states, the Ombudsman totally ignored his counter-affidavits and countervailing evidence and even attributed to him statements and defenses which he did not make. Worse still, Cambe adds, the statements in the aforesaid Joint Resolution betray the Ombudsman's failure to even peruse what he submitted. For another, she used the counter-affidavits of other respondents against Cambe without so much as providing him copies thereof. To compound matters, the Ombudsman even used various memoranda which the whistleblowers admitted to have been falsified. For a third, Cambe, following Revilla's lead, parlayed the *res inter alios acta* line. He also laments the Ombudsman's disregard of handwriting experts' finding on the authenticity of his signatures on the PDAF Documents. He further raises the issue of his right, as part of due process, to be furnished with the counter-affidavits of his co-respondents like Revilla.

Finally, Cambe asserts that none of the elements for the successful prosecution of plunder or violation of Sec. 3 (e) of R.A. 3019 is present. As it were, Cambe claims, vis-a-vis the latter crime, he has nothing to do with the PDAF projects let alone acting with manifest partiality, evident bad faith, or inexcusable negligence. Most importantly, he did not, under the premises, cause undue injury to any party, or give any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

Public respondents, in their Consolidated Comment and training their sights on allegations of supposed denial of due process, argue in the main that Cambe failed to present ny competent evidence to support his thesis. On the contrary, Cambe was furnished copies of the counter-affidavits that directly linked him to the crimes charged against him. They further argue that the issue on Cambe's pretense of being denied, under the premises, of due process has been rendered moot by the Ombudsman's issuance of the May 7, 2014 Joint Order wherein Cambe was furnished copies of the requested documents and was given a chance to comment thereon.

G.R. Nos. 213477-78

John Raymund De Asis, petitioner

In this petition to annul the March 28, 2014 Joint Resolution, De Asis contends at bottom as follows: (1) the basic complaints were devoid of any allegation or proof that would justify the charge of Plunder against him. At best, these allegations merely depicted him as exercising his duties as Napoles' driver, messenger, and janitor which can hardly be construed as overt criminal acts of Plunder or a willful participation on his part to commit the same. (2) He has no knowledge of the existence, let alone of being president, of Kaupdanan Para sa Mangunguma Foundation, Inc. (KPMFI). De Asis describes as unimaginable for a mere high school graduate and a former security guard, like him, to conspire with his employer and high-ranking government officials to perpetrate the crime. He emphasized that the Joint Resolution expressly stated that his employer, Napoles, had "full control and possession of the funds." And, (3) KPMFI was not used as conduit in the PDAF scam.

Commenting on De Asis' declaration of good faith, the Ombudsman stated that the former's acts of receiving checks for Napole' NGOs, depositing them in their bank accounts, delivering Napoles' share in the scam, and assisting in the delivery of the lawmakers' kickbacks are not part of his duties as driver, messenger, or janitor. Rather, for the Ombudsman, these are indispensable parts of the commission of Plunder and violation of Sec. 3(E), RA 3019 in conspiracy with his employer and other persons.

The Ombudsman also shoots down, as specious, De Asis' Claims of not knowing about the incorporation of KPMFI, with the fact that he does not effectively deny the authenticity of his signature on the incorporation papers. At any event, the Ombudsman concludes, De Asis' acts under the premises contextually show his participation in the conspiracy.

G.R. Nos. 213532-33

Ronald John Lim, petitioner

Lim prays in this certiorari action at bar for the annulment of the March 28, 2014 Joint Resolution, predicated his plea on the premise that the Ombudsman issued the same when both the NBI and FIO complaints do not even allege his specific action that constitutes a violation of Plunder. Lim asserts that the complaints failed to establish the elements of the crimes charged against him and that the OOMB's Joint Resolution itself shows that he was not one of those who received the checks issued to the NGOs. To stress, he points out that only the NBI complaint named him as respondent. But even then, the NBI Complaint only impleaded him for being the supposed president of Ginintuang Alay sa Magsasaka Foundation, Inc. (GAMFI), when GAMFI was not even identified as an NGO that transacted with Revilla. He rued the sweeping assumption taken that all Napoles' employees are involved in the subject scam.

To this key contention, the Ombudsman counters that Luy and Suñas explicitly identified Lim as having helped Napoles deliver commissions and kickbacks money to the lawmakers, an actuality clearly indicating his involvement in the execution of the conspiracy to commit Plunder.

G.R. Nos. 218744-59

Mario Relampagos, Rosario Nuñez,

Lalaine Paule, and Marilou Bare, petitioners

In G.R. Nos. 218744-59, Relampagos, Nuñez, Paule and Bare assail the November 13, 2014 and May 13, 2015 Resolutions of the Sandiganbayan, which sustained the Ombudsman's finding of probable cause to indict them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279 and 0280. Petitioners contend that the Sandiganbayan gravely abused its discretion in refusing to declare the lack of probable cause in the mentioned cases considering that the General Appropriations Acts (GAAs) for 2007, 2008 and 2009 already decreed the direct release of all PDAF allocations to the IAs without the need of the prior requirement for the IAs' indorsement. For the petitioners, they cannot be faulted for issuing the SAROs under that circumstance.

They also stress that the Sandiganbayan should have dismissed the prosecution's allegation that they released the SAROs with "undue haste" since the SAROs involved were released four (4) to nine (9) days, way beyond the 11 hours and 15 minutes processing period required under the DBM charter.

G.R. Nos. 213536-37

Janet Lim Napoles, petitioner

In this petition for certiorari, Napoles hooks her plea for the nullification of the March 28, 2014 Joint Resolution and the June 4, 2014 Joint Order on this claim: the Ombudsman arrived at its flawed finding on the existence of probable cause to charge her with Plunder notwithstanding the absence of the critical element of "amassing ill-gotten wealth for an accused public officer." She argues that the complaints did not establish the specific acts of the crime she supposedly committed nor the place and time of commission, and that the testimonies of Luy, Sula and Suñas are conflicting, unreliable, and barred by relevant rules of evidence. Napoles also makes much of the fact that she is not a public officer, thus not subject in context to prosecution by the Ombudsman before the Sandiganbayan.

In her Comment, the Ombudsman urges the outright dismissal of the Napoles petition for being baseless. To a precise point, the Ombudsman alleged having acted within the scope of her jurisdictional authority in determining the existence of probable cause for the plunder and graft charges against Napoles, who, through her indispensable cooperation and conspiratorial acts, such as concocting non-existent projects and creating the bogus-NGOs, paved the way for Revilla to illegally divert his PDAF allocation and amass ill-gotten wealth. And in controversion of Napoles' posture, the Ombudsman contends that the complaints and Information filed against the former are sufficient in form and substance since all the integral parts were explicitly indicated.

Issue

The crucial question underlying these consolidated petitions boils down to whether the Ombudsman acted with grave abuse of discretion in finding probable cause to indict the petitioners for Plunder and violation of Sec. 3(e) of RA 3019.

Discussion

As the ponencia points out, the courts do not usually interfere with the Ombudsman in the determination as to the existence of probable cause.[6] In other words, the Ombudsman possesses ample latitude to determine the propriety of filing a criminal charge against a person. Nonetheless, it must be emphasized that the Ombudsman's broad authority is circumscribed by the need of an upright conduct of a preliminary investigation.[7] This balancing rule is intended to guarantee the right of every person from "the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed"[8] and to guard the State against the "burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges." [9]

In *Principia v. Barrientos*, [10] this Court elucidated that in striking a balance between ensuring that, on one hand, probable criminals are prosecuted and, on the other hand, the innocent are spared from baseless prosecution, [11] it is duty-bound to temper the authority of the Ombudsman where such authority may be used for persecution:

x x x In *Cabahug v. People*, we took exception to the Ombudsman's determination of probable cause and accordingly dismissed the case against the accused before the Sandiganbayan. Therein, we observed:

While it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the courts' time and saves the precious resources of the government.

In *Venus v. Hon. Desierto*, where the case against the accused was also dismissed for want of probable cause, we clarified that:

Agencies tasked with the preliminary investigation and prosecution of crimes must always be wary of undertones of political harassment. They should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

On this account, especially in cases where the impossible statutory penalty is reclusion perpetua to death as in this case, I submit that the Ombudsman must take into consideration only such competent and relevant evidence in

determining the probability of the existence of the elements of the crimes charged, for such determination may spell months, if not years, of incarceration and anxiety for the accused, and vast amounts of expenses by the State.

Where the Ombudsman finds probable cause despite the palpable absence of any competent and relevant evidence of the elements of the crimes charged, I deem it the duty of this Court to reverse her findings on account of such grave abuse of discretion, as had been previously discussed:

As a general rule, the Office of the Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. However, such authority is not absolute; it cannot be exercised arbitrarily or capriciously. Verily, the Constitution has tasked this Court to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government, including the Office of the Ombudsman. Specifically, this Court is mandated to review and reverse the Ombudsman's evaluation of the existence of probable cause, if it has been made with grave abuse of discretion.

x x x x

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts. The present Petition is one such exception, involving serious allegations of multimillion-dollar bribes and unlawful commissions.[12]

Prosecutors and the Ombudsman should verify the averments in the complaint and winnow all the documents and testimonies not only to build the case but also to spare the state the expenses of a frivolous trial and prevent the unnecessary prosecution of the innocent. In *Salapuddin v. Court of Appeals*, [13] the Court reminds, viz:

Hence, even at this stage, the investigating prosecutors are duty-bound to sift through all the documents, objects, and testimonies to determine what may serve as a relevant and competent evidentiary foundation of a possible case against the accused persons. They cannot defer and entirely leave this verification of all the various matters to the courts. Otherwise, the conduct of a preliminary investigation would be rendered worthless; the State would still be forced to prosecute frivolous suits and innocent men would still be unnecessarily dragged to defend themselves in courts against groundless charges. Indeed, while prosecutors are not required to determine the rights and liabilities of the parties, a preliminary investigation still constitutes a realistic judicial appraisal of the merits of the case so that the investigating prosecutor is not excused from the duty to weigh the evidence submitted and ensure that what will be filed in court is only such criminal charge that the evidence and inferences can properly warrant.[14]

Guided by these postulates, the Ombudsman's basis for finding probable cause against each of herein petitioners vis-a-vis the elements of the crimes charged must be considered. For plunder, the following elements must concur:

1. The offender is a public officer acting by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons.
2. The offender amasses, accumulates or acquires ill-gotten wealth.
3. The aggregate amount or total value of the ill-gotten wealth so amassed, accumulated or acquired is at least fifty million pesos (P50,000,000).
4. Such ill-gotten wealth - defined as any asset, property, business enterprise or material possession of any of the aforesaid persons (the persons within the purview of Section 2, RA 7080) - has been acquired directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

- (i) through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
- (ii) by receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
- (iii) by the illegal or fraudulent conveyance or disposition of assets belonging to the national government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;
- (iv) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- (v) by establishing agricultural, industrial or commercial monopolies or other combination and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- (vi) by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic.

Meanwhile, the elements of the crime of violation of Section 3 (e), RA 3019 are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[15]

Revilla

The majority sustained the Ombudsman's finding of probable cause to indict Revilla for Plunder and violation of Sec. 3(e) of RA 3019, for supposedly amassing ill-gotten wealth by allegedly misappropriating, or supposedly receiving commission for allowing the misappropriation of, the PDAF in conspiracy with and/or by giving unwarranted benefit to Napoles and her cohorts. As I have previously stated, I cannot concur with the majority opinion.

A look at the evidence that the complainants had presented demonstrates that there is nary any competent and relevant evidence that can constitute as basis for the finding of probable cause against Revilla.

Ruling in favor of the complainants, the Ombudsman sweepingly concluded that Revilla conspired with Napoles and her cohorts to amass ill-gotten wealth at the expense of the State, specifying Revilla's role in the alleged conspiracy as follows:

During the time material to the charges, Senator Revilla issued several endorsement letters to NABCOR, TRC and NLDC, expressly naming them as his chosen contractor for his PDAF projects.[16]

x x x x

Senator Revilla endorsed, in writing, the Napoles-affiliated NGO to implement projects funded by his PDAF. His trusted staff, Cambe, then prepared indorsement letters and other communications relating to the PDAF disbursements addressed to the DBM and the IAs (NABCOR, TRC and NLDC). On occasion, he allowed Napoles' employees to prepare these documents and sign for him. x x x[17]

x x x x

x x x Senator Revilla, for one, repeatedly and directly, endorsed the NGOs to implement his projects without

the benefit of a public bidding and without having been authorized by an appropriation law or ordinances legally mandated.[18]

x x x x

In order to repeatedly divert substantial funds from the PDAF, access thereto must be made available. This was made possible by Senator Revilla, who chose NGOs affiliated with or controlled by Napoles to implement his PDAF-related undertakings. x x x[19].

x x x x

For their participation, in the above-described scheme, Senator Revilla, Javellana, Cunanan, Amata, Buenaventura and Sevidal received portions of the subject PDAF disbursements from Napoles.[20]

To support such conclusion, the Ombudsman cited the, counter- affidavits of Revilla's co-respondents and the whistleblowers' bare testimonies, viz:

BUENAVENTURA, then a regular employee of the NLDC, avers in her Counter-affidavit dated 6 march 2014, that in her processing of documents relating to the PDAF projects, she... 'checked and verified the endorsement letters of Senator' Ramon Revilla, Jr., 'which designated the NGOs that would implement his PDAF projects and found them to be valid and authentic;' and she also confirmed the authenticity of the authorization given by Senator Revilla to his subordinates regarding the monitoring, supervision and implementation of PDAF projects.[21]

x x x x

In his Counter-Affidavit dated 15 January 2014, SEVIDAL, NLDC Director IV x x x points to Senator Revilla and Napoles, not NLDC employees, as the parties responsible for the misuse of the PDAF. He insists that Senator Revilla, through Cambe, were responsible for 'identifying the projects, determining the projects costs and choosing the NGOs' which was 'manifested in the letters of Senator Revilla.'[22]

x x x x

In his Counter-Affidavit dated 20 February 2014, CUNANAN, Deputy Director general of the TRC at the time material to the complaints x x x related he met Napoles sometime in 2006 or 2007, who introduced herself as the representative of certain legislators who supposedly picked TRC as a conduit for PDAF funded projects at the same occasion, Napoles told him that 'her principals were then Senate President Juan Ponce Enrile, Senators Ramon "Bong" Revilla, Jr., Sen. Jinggoy Ejercito Estrada;' in the course of his duties, he often ended up taking and/or making telephone verifications and follow-ups and receiving legislators or their staff members;[23]

x x x x

In his Counter-Affidavit dated 8 January 2014, FIGURA TRC Department Manager III, denies the charges against him x x x. Figura adds that x x x he and other low-ranking TRC officials had no power to 'simply disregard the wishes of Senator Revilla especially on the matter of public bidding for the PDAF projects.[24]

x x x x

Luy also confirmed in his Affidavit dated 12 September 2013 that Senator Revilla himself, indeed, transacted with Napoles:

63.

T: Nabanggiit mo na may mga chief of Staff ng mga Senador na ka-transact ni JANET LIM NAPOLES, maari mo bang pangalanan kung sinu-sino ang mga ito?

S:

... Kay Senador BONG REVILLA, kung hindi po siya mismo ang naka-usap ni Madame JANET LIM NAPOLES AY SI Atty. RICHARD A. CAMBE ang kinakausap...

Furthermore, Cunanan, in his Counter-Affidavit, claimed that Senator Revilla confirmed to him that he, indeed, chose the NGOs named in the aforementioned letters and even admonished him for supposedly delaying the release of PDAF allocations to his (Revilla) chosen NGOs':

17.1 In particular, I distinctly remember a certain occasion when we tried to verify a PDAF-funded project initiated by the Office of Senator Ramon "Bong" Revilla, Jr., by calling the officially listed telephone number of his office to check if a certain Atty. Richard A Cambe is indeed an authorized signatory for and in behalf of Senator Revilla. Said verification turned out "positive" because not only was I able to talk to Atty. Cambe, Senator Revilla himself even took the call at that instance and confirmed to me that he authorized Atty. Richard A Cambe to coordinate and facilitate the implementation of his PDAF-funded projects. He likewise confirmed to me the fact that he picked and endorsed the NGOs which will implement his PDAF-funded Projects, and he even admonished me that now that I have been able to talk to him, the PDAF - funded project of said NGO should not proceed expeditiously from then on. I did not expect the said admonition by Sen. Revilla, however, I merely replied to him that I am just doing my job.

Cunanan's testimony jibe with Luy, Sula and Suñas' assertion that Senator Revilla's office participated in the complex scheme to improperly divert PDAF disbursements from designated beneficiaries to NGOs affiliated with or controlled by Napoles.[25]

Luy, Sula and Suñas' version of events is supported by: (a) the business ledgers prepared by Luy, showing the amounts received by Senator Revilla as his "commission" from the so-called PDAF scam; (b) the 2007-2009 COA Report documenting the results of the special audit undertaken on PDAF disbursements which found that there were serious irregularities relating to the implementation of PDAF-funded projects, including those sponsored by Senator Revilla; and (c) the results of the independent field verification conducted by the FIO in 2013, which were consistent with the COA's findings and showed that the projects supposedly funded by Senator Revilla's PDAF and implemented by NGOs affiliated with or controlled by Napoles were "ghost" or inexistent.[26]

x x x x

Based on Luy's testimony, supported by his business ledgers prepared during his tenure at Napoles' organization, Senator Revilla received kickbacks from the scheme in the aggregate sum of PHP242,512,500.00, mostly coursed through his authorized staff, Cambe.[27]

Notably, the pieces of evidence relied upon by the Ombudsman do not provide sufficient basis for even a prima facie finding of probable cause to believe that Revilla negotiated and agreed with Napoles on: (i) the list of projects to be chosen by the lawmaker; (ii) the corresponding IA that would implement the project; (iii) the project cost; (iv) the Napoles-controlled NGO that would implement the project; and (v) the amount of commission or kickback which the lawmaker would receive in exchange for endorsing the NGO. Indeed, the Ombudsman's affirmation of these allegations stands on mere inferences and presumptions.

What is certain is that the Ombudsman surmised Revilla's involvement with the PDAF scam from the following: (1) his purported signatures appearing in several documents endorsing the NGOs affiliated with Napoles; (2) the testimonies of the so-called "whistleblowers" and (3) the Counter-Affidavits of some of Revilla's co-respondents. As will be discussed, these are neither relevant nor competent, and do not constitute sufficient bases to sustain the finding of probable cause to subject Revilla to continuous prosecution.

The PDAF Documents

By the PDAF documents, Revilla supposedly coerced the IAs to choose the Napoles NGOs to implement the projects identified by Revilla. The Ombudsman should have been more than wary in accepting such allegations since Revilla, as a member of Congress, was without authority to compel officials or agencies of the executive branch to act at his bidding. The IAs, in fine, simply do not come under the jurisdiction of the Senate, let alone senators. In fact, free from the legislature's control, the IAs are mandated by law to conduct a public bidding in selecting the NGOs that would implement the projects chosen by the legislator.

The duty of the IAs to conduct a public bidding and oversee the implementation of PDAF projects is at once apparent in the National Budget Circulars (NBC) that the DBM issued. NBC No. 537[28] states:

2.0

GENERAL GUIDELINES

xxxx

2.1.2 Funds shall be released directly to implementing agencies enumerated in the PDAF Project Menu. x x x

2.6

All procurement shall comply with the provisions of the Government Procurement Reform Act (R.A. 9184).

xxxx

5.0

POSTING REQUIREMENTS

5.1

DBM shall post in its official website all releases and realignments under the PDAF. Implementing agencies shall likewise post in their respective official websites the (i) priority list, standard and design submitted to Congress; (ii) projects identified and names of concerned proponents; (iii) names of project beneficiaries and/or recipients; (iv) any realignment authorized; (v) status of project implementation; and (vi) program/project evaluation and/or assessment reports in line with the Organizational Performance Indicator Framework (OPIF).

xxxx

5.3

For any procurement to be undertaken under the PDAF, the implementing agencies shall post in the Philippine Government Electronic Procurement System (PHILGEPS) or in a newspaper of general circulation all invitation to bid, names of participating bidders with their corresponding bids, and awards of contract in accordance with R.A. 9184, its implementing rules and regulations and Administrative Order No. 17 dated 28 July 2011.

6.0

ACCOUNTABILITY

The implementing agencies shall be accountable for the implementation of the programs/projects, subject to existing budgeting, accounting and auditing rules and regulations.[29]

In a word, any endorsement made by Revilla does not bear any value that could have compelled the endorsee IA

to benefit a Napoles-controlled NGO. The choice of the NGO made by the IA, without complying with RA 9184 and similar laws, falls on the IA alone. This is apparent from the very words of the NBI Complaint, which states:

The COA Special Audit Office Report No. 2012-03 revealed that the livelihood projects were not undertaken by the Implementing Agencies themselves, but by the NGOs endorsed by the Lawmaker. Among the Implementing Agencies mentioned are NABCOR, NLDC, and TRC.

The arrangement is a blatant disregard of the provisions of the IRR-A of RA 9184 and issuances of GPPB. As per GPPB Resolution No. 12-2007, funds may be transferred to NGOs for implementation when there is an appropriation law or ordinance earmarking an amount to be specifically contracted out to NGOs. The Implementing Agencies to where funds were released should have implemented the projects as they are the Implementing Agencies defined in the GAA. It is noted that, as per 2007-2009 GAA, NABCOR is not one of those mentioned Implementing Agencies of the Priority program /Projects of the Lawmakers.

The NGOs were not selected in accordance with the Guidelines on Participation of NGOs in Public Procurement prescribed under GPPB Resolution, that is, the selection of NGOs shall either be through competitive bidding, prescribed under Section 21.2.4 of the IRR-A of RA No. 9184. Neither was it shown from available evidence that the NGOs were accredited to qualify to implement government projects of great magnitude.

x x x x

The responsible officers of the Implementing Agencies, NABCOR, NLDC and TRC, deliberately or, at the very least, through gross inexcusable negligence failed to notice that the beneficiaries/recipients submitted by the NGOs appear around four (4) to fifteen (15) times in the same or similar seminars/trainings. Among others, the NGOs involved are NAPOLES' NGOs, SDPFFI, MAMFI, POPDFI, APMFI, AEPFFI, CARED, PSDFI.

As Revilla maintained all along, his involvement/participation in the release of his PDAF was limited only to the identification and selection of projects or programs listed in the GAA and communicating such selection to the Chair of the Senate Committee on Finance and the Senate President. Any endorsement made by him does not and cannot sway these IAs to act per his will and contrary to legal requirements. It is, therefore, perplexing that Revilla's involvement in the PDAF scam is hinged on apparently worthless "endorsements" of Napoles-controlled NGOs.

Further, the Ombudsman ought to have exercised caution especially since the "whistleblowers" no less admitted to forging the lawmakers' endorsements of Napoles' NGOs to the IAs along with all other PDAF Documents. Suñas testified that they prepared these endorsement letters, upon which Revilla is now being indicted. In her Sinumpaang Salaysay dated September 12, 2013, she stated:

22.

T:

May nabanggit ka na endorsement letter mula sa mga politicians, ano ang nilalaman nito?

S:

Ito ay naka-address sa Head ng Agency. Nakasaad ang amount ng allocated na pondo, ang SARO Number, date, and napili nilang non-government organizations at mga bayan, na makikinabang.

23.

T:

Kayo rin ba ang gumagawa ng mga endorsement letter ng mga politicians?

S:

Si BENHUR K. LUY ang gumagawa ng draft ng endorsement letter.

24.

T:

Sino ang nag-uutos kay BENHUR LUY na gumawa ng draft ng endorsement letter?

S:

Si Madame JENNY po.[30]

The fact of having falsified or forged the signatures on the PDAF Documents was again mentioned by Suñas in her own Sinumpaang Salaysay dated November 5, 2013, thus:

15.

Tanong: Paano at sino ang mga nagproseso at lumagda sa mga Certificates of Acceptance, Delivery Receipts, Acknowledgment Receipts at Lists of Beneficiaries?

Sagot: Sa liquidation na po ginagawa ang mga papeles na ito. Sa utos ni Ma'am Jenny, kami-kami na ring mga employees sa JLN Corp. ang pumipirma sa mga pangalan ng mga taong involved pati na ng mga beneficiaries sa liquidation papers. Kami-kami na rin ang nag-imbento o nag-fabricate ng mga pangalan tapos pinipirmahan na rin po namin opposite sa mga pangalan nila.

16.

Tanong: Sino at paano ang proseso ng pagliliquidate ng mga proyekto na ipinatupad ng NGO gamit ang PDAF ni Sen. Revilla?

Sagot: Kami-kami na rin po ang gumagawa ng liquidation reports tapos pinapapirma na lang namin sa mga president ng mga NGOs.[31]

During the September 12, 2013 Senate Blue Ribbon Committee, Luy also admitted forging the signatures of lawmakers:

Sen. Escudero:

Ang tanong ko, finorge (forge) or may finorge na ba kayong pirma ng senador o congressman dahil pineke 'yung beneficiary, 'di ba, galing sa listahan ng kung sino. Fino-forge niyo rin ba or nagkaroon ba ng okasyon na finorge (forge) ninyo ang pirma ng congressman o senador sa anumang dokumento?

Mr. Luy:

With the approval of Ms. Napoles kasi sila po ang nag-uusap, may pagkakataon po na pino-forge (forge) po.

Sen. Escudero:

May pagkakataong pino-forge niyo ang pirma ng mambabatas?

Mr. Luy:

Opo.[32]

Luy restated his testimony in his Karagdagang Sinumpaang Salaysay dated September 12, 2013,[33] where he admitted falsifying documents and forging signatures of legislators and their chiefs of staff, viz:

116.

T: May iba pa ba kayong gagawin maliban sa report of disbursement patungkol sa liquidation?

S: Mayroon pa po. Pini-prepare din yung list of beneficiaries, certificate of inspection and acceptance coming from the office ng proponent or legislators, certificate of project completion, delivery receipts, sales invoice, official receipts from the supplier, independent auditor's report, accomplishment report, at pictures ng implementation kung mayroong implementation. Kung wala pong implementation, wala po kaming i-attach na pictures. At sa mga nasabing mga dokumento na kailangan ang pirma ng legislators, may mga panahon po na kami na ang pumipirma sa mga pangalan ng mga Chief of Staff ng mga legislators o sa pangalan ng iilang Congressman sa utos ni Madame Janet Lim Napoles.

117.

T: Nabanggit mo na may mga panahon na kayo ang pumipirma sa pangalan ng mga Chief of Staff ng mga legislators or sa pangalan ng iilang Congressman, ano ang ibig sabihin dito at sinu-sino ang mga kasama mong pumipirma?

S: Kapag kami ay nagli-liquidate at may mga dokumento na kailangan ang pirma ng Chief of Staff ng mga legislators o ng Congressman ay kami na po ang pumipirma para sa kanila sa utos po ni Madame Janet Lim Napoles. Ang mga kasama ko po na pumipirma sa mga nasabing dokumento ay sila Evelyn de Leon, at Merlina Suñas.[34]

Not to be overlooked are the findings of handwriting experts, Rogelio G. Azores and Atty. Desiderio A. Pagui. The two were one in saying that the signatures appearing above Revilla's name on the PDAF Documents were not his.[35] Mr. Azores, in particular, concluded:

The questioned signatures above the printed name Hon. Ramon Revilla, Jr., Ramon "Bong" Revilla, Jr., Ramon Revilla, Jr., on one hand and the standard signatures above the printed name Ramon "Bong" Revilla, Jr., on the other hand, were not written by one and the same person.[36]

Atty. Pagui similarly found the signatures above Revilla's name on the PDAF Documents as not belonging to the latter. Atty. Pagui's conclusion after examining the signatures on the PDAF documents and comparing them with Revilla's standard signatures categorically declared that the signatures on the questioned documents were not affixed by Revilla, viz:

(1) Between questioned signature marked "Q" and standard signatures.

Questioned signature ("Q"), its upward bar stroke (arrow 1, photograph) is slowly written evidence by the irregular edges of both sides; at midsection downward stroke shows an added dot (arrow 2, photograph) to connect the preceding upward bar stroke as appeared to have written in one fast movement; and terminal of capital letter "B" shows uncertainty of writing movement; thus shows bold dot (arrow 3, photograph); while in the series of standard signatures, corresponding upward bar strokes were written in fast and careless gliding strokes as shown in their respective smooth lines at the edges. Terminal strokes in capital letter "B" show careless downward before terminating writing movement in short stab upward strokes.

Natural variation of handwriting characteristics do not persist to exist between the questioned and standard signatures. Natural variation of handwriting characteristics in normal or natural handwriting is unavoidable characteristics in said genuine writings.

There exist between questioned signatures similarities in form, but similarities in form alone have no probative value in the science of handwriting examination where authenticity of questioned signatures is at issue. General form of letter or design close to the model coupled with slow and drawn tremulous writing are symptoms of simulated forgery, to mention few of such defective writings.

(2) Between questioned signature marked "Q-1" and standard signatures.

The upward long bar stroke (arrow 1, photograph) in the questioned signature ("Q-1") exhibit slow writing movement and pen lift at the midsection (arrow 2, photograph) as well as at terminal stroke (arrow 3, photograph); and presence of hidden pen lift between the v-shape stroke and terminal stroke (arrow 4, photograph).

In the standard signatures, long upward strokes are written in fast and unconscious writing movement, there are no pen-lifts at the midsection as well at terminal stroke of capital letter "B", except in S-1 but not deliberate addition. The v-shape forms and their terminal strokes are written in uninterrupted gliding writing movements.

(3) Between questioned signature marked "Q-2" and standard signatures.

Questioned signature marked "Q-2" is generally written in slow writing movement evidenced by tremulous strokes. Unusual presence of two (2) pen lifts at the long upward bar stroke (arrows 1 & 2, photograph). [T]he standards, show fast and unconscious writing movement in [the] entire[ty] of each letter designs.

Characteristics in questioned signature do not fall or embrace the same natural variation of writing characteristics in standard signatures.

Similarities on forms or letter designs alone have no probative value in the science of handwriting identification as forgers can master or perfect copying of letter forms or styles but not the so called individual or personal writing characteristics that identify writer or owner.

x x x x

CONCLUSIONS:

In view of the forgoing, the scientific conclusions arrived for each of above mentioned questioned signatures marked as "Q," "Q-1," "Q-2," "Q-3," "Q-4," "Q-5," "Q-6," "Q-7," "Q-8," "Q-9," "Q-10," "Q-11," "Q-12," "Q-13," "Q-14," "Q-15," "Q-16," "Q-17," "Q-18," "Q-19," "Q-20," "Q-21," "Q-22," "Q-23," "Q-24," "Q-25," and "Q-26," for identification purposes, were NOT affixed or signed by the same person whose standard signatures are those used as bases for the present scientific comparative examinations. In other words, the foregoing specified questioned signatures are NOT authentic, which mean, said questioned signatures were NOT affixed by Ramon "Bong" Revilla, Jr., whose standard signatures admitted as genuine are those enumerated in item numbers B1 to B30, inclusive, above.[37]

In fact, even a cursory glance at some of the PDAF Uocuments questioned by Revilla reveals a forgery so obvious as to be remarkably noticeable to the naked eye of an ordinary person. A prime example is the "endorsement" letter addressed to Gondelina Amata of the NLDC dated October 23, 2009, supposedly signed by Revilla. Compared to the standard signatures submitted by Revilla, the signature contained therein lacks the cursive flourishes of his true signatures and instead contains sharp and blunt strokes. Similarly noticeable is the variance of the letterheads used in these various endorsement letters, with some containing supposed bar codes of Revilla's office, others simply a number.

Respondent Ombudsman, however, makes much of the letter dated July 20, 2011 Letter addressed to COA Assistant Commissioner Cuenco, Jr., wherein Revilla supposedly confirmed the authenticity of his and Cambe's signatures on the PDAF documents. Upon closer examination of the said letter, however, Mr. Azores found that even the said letter is spurious. He noted, thus:

A Questioned signature above the printed name of one Ramon Bong Revilla, Jr. appearing in the letter (Xerox copy) addressed to Assistant Commissioner Arcadia B. Cuenco, Jr. Special Services Sector, Commission on Audit Commonwealth Avenue, Quezon City dated 20 July 2011.

x x x x

CONCLUSION:

The questioned signature above the printed name of one Ramon Bong Revilla, Jr., on one hand, and the standard signatures above the printed name of Ramon "Bong" Revilla, Jr., on the other hand, were no written by one and the same person.

The same finding was made by Atty. Pagui with respect to the same July 20, 2011 Letter. He observed:

A Questioned signatures "RAMON BONG REVILLA JR." appearing on the following machine/Xerox copies allegedly from the originals, to wit:

1. Letter dated 20 July 2011 addressed to Assistant Commissioner Arcadio B. Cuenco, Jr., Special Service Sector, Commission on Audit, Commonwealth Avenue, Quezon City from Office of Senator Ramon Bong Revilla, Jr., Senate, Republic of the Philippines (Q);

x x x x

(1) Between questioned signature marked "Q" and standard signatures.

Questioned signature ("Q"), its upward bar stroke (arrow 1, photograph) is slowly written evidence by the irregular edges of both sides; at midsection downward stroke shows an added dot (arrow 2, photograph) to connect the preceding upward bar stroke as appeared to have written in one fast movement; and terminal of capital letter "B" shows uncertainty of writing movement; thus shows bold dot (arrow 3, photograph); while in the series of standard signatures, corresponding upward bar strokes were written in fast and careless gliding strokes as shown in their respective smooth lines at the edges. Terminal strokes in capital letter "B" show careless downward before terminating writing movement in short stab upward strokes.

Natural variation of handwriting characteristics do not persist to exist between the questioned and standard signatures. Natural variation of handwriting characteristics in normal or natural handwriting is unavoidable characteristics in said genuine writings.

There exist between questioned signatures similarities in form, but similarities in form alone have no probative value in the science of handwriting examination where authenticity of questioned signatures is at issue. General form of letter or design close to the model coupled with slow and drawn tremulous writing are symptoms of simulated forgery, to mention few of such defective writings.

x x x x

CONCLUSIONS:

In view of the forgoing, the scientific conclusions arrived for each of above mentioned questioned signatures marked as "Q," "Q-1," "Q-2," "Q-3," "Q-4," "Q-5," "Q-6," "Q-7," "Q-8," "Q-9," "Q-10," "Q-11," "Q-12," "Q-13," "Q-14," "Q-15," "Q-16," "Q-17," "Q-18," "Q-19," "Q-20," "Q-21," "Q-22," "Q-23," "Q-24," "Q-25," and "Q-26," for identification purposes, were NOT affixed or signed by the same person whose standard signatures are those used as bases for the present scientific comparative examinations. In other words, the foregoing specified questioned signatures are NOT authentic, which mean, said questioned signatures were NOT affixed by Ramon "Bong" Revilla, Jr., whose standard signatures admitted as genuine are those enumerated in item numbers B1 to B30, inclusive, above.[38]

At the very least, the Azores and Pagui findings should have Impelled the Ombudsman to consider the veracity of the signatures on the PDAF documents given that these experts' findings uniformly detail discrepancies between the signatures in the PDAF documents and Revilla's admitted genuine specimens of writing. That the Ombudsman failed to even require NBI handwriting experts to study the questioned signatures renders the immediate dismissal

of the two handwriting expert's certifications highly suspect. Where the genuineness of the documents is crucial to the respondents' defense, it is more prudent, as stressed in *People v. Agresor*,^[39] to allow the opinion of handwriting experts:

The task of determining the genuineness of the handwriting would have been made easier had an expert witness been employed to aid the court in carrying out this responsibility. The records show that counsel for the accused did ask the court for time to file a motion so that the handwriting may be submitted to the National Bureau of Investigation (NBI) to ascertain its authenticity. Such motion was, however, denied by the court, ruling that "The Court itself can determine whether or not that handwriting is the handwriting of the private complainant."

x x x x

It is true that the opinion of handwriting experts are not necessarily binding upon the courts, the expert's function being to place before the court data upon which the court can form its own opinion. Ultimately, the value of the expert testimony would still have to be weighed by the judge, upon whom the duty of determining the genuineness of the handwriting devolves. Nevertheless, the handwriting expert may afford assistance in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer. There is no doubt that superior skills along these lines will often serve to direct the attention of the courts to facts, assent to which is yielded not because of persuasion or argument on the part of the expert, but by their own intrinsic merit and reasonableness.

As there was a dispute regarding the genuineness of the handwriting, it would have been more prudent if the trial court allowed the presentation of a handwriting expert by the defense. The denial of the request for time to file a motion to have the handwriting examined in effect rendered the right of the accused to have compulsory process to secure the production of evidence in his behalf nugatory.^[40]

Being uncontroverted and, in fact, confirmed by the complainants' witnesses, I submit that this forgery of Revilla's signatures and the falsification of the PDAF Documents should have dissuaded the Ombudsman from filing the Informations against Revilla.

Certainly, the finding of probable cause to indict a person for plunder cannot be based on admittedly falsified documents. While probable cause falls below proof beyond reasonable doubt in the hierarchy of quantum of evidence, it must nonetheless be supported by sufficient, credible and competent evidence, i.e., there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged. Thus, this Court elucidated in *Allado v. Diokno*:^[41]

But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion. If they really believed that petitioners were probably guilty, they should have armed themselves with facts and circumstances in support of that belief; for mere belief is not enough. They should have presented sufficient and credible evidence to demonstrate the existence of probable cause. For the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and every definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

In the case at bench, the undue haste in the filing of the information and the inordinate interest of the government cannot be ignored. From the gathering of evidence until the termination of the preliminary

investigation, it appears that the state prosecutors were overly eager to file the case and secure a warrant for the arrest of the accused without bail and their consequent detention. x x x

Indeed, the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of prosecutors. And, whether it is preliminary investigation by the prosecutor, which ascertains if the respondent should be held for trial, or a preliminary inquiry by the trial judge which determines if an arrest warrant should issue, the bottomline is that there is a standard in the determination of the existence of probable cause, i.e., there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged. Judges and prosecutors are not off on a frolic of their own, but rather engaged in a delicate legal duty defined by law and jurisprudence.[42]

Testimonies of the Co-Respondents

Absent any credible proof of Revilla's actual link or participation in the alleged scheme to divert his PDAF to Napoles' NGOs, the Ombudsman should likewise not have accepted hook, line, and sinker any testimony of a participant in the supposed conspiracy.

It is basic that an extrajudicial confession binds only the confessant or declarant and is inadmissible against his or her co-accused.[43] This basic postulate, an extension of the *res inter alios acta* rule, is embodied in Section 28, Rule 130 of the Rules of Court, which states:

SECTION 28. Admission by third party. - The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

Under the rule, the testimony made by the confessant is hearsay and inadmissible as against his co-accused even during the preliminary investigation stage.[44] We explained why so in *Tamargo v. Awingan*: [45]

Considering the paucity and inadmissibility of the evidence presented against the respondents, it would be unfair to hold them for trial. Once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused, they should be relieved from the pain of going through a full blown court case. When, at the outset, the evidence offered during the preliminary investigation is nothing more than an uncorroborated extrajudicial confession of an alleged conspirator, the criminal complaint should not prosper so that the system would be spared from the unnecessary expense of such useless and expensive litigation. The rule is all the more significant here since respondent Licerio Antiporda remains in detention for the murder charges pursuant to the warrant of arrest issued by Judge Daguna.[46]

The exception to the above rule, the succeeding Section 30 of Rule 130, requires foremost, the existence of an independent and conclusive proof of the conspiracy[47] and that the person concerned has performed an overt act in pursuance or furtherance of the complicity.[48]

As discussed above, besides the admittedly falsified and forged PDAF documents, there is no concrete proof showing that Revilla pulled off any "overt act" in furtherance of the supposed conspiracy with Napoles. Other than saying that without Revilla, the scheme would have supposedly failed, the Ombudsman has been unable to point to concrete set of facts to support her conclusion as to the complicity of Revilla to the conspiracy in question. Thus, the conclusion reached by the Ombudsman falls short of the threshold requirement that conspiracy itself must be proved as positively as the commission of the felony itself. The quantum of evidence required is as should be, as conspiracy is a "facile device by which an accused may be ensnared and kept within the penal fold." [49]

For this reason, I submit that the testimonies of Revilla's co-respondents cannot be taken against him. Yet, the

Ombudsman repeatedly and freely cited the previously withheld counter-affidavits of Revilla's co-respondents in finding probable cause to indict him for Plunder and violation of Section 3(e) of RA 3019.

The reliance on these previously suppressed testimonies of Revilla's co-respondents to conjure up probable cause against him is not only violative of the *res inter alios acta* rule, worse, it desecrates the basic rule of due process.

To recall, the counter-affidavits of Revilla's co-respondents, in which the foregoing statements were contained, were not furnished to Revilla before the Ombudsman rendered the March 28, 2014 Resolution despite Revilla's Motion to be Furnished. In denying the Motion, the Ombudsman held that it had no basis to grant the motion and cited *Artillero v. Casimiro*.^[50] But *Artillero* is not even applicable to the case. First, in *Artillero*, it was the complainant who claimed denial of due process when he was not furnished with a copy of the counter-affidavit of the accused. Here, it is the petitioner, as accused, requesting for the counter-affidavits of his co-respondents. Second, the complainant in *Artillero* requested a copy of the counter-affidavit of the accused not because he wanted to answer the counter-charges against him, such as what petitioner intended to do, but because he wanted to file a reply lest his complaint is dismissed for insufficiency of evidence.

After denying Revilla's Motion to be Furnished and his Motion for Reconsideration, the Ombudsman would suddenly turn around, find Revilla's request in order, and allow him to be furnished copies of the counter-affidavits of some his co-respondents.

In a bid to justify her initial refusal to provide Revilla with subject affidavits, the Ombudsman stated that Revilla was anyway eventually furnished the desired documents before the rendition of the assailed June 4, 2014 Joint Order (albeit after the March 28, 2014 Joint Resolution) and yet chose not to submit his comment within the time given him. Upon this premise, Revilla cannot, as the Ombudsman posited citing *Ruivivar v. Office of the Ombudsman*,^[51] be heard about being denied due process having, as it were, "been given ample opportunity to be heard but x x x did not take full advantage of the proffered chance."

I believe that that the Ombudsman has misread *Ruivivar*, which, at bottom, is not consistent with the essence of due process: to be heard before a decision is rendered. In *Ruivivar*, petitioner *Ruivivar's* motion for reconsideration that paved the way for his being furnished with copies of the affidavits of private respondent's witnesses came after the Ombudsman rendered a decision. In the present case, however, Revilla's request to be furnished with his co-respondents' counter-affidavits preceded the Ombudsman's issuance of her probable cause-finding resolution. Clearly, the accommodation accorded Revilla was belated, i.e., after the denial of his motion for reconsideration and way after the issuance of the resolution finding probable cause against him. There lies the crucial difference.

It appears that the Ombudsman issued the May 7, 2014 Joint Order only as an afterthought, as an attempt to address the defects of the preliminary investigation the OOMB conducted on petitioner. However, such Order is of little moment as any comment that Revilla would file would no longer have any bearing precisely because the Ombudsman already issued the Joint Resolution on March 28, 2014 finding probable cause against them.

Worse, the Court cannot see its way clear on why the Ombudsman limited the grant to few counter-affidavits when it could have allowed Revilla access to all counter-affidavits and other filings of his co-respondents. The Ombudsman conveniently justified the selective liberality on the notion that only these counter-affidavits contain allegations that tend to incriminate Revilla to the scam. Yet, as pointed out by Revilla, due process does not only cover the right to know and respond to the inculpatory evidence, but also the concomitant right to secure exculpatory evidence. The mere fact of suppression of evidence, regardless of its nature, is enough to violate the due process rights of the respondent.^[52]

Indeed, *Morfe v. Mutuc*[53] teaches that the due process requirement is met if official action is free from arbitrariness. But, the Ombudsman's denial and limitation of Revilla's Motion to be Furnished, were arbitrary and unreasonable for there was nothing improper or irregular in Revilla's request. And it cannot be overemphasized in this regard that the requesting petitioners offered to have the requested documents photocopied at his expense. Verily, these limitations coupled with her use of the counter-affidavits requested against Revilla, without giving him a prior opportunity to know each and every allegation against him, whether from the complainants and their witnesses or his co-respondents, are random, unreasonable, and taint the Ombudsman's actions with grave abuse of discretion for violating the sacred rule of due process. As such, the statements contained in the Counter-Affidavits of Revilla's co-respondents cannot be used to find probable cause to indict him.

In *Duterte v. Sandiganbayan*[54] where the petitioners therein¹ were not sufficiently apprised of the charges against them during preliminary investigation, this Court ordered the dismissal of the criminal case filed against them, viz:

We have judiciously studied the case records and we find that the preliminary investigation of the charges against petitioners has been conducted not in the manner laid down in Administrative Order No. 07.

In the 12 November 1991 Order of Graft Investigator Manriquez, petitioners were merely directed to submit a point-by-point comment under oath on the allegations in Civil Case No. 20,550-91 and on SAR No. 91-05. The said order was not accompanied by a single affidavit of any person charging petitioners of any offense as required by law. They were just required to comment upon the allegations in Civil Case No. 20,550-91 of the Regional Trial Court of Davao City which had earlier been dismissed and on the COA Special Audit Report. Petitioners had no inkling that they were being subjected to a preliminary investigation as in fact there was no indication in the order that a preliminary investigation was being conducted. If Graft Investigator Manriquez had intended merely to adopt the allegations of the plaintiffs in the civil case or the Special Audit Report (whose recommendation for the cancellation of the contract in question had been complied with) as his bases for criminal prosecution, then the procedure was plainly anomalous and highly irregular. As a consequence, petitioners' constitutional right to due process was violated.

x x x x

WHEREFORE, premises considered, the petition is GRANTED and Criminal Case No. 23193 is hereby DISMISSED. The temporary restraining order issued on 4 September 1997 is made PERMANENT.[55]

In like manner, in the present case, Revilla was not sufficiently apprised of the entirety of the allegations against him before the probable cause finding Resolution of March 28, 2014 was rendered by the Ombudsman. Consequently, his right to due process was denied and I believe that this Court is duty-bound to reverse the Ombudsman's action that was tainted with grave abuse of discretion.

Even assuming *arguendo* that the counter-affidavits of Revilla's co-respondents are admissible, the testimonies contained therein are inadequate to engender the probability that Revilla was a knowing participant in the alleged scheme to divert the PDAF. Buenaventura simply testified in general terms that that she confirmed the authenticity of the authorization given by Revilla[56] without specifying how she made such confirmation or providing the details of the documents and transactions involved. In like manner, Sevidal broadly claimed that Revilla, through Cambe, was responsible for "identifying the projects costs and choosing the NGOs"[57] but did not provide the factual details that justified her claim. Figura's declaration of having no power to "simply disregard the wishes of [Revilla]" is a clearly baseless assumption.

Meanwhile, a closer look of Cunanan's testimony, which was a critical part of the Ombudsman's Resolutions, bares the infirmity of his claim. While he could have easily asked for a written confirmation of the authorization given by Revilla to Cambe, Cunanan himself admitted that he, instead, supposedly sought verification over the

telephone. Yet, an audio recording of the alleged telephone conversation was not presented or even mentioned. Not even a transcript of the alleged telephone conversation was attached to Cunanan's Counter-Affidavit.

Section 1, Rule 11 of the Rules on Electronic Evidence provides that an audio evidence, such as a telephone conversation, is admissible only if it is presented, explained, or authenticated, viz:

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

Given that no audio evidence of the telephone conversation was presented, much less "identified, explained or authenticated," the occurrence of the alleged telephone conversation is rendered highly suspect, if not improbable, and any testimony thereon is inadmissible and of no probative

But granting, arguendo, that Cunanan did call Revilla's office, it still begs the question of how he could have recognized or confirmed the identity of the person he was speaking with over the phone and not face-to-face. There is no indication, and Cunanan never even hinted, that he was closely familiar with Revilla's voice that he can easily recognize it over the phone in a single conversation.

This Court had previously declared that the person with whom the witness was conversing on the telephone must first be reliably identified before the telephone conversation can be admitted in evidence and given probative value. In *Sandoval v. House of Representatives Electoral Tribunal*,^[58] the Court held, thus:

It must also be stressed that, as a matter of reliability and trustworthiness, a telephone conversation must first be authenticated before it can even be received in evidence. To this end, it is critical that the person with whom the witness was conversing on the phone is first satisfactorily identified, by voice recognition or any other means, as the Chief of Staff In the instant case, there is no evidence to conclude that the person who called up the HRET Office of the Secretary was the Chief of Staff of petitioner Sandoval except for the unverified and hearsay identification allegedly made by the caller himself/herself. Worst, the record does not even divulge the alleged employee at the HRET Office of the Secretary from whom the purported caller asked about the relevant matter.^[59]

A similar conclusion was reached by this Court in *People v. Wagas*,^[60] where it ruled, viz:

Finally, Ligaray's declaration that it was Wagas who had transacted with him over the telephone was not reliable because he did not explain how he determined that the person with whom he had the telephone conversation was really Wagas whom he had not yet met or known before then. We deem it essential for purposes of reliability and trustworthiness that a telephone conversation like that one Ligaray supposedly had with the buyer of rice to be first authenticated before it could be received in evidence. Among others, the person with whom the witness conversed by telephone should be first satisfactorily identified by voice recognition or any other means. Without the authentication, incriminating another person just by adverting to the telephone conversation with him would be all too easy. In this respect, an identification based on familiarity with the voice of the caller, or because of clearly recognizable peculiarities of the caller would have sufficed. The identity of the caller could also be established by the caller's self-identification, coupled with additional evidence, like the context and timing of the telephone call, the contents of the statement challenged, internal patterns, and other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller.^[61]

Verily, it is only fair that the caller be reliably identified first before a telephone communication is accorded probative weight. The identity of the caller may be established by direct or circumstantial evidence. x x x^[62]

In this case where there is no authentication or identification of the person with whom Cunanan was conversing

on the telephone, Cunanan's testimony is inadmissible and of no probative value.

In sum, the Ombudsman should have closely scrutinized the testimonies of the alleged participants in the supposed conspiracy. This holds especially true for testimonies that not only try to relieve the affiant from responsibility but also seek to pass the blame to others. The Ombudsman, however, utterly failed to do so and simply accepted the co-respondents' declarations as the gospel truth, unmindful that a neglect to closely sift through the affidavits of the parties can still force the unnecessary prosecution of frivolous cases. By itself, this neglect constitutes a grave abuse of discretion, which should be reversed by this Court.

Whistleblowers' Testimonies

Anent the elements of the crimes charged, the gravamen of the crime of Plunder is the accumulation by the accused of ill-gotten wealth amounting to at least Fifty Million Pesos (P50,000,000.00). In a bid to satisfy this element against Revilla, the Ombudsman heavily relied on the testimonies of the whistleblowers, Luy, Sula, and Suñas. Yet, none of the witnesses stated that they deposited money representing the alleged commissions to any of Revilla's accounts. Not one of them testified that they personally handed money or saw anyone handing/delivering money to Revilla as commission/kickback.

The closest thing passed as proof by the complainants is the private and personal records of Luy. But, even Luy himself admitted his lack of personal knowledge of Revilla's involvement in the PDAF scam, much less of the former senator receiving money from it. In his September 12, 2013 Karagdagang Sinumpaang Salaysay, Luy stated:

T:

Mayroon bang pagkakataon na ikaw mismo ay nakapagbigay ng pera ng "rebates" ng transaction sa Senador o Congressman o sa kung sinomang representative ng pulitiko?

S:

Opo. Sa mga Chief-of-Staff ng mga Senador at sa Jnga Congressman mismo ay nakapag-abot na po ako ng personal, Pero sa mga Senador po ay wala pong pagkakataon na ako mismo ang nag-abot. Naririnig ko lang kay Madame Janet Lim Napoles na nagbibigay daw sa mga Senador.[63]

The foregoing at once betrays the hearsay nature of Luy's testimony against Revilla. The hearsay nature of Luy's testimony regarding Revilla's receipt of money from his PDAF is again highlighted in Luy's Sworn Statement of November 8, 2013, viz:

Q:

How can you tell that Janet Lim Napoles already gave, the commissions or kickbacks to Sen. Ramon Revilla?

A:

Pagbalik ni Mrs. Napoles sa office ng JLN Corporation, pinapa-record niya sa akin sa ledger ni Senator Revilla na natanggap na niya ang pera, or minsan itinatawag ni Mrs. Napoles sa akin na naibigay na niya ang pera kay Senator Bong Revilla at record ko na sa ledger.

Q:

Do you personally know Sen. Ramon Revilla, Jr.?

A:

Hindi po. ...

Similarly, the testimony given by Suñas on September 12, 2013 regarding the supposed receipt by Revilla of a part of his PDAF is not based on her own personal knowledge. She stated:

51.

T:

Maaari mo bang ipaliwanag ang ibig mong sabihin na ang pondo na sa halip napunta sa dapat na beneficiaries ay napunta kay Madame JENNY at sa mga senador?

S:

Dahil sa ang pondo na mula sa PDAF na dapat mapunta sa mga mambabatas ay pinaghahatian. Limampung porsyento (50%) sa mambabatas, limang porsyento (5%) sa Chief of Staff ng mambabatas, sampung porsyento (10%) sa implementing agency at ang natitirang tatlumput limang porsyento (35%) napupunta kay Madame JENNY.

52.

T:

Maari mo bang sabihin kung paano mo nalaman ang sistema ng hatian na iyong binanggit?

S:

Sinasabi sa amin ni Madame JENNY.[64]

Given the hearsay character of the whistleblowers' testimonies, these are devoid of any intrinsic merit, dismissible as without any probative value.[65]

At most, the whistleblowers claimed that money was handed to Cambe. Yet, there is nothing to prove that Revilla received the said money from Cambe or that Cambe's alleged receipt of the said money was under his authority or instruction.

For this and for the fact that there is absolutely nothing competent and relevant that can sway a reasonable man to believe that Revilla had participated in the PDAF scheme, I vote for the reversal of the Ombudsman's finding of probable cause to indict Revilla for plunder and violation of Section 3(e) of RA 3019 on account of grave abuse of discretion.

It must not be forgotten that the crimes involved in these cases are Plunder and violation of Section 3 (e), RA 3019—two grave charges that can strip a man of his good name and liberty, as in this case. The Ombudsman should not have found probable cause to indict Revilla given that there is nothing but falsified documents, hearsay testimonies and declarations barred by the *res inter alios acta* that support the complaints. Worse, the Ombudsman violated the due process protection of the Constitution in citing affidavits and testimonies not previously furnished Revilla. Without doubt, the Assailed Resolutions, insofar as it found probable cause against Revilla, were tainted with grave abuse of discretion.

Cambe

As to Cambe, the March 28, 2014 Joint Resolution of the respondent OOMB briefly outlines his alleged participation in the conspiracy, thus:

Senator Revilla x x x authorized in writing his Chief-of-Staff Cambe to act for, deal with, and sign documents necessary for the immediate and timely implementation of his PDAF-funded projects. From 2006 to 2012, Senator Revilla, through Cambe, issued several indorsement letters to NABCOR, TRC, and NLDC, expressly

naqting the following NGOs to carry out his PDAF projects: AEPFFI, APMFI, MAMFI, PSDFI, and SDPFFI.

Once a PDAF allocation becomes available to Senator Revilla; his office or staff would advise Napoles or her employees or cohorts about it. Napoles or witness Luy would then prepare a listing of the projects available indicating the IAs. This listing would be sent to Cambe who would sign and indorse the same to the DBM under his authority as Chief-of-Staff of Senator Revilla. After the listing is released to, the DBM, the Office of Senator Revilla then formally requests the DBM to release his PDAF; Napoles, in the meantime, would advance to Revilla, through Cambe, a down payment representing a portion of his commission or kickback. After the SARO and/or NCA is released, Napoles would give the full payment for the delivery to Senator Revilla through Cambe.

x x x x

Significantly, after the DBM issues the SARO, Senator Revilla, through Cambe, would then write another letter addressed to the IAs which would identify and indorse Napoles' NGOs as his preferred NGO to undertake the PDAF-funded project. x x x (emphasis added, citations omitted)

In fine, the Ombudsman, in its Joint Resolution, attempted to establish Cambe's liability by presenting an elaborate, complicated scheme wherein he purportedly conspired with Revilla, et al. and the whistleblowers to allegedly enable Revilla to illegally acquire and amass portions of the PDAF through kickbacks.

Cambe's participation in the alleged conspiracy scheme to amass wealth, therefore, hinges on his participation as staff member of Sen. Revilla, and his purported signatures on the PDAF documents. On this point, Cambe argued that all his signatures in the PDAF documents were forged, and, thus, his participation in the conspiracy scheme has not been adequately established.

To underscore his point, he presented the examination report dated December 5, 2013 of Atty. Pagui, the forensic document examiner who examined the purported signatures of Cambe appearing on the PDAF documents, and compared them with various standard signatures presented by Cambe. In his report, Atty. Pagui concluded:

(1) Between questioned signature marked "Q" and standard signatures:

Questioned signature reveals inner loop lying horizontally which shows uncertainty or writing direction coupled with unnecessary pen tops and pen lifts at wrong places, signs of uncertainty of direction of writing strokes, likewise presence of slow and tremulous strokes indicative of unfamiliarity of habitual writing movements that resulted to simulation from certain model genuine signature. In the larger loop, it shows evidence of two (2) pen stops: initial and terminal.

In the standard signatures, which are written in fast and continuous writing strokes, obviously there are no pen lifts and no presence of tremulous strokes. The construction of the inner loop is constant and with clear reflection of the true art or image it represent[s].

(2) Between questioned signature marked "Q-1" and standard signatures:

Questioned signature is characterized with unusual tremulous strokes, pen lifts at wrong places in the signatures which should be in fast and unconscious writing movements. It exhibits evidences of absence of round horizontal design within the [larger] loop that encircled the latter, but letter form or design that lies laterally at its base.

In the standards, they constantly carry letter design written With almost circular letter form within the area encircled by the larger loop with consistent fast and unconscious continued writing movements, peculiar with all the standard signatures. There are no pen lifts and tremulous strokes while the writing process proceeds

until the whole signature are accomplished.

x x x x

SCIENTIFIC CONCLUSIONS:

IN VIEW OF THE FOREGOING, the scientific conclusions arrived at, all questioned signatures marked for identification purposes in , the machine/xerox copies are as follows, to wit: "Q", "Q-1", "Q-2", "Q-3", "Q-4", "Q-4A", "Q-5", "Q-6", "Q-7", "Q-8", "Q-9", "Q-10", "Q-11", "Q-12", "Q-13", "Q-14", "Q-15", "Q-15A", "Q-16", "Q-16A", "Q-17", "Q-18", "Q-19", "Q-20", "Q-21", "Q-22", "Q-23", "Q-24", "Q-25", "Q-26", "Q-27", "Q-28", "Q-29", "Q-30", "Q-31", "Q-32", "Q-33", "Q-34", "Q-35", "Q-36", "Q-37", "Q-38", "Q-39", "Q-40", "Q-41", "Q-42", "Q-43", "Q-44", "Q-45", "Q-46", "Q-47", "Q-48", "Q-49", "Q-50", "Q-51", "Q-52", "Q-53", "Q-54", "Q-55", "Q-57", "Q-58", "Q-59", "Q-60", "Q-61", "Q-62", "Q-63", "Q-64", "Q-65", "Q-66", "Q-67", "Q-68", "Q-69", "Q-69A", "Q-70", "Q-71", "Q-72", "Q-73", "Q-74", "Q-75", "Q-76", "Q-77", "Q-78", "Q-84", "Q-87", "Q-88", "Q-89", "Q-90", "Q-91", "Q-92", "Q-93", "Q-94", "Q-95", "Q-96", "Q-97", "Q-98", "Q-99", "Q-100", AND "Q-168", and standard signatures likewise marked for identification purposes are as follows to wit: "S-5a", "S-6a", "S-7a", "S-7", "8-8", "S-9", "S-12", "S-22", "S-23", "S-24", "S-25", "S-26", "S-27", "S-28", "S-29", "S-30", "S-31", "S-32", "S-33", "S-34", "S-35", "S-36", "S-38", "S-39", "S-40", "S-41", "S-42", "S-43", and "S-44", were NOT written/affixed by one person. In other words, the questioned signatures assuming the machine/xerox copies are authentic reproductions of the original documents they purport to represent, the foregoing questioned signatures were NOT affixed by a certain Atty. Richard A. Cambe, whose standard signatures are those enumerated above, used as bases in the present scientific comparative examinations.

Interestingly, the March 28, 2014 Joint Resolution of the respondent Ombudsman did not once mention the examination report of Atty. Pagui, nor did it squarely address the allegation of forgery. It immediately dismissed the argument by saying:

Forgery is not presumed; it must be proved by clear, positive, and convincing evidence and the burden of proof lies on the party alleging forgery.

Further, as gathered from the March 28, 2014 Joint Resolution, the fact of Cambe, acting on his own as a public officer, amassing or acquiring ill-gotten wealth amounting to at least Fifty Million Pesos (P50,000,000.00) through any of the means provided under the plunder law or acting in violation of RA 3019 has not been demonstrated.

The Ombudsman simply relied heavily on the statements of Luy, Sula, and Suñas, who confessed to having conspired with Napoles in executing this scheme. From their statements, the Ombudsman pieced together the participation of Revilla, Cambe, and the other petitioners. Thus, Cambe asserts that the whistleblowers' statements cannot be used against him under the *res inter alios acta* rule.

Respondents, through the OSG, claim that the case against Cambe fall under the exception to such rule.

I am unable to agree. The exception to the *res inter alios acta* rule, as earlier indicated, in Section 30 of Rule 130 provides:

Section. 30. Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

People v. Cachuela[66] succinctly dwells on the application the rule and its exception, thus:

At any rate, Nabilgas' extrajudicial confession is inadmissible evidence against the appellants in view of the *res inter alios acta* rule. This rule provides that the rights of a party cannot be prejudiced by an act, declaration,

or omission of another. Consequently, an extrajudicial confession is binding only on the confessant and is not admissible against his or her co-accused because it is considered as hearsay against them.

An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court. This provision states that the act or declaration of a conspirator relating to the conspiracy, and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy.

This exception, however, does not apply in the present case since there was no other piece of evidence presented, aside from the extrajudicial confession, to prove that Nabilgas conspired with the appellants in committing the crime charged. Conspiracy cannot be presumed and must be shown as distinctly and conclusively as the crime itself. Nabilgas, in fact, was acquitted by the trial court due to insufficiency of evidence to prove his participation in the crime.

The requisites to bring a given set of facts under the exception to the *res inter alios acta* rule were not met in the present case. Consider:

First, the alleged conspiracy has yet to be established by competent evidence. Except for the whistleblowers' admissions/statements, no other evidence was adduced to show that Cambe agreed to commit plunder or any crime. In fact, these statements heavily relied upon do not even establish Cambe's participation in the scheme or imply any wrongdoing on his part. The PDAF documents made much of by respondents are tainted with falsehood, as the whistleblowers themselves admitted, and can hardly be viewed to be independent and credible evidence to establish said conspiracy.

The fact that some of the PDAF Documents Cambe purportedly signed were notarized is of no moment in light of the admissions, made by the "whistle-blowers" that they themselves did the "notarization." In his *Karagdagang Sinumpaang Salaysay* dated September 12, 2013,[67] Luy admitted that Napoles' employees kept the dry seals and notarial registers of several notary publics and used them to "notarize" the PDAF Documents:

107.

T: Nabanggit mo na ang ginagawaga ninyong report of disbursement ay notarized, saan ninyo ito dinadala para ipanotarize?

S: Doon din lang sa opisina ng JLN Corporation po.

108.

T: Kilala mo ba kung sino ang nagno-notarize ng report of disbursement na ginagawa ninyo?

S: Bale ipinipirma na naming iyon mga attorney. May dry seal at stamp siya sa amin at notarial logbook.

109.

T: Maaari mo bang linawin kung papaano nangyaring kayo na rin ang nagnotaryo sa opisina ninyo sa JLN Corporation?

S: Ang tatoo po niyan cry cryon kay Madame JANET LIM NAPOLES ay kausap na niya ang mga abogado nagnonotaryo. Mayroong dry seal, stamp, at notarial book ang mga attorney sa opisina para kami na ang pumirma at maglagay ng entry sa notarial logbook.

110.

T: Maaari mo bang sabihin kung sinu-sino itong mga tinutukoy mong notary public na inyong ipinipirma at nagpapagamit ng dry seal sa JLN Corporation?

S: Opo, sina Atty. MARK OLIVEROS, Atty. EDITHA TALABOC, Atty. RAYMUND TANSIP, at Atty. JOSHUA LAPUZ.[68]

Hence, the PDAF Documents by themselves are not reliable evidence of Cambe's complicity in the conspiracy to funnel funds out of the PDAF.

Second, Luy, Sula, and Suñas' admissions pertain to their own acts in perpetrating the scheme Napoles designed. This includes the forging and falsification of official documents to make it appear their issuance was authorized by legislators and their staff. Any alleged participation of Cambe as related to by the whistleblowers is hearsay considering that their supposed knowledge as to Cambe's role has Napoles, as source.

Moreover, Cambe's alleged receipt of P224,512,500.00 for Revilla and 5% for himself from the years 2006 to 2010, which purportedly represent their commissions, "rebates," or "kickbacks" for endorsing Napoles' NGOs was never corroborated by any independent evidence aside from the whistleblowers' testimonies. The business ledgers Luy submitted cannot be considered as such independent evidence since they are still based on Luy's statement. The allegation made by Cunanan of the TRC in his counter-affidavit pertaining to his phone conversation with Cambe and Revilla, has not been corroborated and does not establish any wrongdoing on the part of Cambe or Revilla.

Finally, public respondents never refuted the fact that these statements were made after the purported conspiracy had ceased. Luy, Sula, and Suñas only executed their respective admissions/statements sometime in September 2013, long after they have completed the alleged scheme.

What may be taken as independent evidence gathered during the FIO and the NBI's investigations consisted of endorsement letters, MOAs, and other documentation. They are of little evidentiary value, however, as they have been shown to have been falsified and forged by Luy, Sula, and Suñas upon Napoles' instructions. The COA report which found PDAF projects to be inexistent or have never been implemented is also insufficient as to Cambe, as his alleged participation is predicated on the forged indorsement letters, MOAs, and other documents. Even the MOAs allegedly executed by the NGOs, the implementing agencies, and Cambe as representative of Revilla, were admitted to have been "notarized" by Napoles' cohorts, not by legitimate notaries. Owing to this aberration, the MOAs do not enjoy the presumption of regularity and cannot be considered to be credible evidence to establish probable cause against Cambe.

Aside from the whistleblowers' own admission of forgery, handwriting experts Azores and Pagui had evaluated the authenticity of the PDAF documents and had determined that the signatures on the PDAF documents were not made by one and the same person. The testimonies of these experts cannot simply be swept aside by mere resort to legal arguments, but must be addressed and refuted by superior contrary evidence. Until then, the shifted burden to establish the authenticity of the documents rests with public respondents. The evaluation by the Special Panel of Investigators as to such authenticity would not, in context, suffice to overturn the expert testimonies of Azores and Pagui since the Special Panel is not experts in the field of handwriting analysis.

The Ombudsman's selective appreciation of certain critical testimonial evidence is a badge of grave abuse of discretion. She, for instance, accepted as gospel truth the accusatory statements of Luy, Sula, and Suñas insofar as the alleged participation of Revilla and Catibe in the scam is concerned, but in the same breath disregarded their admission of forgery and fabrication of the PDAF documents. In fine, the Ombudsman viewed as true those portions of the whistleblowers' statements which would support the prosecution's version despite contrary evidence presented by petitioners.

Considering the apparent whimsical and capricious approach thus taken by the Ombudsman, I submit that this Court should have exercised its power of judicial review. Tolerating the practice of establishing probable cause based on forged or questionable documents would expose the criminal justice system to malicious prosecution. It will create a dangerous precedent. It will encourage unscrupulous individuals to file trumped up charges based on fictitious, spurious, or manipulated documents. Malicious lawsuits designed to harass the innocent will proliferate, in clear violation of their rights enshrined by no less than the Constitution. This, I cannot allow.

To repeat, a preliminary investigation serves to protect the innocent from hasty, and oppressive prosecution and the state from having to conduct useless, but expensive trials.[69] Wrote the Court in *Cabahug v. People*:

We cannot overemphasize the admonition to agencies tasked with the preliminary investigation and prosecution of crimes that the very purpose of a preliminary investigation is to shield the innocent from precipitate, spiteful and burdensome prosecution. They are duty-bound to avoid, unless absolutely necessary, open and public accusation of crime not only to spare the innocent the trouble, expense and torment of a public trial, but also to prevent unnecessary expense on the part of the State for useless and expensive trials. Thus, when at the outset the evidence cannot sustain a prima facie case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial. (Emphasis supplied, citation omitted.)

Napoles

Like Revilla and Cambe, Napoles also attributes grave abuse of discretion on the Ombudsman for finding probable cause for plunder against her, it being her submission that the elements of the crime have not been alleged and established. The FIO and NBI complaints, as well as the Joint Resolution have, to her, failed to establish that the alleged conspiracy was for the common design or purpose of enriching a public officer or that the proceeds of the PDAF landed in the pockets of any public officer. She points out that the Joint Resolution repeatedly held that the alleged *modus operandi* was geared towards helping her, a private individual, obtain personal gain. She argues that since it was supposedly her, Napoles, who was enriched in the alleged conspiracy, then the plunder case is improper.

Assuming, Napoles continues, that she advanced money to Revilla prior to the release of the SARO, then his monetary gain cannot be considered as coming from the public coffers. Aside from this, Napoles denies being affiliated with the NGOs involved in the implementation of the PDAF projects and that nowhere in the documentary evidence adduced was it shown that she received any check from the implementing agencies.

Napoles obviously misinterpreted the charges against her and the trajectory of the Joint Resolution. This resolution, far from driving home the idea, as Napoles posits, that the conspiracy in question intended to enrich her, a private individual, clearly stated that the conspiratorial acts were "plainly geared towards a common goal which was to amass, acquire and accumulate ill-gotten wealth amounting to at least PhP224,512,500.00."

While I submit that the Court can accord merit to Napoles' assertion respecting the undue reliance of the Ombudsman on inadmissible evidence, such as the statements and ledgers submitted by Luy, I concur with the majority that the Ombudsman's finding as to the existence of probable cause to charge Napoles is substantiated. Her argument that no evidence was presented to show her affiliation to the NGOs and the implementation of the PDAF-financed projects holds no water. Save for her bare denials, Napoles did not submit any contrary evidence which would support her claim.

On the contrary, the Ombudsman, through the efforts of the FIO and the NBI, was able to secure the statements of Napoles' former employees, to independently establish how she set-up NGOs[70] and colluded with people in and out of the government to acquire the proceeds of the PDAF of various legislators. Notably, an employee, Mary

Arlene Baltazar, categorically testified having been instructed by Napoles to forge the signatures of directors in her NGO, as well as the signatures of listed beneficiaries in the PDAF-funded projects, and to shred documents related to the PDAF scheme. Counter-affidavits of the public officers from the implementing agencies involved also admitted having coordinated with Napoles in processing the projects.

Napoles' claim that the NBI and FIO Complaints, purportedly lacking as they do certain data, e.g., dates and places, are insufficient in form and in substance to support a criminal charge for plunder is specious. As correctly pointed out by the OOMB, all the integral parts of a valid complaint, as required by Section 6, Rule 110 of the Rules of Court, quoted below are explicitly indicated:

Section 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

A cursory reading of the NBI and FIO complaints would show substantial compliance with the above provision. All the accused were specifically named, the designation of the offenses charged clearly indicated, and the acts allegedly constituting the offenses and where they were committed enumerated. Considering the offenses charged, it was correctly indicated that the State is the offended party. As for the date of when the offenses were committed, it is sufficient if, as here, the approximate period of commission, i.e., span of four years starting from and ending on, is provided, the exact date of the commission of the crime not being an element in either Plunder or violation of Section 3(e) of RA 3019.

De Asis

The crux of De Asis' petition resembles that of Napoles.

The assailed joint resolution and order, De Asis asserts, did not find KPMFI of which he is supposed to be president-as among the NGOs used as a conduit in the PDAF Scam. A finding of probable cause against him, in spite of KPMFI's alleged non-involvement, is, therefore, without factual and legal basis since the SARO itself controverted his alleged involvement.

Contrary to De Asis' posture, the NBI Complaint mentioned KPMFI as one of those NGOs that served as conduits in the implementation of Revilla's 2006-2012 PDAF. While the assailed joint resolution and order did not indeed mention KPMFI as one of the conduit NGOs, the COA Report alleged that verification is still ongoing as to it since its SARO was only released in March 2012.

Even assuming, as De Asis urges, that he had no participation in the incorporation of KPMFI, there remains the fact that his acts contributed to the furtherance of the illegal scheme. His admitted participation aided Napoles and her cohorts to illegally acquire ill-gotten wealth at the expense of the public. His acts alone in receiving and depositing checks in NGO bank accounts, albeit generally harmless, enabled Napoles to withdraw the money and funnel the funds from the PDAF.

It bears stressing that De Asis, in his counter-affidavit, admitted picking up checks for Napoles' NGOs as he was "instructed" to do so. Yet, De Asis avers that the performance of his duties as Napoles' driver and messenger does not establish criminal intent. He maintains that the mere act of performing his routine duties can hardly be construed as overt criminal acts of plunder or a willful participation on his part to commit the same. Moreover, he had no knowledge of the purpose for which he performed his duties and, as far as he was concerned, he merely

did his job in good faith.

I am not persuaded.

The term good faith is commonly descriptive of that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.[71] Good faith is actually a matter of intention. Albeit internal, a person's intention is judged by relying not on his own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts.[72]

Applying the foregoing tenets, the Ombudsman aptly pointed out the inconsistency of De Asis' acts with the principle of good faith. Routinely withdrawing and delivering huge sums of cash for Napoles and producing fictitious list of beneficiaries and liquidation reports would make a reasonable person doubt the legitimacy of his employer's business. De Asis, as Napoles' employee, possesses knowledge of facts and circumstances, which can put one wary of his employer's nature of business. Possessing this knowledge while continuously participating in the illegal scheme, even if instructed by his employer, is tantamount to acquiescence in the illegal act, thus belying his bona fide claim.

Lim

In like manner, I concur with the majority that probable cause exists against petitioner Lim.

While he was not included as respondent in the FIO complaint, Lim's name, along with four others, was mentioned as one of those who would deliver the money from the office of JLN in Pasig City to Napoles' house.[73] The Ombudsman had, thus, a valid reason to assume Lim's likely involvement in criminal activities and to proceed against him.

Lim contends that Ombudsman, in charging him with Plunder, proceeded on the theory she erroneously deduced from the ensuing accounts of Luy and Suñas, that he prepares and delivers the kickbacks and commissions to the concerned lawmakers, thus:

4.1 Kakaupapin ni Gng. Napoles ang lawmaker na makakapagbigay ng pondo, at pagkakasunduan nila ang komisyon o kickback na dapat matanggap ng kausap niya. Alam namin ito dahil sinasama niya kami noon sa mga ilang meetings niya sa mga lawmakers, at ito rin ang kinagawid na sa mga sumunod niyang mga transaksyon. At nakokompirma naming ito tuwing nag-uutos si Gng. Napoles sa amin na maghanda o magpadala ng pera para sa mga nakaupap niya. Ang kasama naming na laging naghahanda ng pera ay sina Ronald John Lim at x x x De Asis.

According to Lim, there is no allegation that he delivered kickbacks and commissions to the lawmakers. Luy and Suñas merely stated that he (Lim) would usually prepare the money, a scenario different from the concept of being involved in the delivery of money.

This contention is bereft of merit.

While preparation or segregation and the actual delivery are separate acts, they are interconnected with a common objective. It is immaterial, thus, whether Lim only prepared or segregated the money, actually delivered it or both. The fact is, there is probable cause to believe that he performed a role in the consummation of the crime of Plunder.

Further, evidence shows that there is probable cause to believe that Lim cooperated in order to divert the PDAF to their own pockets. By rendering assistance in the delivery of money, Lim is deemed to have conspired in the illegal transaction. Under these circumstances, Lim is as much liable as the principal because of his overt and indispensable cooperation in perpetuating the scam.

At this juncture, it is necessary to state that Revilla is not the only named public officer involved in this issue. There are others against whom the Ombudsman found probable cause. Thus, Lim, being a private individual, may be charged with Plunder, there being probable cause to believe that he acted in concert with some public officers.

Relampagos, Nuñez, Paule, Bare

Petitioners Relampagos, Nuñez, Paule and Bare assail the November 13, 2015 and May 13, 2015 Resolutions of the Sandiganbayan that sustained the finding of probable cause against them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280. In particular, they maintain that, contrary to the graft court's affirmatory findings, undue haste did not characterize the issuance of the concerned SAROs,[74] which their office is not in charge of processing in the first place. Petitioners also argue that Luy himself admitted that he is not aware of any "kickbacks" given to DBM officers and employees. Thus, for the petitioners, the Sandiganbayan committed grave abuse of discretion in remaining adamant in its refusal to dismiss the foregoing criminal cases against them.

I submit that the issues raised by the parties are ripe for adjudication and easily verifiable by the submissions of the parties. To wait for trial will only unnecessarily prolong the disposition of the case. On this note, Sec. 6, Rule 112 of the Rules of Criminal Procedure provides that a judge "may immediately dismiss the case if the evidence on record clearly¹ fails to establish probable cause."

As borne by the records, the Ombudsman initially found probable cause to charge petitioners Relampagos, et al. for sixteen (16) counts of violation of Sec. 3 (e), RA 3019 on account of Luy's testimony that petitioners are Napoles' contact in the DBM. Yet, even Luy himself twice admitted during the September 12, 2013 Senate Blue Ribbon Committee that petitioners did not receive any part of the PDAF, viz:

The Chairman: So, ang hatian - sa legislator, sa line agency na nagimplement. Mr. Luy: Yes, Po.

The Chairman: DBM mayroon ba? Mr. Luy: 'Yan ang hindi ko po alam, ang DBM.

x x x x

Sen. Cayetano: So far ang sinabi mo, congressman, senador, head of agency. Sa DBM, may ibinibigay din?

Mr. Luy: Wala po akong maalala na-o wala po akong nakita na -[75]

The fact that DBM officers and employees did not partake in the PDAF is likewise shown by Suñas' testimony when she alleged the following breakdown of the supposed "kickbacks" on the PDAF Scam:

T:

Maaari mo bang ipaliwanag ang ibig mong sabihin na ang pondo na sa halip napunta sa dapat na beneficiaries ay napunta kay Madame Jenny at sa mga senador?

S:

Dahil sa ang pondo mula sa PDAF na dapat mapunta sa mga proyekto ay pinaghahatian. Limampung porsyento (50%) sa mambabatas, limang porsyento (5%) sa Chief of Staff ng mambabatas, sampung porsyento (10%) sa implementing agency at ang natitirang tatlumpu't limang porsyento (35%) ay napupunta kay Madame Jenny.[76]

The dearth of any allegation as to any DBM employee's share in the PDAF renders their participation in the scheme to divert the funds highly unlikely and improbable.

The absurdity of dragging Relampagos, et al. in the PDAF scam becomes all the more obvious if one considers what DBM Director Carmencita Delantar told the Senate Blue Ribbon Committee, i.e. that it is her office, not

petitioners', that processes the issuance of the SAROs. Some excerpts of that testimony:

Q: I have a PDAF processed flow chart. It's a processed flow for 2007 to 2009. This is one of the attachments of Relampagos submitted for probable cause. You read it and confirm if this is really the process. Go read it silently. Just tell us if that is really the process flow. x x x

A: x x x In the 5[th] step here mentioned, it read, ROCS BMBs, this refers to the Budget and Management Bureaus of the department concern[ed], forwards the SARO NCA letter to OSEC for signature and in the absence of the Secretary or the principal, it goes to the Office of the Undersecretary for Operations for signature and are hand carried by the Director. Your honor, this is true. Why?

x x x x

Q: So, you confirm also that you hand carry the SARO? A: x x x yes x x x

Q: So when, you hand carried the SARO, it's a finished product, only waiting the signature [of the] Secretary or the Usec x x x?

A: Yes, Your Honor. Usually, Your Honor, even if the Secretary is around, we have a Supervising Senior Official. So, it is one of the [USEC]. So, we forward and submit it to the [USEC] in-charge of operations.

Q: You mean to say that your bureau does everything. I mean, all the processing is under your bureau?

A: Your Honor. not for all because we handle the soft.

x x x x

Q: For the soft projects, your bureau does everything and there is nothing more to do by any other office except the Office of the Secretary of the Office of Usec who signs?

A: Yes, in a sense, Your Honor.

Q: What do you mean, yes, in a sense?

A: What we were trying to say, Your Honor, because it would also be at the discretion of the Secretary if he would want through a re-organization to transfer it to the other bureau.

Q: No, I mean, for these ten (10)? A: Yes, Your Honor.[77]

Petitioners Relampagos, et al. could, therefore, not be faulted let alone indicted for what the Ombudsman perceived to be hasty "processing" of the SAROs in question.

What is more, the allegation of "undue haste" was loosely hinged on the supposed lack of endorsement from the IAs before the issuance of the SAROs. However, the GAAs for FYs 2007, 2008, and 2009 already dispensed with this requirement, when they provided a menu of programs/projects as well as the list of IAs authorized to implement them. DBM Circular Letter No. 2015-1, s. 2015, in fact did away with the endorsement of the IA as a sine qua non requirement before a SARO issues. It provides:

1. This Circular is being issued to clarify the application of NBC No. 476 dated September 20, 2001 to PDAF releases for FY 2005 and ears thereafter in view of the related disallowances and cases filed agAinst DBM officials and employees.

2. In this regard, this Department hereby clarifies that beginning FY 2005 and in the succeeding fiscal years, all PDAF allocation were directly released to implementing agencies pursuant to the express provisoris of Special Provision of the FY 2005 [GAA] which already included a list of programs, projects and [IAs] (PDAF menu) upon which the requests for release of funds were evaluated as to consistency with the prgnims,

projects and [IAs] listed in the PDAF menu, to wit:

FY 2005 GAA and FY 2006 reenacted budget [FY 2007, 2008, 2009, 2010]

1. Use and Release of the Fund: The amount appropriated herein shall be used to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the [IAs] as indicated hereunder, to wit:

x x x x

FY 2010 GAA

1. Use and Release of the Fund: The amount appropriated herein shall be used to fund priority programs and projects of the national government and shall be released directly to the [IAs] as indicated hereunder, to wit:

x x x x

3. Consequently, the requirement for the submission of project profile and endorsement by the [IAs] previously required under NBC No. 476, is already effectively superseded by the enactment of the FY 2005 GAA. The submission of project profile and endorsement by the [IAs] were no longer necessary considering that the details required in the project profiles and endorsements under NBC No. 476 were already provided for in the PDAF menu under the GAA for FYs 2005 and succeeding fiscal years.[78]

As a related point, it bears to stress that the SAROs were issued and released only four (4) to nine (9) days following the DBM's receipt of the requests for their issuance. The DBM Citizens' Charter, however, provides that the total processing time of such request should be for less than 10 hours. Clearly then, if petitioners were to be censured, it should be for tardiness, not for acting with "undue haste."

Final Note

Without belaboring the obvious, the presumption of innocence, and all rights associated with it, remains even at the preliminary investigation stage. Thus, where the lack of competent evidence against the respondents is clear from the records, then complaints against them must be dismissed. Else, the protective purpose of a preliminary investigation becomes illusory.

With the foregoing disquisition, I find it unnecessary to discuss the other issues raised in the consolidated petitions.

IN LIGHT OF THE FOREGOING, I cast my vote, thus:

- To DISMISS the petitions in G.R. Nos. 212014-15, 213477-78, 213532-33, and 213536-37 for lack of merit.

- To GRANT the petitions in G.R. Nos. 212694-95, 212794-95 and 218744-59 and REVERSE and SET ASIDE the assailed Joint Resolution and Joint Order issued by the Ombudsman on March 28, 2014 and June 4, 2014, respectively insofar as they find probable cause to indict petitioners Sen. Ramon "Bong" Revilla, Jr., Atty. Richard A. Cambe, Mario L. Relampagos, Rosario Salameda Nuñez, Lalaine Narag Paule, and Marilou Dialino Bare for the crimes indicated therein.

Accordingly, I vote to DISMISS Criminal Case Nos. SB-14CRM 0240 (for Plunder) and SB 14 CRM 0263 to 0282, inclusive, (for Violation of Section 3[e] of RA 3019) against Sen. Ramon "Bong" Revilla, Jr. and Atty. Richard A. Cambe before the Sandiganbayan.

Moreover, I vote to DISMISS Criminal Case Nos. SB 14CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279 and 0280 (for Violation of Section 3[e] of RA 3019) against accused Mario L. Relampagos, Rosario Salameda Nuñez,

Lalaine Narag Paule and Marilou Dialino Bare before the Sandiganbayan.

- In light of my vote for the nullification in G.R. Nos. 212694 95 of the assailed March 28, 2014 Joint Resolution and the affirmatory June 4, 2014 Joint Order of the Ombudsman, insofar it found probable cause to indict petitioner Sen. Ramon "Bong" Revilla, Jr. for Plunder (1 Count) and violation of Section 3 (e) of R.A. 3019 (16 Counts) and recommended the immediate filing of corresponding Informations with the Sandiganbayan, I vote to DISMISS the petition in G.R. Nos. 212427-28.

[1] March 28, 2014 Joint Resolution, pp. 64-69.

[2] *Id.* at 108-110.

[3] *Id.* at 128.

[4] Revilla alleges that, despite the denial of his Motion to be Furnished, the Ombudsman used the affidavits of the following respondents in finding probable cause to indict him: [1] Godelina G. Amata (Amata); [2] Gregoria G. Buenaventura (Buenaventura); [3] Alexis G. Sevidal (Sevidal); [4] Sofia D. Cruz (Cruz); [5] Ofelia E. Ordoñez (Ordoñez); [6] Evelyn B. Sugcang (Sugcang); [7] Allan Javellana (Javellana); [8] Victor Roman Cacal (Cacal); [9] Julie A. Villaralvo-Johnson (Villaralvo-Johnson); [10] Rhodora B. Mendoza (Mendoza); [11] Ninez P. Guañizo (Guañizo); [12] Marivic V. Jover (Jover); [13] Dennia L. Cunanan (Cunanan); [14] Francisco B. Figura (Figura); [15] Consuelo Lilian R. Espiritu (Espiritu); [16] Encarnita Christina P. Munsod; [17] Nuñez, Paule and Bare; [18] Relampagos; and [19] De Asis.

[5] Entitled "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purpose," January 10, 2003.

[6] *Dupasquier v. Court of Appeals*, G.R. No. 112737, January 24, 2001, 350 SCRA 146; *Ilusorio v. Ilusorio*, G.R. No. 171659, December 13, 2007; *Metrobank v. Tobias*, G.R. No. 177780, January 25, 2012.

[7] Section 1, Rule 112, Rules of Court.

[8] *Ledesma v. Court of Appeals*, 344 Phil. 207, 226 (1997).

[9] *Id.*

[10] G.R. No. 167025, December 19, 2005.

[11] *Tan v. Matsuura*, G.R. No. 179003, January 9, 2013.

[12] *PCGG v. Desierto*, G.R. No. 132120, February 10, 2003. Emphasis and underscoring supplied.

[13] G.R. No. 184681, February 25, 2013.

[14] *Id.*; citing *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 557. Emphasis and underscoring supplied.

[15] *Garcia v. Office of the Ombudsman*, G.R. No. 197567, November 19, 2014; citing *Lihaylihay v. People*, G.R. No. 191219, July 31, 2013, 702 SCRA 755, 762; emphases and underscoring supplied.

[16] March 28, 2014 Resolution, p. 70; emphasis supplied.

[17] *Id.* at 73; emphasis supplied.

[18] *Id.* at 77-78; emphasis supplied.

[19] Id. at 108; emphasis supplied.

[20] Id. at 110.

[21] Id. at 40.

[22] Id. at 41-42.

[23] Id. at 49-50.

[24] Id. at 50, 52.

[25] Id. at 70-71.

[26] Id. at 70-72. Emphasis, underscoring and italics removed.

[27] Id. at 82-83.

[28] February 20, 2012.

[29] Emphasis supplied. See also NBC No. 547 issued on January 18, 2013, which similarly provides:

2.0 GUIDELINES

xxxx

2.1.3

Funds shall be released directly to implementing agencies as identified in the PDAF Project Menu (Annex A).

x x x

xxxx

6.0

ACCOUNTABILITY

The implementing agencies shall be accountable for the implementation of the programs/projects, subject to existing budgeting, accounting and auditing rules and regulations.

[30] Rollo (G.R. Nos. 212794-95), p. 3930.

[31] Rollo (G.R. Nos. 212694-95), p. 44; (G.R. Nos. 212794-95), pp. 3368-3369.

[32] Emphasis and underscoring supplied.

[33] Annex ZZZZZZZZZZZZZZZZ, FIO Complaint. Rollo (G.R. Nos. 212694-95), p. 43; (G.R. Nos. 212794-95), pp. 4009-4010.

[34] Emphasis and underscoring supplied.

[35] Mr. Azores examined the signatures appearing on copies of the following documents: (1) Letter addressed to Ms. Gondelina G. Amata, President, [NLDC] dated August 17, 2009; (2) Letter addressed to Ms. Gondelina G. Amata, President, [NLDC], dated October 23, 2009; (3) Letter addressed Mr. Antonio Y. Ortiz, Director General, [TRC], dated December 16, 2008; (4) Work and Financial PDAF of Senator Revilla, Jr., Project Cost: Php. 10,000,000. Beneficiary: Farmers in the Mun. of Akbar, Sulu, in the year 2007; (5) Pangkabuhayan Foundation, Inc., List of Beneficiaries, Livelihood Project, Senator Revilla, Jr., dated in the year 2009; (6) Pangkabuhayan Foundation Inc., Accomplishment Report (Annex 142) dated in the year 2009; (7) Pangkabuhayan Foundation,

Inc., Accomplishment Report (Annex 144) dated in the year 2009; (8) Pangkabuhayan Foundation, Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr., Attendance Sheet conduct of training dated Oct. 3-5, 2009; (9) Pangkabuhayan Foundation, Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr., dated in the year 2009; (10) Pangkabuhayan Foundation, Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr. (Annex 146), dated in the year 2009; (11) Pangkabuhayan Foundation Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr., dated in the year 2009; (12) Vegetable Growing Program and Planting Materials Distribution Project in the Mun. of Akbar, Sulu, Livelihood Project of Ramon Revilla, Jr., dated in the year 2009; (13) Pangkabuhayan Foundation, Inc., Accomplishment Report ROCS-09 02426 dated in the year 2009; (14) Project Title: Vegetable Growing Program Backyard Vegetable Farming, Office of Senator Revilla, Jr., Implementing Agency-Zamboanga Rubber Estate Corp. (Annex 147) dated in the year 2009; (15) Certificate of Acceptance (Annex 148) dated March 12, 2008; (16) SENATE Pasay City, Office of Senator Revilla, Jr., Certificate of Acceptance (Annex 143) dated in the year 2009; (17) SENATE Pasay City, Office of Senator Revilla, Jr., Certificate of Acceptance (Annex 145) dated September 16, 2009; (18) Letter addressed to Mr. Antonio Y. Ortiz, Director General, [TLRC] dated April 10, 2007. (Rollo (G.R. Nos. 212694-95), pp. 357 to 358)

[36] Rollo (G.R. Nos. 212694-95), pp. 355, 362. Emphasis and underscoring supplied.

[37] Rollo (G.R. Nos. 212694-95), pp. 401-403, 409. Underscoring supplied.

[38] *Id.* at 401-403; 409. Underscoring supplied.

[39] G.R. Nos. 119837-39, December 9, 1999.

[40] Emphasis supplied.

[41] G.R. No. 113630, May 5, 1994.

[42] Emphasis and underscoring supplied.

[43] *PNB v. Pasimio*, G.R. No. 205590, September 2, 2015; *Mercado v. People*, G.R. No. 167510, July 8, 2015; *People v. Cachuela*, G.R. No. 191752, June 10, 2013.

[44] *Tamargo v. Awingan*, G.R. No. 177727, January 19, 2010, 610 SCRA 316, 331; *PNB v. Pasimio*, G.R. No. 205590, September 2, 2015; *Mercado v. People*, G.R. No. 167510, July 8, 2015; *People v. Cachuela*, G.R. No. 191752, June 10, 2013.

[45] *Id.*

[46] Emphasis and underscoring supplied.

[47] *People v. Argawanon*, G.R. No. 106538, March 30, 1994, 231 SCRA 614, 618.

[48] *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 193-194.

[49] *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 3.

[50] G.R. No. 190569, April 25, 2012.

[51] 587 Phil. 100 (2008).

[52] See *Brady v. Maryland*, 373 U.S. 83 (1963).

[53] No. L-20387, January 31, 1968, 22 SCRA 424.

[54] G.R. No. 130191, April 27, 1998, 289 SCRA 721.

[55] Id. at 734, 738-739, 745. Emphasis supplied.

[56] March 28, 2014 Resolution, p. 40.

[57] Id. at 41.

[58] G.R. No. 149380, July 3, 2002.

[59] Emphasis supplied.

[60] G.R. No. 157943, September 4, 2013.

[61] Emphasis and underscoring supplied.

[62] Emphasis and underscoring supplied.

[63] Benhur Luy's Affidavit dated September 12, 2013, p.19; rollo (G.R. Nos. 212794-95), p. 4000.

[64] Rollo (G.R. Nos. 212794-95), p. 3934.

[65] Manotok, IV v. Heirs of Barque, G.R. Nos. 162335 & 162605, March 6, 2012; People v. Crispin, G.R. No. 128360, March 2, 2000.

[66] G.R. No. 191752, June 10, 2013.

[67] See FIO Complaint, Annex ZZZZZZZZZZZZZZZZ.

[68] Emphasis and underscoring supplied.

[69] Victor Jose Tan Uy v. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008.

[70] See Sinumpaang Salaysay ni Nova Kay Macalintal, September 12, 2013; rollo (G.R. No. 212794-95), pp. 3903-3912.

[71] Blacks Law Dictionary, sixth edition, 1990 at 693 (underscoring supplied), citing Efron v. Kalmanovitz, 249 Cal.App. 187, 57 Cal.Rptr. 248, 251; Leung Yee v. Frank L. Strong Machinery Co., 37 Phil. 644 (1918); Fule v. Legare, 117 Phil. 368 (1963).

[72] Gabriel v. Mabanta, G.R. No. 142403, March 26, 2003, 399 SCRA 573.

[73] Page 133 of the FIO Complaint.

[74] SARO Nos. ROCS-07-08553; ROCS-07-08555; ROCS-08-5254; ROCS-09-04953; and ROCS-09-04973.

[75] Rollo (G.R. Nos. 218744-59), pp. 34-35. Emphasis and underscoring supplied.

[76] Karagdagang Sinumpaang Salaysay ni Merlina Suñas y Pablo, September 12, 2013, pars. 51-52.

[77] Emphasis and underscoring supplied.

[78] Emphasis and underscoring supplied.

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