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G.R. No. 180643 - ROMULO L. NERI in his capacity as Chairman of the Commission on Higher Education (CHED) and as former Director General of the National Economic & Development Authority (NEDA), Petitioner, - versus - **SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS & INVESTIGATIC (BLUE RIBBON), SENATE COMMITTEE ON TRADE & COMMERCE, and SENATE COMMITTEE ON NATIONAL DEFENSE & SECURITY,** Respondents.

Promulgated:

March 25, 2008

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DISSENTING AND CONCURRING OPINION

***CARPIO, J.*:**

The Case

This Petition,[1] with supplemental petition,[2] for certiorari with application for a temporary restraining order, assails the letter dated 22 November 2007 and the Order dated 30 January 2008 issued by respondents Senate Committees on Accountability of Public Office and Investigation (Blue Ribbon),[3] Trade and Commerce,[4] and National Defense and Security[5] (collectively respondents or Committees).

The 22 November 2007 letter required petitioner Commission on Higher Education Chairman

and former National Economic Development Authority (NEDA) Director General Romulo Neri (petitioner) "to show cause why [he] should not be cited in contempt" for his failure attend the Blue Ribbon Committee hearing on 20 November 2007, while the Order issued or 30 January 2008 cited petitioner in contempt and directed his arrest and detention in the Office of the Senate Sergeant-At-Arms.

The Antecedent Facts

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On 21 April 2007, with President Gloria Macapagal-Arroyo as witness, the Depar Transportation and Communications, represented by Secretary Leandro R. Mendoza, an Zhong Xing Telecommunications Equipment Company Limited (ZTE), represented by its Vice President Yu Yong, signed in Boao, China, a "Contract for the Supply of Equipment and Services for the National Broadband Network Project" (NBN Project) worth US$329,481,290. The People's Republic of China, through its Export and Import Bank, agreed to extend a loan to the Philippines to finance the NBN Project.[6] The NBN Project was supposed to provide landline, cellular and Internet services in all government c nationwide.

After the signing of the agreement, controversies hounded the NBN Project. There were various reports of alleged bribery, "overpricing" of US$130 million, payment "advances" or "kickback commissions" involving high-ranking government officials, and other anomalies which included the loss of the contract, collusion among executive official and political pressures against the participants in the NBN Project.[7]

Considering the serious questions surrounding the NBN Project, respondents calle investigation, in aid of legislation, on the NBN Project based on resolutions introduced Senators Aquilino Q. Pimentel, Sr., Panfilo M. Lacson, Miriam Defensor Santiago, and Roxas. Several hearings were conducted, one of which was held on 26 September 2007 where petitioner testified before respondents.

During this particular hearing, petitioner testified that then Commission on Elections Chairman Benjamin Abalos, Sr. (Abalos), the alleged broker in the NBN Project, offe petitioner ₱200 million in exchange for NEDA's approval of the NBN Project. Petitione further testified that he told President Arroyo of the bribe attempt by Abalos and that President instructed him not to accept the bribe offer.

However, when respondents asked petitioner what he and President Arroyo discusse thereafter, petitioner refused to answer, invoking executive privilege. Petitioner claimed executive privilege when he was asked the following questions:

I.

SEN. PANGILINAN: You mentioned earlier that you mentioned this to the President. Did the President after that discussion over the phone, was this ever raised again, the issue of the 200 ka rito?

MR. NERI: We did not discuss it again, Your Honor.

SEN. PANGILINAN: With the President? But the issue, of course, the NBN deal, was raised again? After that, between you and the President. Pinalow up (followed up) ba niya?

MR. NERI: May I claim the executive privilege, Your Honor, because I think this already involves conversations between me and the President, Your Honor, because this is already confidential in nature.

x x x

II.

SEN. LEGARDA: Has there been any government official higher than you who dictated that the ZTE project be prioritized or given priority? In short, were you dictated upon not to encourage AHI as you've previously done...

MR. NERI: As I said, Your Honor...

SEN. LEGARDA: ...but to prefer or prioritize the ZTE?

MR. NERI: Yeah. As the question may involve – as I said a conversation/correspondence between the President and a public official, Your Honor.

SEN. LEGARDA: I'm sorry. Can you say that again?

MR. NERI: As I said, I would like to invoke Sec. 2(a) of EO 464.

x x x

III.

MR. NERI: She said, "Don't accept it," Your Honor.

SEN. CAYETANO, (P): And there was something attached to that like... "But pursued with a project or go ahead and approve," something like that?

MR. NERI: As I said, I claim the right of executive privilege no further discussions on the...

SEN. CAYETANO, (P): Ah, so that's the part where you invoke your executive privilege, is that the same thing or is this new, this invocation of executive privilege?

My question is, after you had mentioned the 200 million and she said "Don't accept," was there any other statement from her as to what to do with the project?

MR. NERI: As I said, it was part of a longer conversation, Your Honor, so...

SEN. CAYETANO, (P). A longer conversation in that same-- part of that conversation on an ongoing day-to-day, week-to-week conversation?

MR. NERI: She calls me regularly, Your Honor, to discuss various matters.

SEN. CAYETANO, (P): But in connection with, "Ma'am, na-offer-an ako ng 200." -- "Ah, don't accept, next topic," ganoon ba yon? Or was there like, "Alam mo, magandang project sana 'yan, eh bakit naman ganyan."

MR. NERI: As I said, Your Honor, beyond that I would not want to go any further, Your Honor.

SEN. CAYETANO, (P): I just can't hear you.

MR. NERI:
Beyond what I said, Your Honor, I'd like to invoke the right of executive privilege.

On 13 November 2007, the Blue Ribbon Committee issued a subpoena *ad testificandum*[8] requiring petitioner to appear again before it and testify further on 20 November 2007.

On 15 November 2007, Executive Secretary Eduardo Ermita (Executive Secretary Er addressed a letter (Ermita Letter) to respondent Blue Ribbon Committee Chair Alan P Cayetano requesting that petitioner's testimony on 20 November 2007 be dispensed wi because he was invoking executive privilege "By Order of the President." Executive Secretary Ermita explained:

> Specifically, Sec. Neri sought guidance on the possible invocation of executive privilege on t following questions, to wit:
>
> a) Whether the President followed up the (NBN) project?
>
> b) Were you dictated to prioritize the ZTE?
>
> c) Whether the President said to go ahead and approve the project after being told about the alleged bribe?
>
> Following the ruling in *Senate vs. Ermita*, the foregoing questions fall under **conversations** and correspondence **between the President and public officials which are considered executive privilege** (*Almonte v Vazquez,* G.R. 95367, 23 May 1995; *Chavez v PEA*, G.R. 133250, July 9, 2002). Maintaining the confidentiality of conversations of the President is necessary in the exercise of her executive and policy decision making process. The expectation of a President to the **confidentiality of her conversations** and correspondences, like the value which we accord deference for the privacy of all citizens, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. Disclosure of conversations of the President will have a chilling effect on the President, and will hamper her in the effective discharge of her duties and responsibilities, is she is not protected by confidentiality of her conversations.
>
> The context in which executive privilege is being invoked is that the information sought to be

disclosed might impair our diplomatic as well as economic relations with the People's Republic of China.

Given the confidential nature in which these information were conveyed to the President, he cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect.

In light of the above considerations, this Office is constrained to invoke the settled doctrine o executive privilege as defined in *Senate vs. Ermita*, and has advised Secretary Neri accordingly.[9]

Consequently, petitioner did not appear before respondents on 20 November 2007. Pe assumed that the only matters on which respondents would question him were exclusive related to his further discussions with the President relating to the NBN Project.

On 22 November 2007, respondents issued the letter requiring petitioner to show cause why he should not be cited in contempt for his failure to appear at the 20 November 2007 hearing.[10]

In a letter dated 29 November 2007, petitioner personally replied to respondents, requesting to be furnished in advance new matters, if any, which respondents would like to ask him othe than the three questions for which Executive Secretary Ermita had already claimed ex privilege.[11]

On 7 December 2007, petitioner filed the initial Petition for certiorari with a prayer for issuance of a temporary restraining order to enjoin respondents from citing him in contempt.

On 30 January 2008, respondents issued an order for the arrest of petitioner for his failur appear at the hearings of the Senate Committees on 18 September 2007, 20 September 2007, 25 October 2007, and 20 November 2007.[12] On the same day, petitioner wrote respondents and Senate President Manny Villar seeking a reconsideration of the issuance of the arrest

order.

On 1 February 2008, petitioner filed with this Court a supplemental petition for certiorari with an urgent application for a temporary restraining order or preliminary injunction seeking nullify the arrest order and to enjoin respondents from implementing such order.

On 5 February 2008, the Court issued a resolution requiring respondents to Comment o Petition and supplemental petition and to observe the status quo prevailing prior to respondents' Order of 30 January 2008.
The Court further resolved to set the Petition for hearing on the merits and on the Status Q Ante Order on 4 March 2008.

The Court heard the parties in oral arguments on 4 March 2008, on the following issues:

1. What communications between the President and petitioner Neri are covered by the principle 'executive privilege'?

   1.a Did Executive Secretary Ermita correctly invoke the principle of executive privilege, by order the President, to cover (i) conversations of the President in the exercise of her executive and policy decision-making and (ii) information, which might impair our diplomatic as well economic relations with the People's Republic of China?

   1.b Did petitioner Neri correctly invoke executive privilege to avoid testifying on his conversatio with the President on the NBN contract on his assertions that the said conversations "dealt delicate and sensitive national security and diplomatic matters relating to the impact of bri scandal involving high government officials and the possible loss of confidence of foreig investors and lenders in the Philippines" xxx, within the principles laid down in *Senate v. Ermita* (488 SCRA 1 [2006])?

   1.c Will the claim of executive privilege in this case violate the following provisions of th Constitution:

Sec. 28, Art II	(Full public disclosure of all transactions involving public interest)
Sec. 7, Art. III	(The right of the people to information on matters of public concern)
Sec. 1, Art. XI	(Public office is a public trust)

Sec. 17, Art. VII (The President shall ensure that the laws be faithfully executed)

and the due process clause and the principle of separation of powers?

2. What is the proper procedure to be followed in invoking executive privilege?

3. Did the Senate Committees grave[ly] abuse their discretion in ordering the arrest of petit non-compliance with the subpoena?

After the oral arguments, the Office of the Solicitor General (OSG) filed on 17 March 2 Motion for Leave to Intervene and to Admit Attached Memorandum. The OSG argues that petitioner's discussions with the President are covered by executive privilege. The OSG assails the validity of the Senate's *Rules of Procedure Governing Inquiries in Aid of Legislation* on the ground of lack of publication. On 18 March 2008, the Court granted the OSG's motion to intervene.

In his Petition, petitioner alleges that the invocation of executive privilege is well founded. Petitioner claims that his candid discussions with the President were meant to explore option in crafting policy decisions. Petitioner further argues that the invocation of executive privilege was "timely, upon authority of the President, and within the parameters laid down in *Senate v. Ermita* and *United States v. Reynolds*." Petitioner also maintains that his non-appearance at the 20 November 2007 hearing was due to the order of the President herself, invoking executive privilege. Therefore, petitioner asserts that the show cause order was issued with grave abuse of discretion, hence void.

In his supplemental petition, petitioner argues, among others, that the issuance of the arre order was another grave abuse of discretion because he did not commit any contumacious act. Petitioner contends that Executive Secretary Ermita correctly invoked executive privile response to the subpoena issued by respondents for petitioner to testify at the 20 Novembe 2007 hearing. Petitioner also impugns the validity of the Senate's *Rules of Procedure*

Governing Inquiries in Aid of Legislation for lack of publication for the 14th Congress.

Petitioner also alleges that respondents' order of arrest preempted this Court's action on h initial Petition.
Petitioner claims that "this order of arrest elides, and side-steps, the President's invocation of executive privilege in behalf of petitioner."

In their Comment, respondents counter that there is no justification for petitioner's invocatio of executive privilege. Respondents assert that petitioner's sweeping claim of executiv privilege does not authorize his absolute refusal to appear and testify before them. Respondents argue that petitioner failed to overcome the presumption against executive secrecy and in favor of disclosure, as required in *Senate v. Ermita*.[13]

Respondents also claim that petitioner's justification violates the constitutional a statutory standards for public officers.
Respondents further maintain that the grounds invoked by petitioner are mere speculations and presumptions.
Likewise, respondents insist that the testimony of petitioner is material and pertinent i legislation.
Respondents point out that several bills relating to the inquiry have already been filed in aid of legislation. Respondents also stress that even assuming that petitioner timely invok executive privilege, this privilege does not extend to criminal activities.

The Issues

The issues raised in this petition may be summarized as follows:

1. Whether Executive Secretary Ermita correctly invoked executive privilege on th questions mentioned in his 15 November 2007 letter to the Senate Blue Ribb

Committee;

2. Whether the Senate's *Rules of Procedure Governing Inquiries in Aid of Legislation* were duly published; and

3. Whether the Senate's Order of 30 January 2008 citing petitioner in contempt an directing his arrest is valid.

Discussion

1. Overview of Executive Privilege

Executive privilege is the implied constitutional power of the President to w information requested by other branches of the government. The Constitution does not expressly grant this power to the President but courts have long recognized implied Presidential powers if "necessary and proper"[14] in carrying out powers and functions expressly granted to the Executive under the Constitution.

In the United States, executive privilege was first recognized as an implied constitutiona power of the President in the 1973 case of *United States v. Nixon*.[15] U.S. Presidents, however, have asserted executive privilege since the time of the first President, Ge Washington.[16]
In this jurisdiction, several decisions have recognized executive privilege starting with the 1995 case of *Almonte v. Vasquez*,[17] and the most recent being the 2002 case of *Chavez v. Public Estates Authority*[18] and the 2006 case of *Senate v. Ermita*.[19]

As Commander-in-Chief of the Armed Forces[20] and as Chief Executive,[21] the President is ultimately responsible for military and national security matters affecting th

nation. In the discharge of this responsibility, the President may find it necessary to w sensitive military and national security secrets from the Legislature or the public.

As the official in control of the nation's foreign service by virtue of the President's control of all executive departments, bureaus and offices,[22] the President is the chief implementer of the foreign policy relations of the State. The President's role as chief implementer of the State's foreign policy is reinforced l President's constitutional power to negotiate and enter into treaties and internationa agreements.[23] In the discharge of this responsibility, the President may find it necessary to refuse disclosure of sensitive diplomatic secrets to the Legislature or the public. Traditionally, states have conducted diplomacy with considerable secrecy. There is every expectation that a state will not imprudently reveal secrets that its allies have shared with it.

There is also the need to protect the confidentiality of the internal deliberations of the President with his Cabinet and advisers. To encourage candid discussions and thorou exchange of views, the President's communications with his Cabinet and advisers need shielded from the glare of publicity. Otherwise, the Cabinet and other presidential advisers may be reluctant to discuss freely wit the President policy issues and executive matters knowing that their discussions will be publicly disclosed, thus depriving the President of candid advice.

Executive privilege, however, is not absolute. The interest of protecting military, national security and diplomatic secrets, as well as Presidential communications, must weighed against other constitutionally recognized interests. There is the declared state policy of full public disclosure of all transactions involving public interest,[24] the right of the people to information on matters of public concern,[25] the accountability of public officers,[26] the power of legislative inquiry,[27] and the judicial power to secure

testimonial and documentary evidence in deciding cases.[28]

The balancing of interests – between executive privilege on one hand and the other competing constitutionally recognized interests on the other hand - is a function of the courts. The courts will have to decide the issue based on the factual circumstances of each case. This is how conflicts on executive privilege between the Executive and the Legislature,[29] and between the Executive and the Judiciary,[30] have been decided by the courts.

The Judiciary, however, will consider executive privilege only if the issues cannot be resolved on some other legal grounds.[31] In conflicts between the Executive and the Legislature involving executive privilege, Judiciary encourages negotiation between the Executive and Legislature as the preferred route of conflict resolution.[32] Only if judicial resolution is unavoidable will courts resolve such disputes between tl Executive and Legislature.[33]

Information covered by executive privilege remains confidential even after the expiry of terms of office of the President, Cabinet members and presidential advisers. Thus, a f President can assert executive privilege.[34] The character of executive privilege attaches to the information and not to the person. Executive privilege is for the benefit of the State and not for the benefit of the office holder. Even death does not extinguish the confidentiality of information covered by executiv privilege.

Executive privilege must be exercised by the President in pursuance of **official** powers and functions. Executive privilege cannot be invoked to hide a crime because the President is neitl

empowered nor tasked to conceal a crime.[35] On the contrary, the President has the constitutional duty to enforce criminal laws and cause the prosecution of crimes.[36]

Executive privilege cannot also be used to hide private matters, like private financi transactions of the President. Private matters are those not undertaken pursuant to the lawful powers and official functions of the Executive. However, like all citizens, the President has a constitutional right to privacy.[37] In conducting inquiries, the Legislature must respect the right to privacy of citizens, including the President's.

Executive privilege is rooted in the separation of powers.[38] Executive privilege is an implied constitutional power because it is necessary and proper to carry out the e: constitutional powers and functions of the Executive free from the encroachment of the co-equal and co-ordinate branches of government. Executive privilege springs from the supremacy of each branch within its own assigned area of constitutional powers and functions.[39]

Executive privilege can be invoked only by the President who is the sole Executive in whom is vested **all** executive power under the Constitution.[40] However, the Executive Secretary can invoke executive privilege "By Order of the President," which means the Presid personally instructed the Executive Secretary to invoke executive privilege in a p circumstance.[41]

Executive privilege must be invoked with **specificity** sufficient to inform the Legislature and the Judiciary that the matter claimed as privileged refers to military, na security or diplomatic secrets, or to confidential Presidential communications.[42] A claim of

executive privilege accompanied by sufficient specificity gives rise to a presumptive executive privilege. A generalized assertion of executive privilege, without external evidence or circumstances indicating that the matter refers to any of the recognized categories (executive privilege, will not give rise to presumptive executive privilege.

If there is doubt whether presumptive privilege exists, the court may require *in camera* inspection of so much of the evidence as may be necessary to determine whether the c executive privilege is justified.[43]
Once presumptive executive privilege is established, the court will then weigh the need fo such executive privilege against the need for other constitutionally recognized interests.

Executive privilege must be invoked **after** the question is asked by the legislative committee, not before.
A witness cannot raise hypothetical questions that the committee may ask, claim exec privilege on such questions, and on that basis refuse to appear before the legislative committee.
If the legislative committee furnished in advance the questions to the witness, the witness must bring with him the letter of the President or Executive Secretary invoking execut privilege and stating the reasons for such claim.

If the legislative committee did not furnish in advance the questions, the witness must fi appear before the legislative committee, wait for the question to be asked, and then ra executive privilege. The legislative committee must then give the witness sufficient time consult the President or Executive Secretary whether the President will claim executi privilege.
At the next hearing, the witness can bring with him the letter of the President or Exec Secretary, and if he fails to bring such letter, the witness must answer the question.

There are other categories of government information which are considered confidential but are not strictly of the same status as those falling under the President's executive privilege. An example of such confidential information is the identity of an informer which is

confidential by contract between the government and the informer.[44] The privilege character of the information is contractual in nature. There are also laws that classify the identity of an informer as confidential.[45]
The privilege character of the information is conferred by the Legislature and not by Executive's implied power of executive privilege under the Constitution.

There is also the category of government information that is confidential while the deliberative process of agency executives is on-going, but becomes public information once an agency decision or action is taken.
Thus, a committee that evaluates bids of government contracts has a right to keep deliberations and written communications confidential. The purpose of the deliberative process privilege is to give agency executives freedom to discuss competing bids in pri without outside pressure. However, once they take a definite action, like deciding the best bid, their deliberations and written communications form part of government records accessible by the public.[46]

Confidential information under the deliberative process privilege is different from tl President's executive privilege.
Military, national security, and diplomatic secrets, as well as Presidential communicatio remain confidential without time limit.
The confidentiality of matters falling under the President's executive privilege remains as long as the need to keep them confidential outweighs the need for public disclosure.

Then there is the category of government information that must be kept temporarily confidential because to disclose them immediately would frustrate the enforcement of laws. In an entrapment operation of drug pushers, the identity of the undercover police agents informers and drug suspects may not be disclosed publicly until after the operation i concluded.
However, during the trial, the identity of the undercover police agents and informers n disclosed if their testimony is introduced in evidence.

2. Overview of Legislative Power of Inquiry

The Legislature's fundamental function is to enact laws and oversee the implementation existing laws. The Legislature must exercise this fundamental function consistent with the people's information on the need for the enactment of laws and the status of their implementation. The principal tool used by the Legislature in exercising this fundamental function is the power of inquiry which is inherent in every legislative body.[47] Without the power of inquiry, the Legislature cannot discharge its fundamental function and thus becomes inutile.

The Constitution expressly grants to the "Senate, the House of Representatives or any respective committees" the power to "conduct inquiries in aid of legislation."[48] This power of legislative inquiry is so searching and extensive in scope that the inquiry need not result any potential legislation,[49] and may even end without any predictable legislation.[50] The phrase "inquiries in aid of legislation" refers to inquiries to aid the enactment of laws, inquiries to aid in overseeing the implementation of laws, and even inquiries to exp corruption, inefficiency or waste in executive departments.[51]

Thus, the Legislature can conduct inquiries not specifically to enact laws, but specificall oversee the implementation of laws. This is the mandate of various legislative oversight committees which admittedly can conduct inquiries on the status of the implementation of laws. In the exercise of the legislative oversight function, there is always the potential, even if not expressed or predicted, th oversight committees may discover the need to improve the laws they oversee and recommend amendment of the laws. This is sufficient reason for the valid exercise of the power of legislative inquiry. Indeed, the

oversight function of the Legislature may at times be as important as its law-making function.[52]

Aside from the purpose of the inquiry, the Constitution imposes two other limitations on power of legislative inquiry.[53] *One*, the rules of procedure for the inquiry must be published. Publication of the rules of the inquiry is an **essential** requirement of due process. *Two*, the rights of persons appearing before the investigating committees, or affected t inquiries, must be respected. These rights include the right against self-incrimination,[54] as well as the right to privacy of communications and correspondence of a private nature.[55] The power of legislative inquiry does not reach into the private affairs of citizens.[56]

Also protected is the right to due process, which means that a witness must be given "fa notice" of the subject of the legislative inquiry. Fair notice is important because the witness may be cited in contempt, and even detained, if he refuses or fails to answer.[57] Moreover, false testimony before a legislative body is a crime.[58] Thus, the witness must be sufficiently informed of the nature of the inquiry so the witness can reasonably prepare possible questions of the legislative committee. To avoid doubts on whether there is fair notice, the witness must be given in advance the questions pertaining to the basic nature of the inquiry.[59]
From these advance questions, the witness can infer other follow-up or relevant questions that the legislative committee may ask in the course of the inquiry.

The Legislature has the inherent power to enforce by compulsion its power of inquiry.[60]
The Legislature can enforce its power of inquiry through its own sergeant-at-arms without the aid of law enforcement officers of the Executive[61] or resort to the courts.[62] The two

principal means of enforcing the power of inquiry are for the Legislature to order the arrest of a witness who refuses to appear,[63] and to detain a witness who refuses to answer.[64] A law that makes a crime the refusal to appear before the Legislature does not divest the Legislature of its inherent power to arrest a recalcitrant witness.[65]

The inherent power of the Legislature to arrest a recalcitrant witness remains despite the constitutional provision that "no warrant of arrest shall issue except upon probable cause to be determined personally by the judge."[66] The power being inherent in the Legislature, **essential for self-preservation**,[67] and not expressly withdrawn in the Constitution, the power forms part of the "legislative power x x x vested in the Congress."[68] The Legislature asserts this power independently of the Judiciary.[69] A grant of legislative power in the Constitution is a grant of all legislative powers, including inherent powers.[70]

The Legislature can cite in contempt and order the arrest of a witness who fails to appear pursuant to a subpoena *ad testificandum*. There is no distinction between direct and indirect contempt of the Legislature because both can be punished *motu propio* by the Legislature upon failure of the witness to appear or answer. Contempt of the Legislature is different from contempt of court.[71]

3. Whether Executive Privilege Was Correctly Invoked In this Case

The Ermita Letter invokes two grounds in claiming executive privilege. *First*, the answers to the three questions involve confidential conversations of the President wi petitioner. *Second*, the information sought to be disclosed might impair "diplomatic as well as economic" relations with the People's Republic of China.

However, in his present Petition, which he verified under oath, petitioner declared:

> 7.03. Petitioner's discussions with the President were candid discussions mean[t] to explore options in making policy decisions (see *Almonte v. Vasquez*, 244 SCRA 286 [1995]). **These discussions dwelt on the impact of the bribery scandal involving high Government officials on the country's diplomatic relations and economic and military affairs, and the possible loss of confidence of foreign investors and lenders in the Philippines.** (Emphasis supplied)

Petitioner categorically admits that his discussions with the President "**dwelt on the impact of bribery scandal involving high Government officials**." Petitioner's discussions with the President dealt not on simple bribery, but on **scandalous bribery involving high Government officials** of the Philippines.

In a letter dated 29 November 2007 to the Chairs of the Committees, petitioner's cour declared:

> 4.
> His conversations with the President dealt with delicate and sensitive national security and diplomatic matters relating to the impact of **bribery scandal involving high Government officials**
> and the possible loss of confidence of foreign investors and lenders in the Philippines. x x x
> (Emphasis supplied)

Petitioner admits, and there can be no dispute about this admission, that his discussions witl the President dwelt on a bribery scandal involving high Government officials of th Philippines.

Executive privilege can never be used to hide a crime or wrongdoing, even if committed b high government officials. Executive privilege applies only to protect **official** acts and functions of the President, never to conceal illegal acts by anyone, not even those of t President.[72] During the oral arguments on 4 March 2008, **counsel for petitioner admitted that executive privilege cannot be invoked to hide a crime**. Counsel for petitioner also **admitted** that petitioner and the President discussed a scandal, and that the "**scandal was about bribery**." Thus:

JUSTICE CARPIO:
Counsel, in your petition, paragraph 7.03, x x x – you are referring to the discussions between Secretary Neri and the President and you state: - [“]This discussion dwelt on the impact of the bribery scandal involving high government officials on the countries diplomatic relations and economic and military affairs and the possible loss of confidence of foreign investors and lenders in the Philippines.[”] You stated the same claim also in your letter of 29 November 2007 to the Senate, is that correct?

ATTY. BAUTISTA: That is true, Your Honor.

JUSTICE CARPIO:
Now, can Executive Privilege be invoked to hide a crime or a wrongdoing on the part of government officials?

ATTY. BAUTISTA: **Definitely not, Your Honor.**

JUSTICE CARPIO: x x x
Now, you are saying that the discussions between the President and Secretary Neri that you claim[x] to be privilege[ed] refer to bribery scandal involving government officials. So, you are admitting that there is a crime here?

ATTY. BAUTISTA: Only the scandal, Your Honor, not the crime.

JUSTICE CARPIO: But you are saying bribery, bribery is a crime, correct?

ATTY. BAUTISTA: That is true, Your Honor.

JUSTICE CARPIO:
So, they discuss[ed] about a bribery involving government officials, correct?

ATTY. BAUTISTA: **The scandal, Your Honor**.

JUSTICE CARPIO: **No, [it] says bribery**.

ATTY. BAUTISTA: **Well, bribery, the scandal was about bribery.**

x x x. (Emphasis supplied)

Petitioner admits in his Petition, and through his counsel in the 15 November 2007 letter to the Senate Blue Ribbon Committee and during the oral arguments, that he discuss with the President a “**bribery scandal involving high government officials**.” This particular discussion of petitioner with the President is not covered by executive privilege. The invocation of executive privilege on the three questions dwelling on a bribery scandal is

clearly unjustified and void. Public office is a public trust[73] and not a shield to cover up wrongdoing. Petitioner must answer the three questions asked by the Senate Committees.

The Ermita Letter merely raises a generalized assertion of executive privilege diplomatic matters. The bare claim that disclosure "might impair" diplomatic relations w China, without specification of external evidence and circumstances justifying such c insuffcent to give rise to any presumptive executive privilege.[74] A claim of executive privilege is presumptively valid if there is specificity in the claim. The claim of impairment of economic relations with China is invalid because impairment of economic relation involving "foreign investors and lenders in the Philippines," is not a recognized grounc invoking executive privilege.

The Ermita Letter does not claim impairment of military or national security secrets as grounds for executive privilege. **The Ermita Letter only invokes confidential Presidential conversations and impairmen of diplomatic and economic relations**. However, in his Petition, petitioner declared discussions with the President referred to a bribery scandal affecting "diplomatic relations and economic and military affairs." Likewise, in his 29 November 2007 letter to the Senate Committees, counsel for petitione stated that petitioner's discussions with the President referred to "sensitive national security and diplomatic matters."

Apparently, petitioner has expanded the grounds on which Executive Secretary Ermita invoked executive privilege on behalf of the President. Petitioner also confuses military secrets with national security secrets. Petitioner's claim of executive privilege not only lacks specificity, it is also imprecise confusing.

In any event, what prevails is the invocation of Executive Secretary Ermita since he is the only one authorized to invoke executive privilege "By Order of the President."[75]

Thus, the bases for the claim of executive privilege are what the Ermita Letter states, namely, confidential Presidential conversations and impairment of diplomatic and economic relations. However, impairment of economic relations is not even a recognized ground. In short, this Court can only consider confidential Presidential conversations and impairment of dip relations as grounds for the invocation of executive privilege in this petition.

During the oral arguments, counsel for petitioner failed to correct or remedy the lack specificity in the invocation of executive privilege by Executive Secretary Ermita. Thus:

> JUSTICE CARPIO:
> Okay, was the DFA involved in the negotiation[s] for the NBN contract?
>
> ATTY. BAUTISTA:[76] I do not know, Your Honor.
>
> x x x x x x x x x
>
> CHIEF JUSTICE PUNO:
> Do [you] also know whether there is any aspect of the contract relating to diplomatic relations which was referred to the Department of Foreign Affairs for its comment and study?
>
> ATTY. LANTEJAS:
> As far as I know, Your Honors, there was no referral to the Department of Foreign Affairs, Your Honor.

While claiming that petitioner's discussions with the President on the NBN Project in sensitive diplomatic matters, petitioner does not even know if the Department of Foreig Affairs (DFA) was involved in the NBN negotiations. This is incredulous considering that under the Revised Administrative Code, the DFA "shall be the **lead agency** that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations."[77]

The three questions that Executive Secretary Ermita claims are covered by executive privilege, if answered by petitioner, will not disclose confidential Presidential communications. Neither will answering the questions disclose diplomatic secrets. Counsel

for petitioner **admitted** this during the oral arguments in the following exchange:

ASSOCIATE JUSTICE CARPIO: Going to the first question x x x whether the President followed up the NBN project, is there anything wrong if the President follows up with NEDA the status of projects in government x x x, is there anything morally or legally wrong with that?

ATTY. LANTEJAS:[78] There is nothing wrong, Your Honor, because (interrupted)

ASSOCIATE JUSTICE CARPIO: That's normal.

ATTY. LANTEJAS: That's normal, because the President is the Chairman of the NEDA Board, Your Honor.

ASSOCIATE JUSTICE CARPIO: Yes, so there is nothing wrong. So why is Mr. Neri afraid to be asked this question?

ATTY. LANTEJAS: I just cannot (interrupted)

ASSOCIATE JUSTICE CARPIO: You cannot fathom?

ATTY. LANTEJAS: Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO: You cannot fathom. The second question, were you dictated to prioritize the ZTE [contract], is it the function of NEDA to prioritize specific contract[s] with private parties? No, yes?

ATTY. LANTEJAS: The prioritization, Your Honor, is in the (interrupted).

ASSOCIATE JUSTICE CARPIO: Project?

ATTY. LANTEJAS: In the procurement of financing from abroad, Your Honor.

ASSOCIATE JUSTICE CARPIO: Yes. The NEDA will prioritize a project, housing project, NBN project, the Dam project, but never a specific contract, correct?

ATTY. LANTEJAS: Not a contract, Your Honor.

ASSOCIATE JUSTICE CARPIO: This question that Secretary Neri is afraid to be asked by the Senate, he can easily answer this, that NEDA does not prioritize contract[s], is that correct?

ATTY. LANTEJAS: It is the project, Your Honor.

ASSOCIATE JUSTICE CARPIO: So why is he afraid to be asked this question?

ATTY. LANTEJAS: I cannot, I cannot fathom. Your Honor.

ASSOCIATE JUSTICE CARPIO: You cannot fathom also?

ATTY. LANTEJAS: Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO: But is there anything wrong if the President will tell the NEDA
Director General, you prioritize this project, is there anything legally or morally wrong with that?

ATTY. LANTEJAS: There is nothing wrong with that, Your Honor.

ASSOCIATE JUSTICE CARPIO: There is nothing [wrong]. It happens all the time?

ATTY. LANTEJAS: The NEDA Board, the Chairman of the NEDA Board, yes, she can.

ASSOCIATE JUSTICE CARPIO: [S]he can always tell that?

ATTY. LANTEJAS: Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO: Okay. Let's go to the third question, whether the President said, to go ahead and approve the project after being told about the alleged bribe.
Now, x x x it is not the NEDA Director General that approves the project, correct?

ATTY. LANTEJAS: No, no, Your Honor.

ASSOCIATE JUSTICE CARPIO: It is the (interrupted)

ATTY. LANTEJAS: It is the NEDA Board, Your Honor.

ASSOCIATE JUSTICE CARPIO: The NEDA Board headed by the President.

ATTY. LANTEJAS: Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
So this question, is not correct also, x x x whether the President said to Secretary Neri to go ahead and approve the project? Secretary Neri does not approve the project, correct?

ATTY. LANTEJAS: He's just the Vice Chairman, Your Honor.

ASSOCIATE JUSTICE CARPIO: So why is he afraid to be asked this question?

ATTY. LANTEJAS: I cannot tell you, Your Honor.

ASSOCIATE JUSTICE CARPIO: You cannot fathom also?

ATTY. LANTEJAS: Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO: You cannot fathom also.

ATTY. LANTEJAS: Yes, Your Honor.

Petitioner's counsel admits that he "cannot fathom" why petitioner refuses to answer the three questions. Petitioner's counsel admits that the three questions, even if answered by petitioner, will disclose confidential Presidential discussions or diplomatic secrets. The invocation of executive privilege is thus unjustified.

Of course, it is possible that the follow-up questions to the three questions may disclosure of confidential presidential discussions or diplomatic secrets. However, executive privilege cannot be invoked on possible questions that have not been asked by the le committee. Executive privilege can only be invoked after the question is asked, not before, becau legislative committee may after all not ask the question. But even if the follow-up questions call for the disclosure of confidential Presidential discussions or diplomatic secrets, st executive privilege cannot be used to cover up a crime.

4. Whether the Senate's Rules of Procedure on Inquiries Have Been Published

The Constitution requires that the Legislature publish its rules of procedure on the co legislative inquiries in aid of legislation.[79] There is no dispute that the last publication of the *Rules of Procedure of the Senate Governing the Inquiries in Aid of Legislation* was on 1 December 2006 in the *Philippine Star* and *Philippine Daily Inquirer* during the 13th Congress. There is also no dispute that the *Rules of Procedure* have not been published in newspapers of general circulation during the current 14th Congress. However, the *Rules of Procedure* have been published continuously in the website of the Senate since at least the 13th Congress. In addition, the Senate makes the *Rules of Procedure* available to the public in pamphlet form.

Petitioner assails the validity of the *Rules of Procedure* because they have not been duly published for the 14th Congress.[80] Respondents counter that the Senate is a continuing legislative body. Respondents argue that as a continuing body, the Senate does not have to republish the *Rules of Procedure* because publication of the *Rules of Procedure* in the 13th Congress dispenses with republication of the *Rules of Procedure* in subsequent Congresses. The issue then turns on whether the Senate under the 1987 Constitution is a continuing body.

In *Arnault v. Nazareno*,[81] decided under the 1935 Constitution, this Court ruled that "the Senate of the Philippir continuing body whose members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, **two-thirds always continuing into the next Congress** save as vacancies may occur thru death or resignation." To act as a legislative body, the Senate must have a quorum, which is a majority of its membership.[82] Since the Senate under the 1935 Constitution always had two-thirds of its membership filled up except for vacancies arising from death or resignation, the Senate always maintained quorum to act as a legislative body. Thus, the Senate under the 1935 Constitution continued to act as a legislative body even after the expiry of the term of one-third of its members. This is the rationale in holding that the Senate under the 1935 Constitution was a continuing legislative body.[83]

The present Senate under the 1987 Constitution is no longer a continuing legislative body. The present Senate has twenty-four members, twelve of whom are elected every three years for a term of six years each. Thus, the term of twelve Senators expires every three years, leaving **less than a majority of Senators to continue into the next Congress**. The 1987 Constitution, like the 1935 Constitution, requires a majority of Senators to "constitute a quorum to do business."[84] Applying the same reasoning in *Arnault v. Nazareno*, the Senate under the 1987 Constitution is not a continuing body because less than majority of the Senators continue into the Congress. The consequence is that the *Rules of Procedure* must be republished by the Senate

after every expiry of the term of twelve Senators.

The publication of the *Rules of Procedure* in the website of the Senate, or in pamphlet form available at the Senate, is not sufficient under the *Tañada v. Tuvera*[85] ruling which requires publication either in the Official Gazette or in a newspaper of general circulation. The *Rules of Procedure* even provide that the rules "shall take effect seven (7) days after publication in two newspapers of general circulation,"[86] precluding any other form of publication. Publication in accordance with *Tañada* is mandatory to comply with the due process requirement because the *Rules of Procedure* put a person's liberty at risk. A person who violates the *Rules of Procedure* could be arrested and detained by the Senate.

Due process requires that "fair notice" be given to citizens before rules that put th liberty at risk take effect. The failure of the Senate to publish its *Rules of Procedure* as required in Section 22, Article VI of the Constitution renders the *Rules of Procedure* void. Thus, the Senate cannot enforce its *Rules of Procedure*.

5. Whether the Senate Committees Validly Ordered the Arrest of Petitioner

The Senate and its investigating committees have the implied power to cite in contempt and order the arrest of a witness who refuses to appear despite the issuance of a subpoena. The Senate can enforce the power of arrest through its own Sergeant-at-Arms. In the present case, based on the Minutes of Meetings and other documents submitted by respondents majority of the regular members of each of the respondent Committees voted to cite petitioner in contempt and order his arrest. However, the Senate's Order of 30 January 2008 citing petitioner in contempt and ordering his arrest is void due to the non-publication of the *Rules of Procedure*.[87]

The arrest of a citizen is a deprivation of liberty. The Constitution prohibits deprivation of liberty without due process of law. The Senate or its investigating committees can exercise the implied power to arrest c

accordance with due process which requires publication of the Senate's *Rules of Procedure*. This Court has required judges to comply strictly with the due process requirements exercising their **express** constitutional power to issue warrants of arrest.[88] This Court has voided warrants of arrest issued by judges who failed to comply with due process. This Court can do no less for arrest orders issued by the Senate or its committees in violation of du process.

6. Conclusion

In summary, the issues raised in this petition should be resolved as follows:

a. Executive Secretary Ermita's invocation of executive privilege in his letter of November 2007 to the Senate Committees is void because (1) executive privilege cannot be used to hide a crime; (2) the invocation of executive privilege lacks specificity; and (3) the three questions for which executive privilege is claimed answered without disclosing confidential Presidential communications or diplom secrets.

b. The Senate's *Rules of Procedure* are void for lack of publication; and

c. The Senate Committees' Order of 30 January 2008 citing petitioner in contempt and directing his arrest is void for lack of published rules governing the conduct of inquiries in aid of legislation.

Accordingly, I **DISSENT** from the majority opinion's ruling that the three questions are covered by executive p However, I **CONCUR** with the majority opinion's ruling that the Rules of Procedure are void. Hence, I vote to **GRANT** the petition in part by (i) declaring void the assailed Order of respondents dated 30 Januar 2008 citing petitioner Secretary Romulo L. Neri in contempt and directing his arrest, an ordering respondents to desist from citing in contempt or arresting petitioner until the Senate's *Rules of Procedure Governing Inquiries in Aid of Legislation* are duly published and have become effective.

ANTONIO T. CARPIO
Associate Justice

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[1] *Rollo*, pp. 3-10. Under Rule 65 of the Rules of Court.

[2] Id. at 26-32.

[3] Headed by Senator Alan Peter S. Cayetano as Chair.

[4] Headed by Senator Mar Roxas as Chair.

[5] Headed by Senator Rodolfo G. Biazon as Chair.

[6] Respondents' Comment dated 14 February 2008

[7] Id.

[8] *Rollo*, pp. 15-16.

[9] Id. at 17-18.

[10] Id. at 12-13. The show cause letter reads:

Dear Mr. Neri:

A Subpoena Ad Testificandum has been issued and was duly received and signed by a member of your staff on 15 November 2007.

You were required to appear before the Senate Blue Ribbon hearing at 10:00 a.m. on 20 November 2007 to testify on the Matter of:

P.S. RES. NO. 127 BY SENATOR AQUILINO PIMENTEL, JR. (Resolution Directing The Blue Ribbon Committee and the Committee On Trade And Industry To Investigate, In Aid Of Legislation, The Circumstances Leading To The Approval of the Broadband Contract With The ZTE and The Role Played By The Officials Concerned In Getting It Consummated, and To Make Recommendations To Hale To The Courts of Law, The Persons Responsible For Any Anomaly In Connection Therewith and To Plug Loopholes, If Any, In The BOT Law and Other Pertinent Legislations); P.S. RES. NO. 129 BY SENATOR PANFILO M. LACSON (Resolution Directing The Committee On National Defense And Security To Conduct An Inquiry In Aid Of Legislation Into The National Security Implications Of Awarding The National Broadband Network Contract To The Chinese Firm Zhong Xing Telecommunications Equipment Company Limited [ZTE Corporation], With The End In View Of Providing Remedial Legislation That Will Further Protect Our National Sovereignty And Territorial Integrity); PRIVILEGE SPEECH OF SENATOR PANFILO M. LACSON entitled "LEGACY OF CORRUPTION" delivered on 11 September 2007; P.S. RES. NO. 136 BY SENATOR MIRIAM DEFENSOR SANTIAGO (Resolution Directing The Proper Senate Committee To Conduct An Inquiry, In Aid Of Legislation, On the Legal and Economic Justification Of The National Broadband Network [NBN] Project Of The Government); PRIVILEGE SPEECH OF SENATOR MIRIAM DEFENSOR SANTIAGO entitled "INTERNATIONAL AGREEMENTS IN CONSTITUTIONAL LAW: THE SUSPENDED RP-CHINA (ZTE) LOAN AGREEMENT" delivered on 24 September 2007; P.S. RES NO. 144 BY SENATOR MAR ROXAS (Resolution Urging President Gloria Macapagal Arroyo to direct the Cancellation of the ZTE Contract).

Since you have failed to appear in the said hearing, the Committees on Accountability of Public Officers and

Investigations (Blue Ribbon), Trade and Commerce and National Defense and Security require you to show cause why you should not be cited in contempt under Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon).

The Senate expects your explanation on or before 2 December 2007.

[11] Id. at 19.

[12] The arrest order reads:

ORDER

For failure to appear and testify in the Committees's hearing on Tuesday, September 18, 2007; Thursday, September 20, 2007; Thursday, October 25, 2007 and Tuesday, November 20, 2007, despite personal notice and Subpoena[s] Ad Testificandum sent to and received by him, which thereby delays, impedes and obstructs, as it has in fact delayed, impeded and obstructed the inquiry into the subject reported irregularities, AND for failure to explain satisfactorily why he should not be cited for contempt (Neri letter of 29 November 2007, herein attached) ***ROMULO L. NERI*** is hereby cited in contempt of th[ese] Committees and ordered arrested and detained in the Office of the Se Sergeant-At-Arms until such time that he will appear and give his testimony.

The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty four (24) hours from its enforcement.

SO ORDERED.

[13] 433 Phil. 506 (2002).

[14] *Marcos v. Manglapus*, G.R. No. 88211, 15 September 1989, 177 SCRA 668, and 27 October 1989, 178 SCRA 760. In resolving the motion for reconsideration, the Court cited *Myers v. United States* (272 U.S. 52 [1926]) where Chief Justice William H. Taft (a former U.S. President and Governor-General of the Philippines), writing for the majority, ruled: "The tr view of the Executive function is x x x that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power **or justly implied and included within such express grant as necessary and proper for its exercise**." The principle that power can be implied if "**necessary and proper**" to carry out a power expressly granted in the Constitution is now a well-settled doctrine.

[15] 418 U.S. 683 (1974).

[16] Laurence H. Tribe, AMERICAN CONSTITUTIONAL LAW, Vol. 1, p. 784 (3rd Edition).

[17] Supra note 13.

[18] 433 Phil. 506 (2002).

[19] Supra note 13.

[20] Section 18, Article VII, Constitution.

[21] Section 1, Article VII, Constitution.

[22] Section 17, Article VII, Constitution.

[23] Section 21, Article VII, Constitution.

[24] Section 28, Article II, Constitution.

[25] Section 7, Article III, Constitution.

[26] Section 1, Article XI, Constitution.

[27] Section 21, Article VI, Constitution.

[28] Sections 1 and 5, Article VIII, Constitution. *See* also *United States v. Nixon*, supra note 15.

[29] *Senate v. Ermita*, supra note 13.

[30] *United States v. Nixon*, supra note 15; *Clinton v. Jones*, 520 U.S. 681 (1997).

[31] *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367 (2004).

[32] *United States v. AT&T*, 551 F.2d 384, 394 (D.C. Cir. 1976). The Court stated: "Before moving on to a decision of such nerve-center constitutional questions, we pause to allow for further efforts at a settlement. x x x This dispute between legislative and executive branches has at least some elements of the political-question doctrine. A court decision selects a victor, and tends thereafter to tilt the scales. A compromise worked out between the branches is most likely to meet thei essential needs and the country's constitutional balance." *See* also *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977).
The Court stated: "The framers, rather than attempting to define and allocate all governmental power in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and eff functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adv relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of constitutional scheme avoids the mischief of polarization of disputes x x x."

[33] Section 1, Article VIII, Constitution.

[34] *Nixon v. Administrator of General Services Administration*, 433 U.S. 425 (1977).

[35] *McGrain v. Daugherty*, 273 U.S. 135, 179-180 (1927). The U.S. Supreme Court declared: "Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing x x x."

[36] Section 17, Article VII, Constitution.

[37] *Nixon v. Administrator of General Services*, supra note 34.

[38] *United States v. Nixon*, supra note 15.

[39] Id.

[40] Section 1, Article VII, Constitution.

[41] *Senate v. Ermita*, supra note 13.

[42] Id. In *Senate v. Ermita*, the Court quoted *Smith v. Federal Trade Commission* (403 F. Supp. 1000 [1975]), thus: "[T]he lack of specificity renders an assessment of the potential harm resulting from disclosure impossible, thereby preventing the Cou from balancing such harm against plaintiffs' need to determine whether to override any claims of privilege." The Court also quoted *U.S. v. Article of Drug* (43 F.R.D. 181, 190 [1976]), thus: "Privilege cannot be set up by an unsupported claim. The facts upon which the privilege based must be established."

[43] *United States v. Nixon*, supra note 15.
Professor Lawrence H. Tribe summarizes that "documents defended only by broad claim of confidentiality must be turned over to district court for *in camera* inspection to assess relevance." Supra note 16, footnote 35 at 775.

[44] *Toten v. United States*, 92 U.S. 105 (1876).

[45] Republic Act No. 2338. Section 282 of the present Tax Code is now silent on the confidentiality of the identity of the informer.

[46] Section 7, Article III, Constitution; *Chavez v. Public Estates Authority*, 433 Phil. 506, 531-532 (2002). The Court stated: "Information, however, on on-going evaluation or review of bids or proposals being undertaken by the bidding or rev committee is not immediately accessible under the right to information. While the evaluation or review is still on-going, there are no "official acts, transactions, or decisions" on the bids or proposals. However, once the committee makes it recommendation, there arises a "definite proposition" on the part of the government. From this moment, the public's r information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition."

[47]
McGrain v. Daugherty, supra note 35 at 174-175. The U.S. Supreme Court stated: "We are of opinion that the power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American Legislatures before the Constitution was framed and ratified. x x x

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information - which not infrequently is true – recourse must be had to others who possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; s some means of compulsion are essential to obtain what is needed."

[48]
Section 21, Article VI, Constitution which provides: "The Senate or the House of Representatives or any of its respec committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected."

[49]
McGrain v. Daugherty, supra note 35 at 177. The U.S. Supreme Court stated: "It is quite true that the resolution directing the investigation does not in terms avow that it is intended to be in aid of legislation; but it does show that the subject investigated was the administration of the Department of Justice - whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropr remedies against the wrongdoers; specific instances of alleged neglect being recited. Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit. This becomes manifest when it is reflected that the functions of the Department of Justice, the powers and duties of the Attor General, and the duties of his assistants are all subject to regulation by congressional legislation, and that the departme maintained and its activities are carried on under such appropriations as in the judgment of Congress are needed from year t year."

[50]
Eastland v. United States Servicemen's Fund, 421 U.S. 491, 509 (1975). The U.S. Supreme Court declared: "To be a valid legislative inquiry there need be no predictable end result."

[51]
Watkins v. United States, 354 U.S. 178, 187 (1957).
The U.S. Supreme Court declared: "[T]he power of Congress to conduct investigations is inherent in the legislative process That power is broad. **It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste**." (Emphasis supplied)

[52]
Supra note 16 at 790-791.
Professor Tribe comments thus: "xxx it is important to note an implicit or ancillary power belonging to Congress that is at times every bit as important as the power to which it is supposedly appurtenant. That, of course, is the power of investig typically and most dramatically exemplified by hearings, some of them in executive session but most of them in the glare o klieg lights and with the whole nation watching. Such investigations have served an important role in ventilating issues profound national concern."; Louis Fisher & David Gray Adler, AMERICAN CONSTITUTIONAL LAW, p. 227 (7th Edition). Fisher and Adler write: "Oversight is not subordinate to legislation."

[53]
Section 21, Article VI, Constitution.

[54]
Section 17, Article III, Constitution.

[55]
Section 3(1), Article III, Constitution.

[56]
Kilbourn v. Thompson, 103 U.S. 168 (1880).

[57]
Watkins v. United States, 354 U.S. 178 (1957).

[58]
Article 183, Revised Penal Code.

[59]
Watkins v. United States, supra note 57.

[60]
Arnault v. Nazareno, 87 Phil. 29 (1950).

[61] *McGrain v. Daugherty*, supra note 35. *See* also *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*, G.R. No. 72492, 5 November 1987, 155 SCRA 421, which ruled that local government legislative councils have no inherent power to enforce by compulsion their power of inquiry in aid of ordinance-making.

[62] *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955). The Court stated: "When the framers of the Constitution adopted the principle of separation of powers, making each bra supreme within the realm of its respective authority, it must have intended each department's authority to be full an independently of the other's authority or power. And how could the authority and power become complete if for every ac refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department fo the appropriate remedy, because it is impotent by itself to punish or deal therewith, with the affronts committed against authority or dignity."

[63] *Lopez v. De los Reyes,* 55 Phil. 170 (1930).

[64] *Arnault v. Nazareno*, supra note 60.

[65] *McGrain v. Daugherty*, supra note 35 at 172. The U.S. Supreme Court quoted *In re Chapman* (166 U.S. 661), thus: "We grant that Congress could not divest itself, or either of its houses, of the essential and inherent power to punish for contempt, in cases to which the power of either house properly extended; x x x."; *Lopez v. De los Reyes*, supra note 63. The Court stated that "the Philippine Legislature could not divest either of its Houses of the inherent power to punish for contempt."

[66] Section 2, Article III, Constitution.

[67] *Lopez v. De los Reyes*, supra note 63 at 179-180. The Court declared that the Legislature's "power to punish for contempt rests solely upon the right of self-preservation."; *Negros Oriental II Electric Cooperative v. Sangguniang Panlungsod of Dumaguete*, supra note 61 at 430. The Court stated: "The exercise by the legislature of the contempt power is a matter of self-preservation as that branch of the government vest with the legislative power, independently of the judicial branch, asserts its authority and punishes contempts thereof."

[68] Section 1, Article VI, Constitution.

[69] *Lopez v. De los Reyes*, supra note 63.

[70] *Marcos v. Manglapus*, supra note 14.

[71] *Lopez v. De los Reyes*, supra note 63 at 178. The Court declared: "x x x In the second place, the same act could be made the basis for contempt proceedings and for a criminal prosecution. It has been held that a conviction and sentence of a person, not a member, by the House of Representatives of the United States Congress, for an assault and battery upon a member, is not a bar to a subsequent prosecution by indictment for the offense. (U.S. vs. Houston [1832], 26 Fed. Cas., 379.) In the third place, and most important of all, the argument fails to take cognizance of the purpose of punishment for contempt, and of the distinction betwe punishment for contempt and punishment for crime. Let us reflect on this last statement for a moment. The implied power punish for contempt is coercive in nature. The power to punish crimes is punitive in nature. The first is a vindication by th House of its own privileges. The second is a proceeding brought by the State before the courts to punish offenders. The two are distinct, the one from the other."; *Arnault v. Balagtas*, supra note 62 at 370. The Court declared: "The process by contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authorit distinguished from the judicial process by which offenders are brought to the courts of justice for the meting of the punishment which the criminal law imposes upon them. The former falls exclusively within the legislative authority, the latter within domain of the courts; because the former is a necessary concomitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law."

[72] *United States v. Nixon*, supra note 15.

[73] Section 1, Article XI, Constitution.

[74] *Senate v. Ermita*, supra note 13.

[75] *Senate v. Ermita*, supra note 13.

[76] Atty. Antonio R. Bautista.

[77] Section 2, Chapter 1, Title 1, Book IV, Revised Administrative Code of 1987.

[78] Atty. Paul Lantejas.

[79] Section 22, Article VI, Constitution.

[80] Petitioner's Supplemental Petition dated 1 February 2008 and Petitioner's Memorandum dated 14 March 2008.

[81] Supra note 60.

[82] Section 10(2), Article VI, 1935 Constitution; Section 16(2), Article VI, 1987 Constitution. Both the 1935 and 1987 Constitutions provide that "[A] majority of each House shall constitute a quorum to do business."

[83] *See* also *Attorney General Ex. Rel. Werts v. Rogers, et al*, 56 N.J.L. 480, 652 (1844). The Supreme Court of New Jersey declared: "[T]he vitality of the body depends upon the existence of a quorum capable of doing business. That quorum constitutes a senate. Its action is the expression of the will of the senate, and no authority can be found which states a conclusion. All difficulty and confusion in constitutional construction is avoided by applying the rule x x x that the continuity of the body depends upon the fact that in the senate a majority constitutes a quorum, and, as there is always more than a quorum of qualified senators holding seats in that body, its organic existence is necessarily continuous. x x x The senate of the United States remains a continuous body because two-thirds of its members are always, in contemplation of the constitution, in existence."

[84] Section 16(2), Article VI, Constitution.

[85] 230 Phil. 528 (1986), ***reiterated*** in *National Electrification Administration, v. Gonzaga*, G.R. No. 158761, 4 December 2007; *NASECORE v. Energy Regulatory Commission*, G.R. No. 163935, 2 February 2006, 481 SCRA 480; *Dadole v. Commission on Audit*, 441 Phil. 532 (2002).

[86] Section 24, *Rules of Procedure Governing Inquiries in Aid of Legislation*.

[87] Section 18, on Contempt, of the *Rules of Procedure* provides: "The Committee, by a vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively. A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself of that contempt."

[88] *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192; *Abdula v. Guiani*, 382 Phil. 757 (2000).