

PREVENTING THE MISUSE OF LAWS TO EVADE ACCOUNTABILITY

RoC n RoL

the Way to Ensure Accountability and Win the Fight against Corruption

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Chairman, Pederalismo ng Dugong Dakilang Samahan (PDDS)

Philippines

Introduction:

- There are three ways to approach a problem like corruption. First, is to ignore it; Second, find a solution or cure; and third prevent it from happening at the outset. I chose the topic “Preventing the Misuse of Law to Avoid Accountability” because as a Christian who happens to be a lawyer for almost 30 years, I’ve been exposed to various legal maneuvers to avoid liability and accountability. As the saying goes: “prevention is better than cure!”

PREVENTING THE MISUSE OF LAWS TO AVOID ACCOUNTABILITY

Prevention is most effective when anticipated. To prevent the misuse of laws to avoid accountability requires the knowledge of the law and with experience, be able to anticipate the possible factual scenarios.

Philippine Experience

The misuse of law to avoid accountability in the Philippine setting from the perspective of the corrupt may refer to:

- a. Preventive - such premeditated plan to avoid a case or complaint from being filed or ensuring that it will be immediately dismissed through some legal technicalities.
- b. Curative - pertains to the legal defenses which the lawyer after going over the complaint or information provides the defense/s which may be either factual or legal or both. As regards the latter, it may be based on substantive law; procedural law, or both.

N.B.: Just to be clear, the saying that it takes one to know one does not apply here 😊. The situation is akin to the mathematicians who, with a few clues, were able to decode the enigma and tunny encrypted messages and found out what the enemies were planning and about to do. Theory plus practice equals correct ideology. With the knowledge of law and actual practice, we may be able to decode and anticipate what the opponent is planning and come-up with a counter-measure to thwart its implementation.

Fundamental Law

Validly asserting a Constitutional Right does not fall under the phrase "misuse of laws". Except in two instances:

1. When the right may be waived i.e., expressly or impliedly; and
2. When the respondent or accused is at fault

1987 Philippine Constitution

ARTICLE XI

ACCOUNTABILITY OF PUBLIC OFFICERS

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Impeachable Officials

- President, Vice-President, Members of the Supreme Court, Members of the Constitutional Commission, and the Ombudsman – may be removed on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. (Section 2, Article XI, Phil. Constitution)
- Process – Initiated at the Congress through a verified complaint by a member or private individual endorsed by a member of Congress. if the verified complaint is signed by at least 1/3rd of the members, it shall serve as the Articles of impeachment and trial by the Senate shall proceed. Conviction requires at least 2/3rd's vote of the Senators who act as sole judge in impeachment proceedings.

Impeachment and Corruption

- Impeachment is a political action under the guise of “justice.” Filipinos under the present Constitution, are familiar with impeachment. The first official who was impeached was former President Joseph Estrada in November 2000. On January 16, 2001, when the prosecution moved to open an enveloped under the name Jose Velarde, 11 Senators voted No. The prosecutors walked out. The impeachment was televised and immediately, people gathered at EDSA. President Estrada decided to sneak out of Malacanang by crossing the Pasig river, The other side is the compound of the PSG. He then went home. The Supreme Court decided that he resigned. Immediately, Vice President Arroyo took her oath as President before Chief Justice Davide at EDSA. The event was dubbed as EDSA 2.
- The second official who was impeached was Ombudsman Merceditas Gutierrez on charges of the office's alleged underperformance and failure to act on several cases during the [presidency of Gloria Macapagal Arroyo](#). The first impeachment complaint was filed in 2009 while President Arroyo was still the president. It was dismissed by the House which was dominated by the President’s political party. A year later, during the presidency of Benigno Aquino, 2 impeachment complaints were filed. She was impeached by Congress in March 2011. She resigned in April 2011 after the Articles of Impeachment were filed.
- The third and most controversial is the impeachment of Chief Justice Corona. The Articles of Impeachment was forwarded to the Senate on December 13, 2011, On May 29, 2012, Corona was found guilty of [article two](#) of the [articles of impeachment](#) that had been filed against him pertaining to his failure to disclose to the public his [statement of assets, liabilities and net worth](#).

THE PORK BARREL

- **1994 – PHILIPPINE CONSTITUTIONAL ASSOCIATION ET AL VS. SECRETARY OF BUDGET ET AL G.R. NO. 113105 AUGUST 18, 1994 –.**
- **2012 – LAWYERS AGAINST MONOPOLY AND POVERTY (LAMP) ET AL VS. DBM SECRETARY ET AL G.R. No. 164987 APRIL 24, 2012.**

Two cases where the Supreme Court decided that the Pork Barrel System (PDAF formerly CDF) Constitutional.

2013 – BELGICA ET AL VS. EXECUTIVE SECRETARY ET AL. G.R. No.208566 November 19, 2013

In the Philippines, "Pork Barrel" has been commonly referred to as lump-sum, discretionary funds of Members of the Legislature,⁹ although, its usage would evolve in reference to certain funds of the Executive. In PDAF – Congress still controls budget after enactment. On the other hand, certain provisions In PD 1869 as amended by PD1993 (Pagcor Funds), and PD 910 (Malampaya Funds) the president has sole discretion as regards the use of funds. The PDs were issued by then Pres. Marcos Sr. at the time when he has legislative powers under Amendment #6 of the 1973 Constitution..

CONGRESSIONAL AND PRESIDENTIAL PORK BARREL - UNCONSTITUTIONAL

2013 – BELGICA ET AL VS. EXECUTIVE SECRETARY ET AL. G.R. No.208566 November 19, 2013

The Supreme Court declared as UNCONSTITUTIONAL: (a) the entire 2013 PDAF Article; (b) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the budget execution; and the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.

Finally, the Court DIRECTED all prosecutorial organs of the government to, within the bounds of reasonable dispatch, investigate and accordingly prosecute all government officials and/or private individuals for possible criminal offenses related to the irregular, improper and/or unlawful disbursement/utilization of all funds under the Pork Barrel System.

This Decision was immediately executory but prospective in effect.



Republic of the Philippines
Supreme Court
Manila

EN BANC

SUPPLEMENTAL ADVISORY

G.R. No. 208566 (Greco Antonious Beda B. Belgica, et al. vs. Executive Secretary Paquito N. Ochoa Jr., et al.); G.R. No. 208493 (Social Justice Society [SJS] President Samson S. Alcantara vs. Honorable Franklin Drilon, in his capacity as Senate President, and Honorable Feliciano Belmonte, Jr., in his capacity as Speaker of the House of Representatives); and UDK 14951 (Pedrito M. Nepomuceno vs. President Benigno Simeon C. Aquino III, et al.)

In addition to the Advisory issued on October 1, 2013, the Court advises the parties, particularly the petitioners, that Atty. Eduardo V. Bringas, as the petitioners' lead counsel, has the authority to decide on how to assign the issues and share the allotted time of thirty (30) minutes for the presentation of the oral arguments for all the petitioners.

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

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DISBURSEMENT ACCELERATION PROGRAM

- 2014 – ARAULLO ET AL VS. AQUINO ET AL G.R. No. 209287 July 1, 2014
- President Benigno Aquino III approved DAP, a mechanism designed by the government to ramp up spending and help accelerate economic expansion, sourced from savings or unreleased General Appropriation Act (GAA) items, as well as realignment and unprogrammed funds. It was introduced to increase government spending after “sluggish disbursements” that resulted in a Gross Domestic Product (GDP) growth of 3.6% in 2011.
- The Supreme Court identified 3 acts as unconstitutional: the creation of savings prior to the end of the fiscal year and the withdrawal of these funds for implementing agencies; the cross-border transfers of the savings from one department to another; and the allotment of funds for projects, activities, and programs not outlined in the General Appropriations Act.

KNOWING THE TRUTH BEHIND DAP

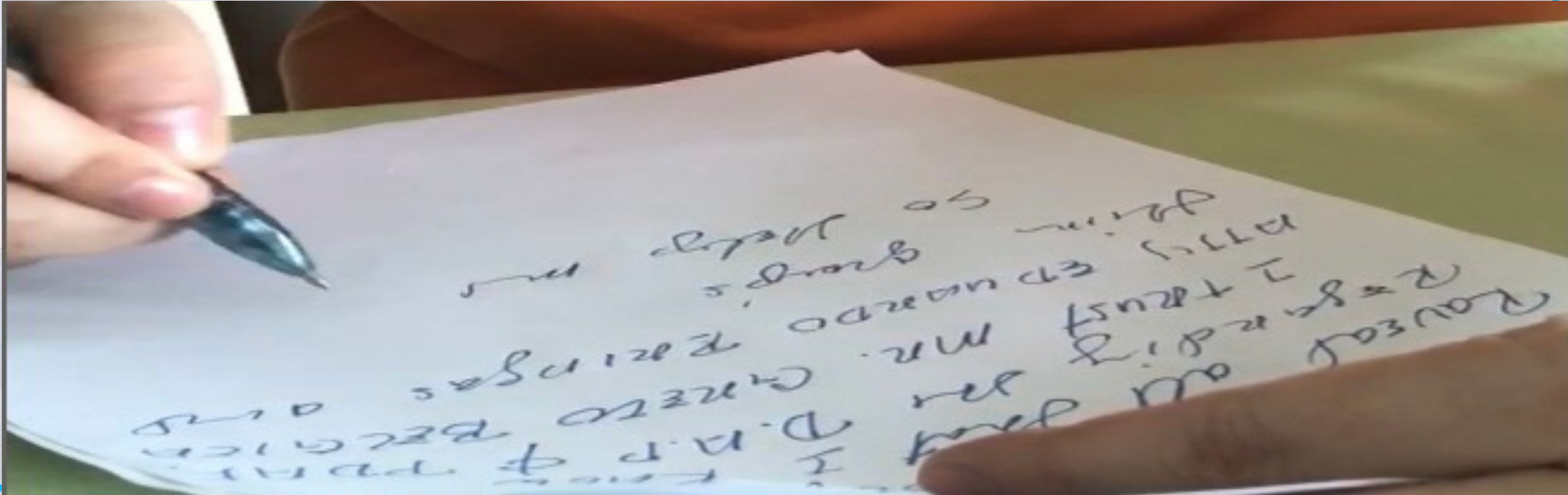


WITH ATTY. JEREMIAH BELGICA - SECURING THE DAP DOCUMENTS UNDER THE FOI FROM DBM SECRETARY DIOKNO

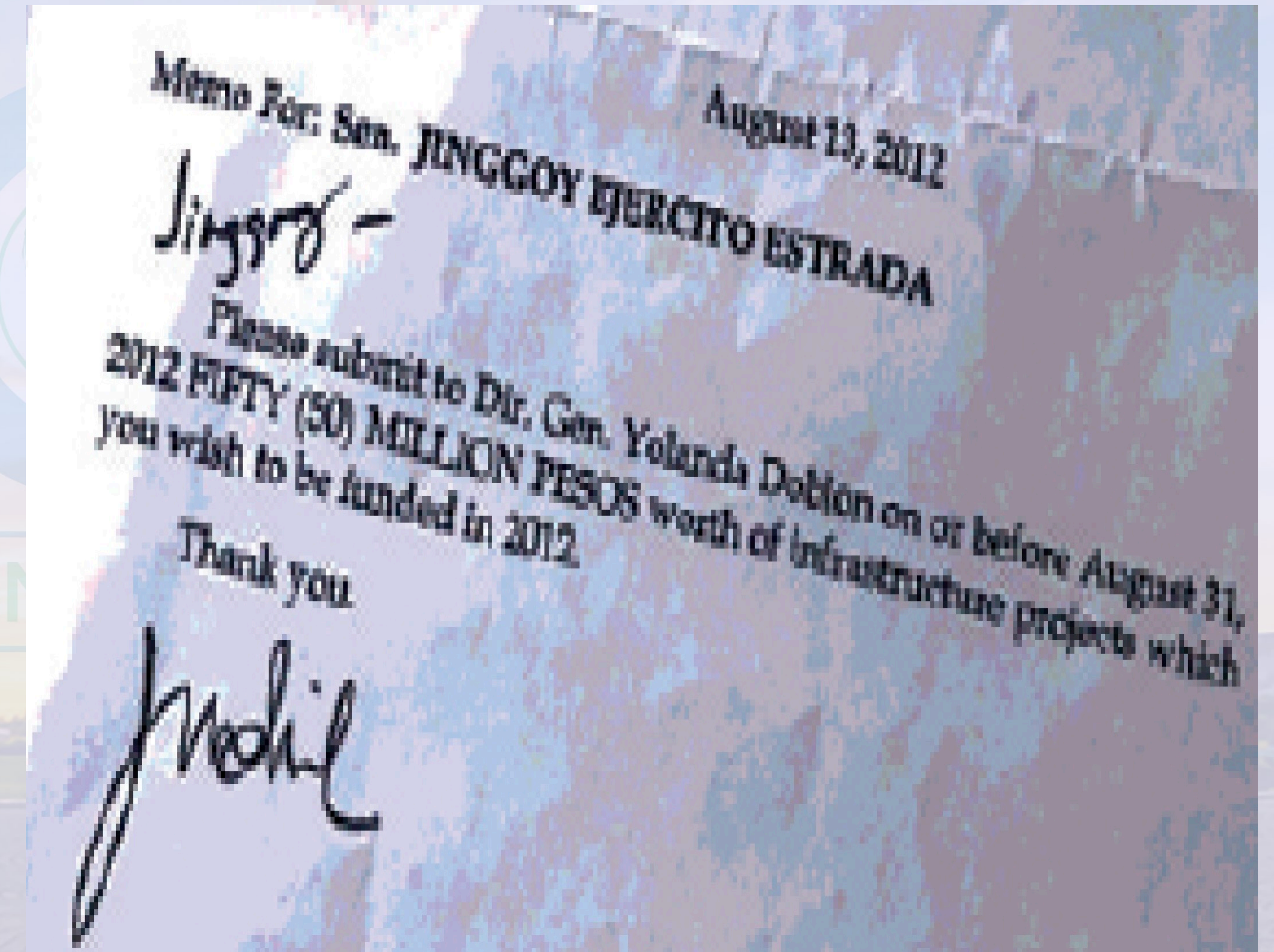
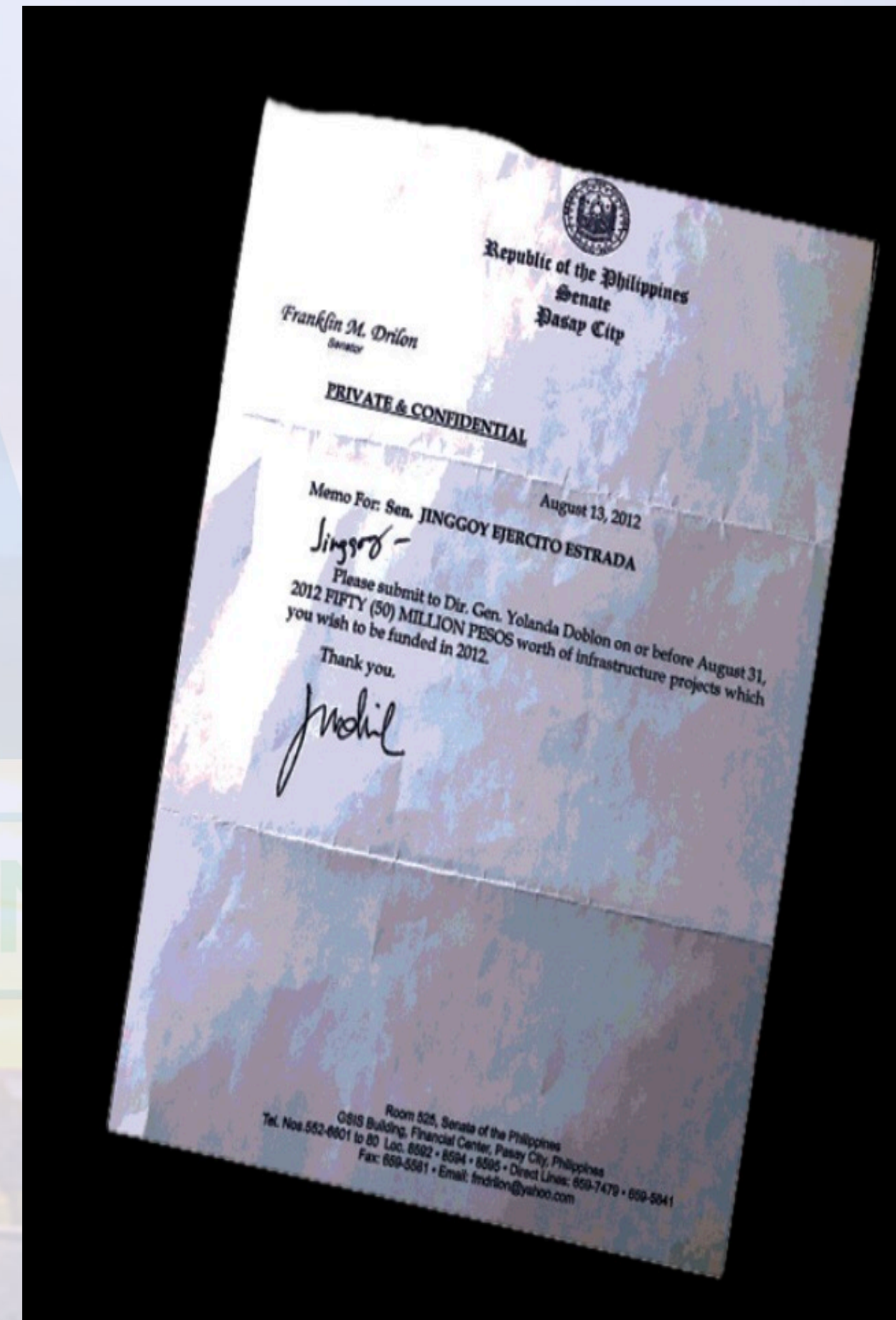


MEETING WITH THE CHIEF JUSTICE'S WIDOW AND SON
MRS. TINA CORONA AND FRANCIS CORONA

JANET LIM NAPOLES



More Evidence gathered: BOY PICK-UP and the alleged P50M Bonus



THE GENERAL APPROPRIATION'S ACT OF 2011 AND THE DAP

Decision in HACIENDA LUISITA, INCORPORATED

On December 27, 2010 or 20 days after E.O. No. 1 was declared unconstitutional, President Aquino, for the first time in eleven years, signed the national budget into law. The phrase "for their respective offices" contained in Article VI, Section 25(5) of the Constitution was omitted in Sec 59 of 2011 GAA.



On October 12, 2011, Sec. Abad sought through a Memorandum the President's approval to implement the proposed Disbursement Acceleration Program or DAP. The memorandum, which contained a list of the funding sources for P72.11 billion and of the proposed priority projects to be funded

PRE-IMPEACHMENT of CHIEF JUSTICE CORONA

On November 2, 2011, 24 Congressmen received DAP funds in the total amount P199,631,993.00. On November 10, 2011, 3 of the 24 Congressmen plus 20 new Congressmen received a total of P1,179,200,000.00 from the DAP. On November 14, 2011, 19 Congressmen received a total of P204,900,000.00 from the DAP. 9 of the 19 Congressmen were first time recipients.

On November 22, 2011, the Supreme Court rendered its Decision in HACIENDA LUISITA, INCORPORATED vs. PRESIDENTIAL AGRARIAN REFORM COUNCIL et al, G.R. No. 171101. The decision was against the interest of the Cojuangco side of President Aquino's family.

On November 23, 2011, 74 Congressmen received P10,000,000.00 each from the DAP. 68 of the Congressmen were first time recipients. Thus, a total of 121 Congressmen were recipients of DAP funds. The total DAP releases for Congressmen during these inclusive dates was P1,359,731,993.00. This does not include releases on October 25, 2011, November 11, 2011, November 24, 2011 and December 8, 2011 in the total amount of P39,272,481.00 and releases on some other dates. The total DAP releases from October 25, 2011 to December 8, 2011 was 1,444,904,474.00 or before the Impeachment on December 12, 2011.

The Constitution requires 1/3rd or 95 Members of Congress to sign the Articles of Impeachment to impeach and impeachable official and 121 Congressmen received DAP money before the impeachment on December 12, 2011. The total number of those who signed were 188. However, the records of Congress and the Journal are silent on the names of the Congressmen who signed. Nevertheless, not all who received DAP signed the Articles of Impeachment.

IMPEACHMENT AND CONVICTION OF THE CHIEF JUSTICE

On December 12, 2011, at the flag ceremony in the Supreme Court, Chief Justice Corona announced that there was a plan to impeach him. He said he will not resign. That same day, the articles of impeachment was presented and immediately approved by Congress.

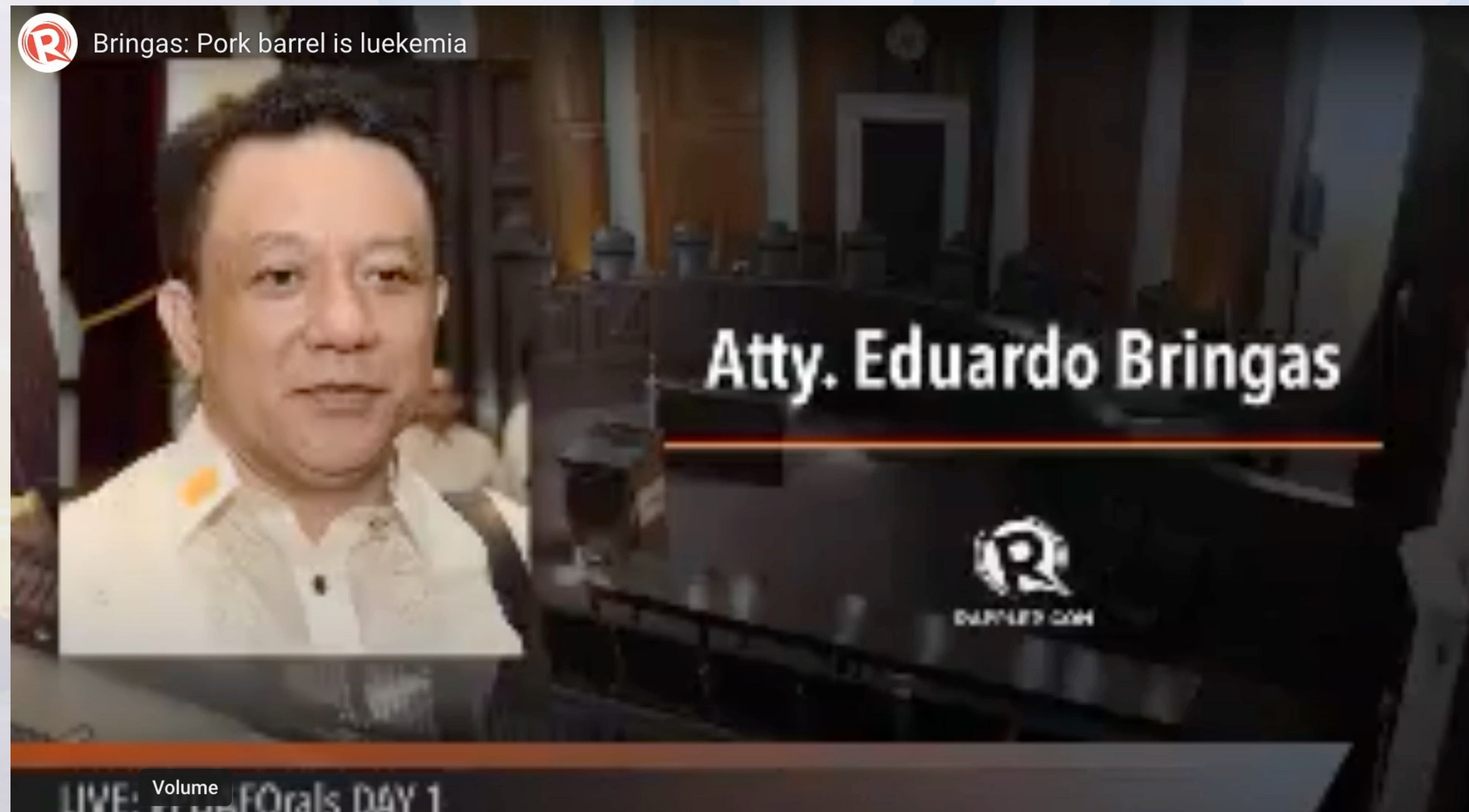
The next day, Dec 13, 2011, the articles of impeachment was delivered to the Senate. That same day, around P722,213,000.00 worth of SAROs from the DAP were released to 11 Senators. Prior to December 13, 2011, 4 of the 11 Senators and 7 other Senators received a total of P733,200,000.00 worth of SAROs from DAP. By December 21, 2011, the amount of 275,000,000.00 worth of SAROs from DAP was released to 4 Senators. There were 20 Senators who received DAP funds.

DAP Releases were withheld during trial at the SENATE and resumed after the Chief Justice was convicted, with P50M alleged Bonus for Senators who voted YES!

FROM PORK BARREL/VACC TO PACC : WALK THE TALK

FROM PORK BARREL BUSTER (BELGICA RULING) / VOLUNTEERS AGAINSTS CRIME AND CORRUPTION (VACC)
TO PRESIDENTIAL ANTI- CORRUPTION COMMISSION (PACC)

1ST DAY OF
ORAL
ARGUMENT
ON PDAF @
SUPREME
COURT
2013



2nd VACC PRIVATE
PROSECUTOR
AWARD @
MALACANANG
2016



PRRD's ANTI-CORRUPTION CAMPAIGN

E.O. NO. 43 – October 4, 2017 – PRRD created the Presidential Anti-Corruption Commission under the Office of the President to directly assist the President in investigating against all presidential appointees, and to perform such other similar duties as the President may direct. It is composed of the Chairman and 4 commissioners. Majority of the members of the Commission shall be members of the Philippine Bar.

It shall have a secretariat to provide technical and administrative support to the Commission. It is headed by an Executive Director with the Rank of Assistant Secretary. He shall be appointed by the President upon the Chairman's recommendation. He shall be under the control and supervision of the Chairman, execute and administer the policies and decisions of the Commission and manage the day-to-day operations thereof.

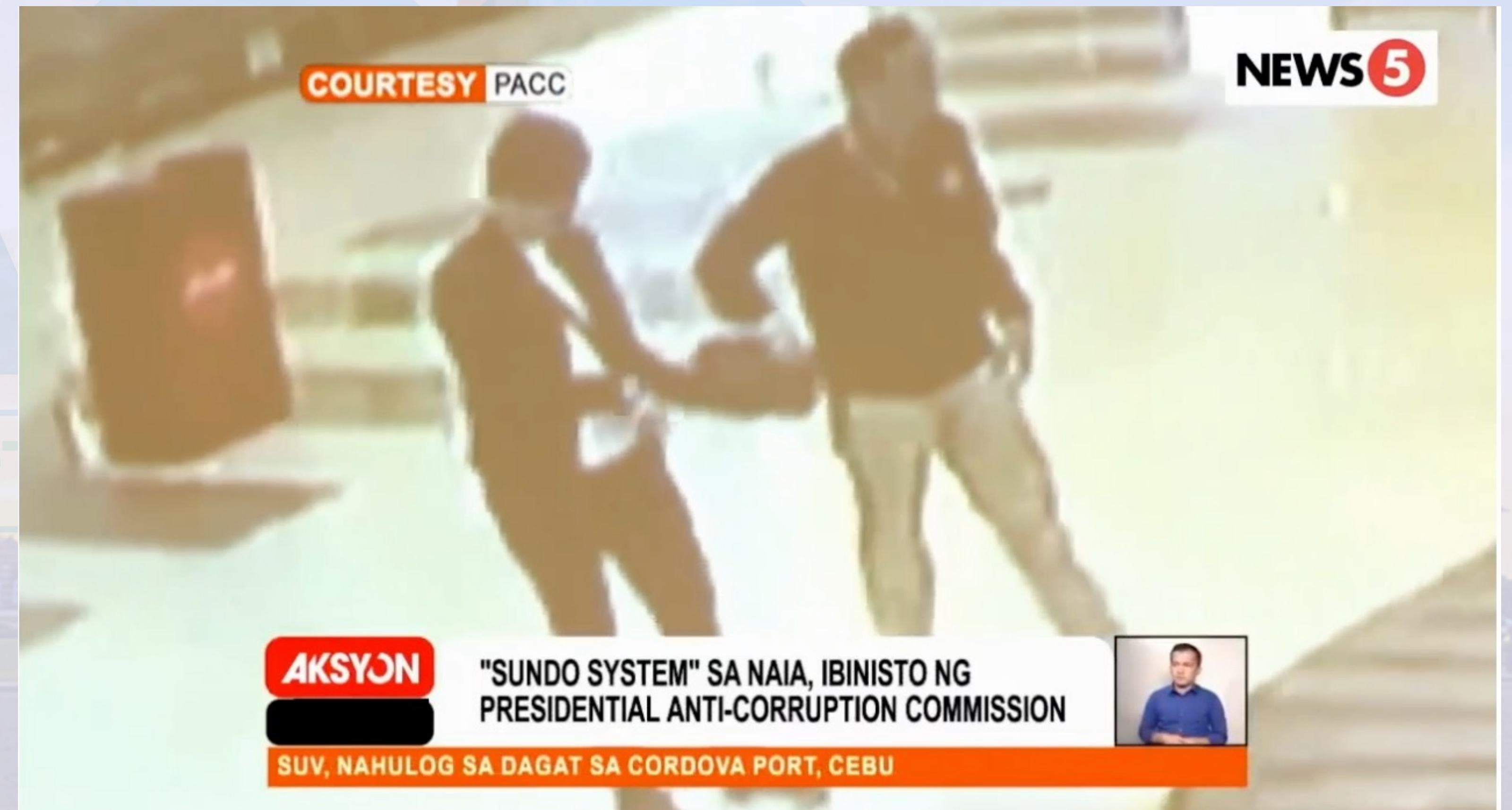
Special Oathtaking of PACC Officials at Malacanang on March 6, 2018.



PACC was the only agency granted by the President to have a special oath taking in Malacanang. Other presidential appointees took their oath en masse. They had a close-door meeting and were given special instruction before the oath taking. The two other commissioners were Atty. Rickson Chiong a retired NBI official and Atty. Gregorio Contacto, III a private-practitioner and politician.

PACC'S STRATEGY TO PREVENT MISUSE OF LAWS TO EVADE ACCOUNTABILITY

EVOLUTIONARY - PACC's jurisdiction is only limited to Presidential Appointees with Salary Grade 26 and above. NAIA 3 SMUGGLING BY CUSTOM'S OFFICER BELOW SG 26. WE HAVE NO JURISDICTION. YET, WE SUCCEEDED BECAUSE WE EVOLVED! HOW?



DARING



Confirmation of the fact that there were 4 Secretaries under investigation by the PACC. We do not adhere to political partisanship. We were evidence based.

Super Radyo DZBB 594khz
15 Oct at 12:43pm · 🌐
JUST IN: Dating Pangulong Noynoy Aquino at ilang miyembro ng kanyang gabinete, sinampahan ng kaso sa Ombudsman kaugnay sa Disbursement Acceleration Program.
📷: Jonathan Andal



GMA News @gmane... · 1h
Kinumpirma ng Presidential Anti-Corruption Commission na inirekomenda nilang paimbestigahan ang apat na miyembro ng Gabinete ni Pangulong Duterte.

PACC chief confirms corruption probe vs. 4 Cab...
gmanetwork.com



Entrapment of 3 BIR Examiners with the NBI taking the lead, with our lady lawyer acting as accountant. NBI was under PACC's supervision.

V-Luna Military hospital acquiring sub-standard medical supplies from ghost companies at the expense of soldiers. Witness taking oath before me at my residence.

Filing of Criminal Complaint against the former President and DBM Secretary for 240+ Counts of Malversation

VETTING

We don't submit a report to the President unless the majority of the Commission are sure!



PLAN



GATHER EVIDENCE



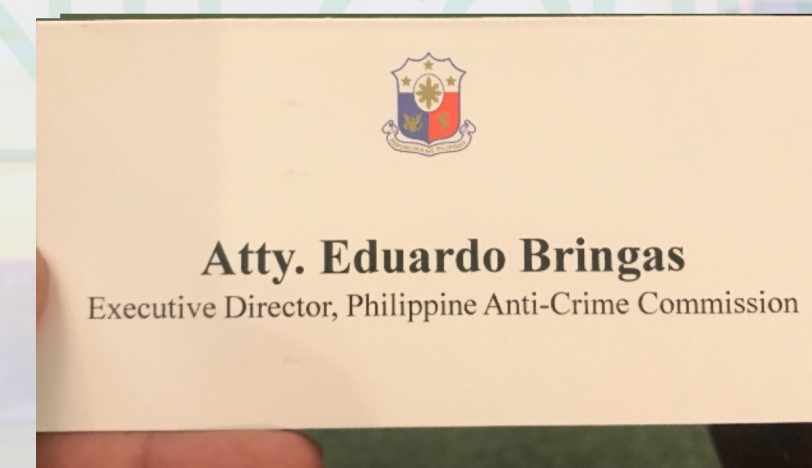
Or do the back door, and he will immediately meet with you. If you know he is going to an event you are attending, just get yourself noticed and he will find time to talk with you.



CLARIFY



PREPARE REPORT



Wait for His office to call. He makes his own vetting for confirmation! At Malacanang, you are given a designated seat.



WACC
WORLD ANTI-CORRUPTION CONFERENCE

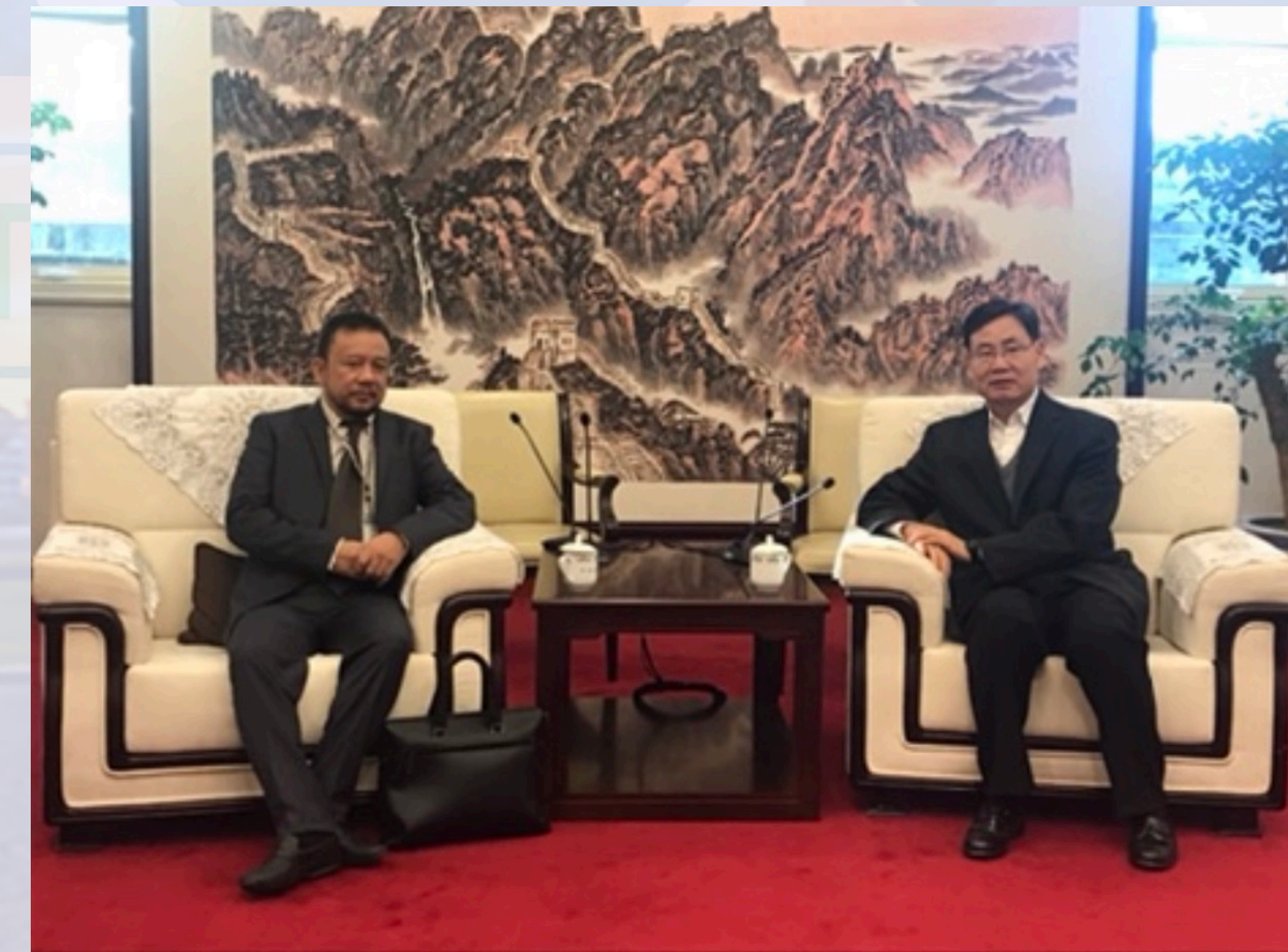
BLITZKRIEG



After a 100% approval rating by the President of PACC'S reports, PACC thru the E.D. and AMLAC'S E.D. signed a MOA. Then, PACC began its dialogue with the departments where the Chair gave each department head the list of complaints in a one-on-one meeting. Thereafter, at the meeting proper, he designated the E.D. as PACC point person and requested his counterpart to do likewise. After meeting all the agencies, the E.D. requested the Commission to approve a resolution deputizing the point persons or the legal office of the department. He then sent invitations to meet them in tranches attaching the resolution and the period to accomplish the task. With this scheme, PACC was able to attain close to Zero Backlog. Each department are on alert level, hence, a good deterrence against corruption. In December 2018, they wanted to learn the best practices of our Asian Neighbors. First in the list was China.

EDVB - Evolve; Dare; Vet; Blitzkrieg. What's Next?

- We go back the "E" - In Beijing, we met Deputy Secretary of the Central Commission for Discipline Inspection of the Communist Party of China, Mr. Li Shulei who now heads the Publicity Department of the Central Committee of the Chinese Communist Party and member of its Politburo. His subordinate Mr. La Yi Fan first met us and asked if it was possible to help them arrest a fugitive who was a former government official from the province. He embezzled around P11 Billion and went into hiding. This was reiterated by Mr. Li during a dinner he hosted. I was assigned to take charge. I met with the delegation and Mr. La Yi Fan the following morning. Mr. Li Shulei's request was a challenge to PACC. We needed to be daring again.



Then, I met with the Ambassador Sta. Romana for some advice to begin the vetting.

VET and BLITZKRIEG

How to avoid “Kampai” without offending the host!



I continued vetting by texting my Director for Investigation and was excused. We went back to the Philippines in mid-December 2018.

Mr. Li Shulie promised to visit the Philippines when Xie, the fugitive is arrested.



PACC only have 3 investigators. I assigned 2 and with BID’s help and coordination with Chinese Officials, Xie was arrested by Mid January, 2019.

Chinese fugitive allegedly involved in corruption arrested in PH

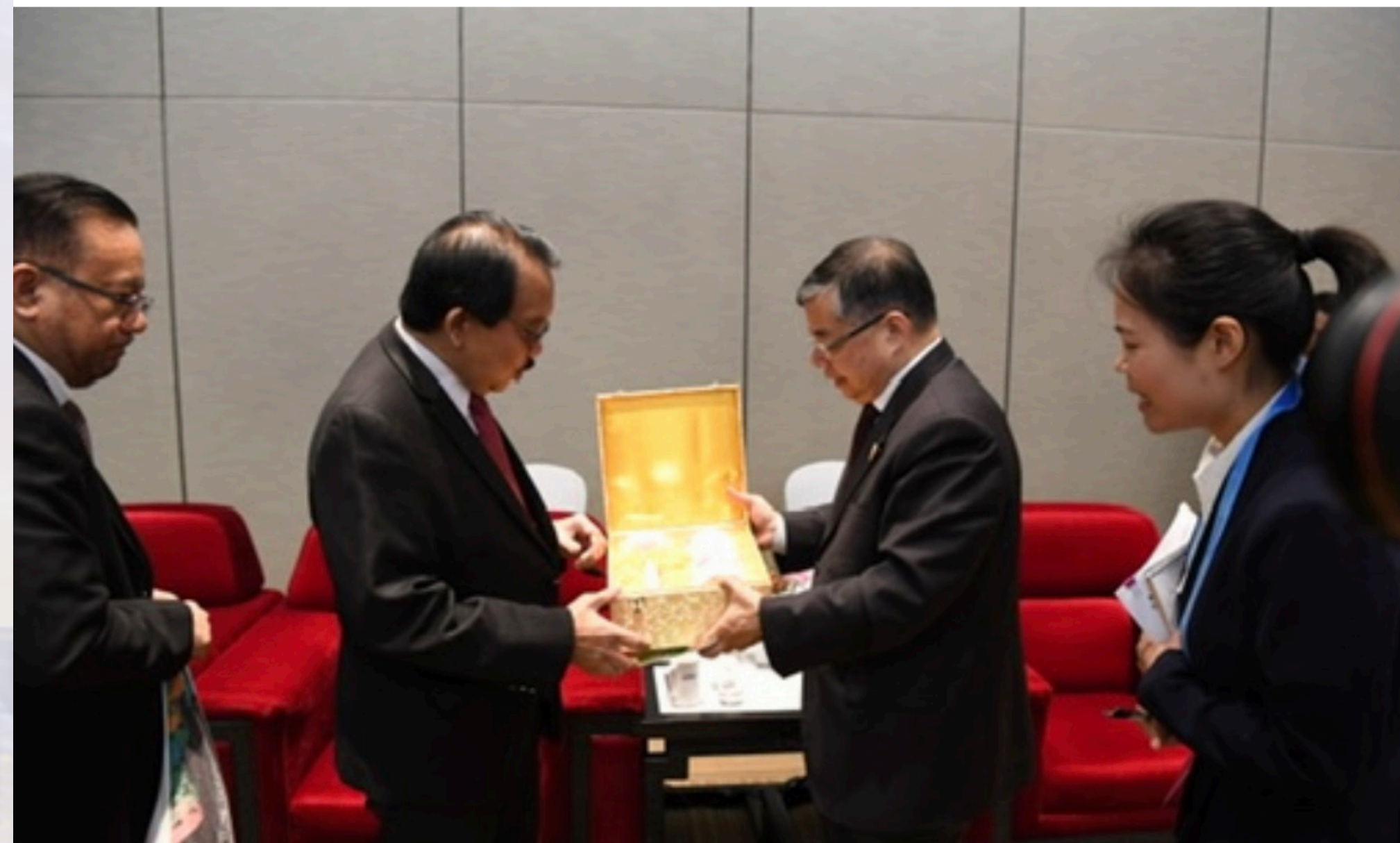
By CNN Philippines Staff
Updated 17:04 PM PHT Wed, January 16, 2019



Through Blitzkrieg, Xie was arrested, and Mr. Li Shulei came to the Philippines



Then We Were Back To “E”



We joined the Philippine delegation headed by our President at the Belt and Road initiative in China by April 2019. An MOU was signed between China and the Philippines represented by Mr. Li Shulei and Chairman Dante Jimenez

ARTA AND THE EDB LAW – PREVENTIVE MEASURE THROUGH EMPOWERMENT AND ENFORCEMENT

- The Anti-Red Tape Authority was created under R.A. 11032 or the “The Ease of Doing Business Law or “EODB”. But I prefer to call it EDB. It has two main functions, “Empowerment” and “Enforcement”. Empowerment – ARTA assist agencies in complying with the EDB law. Review its redundant requirements, apply whole of government approach, Re-engineering. DG Jeremiah Belgica, my companion in securing the DAP files introduced the NEHEMIA Project intended to streamline industry wide processes.
- Enforcement - As DDG for Legal, I was in charge of enforcement. ARTA’s jurisdiction is wider than PACCC. It covers all agencies in the Executive branch engaged in business or non-business transaction with the general public. Otherwise put, we monitor and empower and/or enforce the EDB law to almost 4,000 national and local agencies. One enforcement provision is the Automatic Approval of complete application that remains pending beyond the prescribed processing time. ARTA simply investigates if the requisites are present and issues an Order that it is deemed approved by operation of law. If the agency does not comply, charges may be filed by ARTA.

MISUSE OF LAWS – BY OFFENSIVE STANCE TO AVOID ACCOUNTABILITY

- Here's a situation: Assume that Agency A has been warned by ARTA. Agency A went to Agency B and the latter took its side. ARTA is ganged up. To avoid accountability, the head of Agency A asked the Constitutionally mandated Disciplinarian with the help of a big company under the jurisdiction of Agency A. Agency A needs the findings of ARTA reversed to avoid accountability. Big company filed a complaint vs. ARTA. Const D issues a preventive suspension. ARTA OIC reversed, and Agency A used the reversal to have the 2 cases dismissed. One case agreed but the other case and A lost. Now, the head of Agency was appointed as head of a Constitutional body.
- In this situation, How were the laws misused? How will you address the problem of ARTA?

RULE OF LAW; TRUTH & JUSTICE

- The misuse of laws to evade accountability happens when the rule of law, truth and justice are disregarded. The rule of law in plain and simple language is compliance to the standards set by society. These standards are often based on moral principles established by our belief that they came from an unseen "Author of life" taught by His Chosen we refer as prophet or Lord. Justice on the other hand is both the process of threshing out an issue on the said compliance and its outcome. Truth is what binds the rule of law and justice. These are the key elements in preventing the misuse of laws to evade accountability. In the final analysis, however, the rule of law and truth are within the term "justice!"

Justice therefore is more than what meets the eye! Unless by GOD's grace we first resolve the problem of injustice, no amount of economic reform, no charismatic leader, no ideology, no political party, no international treaty, and no technology can ever bring peace and prosperity to our society.

- The Preamble of our Constitution provides:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy **under the rule of law and a regime of truth, justice, freedom, love, equality, and peace,** do ordain and promulgate this Constitution. (*emphases provided*)

Thus, after the 1986 miracle at EDSA, the Filipino people ratified the 1987 Constitution. The preamble contained the Filipino dream and how to attain it: 1. Implore the aid of the Almighty GOD; and 2. Fulfill the duty (i.e., a covenant with GOD and among each other) to live under **the rule of law and a regime of truth, justice, freedom, love, equality, and peace.** This is our Code of Conduct. If we abide, then we will get rid of corruption.

To the majority of Filipinos, **truth, justice, freedom, love, equality, and peace are the traits of Christ.** I may sound or appear to be veering towards religion. No! I speak of the Preamble of our Constitution which is our fundamental law and the duty of every Filipino. It may not be a source of right, but definitely, it is a source of our duty. Thus, last February, I resigned from my position in government for the purpose of RoC n RoL – To live under the Regime of Christ and Rule of Law! The RoC n RoL Movement!

Let's RoC n RoL

THANK YOU!

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THE ROC N ROL MOVEMENT