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S E N A T E

RECORDED BY: 

COMMITTEE REPORT NO. 196

Submitted by the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) on DEC 12 2017.

Re: **Bureau of Immigration Extortion Scandal**

Recommending its approval.

Sponsor: Senator Richard J. Gordon

MR. PRESIDENT:

The Committee on Accountability of Public Officers and Investigations (Blue Ribbon) has conducted an inquiry, *motu proprio*, in aid of legislation, on **the Bureau of Immigration Extortion Scandal**

The Committee has the honor to submit its Report, after conducting an inquiry, to the Senate.

Recommending the adoption of the recommendations contained herein.

Bureau of Immigration Extortion Scandal
Committee Report

Evil is not just a theory or paradox, but an actual entity that exists only for itself. From its ether of manifestation that is garlanded in perpetual darkness, it not only influences and seeks the ruination and destruction of everything that resides in our universe, but rushes to embrace its own oblivion as well.

To accomplish this, however, it must hide within the shroud of lies and deceit it spins to manipulate the weak-minded as well as those who choose to ally themselves with it for their own personal gain. For evil must rely on the self-serving interests of the arrogant, the lustful, the power-hungry, the hateful, and the greedy to feed and proliferate. This then becomes the condition of evil's existence: the baneful ideologies of those who wantonly chose to ignore the needs and rights of others, inducing oppression, fear, pain, and even death throughout the cosmos. And by these means, evil seeks to supplant the balance of the universe with its perverse nature.

And once all that was good has been extinguished by corruption or annihilation, evil will then turn upon and consume what remains: particularly its immoral servants who have assisted its purpose so well ... along with itself. And within that terrible instant of unimaginable exploding quantum fury, it will burn brighter than a trillion galaxies to herald its moment of ultimate triumph. But a moment is all that it shall be. And a micro-second later when the last amber burns and flickers out to the demise of dissolving ash, evil will leave its legacy of a totally devoid universe as its everlasting monument to eternal death.

— R.G. Risch, Beyond Mars: Crimson Fleet

PRELIMINARIES

For the love of money is a root of all kinds of evil: which some reaching after have been led astray from the faith, and have pierced themselves through with many sorrows.

1 Timothy 6:10

English Revised Version

It is often said that the inordinate love of money is the root of all kinds of evil. In fact, it is this love of money that leads people to gamble. Some gamble with their fortunes. Others, gamble with their careers. However, there are some who gamble using their resources to get special favors from public officers whose love for money makes it impossible for them to resist the seduction of wealth. And this is where the Bureau of Immigration extortion scandal begins and ends – the failure of public officers to resist the lure of money- officials getting their hands grubby with filthy lucre.

On June 30, 2016, the new administration entered government with a strong battle cry to rid this country of graft and corruption. The current administration also recognizes the strong correlation of corruption with gambling and everything else connected with it.

As early as September 20, 2016, by order of the President, Executive Secretary Salvador Medialdea issued Memorandum Circular 6 which reiterates the basic tenet of public service found in Section 2 of the Code of Conduct and Ethical Standards for Public Officials and Employees which provides: "It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest."

Memorandum 6 entitled, **ENJOINING ALL GOVERNMENT OFFICIALS AND EMPLOYEES TO STRICTLY OBSERVE AND COMPLY WITH THE PROHIBITION**

AGAINST GOING TO GAMBLING CASINOS. This prohibition addressed to all public officers is a stern warning: for public officers to stay away from gambling in all its forms. Moreover, it is a reiteration that perception in public office is of utmost importance.

This Memorandum is a careful reminder to all public officers- elected or appointed- about accountability. As Edmund Burke once said: "All persons possessing any portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author, and Founder of society."

The Bureau of Immigration extortion scandal is a story about a junket operator corrupting, at least, two high-ranking public officials who were not able to resist the allure of bribe money.

This Bureau of Immigration extortion scandal involved two high-ranking public officials who are both lawyers from the Bureau of Immigration (BI), an agency under the control and supervision of the Department of Justice (DOJ). These lawyers are Associate Commissioners of the Bureau of Immigration who enjoy the rank of Assistant Secretaries. They were presumably appointed to bring reforms in the Bureau. Ironically, it is not reform that they brought to the Bureau, but abasement.

This scandal is a story of greed of two Bureau of Immigration Associate Commissioners who tried to make a fast buck by allowing themselves to be bribed by a foreign gambling tycoon. They did not only betray public trust but they also made a mockery of the anti-corruption battle cry of the current administration, which had appointed them.

The scandal is about public officers, presumed to be partners for change; but, who turned out to be the enemies of change. It is a scandal about how two lawyers gave in to the temptation of extortion of a gaming mogul in exchange for the release of the latter's 1,316 Chinese-national employees who were arrested for illegally working at Jack Lam's online casino at Fontana Leisure Parks and Casino in Clark Field, Pampanga.

And who is Jack Lam?

Jack Lam (Lam Yin Lok) was born in Guangzhou, China in 1961. He, then, moved to Hong Kong in 1979 to work in a factory with his uncle. In 1981, after years of joining his uncle's gambling trips to Macau, Lam began working in the industry as a sub-agent.

A Shanghai Business Review (SBR) report in 2015 described Lam as someone who was natural with rich gamblers as he "well understood their motivations and catered to their every whim, allowing him to reach the top of the ultimate service industry."¹

It is said that Lam's undeniable rapport with "legendary kingpins" helped him build his gambling empire.

With 30 years of experience in the gaming and gambling industry, Lam became one of the most important figures in the Macau gaming industry. In 2009, he was named by the Global Gambling Business Magazine as one of the Ten Most Influential People in Gaming.²

Jimei International Entertainment Group, which Lam chairs, holds two of Macau's top-notch companies: Las Vegas Sands and Wynn Macau. The company is often referred to as one of the "Largest VIP Junket Operators in Asia."³

Lam is also a member of the Guangdong Provincial Committee of The Chinese People's Political Consultative Conference, General Chairperson of the Federation of Hong Kong Guangdong Community Organizations, and a Director of the China Overseas Friendship Association.

Lam's businesses include real estate development and hotel and resort operations. He also has securities and investments in Hong Kong, China, and in the

¹ A Roll of the Dice The Magical Life of Dr. Jack Lam, <http://www.sbrchina.com/a-roll-of-the-dice-the-magical-life-of-dr-jack-lam/> (last accessed 26 June 2017)

² Gaming's 10 Most Influential People, <https://ggbmagazine.com/article/gaming-s-10-most-influential-people/> (last accessed 26 June 2017)

³ Id.

Philippines. His ventures in the Philippines include the 300-hectare Fontana and Fort Ilocandia Hotel.

Lam had already been previously involved in the gambling industry in the Philippines in the late 90s, and reportedly held sway in local gambling operations. He was viewed as god walking on water, as it were.

However, Lam's gambling operations were not without the stench of alleged illegal activities. He possessed a license to operate gambling operations in the north (Cagayan Export Zone); but that license was utilized as permission to operate gambling activities in Clark. This clearly is irregular, if not anomalous and illegal. As proof, he had some 1,316 Chinese nationals working illegally in one of his casinos. Hence, the arrest of these illegal aliens is the origin of this Bureau of Immigration extortion scandal, involving high-ranking officers of the BI.

Lam knowing how human nature works and how the enticement of money can buy a weak soul, found a broker who could act as his liaison officer in contacting the Bureau of Immigration officials who can help him free his employees.

To facilitate the discussion of the findings of the Blue Ribbon's inquiry in aid of legislation, this Committee Report is divided into five parts. After the Introduction in Part I, the Background of the Probe is found in Part II. Thereafter, Part III involves Identification of Issues. Part IV is the Discussion of the Issues and the fifth and last part contain Recommendations.

I- INTRODUCTION

We believe above all else that those who hold in their hands the power of government must themselves be independent—and this kind of independence means the wisdom, the experience, the courage to identify the special interests and the pressures that are always at work, to see the public interest steadily, to resist its subordination no matter what the political hazards.

— Adlai Stevenson

The serious allegations hurled against Bureau of Immigration Associate Commissioners Atty. Michael Robles and Atty. Al Argosino which include violations of the Philippine Immigration Law (Commonwealth Act No. 613), the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), the Plunder Law (R.A. No. 7080) as amended (R.A. No. 7659), and the Revised Penal Code, among others, made headlines during the last quarter of 2016 and the first quarter of 2017.

Public interest on the issue had escalated to a degree that there was an outcry for public accountability during the height of the investigations, most especially because the reputation of the new administration running on an anti-corruption platform had been tarnished by the brouhaha brought about by this scandal.

Hence, on January 16, 2017, your Chairman of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), decided to conduct an inquiry, in aid of legislation, *motu proprio*, into the scandal that has brought dishonor and utter disgrace, not only to the Philippine government, but to the entire Filipino nation. This investigation is in accordance with Rule 10, Section 13, Subsection 37 of the Rules of the Senate, which provides, quoted hereunder:

Committee on Accountability of Public Officers and Investigations. - Seventeen (17) members. All matters relating to, including investigation of, malfeasance, misfeasance and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions and instrumentalities; implementation of the provision of the Constitution on nepotism; and investigation of any matter of public interest ***on its own initiative*** or brought to its attention by any member of the Senate. (emphasis supplied)

Considering that also at the heart of the issue of this scandal are the legal status and the freedom of foreign workers in casinos, Senator Joel Villanueva, in his preliminary statement, said: *"I think this investigation is crucial because it will also shed*

On November 25, 2016, Jack Lam, owner of the Hong Kong-listed Jimei

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*light on several issues surrounding the issuance of visa or working permits to foreign nationals.*⁴

Thence, in order to ferret out the truth, to provide clarity to the situation and to determine whether or not remedial legislation is necessary, the Committee on Accountability of Public Officers and Investigations has conducted five (5) public hearings scheduled as follows:

- 1.) First Public Hearing - January 23, 2017
- 2.) Second Public Hearing - January 31, 2017
- 3.) Third Public Hearing - February 9, 2017
- 4.) Fourth Public Hearing - February 16, 2017
- 5.) Fifth Public Hearing - March 9, 2017

II- BACKGROUND

If you look at great human civilizations, from the Roman Empire to the Soviet Union, you will see that most do not fail simply due to external threats but because of internal weakness, corruption, or a failure to manifest the values and ideals they espouse.

— Cory Booker

On November 24, 2016, by virtue of a mission order, the Bureau of Immigration (BI), together with the Department of Justice (DOJ), and with the help of the Special Action Force (SAF), conducted a raid at the Fontana Leisure Parks and Casino in Clark, Pampanga, which is owned by Jack Lam or Lam Yin Lok of Jimei Corporation. The raid was conducted due to the reports of violations of several immigration laws and laws on illegal gambling, especially illegal online gaming.

The DOJ and the BI arrested and detained 1,316 Chinese nationals: for overstaying; for working in violation of the limitations and conditions of their visa; and for engaging in an unlicensed online gaming business. According to DOJ Secretary Vitaliano N. Aguirre II, it was the biggest arrest made by the DOJ and the BI.

⁴ TSN: Mhulep III-1 January 23, 2017, 10:32 a.m., page 6.

Secretary Aguirre: *"Pwede ba ang Secretary of Justice na ang magninong na kay Jack Lam?"*⁵

In response, DOJ Secretary Aguirre rejected the proposal because he knew where the conversation would lead them.

Subsequently, on the early morning of November 27, 2016 and after waiting for seven to eight hours, Sombero reportedly handed over P50 million in five paper bags containing P10 million each to Bureau of Immigration Associate Commissioners Argosino and Robles as "goodwill money" at the Erwin's Gastrobar, City of Dreams.

According to Sombero, the handing over of the P50 million pesos to Associate Commissioners Argosino and Robles was properly recorded by the closed-circuit television (CCTV) at the City of Dreams.

Subsequently, on November 29, 2016, like a thief in the night, Lam left the Philippines via Cathay Pacific Airlines bound for Hong Kong.

On November 30, 2016, Sombero and the Bureau of Immigration Intelligence Officer Calima allegedly set up an entrapment operation for Associate Commissioners Argosino and Robles but the two failed to appear on the designated meeting time and at the designated meeting place.

Quite interestingly, on December 10, 2016, columnist Ramon Tulfo wrote in his column in Philippine Daily Inquirer that Associate Commissioners Argosino and Robles, allegedly extorted money from Lam, through Sombero, in exchange for the release of 600 undocumented Chinese workers who were among those arrested at the Fontana Leisure Park and Casino.

On December 12, 2016, presumably because of the allegations of corruption, BI Associate Commissioners Argosino and Robles filed leaves of absence.

⁵ TSN: Jmbaisa V-1 January 23, 2017, 10:52 a.m., pages 3-4.

Thereafter, on December 13, 2016, Associate Commissioners Argosino and Robles admitted to accepting P50 million from gambling tycoon Jack Lam, but insisted they only did so as part of a "case build-up" against the Macau-based businessman. They also asserted that P2 million of the P50 million went to former police official Wally Sombero, while P18 million was pocketed by BI Intelligence officer Charles Calima. Thereafter, both Associate Commissioners filed a criminal case against Lam, Sombero, Ng, Yu, and Calima for Corruption of Public Officials and Violation of R.A. No. 4200. For his part, DOJ Secretary Aguirre released a Department Order relieving/dismissing retired Police Director Charles Calima of the Bureau of Immigration.

On December 14, 2016, DOJ Secretary Vitaliano Aguirre III recommended the termination of Associate Commissioners Argosino and Robles from government service for alleged corruption. In DOJ Secretary Aguirre's letter to President Rodrigo Duterte, he said that he is recommending their dismissal over apparently strong allegations that the two Associate Commissioners received P50 million from gambling tycoon Lam, as well as irregularities in the Bureau operations at the Fontana Leisure Park in Pampanga in November.

On December 16, 2016, Sombero filed a graft complaint against Associate Commissioners Robles and Argosino before the Office of the Ombudsman.

On December 17, 2016, President Duterte dismissed Associate Commissioners Argosino and Robles because of the allegations of corruption against them.

Given the chain of events, considering the magnitude of scandal and amount of money involved and, and for public interest, it is only befitting to unravel the truth, expose the offenders, and determine remedial measures or legislations necessary.

III- ISSUES

In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it, and it will rise up a thousand fold in the future. When we neither punish nor reproach evildoers . . . we are ripping the foundations of justice from beneath new generations.

— Alexander Solzhehnitsyn

The major issues that need to be resolved in this inquiry in aid of legislation are:

A.

WHETHER OR NOT A VIOLATION OF REPUBLIC ACT NO. 3019, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, HAS BEEN COMMITTED, PARTICULARLY SECTION 3 PARAGRAPH (B) THEREOF.

B.

WHETHER OR NOT DIRECT BRIBERY UNDER ARTICLE 210 OF THE REVISED PENAL CODE HAS BEEN COMMITTED.

C.

WHETHER OR NOT THE PHILIPPINE IMMIGRATION LAW AND OTHER RELATED LAWS HAVE BEEN VIOLATED.

D.

WHETHER OR NOT THE CRIME OF PLUNDER WAS COMMITTED HERE

IV- DISCUSSION

There is no more dangerous menace to civilization than a government of incompetent, corrupt, or vile men.

-Ludwig von Mises

A.

WHETHER OR NOT A VIOLATION OF REPUBLIC ACT NO. 3019, OTHERWISE KNOWN AS THE ANTI-GRAFT AND

**CORRUPT PRACTICES ACT, HAS BEEN COMMITTED,
PARTICULARLY SECTION 3 PARAGRAPH (B) THEREOF.**

During the First Public Hearing conducted by the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) last January 23, 2017, it was revealed that a large amount of money had exchanged hands at the City of Dreams which stemmed from the arrest and detention of 1,316 Chinese nationals at the Fontana Leisure Parks and Casino in Clark, Pampanga.

As the hearing progressed, two Bureau of Immigration (BI) Associate Commissioners, namely, Atty. Al C. Argosino and Atty. Michael B. Robles were found to have received P50 million pesos from Wenceslao "Wally" Sombero.

Argosino knew of the fact that Sombero was looking for a "ninong" or sponsor at the Bureau of Immigration who could facilitate the immediate release of the detained Chinese nationals at the Fontana Leisure Parks and Casino in Clark, Pampanga.

In fact, after DOJ Secretary Aguirre left the group after their meeting on November 26, 2016 at Shangri-La Hotel, Bonifacio Global City, Sombero approached BI Associate Commissioner Argosino and told the latter: "*Sir, kailangan talagang may sponsor si Jack Lam. Sir, magkano ba ang kailangan, 50 million, 100 million?*"⁶

Mr. Sombero thereafter invited BI Associate Commissioner Argosino, saying: "*Mag-usap tayo sa City of Dreams.*"⁷

Before going to the City of Dreams, at around 7 o'clock in the evening of November 26, 2017, BI Associate Commissioner Argosino called-up BI Associate Commissioner Robles, telling his fraternity brother: "*Samahan mo ako dahil gusto kong malaman anong nangyayari dito, dahil privy po ako doon sa nangyari sa meeting.*"⁸

At around 10:20 in the evening, Associate Commissioners Argosino and Robles were at the City of Dreams and stayed at Erwin's Gastrobar waiting for Sombero to

⁶ TSN: RPALGER VII-1 January 23, 2017, 11:12 a.m., page 9.

⁷ TSN: RPALGER VII-1 January 23, 2017, 11:12 a.m., page 10.

⁸ TSN: RPALGER VII-1 January 23, 2017, 11:12 a.m., page 13; Aliccatimbang VIII-1 January 23, 2017, 11:22 a.m., page 1.

arrive. Sombero arrived at around 10:45 in the evening, talked to the two BI Associate Commissioners then left. Sombero came back at around 11:30 to 11:45 in the evening bringing with him two shopping bags.

Since Erwin's Gastrobar closed at past 12:00 midnight, the group of Argosino transferred to another restaurant, Reg Ginger, with Sombero carrying the two bags.

After talking to the BI Associate Commissioners, Sombero left again leaving behind the two bags. At around past 5:00, or about seven (7) hours from the time the Associate Commissioners arrived in the City of Dreams, in the morning of November 27, 2016, Sombero went back to the group, this time bringing with him three bags. Immediately thereafter, Argosino and Robles left.

According to BI Associate Commissioner Argosino, it was at Erwin's Gastrobar that Sombero told them, "*Mayroon dito*", referring the money inside the two shopping bags.⁹ Atty. Argosino further said: "*Sinabi po niya (referring to Wally Sombero), Your Honor, na 'mayroon ditong 20 million'.*"¹⁰

BI Associate Commissioner Argosino already had the idea that each bag contained P10 million each. In sum, the total amount of P50 million pesos was handed over by Sombero to the two Associate Commissioners Atty. Al C. Argosino and Atty. Michael B. Robles at the City of Dreams.

On the part of Atty. Robles, he could not pretend or claim to have no knowledge of the transaction because during the January 23, 2017 hearing, he admitted bringing home with him the P20 million pesos while Atty. Argosino brought home P28 million pesos. Mr. Sombero got the P2 million pesos.

The exchange among Senator Richard J. Gordon and Atty. Robles, as well as Atty. Argosino, is quite telling:

Senator Gordon: *Inuwi ninyo iyong pera, hindi ba?*

Atty. Robles: *Yes, Mr. Chair, but it was consolidated at that time."*

⁹TSN: NGDizon IX-1 January 23, 2017, 11:32 a.m., page 2.

¹⁰TSN: NGDizon IX-1 January 23, 2017, 11:32 a.m., page 6.

Senator Gordon: *Ilan ang inuwi mo?*

Atty. Robles: *Twenty, Mr. Chair.*

Senator Gordon: *Ilan ang inuwi mo?*

Atty. Argosino: *Twenty-eight, Your Honor.*

Senator Gordon: *Twenty-eight. Saan napunta iyong two million?*

Atty. Argosino: *Kinuha po ni Wally Sombero.*¹¹

Senator Gordon: *Tinago ninyo iyong pera sa bahay, yes or no?*

Atty. Argosino: *I brought the money in my house, Your Honor.*¹²

It was also established during the January 23, 2017 public hearing that both Atty. Argosino and Atty. Robles had the money in their possession from November 26 to December 13, 2016- **seventeen (17) days!**

It was established further that Atty. Argosino negotiated with Mr. Sombero without the knowledge of the DOJ Secretary Aguirre and BI Commissioner Jaime Morente.

To make things worse, Senator Joel Villanueva manifested his absolute disgust and indignation at Atty. Argosino's actions and failure to disclose the information that the latter had already received the P50 million pesos from Jack Lam and Wally Sombero during the hearing conducted by the Committee on Labor on December 7, 2016 which was precisely inquiring into the arrest of illegal Chinese workers in Clark, Pampanga.

These actions of Atty. Argosino and Atty. Robles are indicative of bad faith and betrayal of trust.

Both cannot feign ignorance since both are lawyers. They cannot feign stupidity since they are presumed to have understood the significance of their acceptance of the bribe money. The fact that both of them received the bribe money and held on to it for a long period of time lead to no other conclusion than that they intended to keep it for personal gain. It was only when they were trapped by the truth, did they admit that there indeed was a bribe.

¹¹ TSN: NGDizon IX-1 January 23, 2017, 11:32 a.m., page 13.

¹² TSN: JLFlores X-1 January 23, 2017, 11:42 a.m., page 1.

What is alarming is the fact that both Atty. Argosino and Atty. Robles, together with DOJ Secretary Aguirre, are fraternity brothers of Lex Talionis Fraternitas, an exclusive fraternal organization of Filipino jurists, legal practitioners and law students founded in San Beda College of Law in Manila on September 29, 1969.

Taking into consideration the events that occurred on the night of November 26, 2016 up to the wee hours of November 27, 2016, it is crystal clear that these two BI Associate Commissioners committed unlawful acts in violation of Republic Act No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act, particularly Section 3(b) of Republic Act No. 3019.

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:

XXX

(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.¹³

In the case of *Peligrino versus People*,¹⁴ the Supreme Court explained that Section 3(b) of Republic Act No. 3019 penalizes three distinct acts, as follows:

- (1) demanding or requesting;
- (2) receiving; or
- (3) demanding, requesting and receiving any gift, present, share, percentage, or benefit for oneself or for any other person, in connection with any contract or transaction between the government and any other party, wherein a public officer in an official capacity has to intervene under the law.

¹³Compilation of Laws on GRAFT AND CORRUPTION, Revised Edition @ 2004 by the Office of the Ombudsman, page 14.

¹⁴ 415 Phil. 94, 117 {2001}.

Proof of the existence of any of them suffices to warrant conviction. The lack of demand is immaterial. (emphasis supplied) After all, Section 3(b) of Republic Act No. 3019 uses the word “or” between *requesting* and *receiving*.

In *Mejia versus Pamaran*,¹⁵ it was held that, in a prosecution under Section 3(b) of Republic Act No. 3019, the value of gift, money or present, etc. is immaterial nor is it determinative of the guilt or innocence of the accused or the penalty to be imposed.

The person liable under Section 3(b) of Republic Act No. 3019 is the public officer, who, in his official capacity, has to intervene under the law in any contract or transaction between the government and any other party. The act constituting the crime is, directly or indirectly, requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with that contract or transaction.

B.

WHETHER OR NOT DIRECT BRIBERY UNDER ARTICLE 210 OF THE REVISED PENAL CODE HAS BEEN COMMITTED.

There are three forms of direct bribery defined and punished under Article 210 of the Revised Penal Code, namely:

- (1) By *agreeing* to perform, or by performing, an act *constituting a crime* in connection with the performance of his official duties in consideration of any offer, promise, gift or present;
- (2) By *accepting* a gift in consideration of the execution of an act which does not constitute a crime but *must be unjust*, in connection with the performance of his official duties; and
- (3) By *agreeing* to refrain, or by refraining, from doing something which is his official duty to do, in consideration of a gift or promise.¹⁶

¹⁵ 160 SCRA 457.

¹⁶ Laws And Jurisprudence on Graft and Corruption 3rd Edition, page 60

It must be emphasized that, in all three forms of direct bribery, the act that the public officer agreed to perform or refrain from doing must be "in connection with the performance of his official duties."

During the January 23, 2017 hearing, it was disclosed that DOJ Secretary Aguirre rejected the proposal of Wally Sombero as to the immediate release of the 1,316 Chinese nationals arrested and detained at the Fontana Leisure Parks and Casino in Clark, Pampanga. DOJ Secretary Aguirre also rejected the offer to be the "ninong" of Jack Lam.

With this turn of events, Sombero was desperate in looking for a "ninong" or sponsor at the Bureau of Immigration who could facilitate the immediate release of the detained Chinese nationals and/or provide Lam "protection" as he continued to prosecute his business.

Thus, after DOJ Secretary Aguirre left the group after their meeting on November 26, 2016 at Shangri-La Hotel, Bonifacio Global City, Sombero approached BI Associate Commissioner Atty. Argosino and told the latter: "*Sir, kailangan talagang may sponsor si Jack Lam. Sir, magkano ba ang kailangan, 50 million, 100 million?*"¹⁷

Sombero, thereafter, invited BI Associate Commissioner Atty. Argosino, saying: "*Mag-usap tayo sa City of Dreams.*"¹⁸

It was disclosed during the hearing what happened next, that is, the handing over by Sombero of the P50 million pesos to Atty. Argosino and Atty. Robles which was properly recorded by the closed-circuit television (CCTV) at the City of Dreams.

Based on the circumstances that unraveled during the hearing, it can be deduced therefore that an agreement between the public officer, in this case referring to Atty. Al Argosino, and the bribe-giver, in this case referring to Wally Sombero, had been reached. Circumstances would support the fact that there has been a meeting of the minds to exchange official duties for money.

¹⁷ TSN: RPALGER VII-1 January 23, 2017, 11:12 a.m., page 9.

¹⁸ TSN: RPALGER VII-1 January 23, 2017, 11:12 a.m., page 10.

The Supreme Court, in the case of *Tad-y versus People*,¹⁹ stated that the agreement between the public officer and the bribe-giver maybe express or implied. Such agreement may be proven by direct or circumstantial evidence. Proof of such an agreement may rest upon relevant and competent circumstantial evidence. To hold otherwise would allow the culprit to escape liability with winks and nods even when the evidence as a whole proves that there has been a meeting of the minds to exchange official duties for money.

During the February 9, 2017 hearing, Bureau of Immigration Intelligence Officer Charles T. Calima Jr. admitted receiving the P18 million pesos from Atty. Argosino on December 9, 2016 after their meeting on December 8, 2016 at the Promenade, Greenhills.

According to Atty. Argosino, "*Exactly. Kung ano po iyong tinanggap ko, Your Honor, iyon po iyong binigay ko po kay General Calima.*"²⁰ This was the explanation of Atty. Argosino to Senator Leila De Lima that the money he received from Wally Sombero at the City of Dreams was the same money that he gave to General Calima.

General Calima cannot claim he had no interest in the money because while he surrendered the P18 million pesos to the Criminal Investigation and Detection Group (CIDG) on December 20, 2016, he accepted the money with the full knowledge that it was given by Mr. Sombero to Atty. Argosino in exchange for unlawful acts that comes within the latter's official duties. In fact, the said amount stayed in his possession for **eleven (11) days**, leading a reasonable man to believe that there was an intent to keep it for himself and, thus, indicative of bad faith and betrayal of trust.

In *U.S. versus Richards*²¹, the Supreme Court held that, in order to convict a person of bribery, it is necessary to prove that he received money or other article of value, and, having received it, agreed to do an unlawful act, or that a promise or offer was made to him to give him money if he would commit an unlawful act and that he did agree to commit an unlawful act in consideration of the promise or offer. It is not

¹⁹G.R. No. 148862, August 11, 2005.

²⁰TSN: Mancol XI-1 February 9, 2017, 11:57 a.m., page 2.

²¹6 Phil. 545, 546.

necessary in either case that the evidence show an express promise. It is sufficient if from all the circumstances in the case such promise can be implied.

In *Magno versus Comelec, et al.*,²² the Supreme Court held that moral turpitude can be inferred from the third element of the crime of direct bribery. The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a malicious intent on the part of the offender to renege on the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty, and good morals. In all respects, direct bribery is a crime involving moral turpitude.

C.

WHETHER OR NOT THE PHILIPPINE IMMIGRATION LAW AND OTHER RELATED LAWS HAVE BEEN VIOLATED.

Foreign nationals who wish to enter the Philippines require a visa unless he/she is a citizen of a member state of the Association of Southeast Asian Nations (ASEAN); or he/she is a citizen of a non-ASEAN member state whose nationals are allowed to enter the Philippines visa-free; or, he/she is a balikbayan and is only returning to the Philippines temporarily.

The visa policy of the Philippines is governed by Commonwealth Act No. 613, also known as the Philippine Immigration Act, and by subsequent legislation amending it. The Act is jointly enforced by the Department of Foreign Affairs (DFA) and the Bureau of Immigration (BI).

On the other hand, any foreign national wishing to work in the Philippines must obtain a valid work visa, called the 9(G) visa. This should be arranged before commencing employment in the country. A 9(G) visa allows foreigners to enter the Philippines to engage in a lawful occupation.

²² G.R. No. 147904, October 4, 2002.

Aside from an employment or work visa, the Philippine government requires non-resident foreign nationals to apply for an Alien Employment Permit (AEP). This is not a travel document and the department responsible for this permit is the Department of Labor and Employment (DOLE).

The Revised Rules for the Issuance of Employment Permits to Foreign Nationals (Department Order No. 97-09), defines an Alien Employment Permit (AEP) as a document issued by the DOLE which authorizes a foreign national to work in the Philippines. The said Department Order, among others, state that all foreign nationals who intend to engage in gainful employment in the Philippines are required to apply for an Alien Employment Permit.

In addition to the Alien Employment Permit, foreign nationals must obtain a provisional permit to work, pending the approval of the 9(G) visa. This permit is issued by the Bureau of Immigration and is normally valid only for three months from the date of issue. The Bureau of Immigration will not issue a 9(G) working visa unless and until the Alien Employment Permit from the Department of Labor and Employment is obtained.

During the February 16, 2017 public hearing, DOJ Secretary Aguirre disclosed that during the raid at Fontana Leisure Parks and Casino in Clark, Pampanga, the Chinese nationals arrested were discovered to have committed outright violations of the Immigration Law; some did not have immigration papers or documents, while others did not have working visas.

As DOJ Secretary Aguirre put it: *"Pagkatapos pong i-raid ay napakaraming violation ang nakita ng mga nag-raid, by the BI and, of course, assisted by the Special Action Forces (SAF). Marami po doon silang nakita na iyong outright walang immigration papers, walang documents. Mayroon naman po na nagtatrabaho doon na nahuli doon pero wala naman silang working visa. Mayroon po namang may visa na issued by the CEZA, Cagayan Economic Zone, na hindi naman po dapat doon sapagkat good for sa Cagayan Economic Zone area lamang."*²³

²³ TSN: CBGealan III-1 February 16, 2017, 10:42 a.m., page 6.

D.
WHETHER OR NOT THE CRIME OF PLUNDER
WAS COMMITTED

Republic Act 7080 (AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER), states in its Section 2, "Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof, in the aggregate amount or total value of at least Seventy-five million pesos (P75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office."

Two years later, this law was amended, lowering the threshold amount from P75 Million to P50 Million. Section 12, of Republic Act 7659 (AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES), provides, "Section 2 of Republic Act No. 7080 (An Act Defining and Penalizing the Crime of Plunder) is hereby amended to read as follows:

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

including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State."

Clearly, the acts herein of Messieurs Argosino and Robles had unjustly enriched themselves, thus falling under Section 1(d)(6) of RA 7080. Sombero should, likewise, be held liable under this provision because without his participation the offense could not have been consummated. Sombero was the one who handed over the P 50 million to the Assosicate Commissioners at the City of Dreams. His acts of bringing out the money from the casino and bringing them to Messrs. Argosino and Robles indicate his co- principal participation in the offense of Plunder.

V- RECOMMENDATIONS

Power doesn't corrupt people, people corrupt power.

– William Gaddis

After a thorough consideration of the facts, evidence and testimonies presented during the five public hearings conducted by the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), it is hereby recommended as follows:

- (1) In view of the rampant entry of illegal foreign nationals in the Philippines, it is deemed necessary to review the intelligence network as well as the strict enforcement/implementation of the laws of the Bureau of Immigration (BI), the Department of Foreign Affairs (DFA) and, the Department of Labor and Employment (DOLE).

While the right to travel cannot be impaired as provided under Section 6, Article III (Bill of Rights) of the Philippine Constitution, such right maybe curtailed even by administrative officers (example, passport officers) in the interest of national security, public safety, or public health, as may be provided by law.

Along this line, the BI, the DFA, as well as the DOLE should set-up portals of entry and exit in all airports, both domestic and international, to be manned by duly

constituted authorities who would strictly enforced the law, specially in the scrutiny of travel documents.

- (2) Former Bureau of Immigration Associate Commissioners Atty. Al C. Argosino and Atty. Michael B. Robles should be charged with violation of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, particularly Section 3 (b) thereof.
- (3) Both Atty. Al C. Argosino and Atty. Michael B. Robles should be charged with Direct Bribery under Article 210 of the Revised Penal Code. BI Intelligence officer Charles Calima should also be charged with Direct Bribery under Article 210 of the Revised Penal Code.
- (4) Former Commisioners Al C. Argosino and Michael B. Robles should be charged with Plunder under R.A. No. 7080, as amended by R.A. No. 7659, the amounts involved here having reached the P50 Million threshold amount. It cannot be imagined that they didn't know that money was going to change hands. They, considering their busy schedules and high standing in the bureaucracy were made to wait, and willingly waited for seven hours, i.e., until the wee hours, because they knew that there was something substantial to be waited for. Mr Robles even brought his brother to the COD, because he knew that they would need manpower to carry what they were waiting for. (N.B. P50 million in P1,000 bills could have weighed about a hundred pounds).

In the plenary session of October 10, 2017, during the discussions on the General Appropriations Bill's allocation for the Department of Justice (DOJ), your Chairman had the occasion to listen to the interpellation of the Minority Leader, Senator Franklin Drilon, to the Chairman of the Committee on Finance, Senator Loren Legarda, that the DOJ had not yet filed cases against Messrs, Argosino and Robles; worse, that their contemplation is to file Direct Bribery charges against them, rather than Plunder. The reason they posit is that the amounts surrendered and or recovered is P49,999,000.00, rather than P50,000,000.00 which is the threshold amount. To say that your Chair was shocked by this information is to make a gross understatement.

We are now not too certain who have taken the cudgels for this case: either the DOJ or the Ombudsman. In fact, how the DOJ is aware of the progress of this case surprised your Chair because he was of the long-standing belief that it was the Ombudsman that has exclusive jurisdiction over this criminal matter.

That said, a warning must here be made against those who, your Committee feels, are setting up a farce, making a vulgar and cheap attempt at reducing the probable charge against the two former commissioners from Plunder to Direct Bribery, by the convenient manner of reducing by one thousand pesos from the amount recovered/surrendered. We all must keep our eyes open lest they succeed in imposing this travesty on all of us.

- (5) Wenceslao "Wally" Sombero should be charged with Corruption of Public Officials under Article 212 of the Revised Penal Code; and, for violation of R.A. No. 7080 (Plunder), as amended; his acts of bringing out the money from the casino till, and bringing them to Messrs. Argosino and Robles indicating his co- principal participation
- (6) Jack Lam's role here, especially in corrupting public officers, should be investigated further. It is impossible to envision that he didn't play a role here. Only his influence (or perhaps his standing in the casino business) would have allowed Sombero to withdraw from the City of Dreams casino monies amounting to P50 Million in one night.
- (7) Department of Justice (DOJ) Secretary Vitaliano N. Aguirre II must explain thoroughly why he consented to have a meeting with Mr. Wenceslao "Wally" Sombero and Jack Lam on November 26, 2016 with regard to the arrest and detention of the 1,316 Chinese nationals. DOJ Secretary Aguirre was less than prudent in dealing with the situation. Here he met with persons who, a few hours later, turned out to be "bribers" of public officers. He should have possessed sufficient foresight- not to deal privately with people who have pending cases with the Department he heads.

It must be noted that the DOJ serves as the government's prosecution arm and administers the government's criminal justice system by investigating crimes, prosecuting offenders and overseeing the correctional system. The DOJ, through its offices and constituent/attached agencies, implements the Philippines' laws on the admission and stay of aliens within its territory.

One of the functions of the DOJ is the regulation of immigration. The DOJ provides immigration and naturalization regulatory services and implements the laws governing citizenship and the admission and stay of aliens through the Bureau of Immigration (BI). Also, under Administrative Order No. 142 dated August 23, 1994, the Secretary or his duly authorized representative is authorized to act on immigration matters, including the waiver of visas and admission of aliens, except deportation matters.

Notwithstanding the mandate and functions provided by law, DOJ Secretary Aguirre and his Department failed to monitor the influx of illegal aliens into the country, more so with the latter's illegal activities. DOJ Secretary Aguirre is remiss with his mandate reposed upon him by law.

To be fair, it may be believed that DOJ Secretary Aguirre may not have known exactly what the agenda for the meeting was going to be. He was only requested to be there by a subordinate, and which was going to be very convenient for him because he had a function to attend in the same hotel a little later in the evening. And, that he was "ambushed" by Sombero and was forced to listen to Sombero's blandishments could also be believable. But, we submit however, that prudence also dictates that DOJ Secretary Aguirre should refrain from dealing or talking with persons whose questionable activities were under investigation by his Department.

Having acted otherwise, he made himself vulnerable in this situation was not faithful to a precept contained in R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), at section 4(b), " xxx They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage."

- (8) Bureau of Immigration Commissioner Jaime H. Morente should be directed to explain the lapses in monitoring the entry and activities of illegal foreign nationals, especially those who were engaged in illegal activities in the country and, what precautionary or preventive measures the Bureau has to observed and adopted so as to totally eradicate the proliferation of illegal foreign entrants.

Further, Commissioner Morente should be directed to fully explain of his failure to criminally charged BI Intelligence officer Charles Calima. It took DOJ Secretary Aguirre to release a Department Order relieving/dismissing retired Police Director Charles Calima of the Bureau of Immigration.

- (9) An amendment should be made in R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees pertaining to prohibiting public officials from meeting any person who has a pending matter before his or her office outside one's office. Should the public officer be seen in a public or private meeting with a person who has a pending matter before one's office, the public officer should be asked to show cause why he or she should not be administratively charged with unethical conduct. An unethical conduct is considered a grave misconduct and can be penalized with dismissal from public service.

EPILOGUE

Nearly all men can stand adversity, but if you want to test a man's character, give him power.

— Abraham Lincoln

Perception is very important in public office. Many things need not be true; they just have to look like that.

This is precisely the reason why a public officer is reposed with a sense of accountability and one's character is always tested by not only being morally upright but also by being perceived as such.

Jurisprudence has been replete with warnings about perception. It has been said that, "prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's (sic) perception of corruption and incompetence in the government."²⁴

The Bureau of Immigration extortion scandal has shown how high-ranking public officials, two of whom, are fraternity brothers of no less than the Secretary of Justice and the President of the Philippines, miserably failed to resist the enticement of money.

In their apparent excitement and haste to bring home millions of pesos, they forgot about the CCTV cameras as well as the impropriety in meeting someone who has a pending matter in one's office in a public place in the wee hours of the morning. There was no other reason for the meeting but to make oneself accessible to the bribe as well as to take the bribe. To accept any other excuse becomes an insult to one's intelligence.

The scandal comes both as a warning and a lesson. Public office is a public trust. And once one chooses the path of public office, exaction of accountability, national naming and shaming is only the beginning. The administrative, civil, and criminal repercussions are endless.

At a time when change and transparency in governance are what the Filipino people want, it is most important to keep in mind that: "All persons possessing any portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author, and Founder of society."²⁵ In the case of the Philippine nation, that accountability is the relentless and now unforgiving Filipino people.

²⁴ Japson vs. Civil Service Commission, G. R. No. 189479, April 12, 2011.

²⁵ Edmund Burke

Respectfully submitted:

Chairman:



RICHARD J. GORDON

Committee on Accountability of Public Officers
and Investigations (Blue Ribbon)

Members:

SONNY ANGARA

Vice Chairman



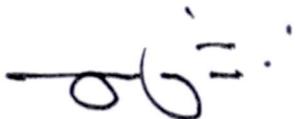
WIN GATCHALIAN

will amend


PAOLO BENIGNO "BAM" AQUINO IV



FRANCIS "CHIZ" G. ESCUDERO



JOSEPH VICTOR G. EJERCITO

GREGORIO B. HONASAN II

RISA HONTIVEROS

PANFILO M. LACSON

EMMANUEL "MANNY" D. PACQUIAO

LOREN B. LEGARDA

*with Secretaries. Will
interpellate / demand*

FRANCIS "RIKO" N. PANGILINAN

*Grace Poe may
not interpellate*

GRACE POE

CYNTHIA A. VILLAR

JUAN MIGUEL "MIGZ" F. ZUBIRI

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