

# **ANTI-GRAFT AND CORRUPT PRACTICES ACT**

**ASP III JOSE M. BALMEO, JR.**  
Office of the Ombudsman

# C O V E R A G E

## First Part

- i. Jurisdiction of the Sandiganbayan
- ii. Republic Act 3019
- iii. Crimes under Revised Penal Code
- iv. Topic on Budget Officers
- v. Rules on Immunity

Offense	Number of Prosecutions			Pending Cases			Decided Cases 2009		Decided Cases 2010		Decided Cases 2011	
	2009	2010	2011	2009	2010	2011	Convicted	Acquitted	Convicted	Acquitted	Convicted	Acquitted
<b>Bribery (Article 210)</b>	3	-	4	15	12	9	1	-	2	1	-	-
<b>Malversation (Article 217)</b>	10	61	<b>64</b>	614	588	<b>507</b>	<b>23</b>	5	<b>11</b>	15	<b>50</b>	31
<b>Violation of R.A. 3019, 3(e)</b>	87	89	<b>179</b>	938	902	<b>792</b>	<b>24</b>	44	<b>13</b>	23	<b>47</b>	63
<b>R.A. 6713</b>	13	8	<b>15</b>	17	18	19	-	1	1	-	-	2
<b>Perjury</b>	5	1	12	12	14	14	1	1	-	-	1	-
<b>Forfeiture of Unlawfully Acquired wealth</b>	3		2	9	9	9						

# Jurisdiction of the Sandiganbayan



## ■ JURISDICTION OF SANDIGANBAYAN

The jurisdiction of the Sandiganbayan is perhaps one of the most often amended provision from the 1973 Constitution to RA 8249 of 1997. Before RA 8249, jurisdiction of the Sandiganbayan was determined on the basis of the penalty imposable on the offense charged. Then, it was amended such that regardless of the penalty, so long as the offense charged was committed by a public officer, the Sandiganbayan was vested with jurisdiction. Under RA 8249, to determine whether the Sandiganbayan has jurisdiction, lawyers must look into two (2) criteria, namely:

- The nature of the Offense and Salary Grade of the Official

- Thus, Sec.4 of RA 8249 provides that the Sandiganbayan shall have original exclusive jurisdiction over:

I.) Violations of RA 3019 (Anti-graft and Corrupt Practices Law);

II.) RA 1379 (Forfeiture of Illegally Acquired Wealth);

III.) Crimes by public officers or employees embraced in Ch. II, Sec.2 Title VII, Bk. II of the RPC (Crimes committed by Public Officers) namely:

a) Direct Bribery under Art. 210 as amended by BP 871, May 29, 1985;

b) Indirect Bribery under Art. 211 as amended by BP 871, May 29, 1985;

c) Qualified Bribery under Art. 211-A as amended by RA 7659, Dec. 13, 1993;**(public officer –law enforcement refrains to arrest or prosecute-same penalty as crime-if law enforcement ask or demands-death penalty)**

■ d) Corruption of public officials under Art. 212

where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758) specifically including:

a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, provincial treasurers, assessors, engineers and other provincial department heads;

b) City mayors, vice-mayors, members of the sangguniang panglungsod, city treasurers, assessors, engineers and other department heads;

c) Officials of the diplomatic service occupying the position of consul and higher;

d) Philippine Army and Air force colonels, naval captains and all officers of higher rank;

- e.) Officers of the PNP while occupying the position of Provincial Director and those holding the rank of Senior Superintendent or higher;
  - f) City and provincial prosecutors and their assistants; officials and the prosecutors in the Office of the Ombudsman and special prosecutor ;
  - g) President, directors or trustees or managers of government owned or controlled corporations, state universities or educational institutions or foundations;
- 2) Members of Congress and Officials thereof classified as Grade 27 and up under the Compensation and Classification Act of 1989;
  - 3) Members of the Judiciary without prejudice to the provision of the Constitution;
  - 4) Chairmen and members of Constitutional Commissions, without prejudice to the provision of the Constitution;
  - 5) All other national and local officials classified as Grade 27 and higher under the Compensation and Position Classification Act of 1989.



**[ G.R. Nos. 140199-200, February 06, 2002 ]**

FELICITO S. MACALINO, PETITIONER, VS. SANDIGANBAYAN AND  
OFFICE OF THE OMBUDSMAN, RESPONDENTS.

\*Issue of jurisdiction

Liwayway S. Tan charging them with estafa through falsification of official documents (Criminal Case No. 18022) and frustrated estafa through falsification of mercantile documents (Criminal Case No. 19268), as follows

"CRIMINAL CASE NO. 18022

"That on or about the 15th day of March, 1989 and for sometime prior or subsequent thereto, in the Municipality of Mandaluyong, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, FELICITO S. MACALINO, being then the Assistant Manager of the Treasury Division and the Head of the Loans Administration & Insurance Section of the Philippine National Construction Corporation (PNCC), a government-controlled corporation with offices at EDSA corner Reliance St., Mandaluyong, and hence, a public officer, while in the performance of his official functions, taking advantage of his position, committing the offense in relation to his office and conspiring and confederating with his spouse LIWAYWAY S. TAN, being then the owner of Wacker Marketing, did then and there willfully, unlawfully, feloniously and by means of deceit defraud the Philippine National Construction Corporation in the following manner: in preparing the application with the Philippine National Bank, Buendia Branch for the issuance of a demand draft in the amount of NINE HUNDRED EIGHTY THREE THOUSAND SIX HUNDRED EIGHTY-TWO & 11/100 PESOS (P983,682.11), Philippine Currency, in favor of Bankers Trust Company, accused FELICITO S. MACALINO superimposed the name "Wacker Marketing" as payee to make it appear that the demand draft was payable to it, when in truth and in fact and as the accused very well knew, it was the Bankers Trust Company which was the real payee as indicated in Check Voucher No. 3-800-89 and PNB Check No. B236746 supporting said application for demand draft; subsequently accused FELICITO S. MACALINO likewise inserted into the letter of PNCC to PNB Buendia Branch the words "payable to Wacker Marketing" to make it appear that the demand drafts to be picked up by the designated messenger were payable to Wacker Marketing when in truth and in fact the real payee was Bankers Trust Company; and as a result of such acts of falsification, PNB Buendia issued 19 demand drafts for P50,000.00 each and another demand draft for P33,682.11, all, payable to Wacker Marketing, which were subsequently delivered to accused Felicitor S. Macalino and which accused LIWAYWAY S. TAN thereafter exchanged with PNB Balanga Branch for 19 checks at P50,000.00 each and another for P33,682.11 and all of which she later deposited into Account No. 0042-0282-6 of Wacker Marketing at Philtrust Cubao, thereby causing pecuniary damage and prejudice to Philippine National Construction Corporation in the amount of P983,682.11.

"CONTRARY TO LAW.

"Manila, Philippines, August 24, 1992."

"CRIMINAL CASE NO. 19268

"That on or about the 4th day of April, 1990, and subsequently thereafter, in the Municipality of Mandaluyong, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, FELICITO S. MACALINO, being then the Assistant Manager of the Treasury Division and the Head of the Loans Administration and Insurance Section of the Philippine National Construction Corporation, a government-controlled corporation with offices at EDSA corner Reliance St., Mandaluyong, Metro Manila, and hence, a public officer, while in the performance of his official functions, taking advantage of his position, committing the offense in relation to his office, and conspiring and confederating with his spouse LIWAYWAY S. TAN, being then the owner of Wacker Marketing, did then and there willfully, unlawfully, feloniously and by means of deceit defraud the Philippine National Construction Corporation in the following manner: after receiving Check Voucher No. 04-422-90 covering the partial payment by PNCC of the sinking fund to International Corporate Bank (Interbank) as well as Check No. 552312 for TWO MILLION TWO HUNDRED FIFTY THOUSAND PESOS (P2,250,000.00), Philippine Currency, payable to Interbank for the purpose, accused FELICITO S. MACALINO falsified PNB Check No. 552312 by altering the payee indicated therein to make it appear that the aforesaid check was payable to Wacker Marketing instead of Interbank and further falsified the schedule of check disbursements sent to PNB Buendia by making it appear therein that the payee of Check No. 552312 was Wacker Marketing when in truth and in fact and as the accused very well knew, it was Interbank which was the real payee; accused LIWAYWAY S. TAN thereafter deposited Check No. 552312 into Account No. 0042-0282-6 of Wacker Marketing at Philtrust Cubao and Wacker Marketing subsequently issued Philtrust Check No. 148039 for P100,000.00 in favor of accused FELICITO S. MACALINO; which acts of falsification performed by the accused would have defrauded the Philippine National Construction Corporation of P2,250,000.00 had not PNB Buendia ordered the dishonor of Check No. 552312 after noting the alteration/erasures thereon, thereby failing to produce the felony by reason of causes independent of the will of the accused.

"CONTRARY TO LAW.

"Manila, Philippines, May 28, 1993.

Petitioner moved for leave to file a motion to dismiss on the ground that the Sandiganbayan has no jurisdiction over him since he is not a public officer because the Philippine National Construction Corporation (PNCC), formerly the Construction and Development Corporation of the Philippines (CDCP), is not a government-owned or controlled corporation with original charter. The People of the Philippines opposed the motion.

The Supreme Court held:

Inasmuch as the PNCC has no original charter as it was incorporated under the general law on corporations, it follows inevitably that petitioner is not a public officer within the coverage of R. A. No. 3019, as amended. Thus, the Sandiganbayan has no jurisdiction over him. The only instance when the Sandiganbayan has jurisdiction over a private individual is when the complaint charges him either as a co-principal, accomplice or accessory of a public officer who has been charged with a crime within the jurisdiction of Sandiganbayan.

## **On Suspension Pendente Lite**

**[ G.R. NO. 146217, April 07, 2006 ]**

**ANUNCIO C. BUSTILLO, PETITIONER, VS. SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, ALFREDO S. LIM AS SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), AND JEAN MARY PASCUA, RESPONDENTS.**

Section 13 provides:

Suspension and loss of benefits. - Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to reconstitute the same to the Government. (Emphasis supplied)

Suspension from office is mandatory whenever a valid Information charges an incumbent public officer with (1) violation of RA 3019; (2) violation of Title 7, Book II of the RPC; (3) any offense involving fraud upon government; or (4) any offense involving fraud upon public funds or property. While petitioner correctly contends that the charge filed against him and his co-accused does not fall under Title 7, Book II but under Title 4, Book II of the RPC, it nevertheless involves "fraud upon government or public funds or property."

As used in Section 13, the term "fraud" is understood in its generic sense,[14] that is, referring to "an instance or an act of trickery or deceit especially when involving misrepresentation." The Information alleges that petitioner and his co-accused "feloniously ma[d]e it appear in official documents that municipal funds totalling [thirty thousand pesos] (P30,000.00) were expended for the purchase of lumber from Estigoy Lumber when, in truth and in fact, as both accused well knew, said lumber were actually purchased from Rowena Woodcraft, a single proprietorship owned by accused Rowena G. Bustillo." This suffices to classify the charge as "involving fraud upon government" as contemplated in Section 13.

Petitioner does not dispute that the official documents he and his co-accused are charged of falsifying are vouchers. As used in government, vouchers, like daily time records,[16] are official documents signifying a cash outflow from government coffers, especially if, as here, receipt of payment is acknowledged. Thus, falsifying these official documents invariably involves "fraud upon x x x public funds x x x."

# CULTURE OF CORRUPTION



# **REPUBLIC ACT 3019**

August 17, 1960

**ANTI-GRAFT AND CORRUPT  
PRACTICES ACT**



- SECTION 1. Statement of policy. — It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.
- SECTION 2. Definition of terms. — As used in this Act, that term —
- (a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.
- (b) **"Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.**
- (c) "Receiving any gift" **includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.**
- (d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

- The most important feature of RA 3019 is that which is provided under Section 3 thereof which provides: **violation of RA 3019 shall be in addition to acts or omissions of public officers already penalized by existing laws.**

**Thus, a person who committed Bribery in violation of the Revised Penal Code may likewise be charged under RA 3019 for the same act of bribery. Sec. 3(b)**

- **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:
  - **(a)** Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

## Section(a) Elements:

(1) Persuading, inducing or influencing another public officer to perform:

(1.a) An act constituting a violation of rules and regulations duly promulgated by competent authority or

(1.b) An offense in connection with the official duties of the latter

(2) Allowing himself to be persuaded, induced, or influenced to commit such:

(2.a) Violation or

(2.b) Offense

Sec. (a) case: **G.R. No. 87186 April 24, 1992**

■ **CAMILO VILLA**, petitioner

vs.

**SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES**,  
respondents.

■ **G.R. No. 87281 April 24, 1992**

■ **RODOLFO E. MONTAYRE**, petitioner,

vs.

**SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES**,  
respondents.

■ **G.R. No. 87466 April 24, 1992**

■ **JOSEFINA SUCALIT**, petitioner,

vs.

**SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES**,  
respondents.

■ **G.R. No. 87524 April 24, 1992**

■ **ARTURO JIMENEZ**, petitioner,

vs.

**SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES**,  
respondents

- Facts: The case involved questionable payments made by the CAA Mactan to Rocen Enterprises and Sprayway Corp., dealers in paper products and printed matter, for the purchase of electrical items and the cost of their installation, in the total amount of P299,175.00.
- Charge were: Arturo Somosa Jimenez, then Airport General Manager, Mactan International Airport; Rodolfo Evangelista Montayre, Assistant Airport General Manager; Camilo Gido Villa, Chief of the Logistics Section, CAA Mactan; Josefina Sanchez Socalit, Technical Inspector of the COA, Cebu City; Manuel Raneses Bustamante, Regional Auditor, Cebu City; and Hereto Cabrera Leonor, Chief Accountant, CAA, Manila, taking advantage of their public positions and while in the performance of the duties of their office, together with Fernando Dario, Estanislao Centeno, Serafin Robles and Casimiro David



- A supposed bidding was done for the purchase of the following: 1 set three phase primary metering 13.8 KV 400 KVA, 60 cycles complete with demand metering, voltage and current transformers valued at P30,000.00; 3 pieces 150 KVA Distribution Transformers, single phase, 60 cycles 2400 volts-240 V/120V oil cooled valued at P69,000.00; 3 pieces 150 KVA Power transformers, single phase, 60 cycles, 138 KV/2400 volts oil cooled valued at P90,000.00; 4 sets high voltage change over switch 3 poles double throw KV valued at P12,050.00; 6 sets high voltage fuse cut-outs valued at P33,000.00; and cost of installation — P9,000.00 costing all in all P299,175.00,
- The contract was awarded to "Rocen Enterprises, which was a company whose line of business, as registered with the Bureau of Domestic Trade on August 9, 1974, was "paper products and printed matter. ." On August 11, 1975, the firm was incorporated and registered with the Securities and Exchange Commission as "Rocen Trading Incorporated" with an authorized capital stock of P100,000, P20,000 of which had been subscribed and P5,000 paid up.



- The Sandiganbayan convicted herein accused, and on Appeal the Supreme Court , in affirming the SB decision said: “A close scrutiny of the circumstances of this case clearly indicates that Jimenez and Sucalit were indeed involved in a scheme violative of the Anti-Graft and Corrupt Practices Act. Dario, Centeno and Robles were CAA Manila employees and were on leave during the period of the questioned transaction. They were seen by prosecution witnesses at Mactan Airport in the company of Jimenez, who admitted he knew the three. Robles and Centeno are incorporators of Rocen Trading, Inc., which was the Rocen Enterprises at the time the transaction was consummated. This was a sole proprietorship registered in the name of Remedios Centeno, wife of Estanislao Centeno, and engaged only in the business of dealing in "paper products and printed matter. “When the requisition of the items was made, Sucalit went to Manila pursuant to a travel order issued by Jimenez to canvass prices of the articles. It is not explained why she delivered an advertisement form to Rocen Enterprises, which was a supplier only of paper products and printed matter but not of the needed electrical items. Curiously, Rocen submitted the lowest quotation for the items requisitioned. When the contract was awarded to it, Rocen merely procured the items requisitioned from UTESCO, a losing bidder.

- Arturo Jimenez, Airport General Manager, had the responsibility, as head of office, to see to it that the purchases made were from reputable suppliers pursuant to the Unnumbered Presidential Memorandum dated April 22, 1971. Instead of discharging this responsibility, Jimenez approved the award to Rocen Enterprises, which was represented by Centeno, Robles and Dario.
- Josefina Socalit, who was sent by Jimenez to Manila to make a canvass, inexplicably delivered an advertisement for Rocen Enterprises, which was not a reputable supplier of the needed items. In her Travel Report, she certified that she made a canvass from reputable suppliers.
- These acts and omissions of Jimenez and Socalit violated paragraph (a) of Section 3 of R.A. 3019 in relation to the Unnumbered Presidential Memorandum. They were persuaded, induced or influenced, and persuaded, induced or influenced each other, to award the purchase of electrical items to an entity which was not even a supplier of electrical items in disregard of the Presidential Memorandum directing that procurement of supplies by government offices should be from reputable suppliers. Rocen was not a "reputable supplier" as it was dealing only in paper products and printed matter at the time of the transaction in question."





**(b)** Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

## (1) Requesting or Receiving

– directly or indirectly

(2) Any gift, present, share, percentage, or benefit, for himself or for any other person

(3) In connection with any contract or transaction between the Government and any other party

(4) Wherein the public officer in his official capacity has to intervene under the law

**G.R. No. L-65952 July 31, 1984**  
**LAURO G. SORIANO, JR.**, petitioner,  
vs.

**THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE**  
**PHILIPPINES**, respondents •

■ The factual background is as follows:

Thomas N. Tan was accused of qualified theft in a complaint lodged with the City Fiscal of Quezon City. The case was docketed as I.S. No. 82-2964 and assigned for investigation to the petitioner who was then an Assistant City Fiscal. In the course of the investigation the petitioner demanded P4,000.00 from Tan as the price for dismissing the case. Tan reported the demand to the National Bureau of Investigation which set up an entrapment. Because Tan was hard put to raise the required amount only P2,000.00 in bills were marked by the NBI which had to supply one-half thereof. The entrapment succeeded and an information was filed with the Sandiganbayan in Criminal Case No. 7393

- The Sandiganbayan rendered a decision with the following dispositive portion:

WHEREFORE, the Court finds accused Lauro G. Soriano, Jr., GUILTY beyond reasonable doubt, as Principal in the Information, for Violation of Section 3, paragraph (b), of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from SIX (6) YEARS and ONE (1) MONTH, as minimum, to NINE (9) YEARS and ONE (1) DAY, as maximum; to

On appeal the Soriano contends:

Assuming in gratia argumenti, petitioner's guilt, the facts make out a case of Direct Bribery defined and penalized under the provision of Article 210 of the Revised Penal Code and not a violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended.

The evidence for the prosecution clearly and undoubtedly support, if at all the offense of Direct Bribery, which is not the offense charged and is not likewise included in or is necessarily included in the offense charged, which is for violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended. The prosecution showed that: the accused is a public officer; in consideration of P4,000.00 which was allegedly solicited, P2,000.00 of which was allegedly received, the petitioner undertook or promised to dismiss a criminal complaint pending preliminary investigation before him, which may or may not constitute a crime; that the act of dismissing the criminal complaint pending before petitioner was related to the exercise of the function of his office. Therefore, it is with pristine clarity that the offense proved, if at all is Direct Bribery

- The Supreme Court held:
- It is obvious that the investigation conducted by the petitioner **was not a contract. Neither was it a transaction** because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner.
  
- IN THE LIGHT OF THE FOREGOING, the judgment of the Sandiganbayan is modified in that the petitioner is **deemed guilty of bribery** as defined and penalized by Article 210 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years of *prision correccional* as maximum, and to pay a fine of Two Thousand (P2,000.00) Pesos. The rest of the judgment is hereby affirmed. Costs against the petitioner.

**[ G.R. NO. 165111, July 21, 2006 ]**

**ROBERTO E. CHANG AND PACIFICO D. SAN MATEO, PETITIONERS,  
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

The charge:

That on or about June 19, 1991, in Makati, Metro Manila and within the jurisdiction of this Honorable Court, accused ROBERTO ESTANISLAO CHANG, a public officer being the incumbent Municipal Treasurer of Makati, Metro Manila and as such is tasked among others, to examine or investigate corporate tax returns of private corporations or companies operating within the municipality of Makati, Metro Manila, to determine their compliance and/or insufficiency of Income Tax Assessments thereon, and to collect payments corresponding thereto, while in the performance of his official duties as such found Group Developer's Inc., to be owing the municipality in the form of tax liabilities amounting to Four Hundred Ninety Four Thousand Pesos (P494,000.00), conspiring and confederating with Pacifico Domingo San Mateo, Chief of Operations, Business Revenue Examination, Audit Division, Municipal Treasurer's Office, Makati, Metro Manila, and Edgar Leoncito Feraren, Driver-Clerk, Municipal Treasurer's Office, Makati, Metro Manila, who are both public officials, did then and there willfully, unlawfully and criminally demand the amount of One Hundred Twenty Five Thousand Pesos (P125,000.00) from the said corporation, through Mario Magat, an employee of said corporation, in consideration of the issuance of a Certificate of Examination that it had "no tax liability" to the Municipality of Makati, Metro Manila, which he in fact issued to the said corporation, notwithstanding the fact that the latter has not paid any amount out of the P494,000.00.

## Facts :

Roberto Estanislao Chang (Chang) was the Municipal Treasurer of Makati who was tasked to, among other things, examine or investigate tax returns of private corporations or companies operating within Makati, and determine the sufficiency or insufficiency of Income Tax assessed on them and collect payments therefor. Petitioner Pacifico D. San Mateo (San Mateo) was the Chief of Operations, Business Revenue Examination, Audit Division, Makati Treasurer's Office. The examiners found that GDI incurred a tax deficiency inclusive of penalty in the total amount of P494,601.11, The assessment notices were personally received by Mario Magat (Magat), Chief Operating Officer of GDI, in April 1991. Magat thereupon referred the matter to the Accounting Department which informed him that the computations and worksheets requested from the municipal auditors to enable it to validate the assessment had not been received.

Magat was later able to talk via telephone to San Mateo who had been calling GDI's Accounting Department and requesting for someone with whom he could talk to regarding the assessment.

On May 15, 1991, Magat and San Mateo met for lunch at the Makati Sports Club. Chang later joined the two, and the three agreed that if GDI could pay P125,000 by the end of May 1991, the assessment would be "resolved"

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Entrapment by NBI ensued , accused were charged and convicted by Sandignbayan. On appeal to The Supreme Court accused contends that not all elements are present. claim of Instigation and not entrapment.



Supreme Court said:

Section 3(b) of the Anti-Graft and Corrupt Practices Act provides:

SEC. 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

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

Peligrino v. People restates the elements of the above-quoted offense as summed up in Mejia v. Pamaran, to wit: (1) the offender is a public officer (2) who requested or received a gift, a present, a share, a percentage, or a benefit (3) on behalf of the offender or any other person (4) in connection with a contract or transaction with the government (5) in which the public officer, in an official capacity under the law, has the right to intervene.

From the evidence for the prosecution, it was clearly established that the criminal intent originated from the minds of petitioners. Even before the June 19, 1991 meeting took place, petitioners already made known to Magat that GDI only had two options to prevent the closure of the company, either to pay the assessed amount of P494,601.11 to the Municipality, or pay the amount of P125,000 to them.

Conviction Affirmed

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

**G.R. No. 123045 November 16, 1999**

**DEMETRIO R. TECSON,** petitioner,  
**vs. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,**  
respondents.

1.) Requesting or Receiving  
directly or indirectly

(2) Any gift, present or other pecuniary or material  
benefit, for himself or for another

(3) From any person for whom the public officer, in any  
manner or capacity

(4) Has secured or obtained, or will secure or obtain

(5) Any Government permit or license

(6) In consideration for the help given or to be given

(7) Without prejudice to Section 13 of this Act

■ **FACTS:**

- In the last week of September 1989, upon the offer of Tecson, he and Mrs. Luzana agreed to engage in an investment business. They would sell tickets at P100.00 each which after 30 days would earn P200.00 or more. She would buy appliances and cosmetics at a discount, with the use of the proceeds of the sales of tickets, and resell them. No other details were disclosed on how the business would operate, and Tecson does not appear to have contributed any monetary consideration to the capital. On September 27, 1989, they began selling tickets.

Tecson also acted as agent selling tickets. He got on that day early in the morning two booklets of tickets, for which he signed the covers of the booklets to acknowledge receipt. Before noon of the same day he returned after having already sold 40 tickets in the amount of P4,000.00, bringing with him a Mayor's Permit in the name of Mrs. Luzana for their business called "LD Assurance Privileges." He asked for a cash advance of P4,000.00 which he would use during the fiesta on September 29, 1989, and he would not release the Mayor's Permit unless the cash advance was given him. Mrs. Luzana reluctantly acceded, saying that it was not the due date yet, so he was getting the cash advances on his share. Tecson signed for the cash advance.

On October 3, 1989, Mrs. Luzana secured a Business Permit in accordance with the instructions of Tecson. The permit was in her name but the same was for the operation of "Prosperidad Investment and Sub-Dealership," the new name of the business. In the session of the Sangguniang Bayan of Prosperidad, Agusan del Sur on October 17, 1989 presided over by Tecson, Resolution No. 100 was passed revoking the business permit at the instance of the Provincial Director of the Department of Trade and Industry

- The crime charged has four elements, namely:
  - (1) The accused is a public officer;
  - (2) That in any manner or capacity he secured or obtained, or would secure or obtain, for a person
    - any government permit or license;
  - (3) That he directly or indirectly requested or received from said person any gift, present or other
    - pecuniary or material benefit for himself or for another; and
  - (4) That he requested or received the gift, present or other pecuniary or material benefit in
    - consideration for the help given or to be given.

As correctly pointed out by the Sandiganbayan, all of the aforementioned elements concur in the instant case. Its findings on this concurrence are as follows:

- *First*, Tecson was in September 1989 a public officer, being then the Municipal Mayor of Prosperidad, Agusan del Sur.
- *Second*, in his official capacity as Mayor, he signed and issued on September 27, 1989, a Mayor's Permit to and in the name of Mrs. Luzana for their investment business in which he does not appear to have made any contribution to the capital.
- *Third*, before he released the Mayor's Permit to Mrs. Luzana, he requested and received on that same day, September 27, 1989, at about 11:00 a.m., the amount of P4,000.00 to be used by him in the fiesta to be held on September 29, 1989.
- And, *fourth*, Tecson requested and received the amount of P4,000.00 as cash advance in consideration of the help he gave—*viz*, issuance of Mayor's Permit which he would not deliver to Mrs. Luzana unless she acceded to his request. Although Tecson expected to have a share in the profits of the business as partner of Mrs. Luzana, the same was not yet due. In fact, there was as yet no profits to speak of, for they began operating only in the morning of September 27, 1989, the very day the cash advance was requested and received.



**(d)** Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

**(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. \*\***

**\*\*This has long been settled in our ruling in *Mejorada v. Sandiganbayan*, 235 Phil. 400 (1987).**

where we categorically declared that a prosecution for violation of Sec. 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is “charged with the grant of licenses or permits or other concessions.” Quoted hereunder is an excerpt from *Mejorada*:

Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers (sic) declared unlawful. Its reference to “any public officer” is without distinction or qualification and it specifies the acts declared unlawful. We agree with the view adopted by the Solicitor General that the last sentence of paragraph [Section 3] (e) is intended to make clear the inclusion of officers and employees of officers (sic) or government corporations which, under the ordinary concept of “public officers” may not come within the term. **It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting licenses or permits or other concessions.** (Emphasis and underscoring supplied)

The above pronouncement was reiterated in *Cruz v. Sandiganbayan*, where the Court affirmed the *Mejorada* ruling that finally puts to rest any erroneous interpretation of the last sentence of Sec. 3(e) of the Anti-Graft Law.



## Section D

- (1) Accepting or having any member of his family
  - (2) Accept employment in a private enterprise
  - (3) Which has pending official business with him
  - (4) During the pendency thereof or within one year after its termination

Section e-

- (1) Causing any undue injury to any party, including the government or
- (2) Giving any private party any:
  - (2.a) Unwarranted benefits
  - (2.b) Advantage
  - (2.c) Preference
- (3) In the discharge of his official administrative or judicial functions
- (4) Through: (a) Manifest Partiality, (b) Evident Bad Faith or (c) Gross Inexcusable Negligence.
- (5) This provision shall apply to officers and employees of offices or government corporations charged with the grant of:
  - (a) licenses
  - (b) permits
  - (c) other concessions



- In the case of *PEOPLE OF THE PHILIPPINES, Petitioner, vs. ROBERT P. BALAO, et.al.* G.R. No. 176819 , January 26, 2011 it was held:

In a number of cases, the **elements of this offense** (Section 3e) have been broken down as follows:

- 1. That the accused are public officers or private persons charged in conspiracy with them;
- 2. That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- 3. That they caused undue injury to any party, whether the Government or a private party;
- 4. That such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and
- 5. That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.

*Isabelo A. Braza v. The Honorable Sandiganbayan (1st Division), G.R. No. 195032, February 20, 2013.(Cebu Lamppost case)*

Issue:

Braza challenges the sufficiency of the allegations in the second information because there is no indication of any actual and quantifiable injury suffered by the government. He then argues that the facts under the second information are inadequate to support a valid indictment for violation of Section 3(e) of R.A. No. 3019

Held:

In a catena of cases, the Supreme Court (SC) has held that there are two (2) ways by which a public official violates section 3(e) of R.A. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. The disjunctive term “or” connotes that either act qualifies as a violation of section 3(e) of R.A. 3019. In other words, the presence of one would suffice for conviction. It must be emphasized that Braza was indicted for violation of section 3(e) of R.A. 3019 under the second mode.

“To be found guilty under the second mode, it suffices that the accused has given **unjustified favor or benefit to another, in the exercise of his official, administrative and judicial functions.**” The element of damage is not required for violation of section 3(e) under the second mode. In the case at bench, the second information alleged, in substance, that accused public officers and employees, discharging official or administrative function, together with Braza, confederated and conspired to give FABMIK Construction and Equipment Supply Company, Inc. **unwarranted benefit or preference by awarding to it Contract J.D. No. 06H00050 through manifest partiality or evident bad faith, without the conduct of a public bidding and compliance with the requirement for qualification contrary to the provisions of R.A. 9184 or the Government Procurement Reform Act.** Settled is the rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under section 3 of R.A. 3019. Considering that all the elements of the offense of violation of section 3(e) were alleged in the second information, the SC found the same to be sufficient in form and substance to sustain a conviction

- In RAMON A. ALBERT- versus - THE SANDIGANBAYAN, G.R. No. 164015 February 26, 2009 it was so said:
- **Manifest Partiality** – a clear or plain inclination to favor one side or person rather than another;
- **Evident Bad Faith** – connotes not only bad judgment but also patently and palpably fraudulent and dishonest purpose, or a conscious wrongdoing for some perverse motive or ill-will. It partakes of the nature of fraud.
- **Gross Inexcusable Negligence** – refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected

**(f)** Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

## Section 3(f) elements

- (1) Neglecting or Refusing
- (2) After due demand or request
- (3) Without sufficient justification
- (4) To act within a reasonable time
- (5) On any matter pending before him
- (6) For the purpose of obtaining, directly or indirectly
  - (6.a) From any person interested in the matter some (1) pecuniary or (2) material benefit or (3) advantage or
  - (6.b) For the purpose of:
    - (6.b.1) Favoring his own interest or
    - (6.b.2) Giving undue advantage in favor of or
    - (6.b.3) Discriminating against any other interested party



**G.R. No. 94955 August 18, 1993**

**JUAN CONRADO**, petitioner,

vs.

**THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES**,

respondents.

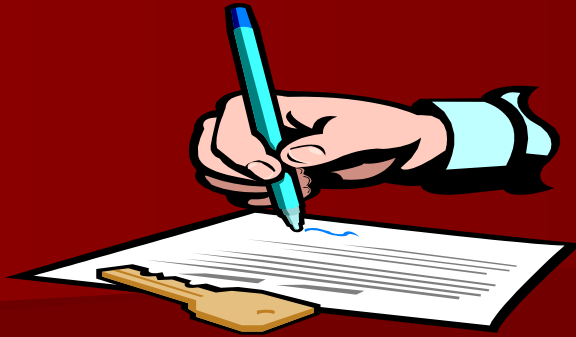
**The Information:**

That during the period from August 31, 1984 to February 21, 1985 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, accused JUAN CONRADO, JR., a public officer being the Process Server of all the Regional Trial Court of Antipolo, Rizal, did then and there wilfully and unlawfully neglect and refuse to serve within reasonable time, a copy of the Order dated July 11, 1984, issued by Executive Judge Antonio V. Benedicto in Civil Case No. 290-A entitled "Pinagkamaligan Indo-Agro- Development Corporation, et al. v. Mariano Lim, et al.," denying plaintiffs' Motion for Reconsideration of the Order of January 23, 1984 dismissing their complaint for Cancellation of Title, upon plaintiffs' counsel, Atty. Patrocinio Palanog, without sufficient justification, despite due demand and request made by defendant Mariano Lim, the copy of said Order of July 11, 1984 being served on plaintiffs' counsel only on February 22, 1985, for the purpose of giving undue advantage in favor of the plaintiffs and discrimination against defendants in said case by delaying the finality of the order of dismissal and allowing the plaintiffs to prolong their stay on the land in litigation.

Admittedly, the elements of the offense are that:

- a) The offender is a public officer;
- b) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;
- c) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and
- d) Such failure to so act is "for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another. (reiterated in the case of JOSE M. GALARIO vs. Office of the Ombudsman [Mindanao] GR 166797 July 10, 2007)

- The Supreme Court said: To warrant conviction for a violation of Section 3 (f) of the Anti-Graft and Corrupt Practices Act, the law itself additionally requires that the accused's dereliction, besides being without justification, *must be for the purpose of* (a) obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party or (b) discriminating against another interested party. The severity of the penalty imposed by the law leaves no doubt that the legislative intent is to consider this element to be indispensable.
- The record is bereft of evidence, *albeit* alleged, to indicate that the petitioner's failure to act was motivated by any gain or benefit for himself or knowingly for the purpose of favoring an interested party or discriminating against another. It is not enough that an advantage in favor of one party, as against another, would result from one neglect or refusal. Had it been so, the law would have perhaps instead said, "*or as a consequence* of such neglect or refusal undue advantage is derived by an interested party or another is unduly discriminated against."



**(g)** Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

■ In the case of HENRY T. GO vs. THE FIFTH DIVISION, SANDIGANBAYAN G.R. No. 172602, September 3, 2007 it was held:

To be indicted of the offense under Section 3(g) of R.A. No. 3019, the following **elements must be present:**

- 1) that the accused is a public officer;
- 2) that he entered into a contract or transaction on behalf of the government; and
- 3) that such contract or transaction is grossly and manifestly disadvantageous to the government (ZTE case)

(1) Entering, on behalf of the Government

(2) Into any contract or transaction

(3) Manifestly and grossly disadvantageous to the same

(4) Whether or not the public officer profited or will profit thereby

■ The first element of the crime is that the accused must be a public officer who enters into a contract on behalf of the government. The philosophy behind this is that the public officer is duty bound to see to it that the interest of the government is duly protected. Thus, should the contract or transaction entered into by such public officer is manifestly or grossly disadvantageous to the government's interests, the public officer is held liable for violation of Section 3(g), whether or not this public officer profited or will profit thereby. [September 3, 2007 G.R. No. 172602 , **HENRY T. GO vs. Sandiganbayan** ]

RODRIGO R. DUTERTE AND BENJAMIN C. DE GUZMAN,  
vs. Sandiganbayan April 27, 1998 G. R. No. 130191

- Finally, under the facts of the case, there is no basis, in law or in fact, to charge petitioners for violation of Sec. 3[g] of R.A. No. 3019. To establish probable cause against the offender for violation of Sec. 3[g], the following elements must be present: [1] the offender is a public officer; [2] he entered into a contract or transaction in behalf of the government; and [3] the contract or transaction is grossly and manifestly disadvantageous to the government. The second element of the crime - that the accused public officers entered into a contract in behalf of the government - is absent. The computerization contract was rescinded on 6 May 1991 before SAR No. 91-05 came out on 31 May 1991 and before the Anti-Graft League filed its complaint with the Ombudsman on 1 August 1991. Hence, at that time the Anti-Graft League instituted their complaint and the Ombudsman issued its Order on 12 November 1991, there was no longer any contract to speak of. The contract, after 6 May 1991 became in contemplation of law, non-existent, as if no contract was ever executed. **(compare with ZTE case)**

# Joey Marquez Case



- In Criminal Case CC 27944 – 5, 998 pieces of walis tingting bought at P 25.00

COA actual cost P 11.00

In Criminal Case CC 27946- 23,334 pieces of walis tingting at P 15.00

COA actual cost P11.00

In Criminal Case CC 27952- 8,000 pieces of walis tingting bought at P 15.00

COA actual cost P 11.00

In Criminal Case CC 27953-10,100 pieces of walis tingting bought at P 25.00

COA actual cost P 11.00

In Criminal case 27954 – 8,000 pieces of walis tingting was bought at P 25.00

COA actual cost P 11.00

Mayor Joey Marquez was convicted by the Sandiganbayan Fourth Division  
March of 2008



G.R. Nos. 181999 & 182001-04

September 2, 2009

OFELIA C. CAUNAN, Petitioner,

vs.

PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,  
Respondents.

X - - - - -X

G.R. Nos. 182020-24

JOEY P. MARQUEZ, Petitioner,

vs.

THE SANDIGANBAYAN-FOURTH DIVISION and PEOPLE OF  
THE PHILIPPINES, Respondents.



- In finding that the walis tingting purchase contracts were grossly and manifestly disadvantageous to the government, the Sandiganbayan relied on the COA's finding of overpricing which was, in turn, based on the special audit team's report. The audit team's conclusion on the standard price of a walis tingting was pegged on the basis of the following documentary and object evidence: (1) samples of walis tingting without handle actually used by the street sweepers;
- (2) survey forms on the walis tingting accomplished by the street sweepers;
- (3) invoices from six merchandising stores where the audit team purchased walis tingting;
- (4) price listing of the DBM Procurement Service; and (5) documents relative to the walis tingting purchases of Las Piñas City. These documents were then compared with the documents furnished by petitioners and the other accused relative to Parañaque City's walis tingting transactions

- Notably, however, and this the petitioners have consistently pointed out, the evidence of the prosecution did not include a signed price quotation from the walis tingting suppliers of Parañaque City. In fact, even the walis tingting furnished the audit team by petitioners and the other accused was different from the walis tingting actually utilized by the Parañaque City street sweepers at the time of ocular inspection by the audit team. At the barest minimum, the evidence presented by the prosecution, in order to substantiate the allegation of overpricing, should have been identical to the walis tingting purchased in 1996-1998.

Only then could it be concluded that the walis tingting purchases were disadvantageous to the government because only then could a determination have been made to show that the disadvantage was so manifest and gross as to make a public official liable under Section 3(g) of R.A. No. 3019.

- **(h)** Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the constitution or by any law from having any interest.

## Section 3(h) Elements:

Having financial or pecuniary interest in any: (a) business, (b) contract or (c) transaction directly or indirectly

In connection with which he:

(2.a) Intervenes or

(2.b) Takes part in his official capacity or

(2.c) In which he is prohibited by the Constitution or by any law from having any interest

JAIME H. DOMINGO, G.R. No. 149175 ' Petitioner,

-versus -

HON. SANDIGANBAYAN and  
PEOPLE OF THE PHILIPPINES,  
*Respondents.*

X ----- X

DIOSDADO T. GARCIA, G.R. No. 149406  
*Petitioner,*  
PEOPLE OF THE PHILIPPINES, AZCUNA, *JJ.*  
*Respondent.*

Promulgated:  
October 25, 2005

Under Section 3(h) of R.A. 3019, the person liable is any public officer who directly or indirectly has financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The essential elements of the violation of said provision are as follows: 1) The accused is a public officer; 2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; 3) he either: a) intervenes or takes part in his official capacity in connection with such interest, or b) is prohibited from having such interest by the Constitution or by law. In other words, there are **two modes** by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The **first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law**

- Petitioner Domingo, in his official capacity as mayor of San Manuel, Isabela, violated the aforestated provision via the first mode, that is, by intervening or taking part in his official capacity in connection with his financial or pecuniary interest in the transaction regarding the supply and delivery of mixed gravel and sand to the constituent barangays



Furthermore, several other instances point to the fact that petitioner Domingo had financial interest in the questioned transaction which he attempted vainly to conceal, thus:

- First, he was the co-drawer of the two questioned checks for which he was also the payee. Said checks were allegedly applied as partial payment to the indebtedness of Anicia Garcia to his wife, Consolacion Domingo;
- Second, we agree with the Sandiganbayan in giving credence to the findings of the COA and the certification of the municipal engineer stating that he saw the trucks of Domingo being used for the delivery of gravel and sand to the different barangays
- Third, the testimony of Garcia on the following remain undisputed: 1) that he was asked to sign the Affidavit and Counter-affidavit admitting that he was the contractor for the supply and delivery of the mixed gravel and sand to the different barangays; 2) that Domingo had 'borrowed his official receipt (Official Receipt No. 229) and asked for three sales invoices; and, 3) that he agreed to sign the aforementioned documents after he was assured by Domingo that the matter had already been settled by Congressman Dy

- Fourth, the supporting documents for the issuance of the checks such as the purchase request, sales invoice and the disbursement voucher showed manifest irregularity as the signatures of some of the municipal officials that should have appeared thereon were absent, and said documents were undated. Likewise, the official receipt that was supposedly issued by D.T. Garcia Construction Supply evidencing payment for the mixed gravel and sand was undated
- Fifth, when it conducted the special audit in June of 1994, the COA team did not find a copy of the contract for the supply and delivery of the gravel and sand, and the letter of request by Garcia supposedly authorizing the municipal treasurer to issue the checks in Domingo's name
- Sixth, it has been established that the subject checks were encashed by the spouses Domingo

- Thus, in view of the above, petitioner Domingo is guilty of violating Section 3(h) of the Anti-Graft Law. As earlier mentioned, what the law prohibits is the actual intervention by a public official in a transaction in which he has a financial or pecuniary interest, for the law aims to prevent the dominant use of influence, authority and power.

**(i)** Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

**(j)** Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

## Section (i) Elements:

Becoming interested for personal gain or directly or indirectly

Having a material interest in any (a) transaction or (b) act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

directly or indirectly

\* Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

## Section (j) Elements

(1) Knowingly approving or granting any:

(a) license

(b) permit

(c) privilege or

(d) benefit

(2) In favor of any person:

(a) not qualified for or

(b) not legally entitled to such license, permit, privilege or advantage or

(c) of a mere representative or dummy of one who is not so qualified or entitled.

■ Section 3(j) case:[G.R. No. 159754. July 25, 2005]  
BORLONGAN *vs.* THE OFFICE OF THE OMBUDSMAN

In a sworn complaint-affidavit filed with the Office of the Ombudsman and thereat docketed as OMB-0-01504, petitioner Borlongan charged respondents Rafael B. Buenaventura and Norberto C. Nazareno in their respective capacities as Governor, BSP, and President, PDIC, of giving undue preference to the Land Bank of the Philippines (LBP) when they allowed LBP to enforce collection from Urban Bank Inc. on the promissory notes of the National Food Authority in the amount of P562,500,000. The ordained collection was allegedly in violation of Section 30 of RA 7653 because it was effected after UBI was already placed under receivership of the PDIC and the latter had already taken over the operations of UBI.

- Held:
- Section 3(j) of R.A. 3019, punishes the act of:
- Knowingly approving or granting any license, permit, privilege or benefit in favor of another person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.“

It is clear that respondents did not give undue preference to Land Bank of the Philippines when it allowed the latter to enforce collection on the subject National Food Authority promissory notes. Hence, no basis to charge respondent with violation of Section 3(j) of R.A. 3019.



- Respondents did not give undue preference to Land Bank of the Philippines when the latter was allowed to enforce collection on the subject National Food Authority Promissory Notes. The assignment of said NFA notes to LBP was completed on 29 March 2000 before the closure of UBI on 26 April 2000. as of that date, LBP, as assignee, had full rights to enforce collection of the subject NFA notes. Respondent Nazareno merely confirmed LBP's authority to enforce collection on the subject NFA promissory notes on the basis of the perfected Deed of Assignment executed by UBI in favor of LBP, which was notarized on 29 March 2000 or before the closure of UBI. The "confirmation of outright purchase of Government Securities" relied upon by complainant is not the document that established LBP's rights to collect the proceeds of the NFA notes. It was clear that it was the Deed of Assignment notarized on March 29, 2000, which gave LBP the right to collect. Even without the "Confirmation of Outright Purchase of Government Securities", NFA is duty bound to pay the proceeds of the NFA notes to LBP because of the provisions of the Deed of Assignment, and the fact that LBP has physical possession of the NFA notes.

- **k**) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

(1) Divulging valuable information of a confidential character

(a) acquired by his office or

(b) by him on account of his official position

(2) To unauthorized persons or

(3) Releasing such information in advance of its authorized release date.

- **Note that Secs.3 (a) (b) (c) (d) (f) (h) (i) (j) are akin to the crime of bribery**

# Crimes under the Revised Penal Code





- Direct Bribery Punishable under Article 210 of the Revised Penal Code
- Indirect Bribery Punishable under Article 211 of the Revised Penal Code



- Art. 210. *Direct bribery.* — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.
- If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift. (Revised Penal Code)



- Art. 211. *Indirect bribery*. — The penalties of *prision correccional* in its medium and maximum periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office. (Revised Penal Code)
- NOTE SIMILARITY WITH SEC.3(b) RA 3019

## ■ Direct Bribery

- 1.) There is an agreement between the public officer and the giver of the gift or present
- 2.) The offender agrees to perform or performs an act or refrains from doing something because of the gift or promise

## ■ Indirect Bribery

- 1.) No such agreement exists
- 2.) It is not necessary for the public officer to do an act or even promise To do an act, it is enough to accept gifts by reason of his office

**PRESIDENTIAL DECREE No. 46 November 10, 1972**  
**MAKING IT PUNISHABLE FOR PUBLIC OFFICIALS AND EMPLOYEES TO RECEIVE,**  
**AND FOR PRIVATE PERSONS TO GIVE, GIFTS ON ANY OCCASION, INCLUDING**  
**CHRISTMAS**

- WHEREAS, under existing laws and the civil service rules, it is prohibited to receive, directly or indirectly, any gift, present or any other form of benefit in the course of official duties;
- WHEREAS, it is believed necessary to put more teeth to existing laws and regulations to wipe out all conceivable forms of graft and corruption in the public service, the members of which should not only be honest but above suspicion and reproach; and
- WHEREAS, the stoppage of the practice of gift-giving to government men is a concrete step in the administration's program of reforms for the development of new moral values in the social structure of the country, one of the main objectives of the New Society;
- NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby make it punishable for any public official or employee, **whether of the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing to any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of his official position, regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition** is the throwing of parties or entertainments in honor of the official or employees or his immediate relatives.
- For violation of this Decree, **the penalty of imprisonment for not less than one (1) year nor more than five (5) years and perpetual disqualification from public office shall be imposed. The official or employee concerned** shall likewise be subject to administrative disciplinary action and, if found guilty, shall be meted out the penalty of suspension or removal, depending on the seriousness of the offense.



- **Possible defense of a public officer in Indirect Bribery charge.....**

# REPUBLIC ACT NO. 3019

## ANTI-GRAFT AND CORRUPT PRACTICES ACT

- **Sec. 14. *Exception.* - Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.**

What is insignificant? Who determines value? Customs or usage?

ROLANDO L. BALDERAMA, vs. PEOPLE OF THE PHILIPPINES G.R.

Nos. 147578-85, January 28, 2008

ROLANDO D. NAGAL, vs. JUAN S. ARMAMENTO,. G.R. Nos. 147598-605)

### **DIRECT BRIBERY AND INDIRECT BRIBERY:**

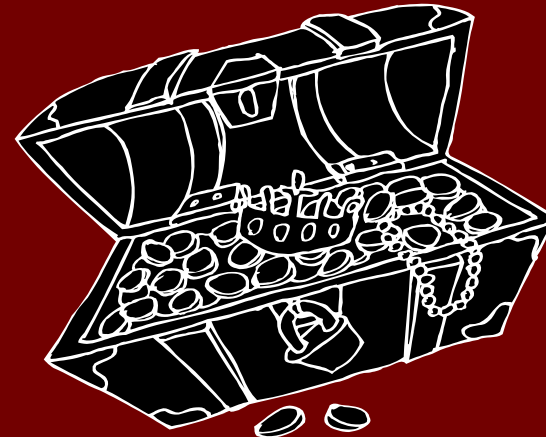
- The essential elements common to all acts of Bribery under Article 210 and 211 of the Revised Penal Code are the following:
  - 1. The offender is a public officer;
  - 2. The offender accepts an offer or promise or receives a gift or present by himself or through another;
  - 3. The offer or promise be accepted or the gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and
  - 4. The act which the offender agrees to perform or which he executes is connected with the performance of his official duties.

- It is well to note and distinguish direct bribery from indirect bribery. In both crimes, the public officer receives gift. While in direct bribery, there is an agreement between the public officer and the giver of the gift or present, in indirect bribery, usually no such agreement exists. In direct bribery, the offender agrees to perform or performs an act or refrains from doing something, because of the gift or promise. In indirect bribery, it is not necessary that the officer should do any particular act or even promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office.
- The public official who accepts the bribe is liable for the crime of bribery. On the other hand, the person who gives the bribe shall be liable for the crime of corruption of public official(Art 202 , RPC)



- Who can be liable for bribery ?
  1. Public Officers
  2. Private Persons performing public duties , e.g. court-appointed assessors , commissioners and expert witnesses

- What may a bribe consists of ?
  - Money, gift , and offer or promise of money or gift
  - That is of value or otherwise capable of pecuniary estimation



- How does the offender receive the bribe?
- He accepts or receives the bribe himself or through another
- Physical possession of the bribe money , unaccompanied by any other act or circumstance , is not sufficient to prove that the offender accepted or received the bribe.
- To do an act that is not that is not a crime but is related to duties  
e.g. appointing a qualified person, render a correct decision
- \* To fail or perform official duty  
bribe may be a gift or promise

the failure to perform official duty must not be a crime by omission

Examples: Judges, prosecutors , police, law enforcement officers, etc.

# Illegal Use of Public Funds Article 220 Revised Penal Code

- Otherwise known as Technical Malversation
- *Art. 220. Illegal use of public funds or property.* — Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification
- If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied. (Revised Penal Code)



## ■ Elements of Technical Malversation

- In the case of Norma A. Abdulla, vs. People of the Philippines **G.R. NO. 150129** April 6, 2005 it was held:

1. That the offender is a public officer;
- “2. That there is public fund or property under his administration;
- “3. That such public fund or property has been appropriated by law or ordinance;
- “4. That he applies the same to a public use other than that for which such fund or property has been appropriated by law or ordinance.



- Example is when funds budgeted for a particular purpose are used for another purpose , e.g. funds released for capital expenditure(ASSETS) are used to pay for consultants fee
- The DBM's Notice of Allotment is NOT the ordinance or law contemplated in Article 220; hence the application of funds for a purpose different from that stated in the Notice of Allotment, in this case, one allowance instead of another , does not constitute technical malversation, provided both fall within the same budgetary appropriation (Abdullah vs. People GR No. 150129 April 6, 2005)

Example : Mayor , Nueva Viscaya

- Art. 218. *Failure of accountable officer to render accounts.* — Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by *prision correccional* in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both. (Revised Penal Code)

- Elements:

- Public Officer
- In service or separated by resignation or other cause;
- Legally required to render an account to the proper officer
- Fails to do so within 2 months from the time required to do so

- Art. 219. *Failure of a responsible public officer to render accounts before leaving the country.* — Any public officer who unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Insular Auditor showing that his accounts have been finally settled, shall be punished by *arresto mayor*, or a fine ranging from 200 to 1,000 pesos or both

- Elements:

- Public Officer
- Unlawfully leaves or attempts to leave the country without a certification clearing him of accountability





- Art. 221. *Failure to make delivery of public funds or property.* — Any public officer under obligation to make payment from Government funds in his possession, who shall fail to make such payment, shall be punished by *arresto mayor* and a fine from 5 to 25 per cent of the sum which he failed to pay.
- This provision shall apply to any public officer who, being ordered by competent authority to deliver any property in his custody or under his administration, shall refuse to make such delivery.
- The fine shall be graduated in such case by the value of the thing, provided that it shall not less than 50 pesos. (Revised Penal Code)

## ■ Elements:

- Public Officer
- Legally required to pay money or deliver property
- Unjustifiably fail or refuse to make such payment or delivery

\*Example: Issued a government property , failed to return



- Article 221 is intended to discourage public officers from taking an interest in, and subsequently misappropriating funds, or property which are in their possession and which they are required to deliver. Thus from a purely legal standpoint, Art, 221 is intended to prevent n the more serious felony of malversation. Alternatively , it may be viewed as that stage in the process of malvesation during which the offender is contemplating the felony but before the onset of the attempted stage.



- Art. 217. *Malversation of public funds or property; Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property (Revised Penal Code)



- The essential elements common to all acts of malversation under Article 217 of the Revised Penal Code are the following:
  - 1. That the offender be a public officer.
  - 2. That he had the custody or control of funds or property by reason of the duties of his office.
  - 3. That those funds or property were **public funds or property for which he was accountable.**
  - 4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. (Milagros L. Diaz vs. Sandiganbayan, 302 SCRA 130).



- Malversation may be committed either by direct participation or by negligence. Considering that the crime may be committed by negligence, the defense of good faith is available to the accused.
- Prior demand is not an essential element of the crime of malversation as compared to estafa. There is malversation when a public officer responsible for the custody or safekeeping of the funds will fail to account or will fail to give a satisfactory explanation as to what happened to the funds when asked to do so by a competent authority.
- In a long line of cases, it has been the consistent holding of the Supreme Court that “prior demand” is a mere rule of evidence, intended to provide a prima facie evidence for the prosecution to the effect that **whenever a public officer fails to produce on demand any accountable fund or property entrusted to him, it should be presumed that he has utilized the missing fund or property for his personal use.** In the same manner that **restitution or payment of the amount malversed is a mere mitigating circumstance.**

## Examples:

- Malversation- FIDA Treasurer
- Sibug case-cash advances

- unlike estafa, damage is not an element, since damage is not an element of the offense, return or reimbursement of the misappropriated money is not a defense...At most it is a mere mitigating circumstance( Perez vs. People GR No. No 145229 April 24, 2006,
- Direct evidence of misappropriation **is not necessary** to convict one for malversation. In its place the law raises a presumption of malversation of public funds or property from the offender's failure to present the same upon proper demand

# Important Provisions of Law relating to Budget Officers

# Republic Act 7160

## Local Government Code

### CHAPTER IV

### Expenditures, Disbursements, Accounting and Accountability

**Section 340.** *Persons Accountable for Local Government Funds.* –

Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, **though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.**

**Section 344. Certification, and Approval of, Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose,** the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

## **ARTICLE V**

### **The Budget Officer**

#### **Section 475.** *Qualifications, Powers and Duties.*

(a) No person shall be appointed budget officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in accounting, economics, public administration or any related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in government budgeting or in any related field for at least five (5) years in the case of the provincial or city budget officer, and at least three (3) years in the case of the municipal budget officer.

The appointment of a budget officer shall be mandatory for the provincial, city, and municipal governments.

(b) The budget officer shall take charge of the budget office and shall:

- (1) Prepare forms, orders, and circulars embodying instructions on budgetary and appropriation matters for the signature of the governor or mayor, as the case may be;
- (2) Review and consolidate the budget proposals of different departments and offices of the local government unit;
- (3) Assist the governor or mayor, as the case may be, in the preparation of the budget and during budget hearings;
- (4) Study and evaluate budgetary implications of proposed legislation and submit comments and recommendations thereon;
- (5) Submit periodic budgetary reports to the Department of Budget and Management;



(6) Coordinate with the treasurer, accountant, and the planning and development coordinator for the purpose of budgeting;

(7) Assist the sanggunian concerned in reviewing the approved budgets of component local government units;

(8) Coordinate with the planning and development coordinator in the formulation of the local government unit development plan; and

(c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

(d) The appropriations for personal services of the budget officer provided under the Department of Budget and Management shall, upon effectivity of this Code, be transferred to the local government unit concerned. Thereafter, the appropriations for personal services of the budget officer shall be provided for in full in the budget of the local government unit.

Decided Case involving a Budget Officer

**G.R. Nos. 75440-43 February 14, 1989**

**ALEJANDRO G. MACADANGDANG**, petitioner,

vs.

**HON. SANDIGANBAYAN (Third Division) and PEOPLE OF THE PHILIPPINES**, respondents

- Alejandro G. Macadangdang, budget officer of the Bureau of Posts for the Province of La Union, five other postal officials of the province, the auditing examiner and property inspector of the Provincial Auditor's Office and three private persons dealing with them were charged in four (4) informations for estafa through falsification of public documents filed with the Sandiganbayan. The charges arose out of the loss of P26,523.00 resulting from falsified vouchers for the repair of postal vehicles in La Union when no such repairs were made.

- The four informations are identical except for the amounts, the vehicles, and the private persons involved in each case.

The information in Criminal Case No. 6681 states:

That on or about the 23rd day of May, 1980, in San Fernando, La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Genaro Basilio, Regional Director; Alejandro G. Macadangdang, Budget Officer; Agustin V. Talino, Accountant III; Bernardo Togade, Administrative Assistant III; Ernesto Larra, Supply Officer; Pio Ulat, Motorpool Dispatcher; all of the Bureau of Post of La Union and Renato Valdez, Auditing Examiner & Property Inspector of the Provincial Auditor's Office of La Union; hence, are public officers, taking advantage of their respective official positions and committing the aforesaid offense in relation to their office, and Benjamin Flora, a private individual, conspiring, confederating and mutually helping each other with deliberate intent, did then and there wilfully, unlawfully and feloniously defraud the Republic of the Philippines by falsifying public documents in the following manner, to wit: 'By making it appear in an Abstract of Bid that Flora Ben Motor Works owned by accused Benjamin Flora submitted a bid for P7,600.00 representing the cost of materials and value of labor for Mail Toyota Jeep J-10 of the La Union Post Office, when they very well know that no such bid was submitted and caused the preparation of a general voucher where they made it appear that Flora Ben Motor Works had a credit collectible against the Bureau of Post of La Union for P7,600.00 for the repair of the above- mentioned vehicle, when the accused well know that no such repair was made and consequently, there is no such collectible credit and thereafter received the check corresponding to the voucher prepared which check they subsequently encashed and appropriated to their own personal use and benefit to the damage and prejudice of the Republic of the Philippines in the above-mentioned amount.

In criminal Case No. 6682 — 1) the amount misappropriated was P4,723.00; 2) the vehicle involved was identified as Philippine Mail Truck FF-45; and 3) the firm which allegedly supplied labor and materials for the repair of the subject vehicle was the Flora Ben Motor Works, owned by accused Benjamin Flora.

In Criminal Case No. 6683 — 1) the amount misappropriated was P7,500.00; 2) the vehicle which was supposed to be repaired was identified as Mail Truck DT-320; and 3) the repair of the subject vehicle was supposed to have been made by a machine shop owned by accused Carlos Soliman.

In Criminal Case No. 6684 — 1) the amount misappropriated was P6,700.00; 2) the vehicle involved was identified as Isuzu Mail Truck V-155; and 3) the repair of this vehicle was supposed to have been made by the Maglaya Motor Works owned by accused Rodrigo Maglaya.

When arraigned, all the accused pleaded "Not Guilty", Upon agreement of the parties, all the cases were tried jointly. However, after the presentation of the prosecution's evidence, accused Basilio, Talino, and Macadangdang were granted separate trials.

After trial on the merits, the Court found the government officers, namely: 1) Genaro T. Basilio, Pio Ulat, Renato M. Valdez, Agustin V. Talino and Alejandro G. Macadangdang guilty as charged. The private persons, Benjamin Flora, Carlos Soliman and Rodrigo Maglaya were acquitted.

The records show that the Sandiganbayan convicted Macadangdang because it suspected his alleged complicity when he failed to detect an obvious irregularity in the vouchers presented to him for signature. The petitioner now contends that the prosecution's evidence was wanting to prove his participation in the conspiracy to commit the crimes; that he signed and initialed the four subject vouchers in lawful performance of his duty as budget officer without any criminal intent; that as budget officer he had no legal duty to go beyond what appears on the face of the documents supporting the vouchers, much less as to the details or sidelights of the transaction as this duty properly pertains to the officers of the Bureau who individually prepared the documents; that after determining that all the supporting papers are complete and in order, it becomes a ministerial duty on his part to issue the request for obligation of allotment and that he could not have verified the details relating to the cancellation of the first set of vouchers in the morning of May 23, 1980 and the submission to him of a second set of vouchers in favor of another repair shop, considering the bulk of the other equally important documents and transactions likewise requiring his preferential attention on the same day.



The petitioner's insistent arguments in his motion for reconsideration and the respondent's brief two-page comments lead us to carefully reconsider the records as they specifically bear on the charges against him.

It may be recalled that the Sandiganbayan convicted the petitioner on its finding that he conspired with his co-accused government officers to commit the four cases of estafa through falsification of public documents. The lower court arrived at this conclusion because the petitioner did not question the "obvious irregularity" in the preparation of three of the four subject vouchers before affixing his signatures on them. According to the court, the "obvious irregularity" is shown by the following facts: 1) In the morning of May 23, 1980, the petitioner signed the Request for Obligation of Allotment" (ROA) based on four vouchers, one in favor of Soliman and the others in favor of D'Alfenor Motor Shop; 2) In the afternoon of the same day, with D'Alfenor Motor Shop no longer existing and with three new vouchers on his desk covering the same transaction as those he had signed in the morning, the only difference being the name of the creditors (first three (3) new vouchers of D'Alfenor Motor Shop while the three (3) new vouchers were in favor of accused Maglaya and Flora Ben Motor Shop) he again signed the vouchers notwithstanding the fact that both sets of vouchers were supported by the same documents.

Is there evidence beyond reasonable doubt to show conspiracy with the other accused?

XXX

**The records show that the only participation of the budget officer in the alleged conspiracy was to obligate and allot funds. His job was to certify to the availability of funds and to segregate those funds in the books once allotted. It was not his job to directly attend to the inspection of vehicles, the ascertainment of whether or not repairs were needed, the bidding and awards to repair shops, and the determination of whether or not the repairs were effected pursuant to specifications in the contracts. More particularly, he had nothing to do with the abstract of bids which were falsified to make it appear that the accused private persons participated in the bidding when in truth, they did not do so.**

**Simply because a person in a chain of processing officers happens to sign or initial a voucher as it is going the rounds, it does not necessarily follow that he becomes part of a conspiracy in an illegal scheme.** The guilt beyond reasonable doubt of each supposed conspirator must be established. It is all too easy to be swept into a long prison term simply because the guilt of some conspirators is overwhelming and somehow it attaches to all who happen to be charged in one indictment.

*There is no testimony in the records to show the petitioner's participation in the conspiracy. **The only material proofs forming the basis for conviction are his signatures on the vouchers and the request for obligation of allotment.*** The petitioner explains his not having questioned the three new vouchers in the afternoon of May 23, 1980 by stating that he had so many documents and transactions to attend to them. He explains that it was humanly impossible to have known that the second set of vouchers covered the same three (3) vehicles under the first set of vouchers.

In other words, he failed to recall the plate numbers of the vehicles in the morning vouchers when confronted with the same plate numbers in the afternoon. The supporting documents were all properly signed, complete, and in order. We give the benefit of the doubt, given two possible explanations — one, he was aware all along of the falsification and two, he signed the papers routinely and perhaps even carelessly, but not with criminal intent.

Under these circumstances, we find that the petitioner, a mere budget officer, signed the vouchers and prepared the necessary "Request for Obligation and Allotment" as part of standard operating procedures. It does not follow that he was part of the conspiracy to defraud. The petitioner claims that as a budget officer he had no authority or duty to go beyond what appears on the face of the documents supporting the vouchers, as this duty properly belongs to the other officers who individually prepared the documents. He should have been more careful. His lack of care, however, may be ground for administrative action but it does not give rise to criminal culpability absent more evidence against him.

Every person who signs or initials documents in the course of their transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence.

We reiterate our ruling in *People v. Reyes* (60 SCRA 126, 129 [1974]):  
Considering the testimony of record, it cannot be plausibly maintained that the constitutional presumption of innocence had been overcome by proof beyond reasonable doubt. What was said by this Court in *People v. Dramayo* (42 SCRA 59) has pertinence: 'Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon them to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. *Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.*

WHEREFORE, the petitioner's motion for reconsideration is GRANTED. The decision of the Sandiganbayan is MODIFIED in that the petitioner **Alejandro Macadangdang** **is ACQUITTED** of the FOUR (4) CRIMES of ESTAFA through falsification of public documents in Criminal Cases Numbered 6681, 6682, 6683 and 6684 on grounds of reasonable doubt.



**RULES ON CRIMINAL IMMUNITY**  
**UNDER**  
**PHILIPPINE LAWS**



## **PRESIDENTIAL DECREE No. 749 July 18, 1975**

### **GRANTING IMMUNITY FROM PROSECUTION TO GIVERS OF BRIBES AND OTHER GIFTS AND TO THEIR ACCOMPLICES IN BRIBERY AND OTHER GRAFT CASES AGAINST PUBLIC OFFICERS**

WHEREAS, public office is a public trust: public officers are but servants of the people, whom they must serve with utmost fidelity and integrity;

WHEREAS, it has heretofore been virtually impossible to secure the conviction and removal of dishonest public servants owing to the lack of witnesses: the bribe or gift-givers being always reluctant to testify against the corrupt public officials and employees concerned for fear of being indicted and convicted themselves of bribery and corruption;

WHEREAS, it is better by far and more socially desirable, as well as just, that the bribe or gift giver be granted immunity from prosecution so that he may freely testify as to the official corruption, than that the official who receives the bribe or gift should be allowed to go free, insolently remaining in public office, and continuing with his nefarious and corrupt practices, to the great detriment of the public service and the public interest.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree and order that:

**Section 1.** Any person who voluntarily gives information about any violation of Articles 210, 211, and 212 of the Revised Penal Code; Republic Act Numbered Three Thousand Nineteen, as amended; Section 345 of the Internal Revenue Code and Section 3604 of the Tariff and Customs Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned; and other laws, rules and regulations punishing acts of graft, corruption and other forms of official abuse and who willingly testifies against any public official or employee for such violation shall be exempt from prosecution or punishment for the offense with reference to which his information and testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: Provided; that this immunity may be enjoyed even in cases where the information and testimony are given against a person who is not a public official but who is a principal, or accomplice, or accessory in the commission of any of the above-mentioned violations:

Provided, further, that this immunity may be enjoyed by such informant or witness notwithstanding that he offered or gave the bribe or gift to the public official or his accomplice for such gift or bribe-giving; and Provided, finally, that the following conditions concur:

- 1. The information must refer to consummated violations of any of the above-mentioned provisions of law, rules and regulations;**
- 2. The information and testimony are necessary for the conviction of the accused public officer;**
- 3. Such information and testimony are not yet in the possession of the State;**
- 4. Such information and testimony can be corroborated on its material points; and**
- 5. The informant or witness has not been previously convicted of a crime involving moral turpitude.**

**Section 2.** The immunity granted hereunder shall not attach should it turn out subsequently that the information and/or testimony is false and malicious or made only for the purpose of harassing, molesting or in any way prejudicing the public officer denounced. In such a case, the public officer so denounced shall be entitled to any action, civil or criminal, against said informant or witness.

**Section 3.** All preliminary investigations conducted by a prosecuting fiscal, judge or committee, and all proceedings undertaken in connection therewith, shall be strictly confidential or private in order to protect the reputation of the official under investigation in the event that the report proves to be unfounded or no prima facie case is established.

**Section 4.** All acts, decrees and rules and regulations inconsistent with the provisions of this decree are hereby repealed or modified accordingly.

**Section 5.** This Decree shall take effect immediately.

Republic Act No. 6770

November 17, 1989

*"The Ombudsman Act of 1989".*

**Section 17. Immunities.**

XXXX

Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman **may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.**

**Republic Act No. 6981**

**April 24, 1991**

**AN ACT PROVIDING FOR A WITNESS PROTECTION, SECURITY AND  
BENEFIT PROGRAM AND FOR OTHER PURPOSES**

**Section 3. Admission into the Program.** - Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program:

Provided, That:

- a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;
- b) his testimony can be substantially corroborated in its material points;
- c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony; and
- d) he is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act.

**Section 5. Memorandum of Agreement With the Person to be Protected.** - Before a person is provided protection under this Act, he shall first execute a memorandum of agreement which shall set forth his responsibilities including:

- a) to testify before and provide information to all appropriate law enforcement officials concerning all appropriate proceedings in connection with or arising from the activities involved in the offense charged;
- b) to avoid the commission of the crime;
- c) to take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under this Act;
- d) to comply with legal obligations and civil judgments against him;
- e) to cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under this Act; and
- f) to regularly inform the appropriate program official of his current activities and address

**Section 8. *Rights and Benefits.*** - The witness shall have the following rights and benefits:

- (a) To have a secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level. When the circumstances warrant, the Witness shall be entitled to relocation and/or change of personal identity at the expense of the Program. This right may be extended to any member of the family of the Witness within the second civil degree of consanguinity or affinity.
  
- (b) The Department shall, whenever practicable, assist the Witness in obtaining a means of livelihood. The Witness relocated pursuant to this Act shall be entitled to a financial assistance from the Program for his support and that of his family in such amount and for such duration as the Department shall determine.



(c) In no case shall the Witness be removed from or demoted in work because or on account of his absences due to his attendance before any judicial or quasi-judicial body or investigating authority, including legislative investigations in aid of legislation, in going thereto and in coming therefrom: Provided, That his employer is notified through a certification issued by the Department, within a period of thirty (30) days from the date when the Witness last reported for work: Provided, further, That in the case of prolonged transfer or permanent relocation, the employer shall have the option to remove the Witness from employment after securing clearance from the Department upon the recommendation of the Department of Labor and Employment.

Any Witness who failed to report for work because of witness duty shall be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the Program. For purposes of this Act, any fraction of a day shall constitute a full day salary or wage. This provision shall be applicable to both government and private employees.

d) To be provided with reasonable travelling expenses and subsistence allowance by the Program in such amount as the Department may determine for his attendance in the court, body or authority where his testimony is required, as well as conferences and interviews with prosecutors or investigating officers.

(e) To be provided with free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered by him because of witness duty in any private or public hospital, clinic, or at any such institution at the expense of the Program.

(f) If a Witness is killed, because of his participation in the Program, his heirs shall be entitled to a burial benefit of not less than Ten thousand pesos (P10,000.00) from the Program exclusive of any other similar benefits he may be entitled to under other existing laws.

(g) In case of death or permanent incapacity, his minor or dependent children shall be entitled to free education, from primary to college level in any state, or private school, college or university as may be determined by the Department, as long as they shall have qualified thereto.

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**Section 10. State Witness.** - Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:

- (a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
- (b) there is absolute necessity for his testimony;
- (c) there is no other direct evidence available for the proper prosecution of the offense committed:
- (d) his testimony can be substantially corroborated on its material points;
- (e) **he does not appear to be most guilty; and**
- (f) he has not at any time been convicted of any crime involving moral turpitude.

# RULES OF COURT

## RULE 119

### Trial

**Section 17.** *Discharge of accused to be state witness.* — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, **the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state** when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement **shall be inadmissible in evidence.**

<b>Under PD No. 749 July 18, 1975</b> -----	<b>Under <u>Ombudsman Law</u></b> -----	<b>Rules Of Court</b> -----	<b>Under WPP</b> -----
<b>Immunity from the start</b>	<b>Immunity from the start</b>	<b>Initially charged later discharge</b>	<b>Coverage from the start</b>
<b>No material benefits (anti graft cases only)</b>	<b>No material benefits            * Cases covered by Ombudsman jurisdiction( anti graft, etc.)</b>	<b>No material benefits(all cases)</b>	<b>With benefits granted under Section 8 (all cases)</b>

***Corruption has  
never been  
compulsory***

Robert Anthony Eden, British Conservative politician and  
Former Great Britain Prime Minister from 1955 to 1957.



Thank you  
and have a  
good day!

**ASP III JOSE M. BALMEO, JR.**

[jn\\_balmeo@yahoo.com](mailto:jn_balmeo@yahoo.com)

09175712184