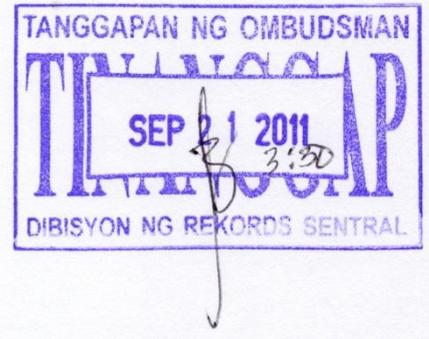


Republic of the Philippines
Office of the Ombudsman
Agham, North Triangle, Quezon City



AQUILINO Q. PIMENTEL, Jr.
MELCHOR GRUELA MAGDAMO
Genuine Complainants,

versus

ORLANDO C. CASIMIRO,¹
ALEU A. AMANTE,²
MEDWIN S. DIZON,³
MARIUS FITZGERALD E. VELOSO,⁴
JOSE MARUNDAN TOLENTINO,⁵
MARIA LEA ROBLES ALARKON,⁶
ALLEN FRANCIS BRAVO ABAYA,⁷
MARIA NORINA DELOS SANTOS TANGARO CASINGAL,⁸
MARTIN BANAWAN NIEDO,⁹
ANTONIO SERRANO SANTELLA,¹⁰
HENRY KWOK YOUNG,
WILLY KWOK YOUNG,
Respondents.

GRIEVANCE
WITH REQUEST FOR ASSISTANCE
TO NULLIFY THE MIDNIGHT RESOLUTIONS IN
OMB-C-C-10-0289-G and OMB-C-A-10-0301-G

The genuine complainants in the P690 Million Ballot Secrecy Folder Plunder respectfully submit to the Honorable **CONCHITA CARPIO MORALES**, and to her alone, this grievance and request for assistance versus those responsible for hiding the entire proceedings of this case from the genuine complainants, in gross violation of the Ombudsman's constitutional duty to "notify the complainants of the actions taken and the result thereof,"¹¹ resulting to the promulgation of **midnight resolutions** in OMB-C-C-10-0289-G and OMB-C-A-10-0301-G, whitewashing the "Biggest Fish" in a manner similar to the "Biggest Joke"¹² in recent jurisprudence.

¹ Deputy Ombudsman

² Assistant Ombudsman, Preliminary Investigation, Administrative Adjudication & Monitoring Office 1

³ Director, Preliminary Investigation & Administrative Bureau - A

⁴ Graft Investigation & Prosecuting Officer 1

⁵ Comelec Executive Director

⁶ Comelec Planning Director III

⁷ Comelec Electoral Contest Adjudication Department Director III

⁸ Comelec Law Department Director III

⁹ Comelec Budget Division Chief

¹⁰ Comelec General Services Division Chief

¹¹ Constitution, Article XI, Section 12

¹² Dissenting Opinion of the Honorable Justice **Conchita Carpio Morales** in the 12 April 2011 Supreme Court decision in the Coco Levy cases (GR No 166859)

This is pursuant to the Rule that complaints / grievances / requests for assistance “may be in any form, either verbal or in writing” for as long as the complaining party indicates his address and telephone number, if any.¹³

In the attachment is the affidavit of complainant Melchor Magdamo for the consideration of the Honorable Ombudsman.

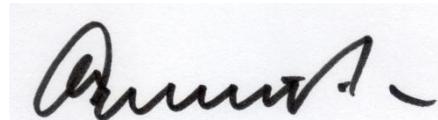
In addition, we would like to advert to the fact that the Commission on Elections (Comelec) Chairman **Sixto S. Brillantes**, Jr., had written the Ombudsman under the date September 19, 2011 formally “REQUEST[ing] FOR [an] INVESTIGATION” regarding the incident surrounding the decision in OMB-C-A-10-0301-G that involves, at the very least, “ATTY. MARIA LEA ROBLES ALARKON, ATTY. ALLEN FRANCIS BRAVO ABAYA AND MR. ANTONIO SERRANO SANTELLA” who are also some of the individuals we are complaining against in the second Ombudsman case we cite in the paragraph immediately preceding.

Respectfully submitted, September 21, 2011.



MELCHOR G. MAGDAMO
54 Sarimanok Street
Mira Nila Homes 1107 Quezon City

+63**9062288888**



AQUILINO Q. PIMENTEL Jr.
Pimentel Center for Local Governance,
University of Makati,
Makati City

+63**9189728825**

AFFIDAVIT

I, MELCHOR GRUELA MAGDAMO; of legal age; with address at 54 Sarimanok Street, Mira Nila Homes 1107 Quezon City; after having been sworn in accordance with law, hereby depose and state:

PRELIMINARY SUMMARY

Predictably, whoever receives this affidavit will place it inside folders that are available in ordinary book stores. How much does a folder cost? Generally, the prices of folders may range from One Peso to Ten Pesos. Special folders may cost around Twenty Pesos or at most Thirty Pesos. Who is willing to believe that a folder can cost Three Hundred Eighty Pesos (P380) per piece? There is no law requiring the use of ballot secrecy folders. Worse, that folder can be of use for only a single day, on 10 May 2010 only, since its awkward and cumbersome dimensions render it worthless for ordinary use. Adding insult to injury is the bloating of the purchase quantity to 1,815,000 pieces, which, when multiplied with the unit price, adds up to the gargantuan sum of **689.7 Million Pesos!** That is the “Biggest Joke” in folder history!

CONSTITUTIONAL LAW ISSUE

The issue pertains to the Ombudsman’s constitutional duty to notify the **complainants** of the actions taken and the result thereof.¹⁴ Who are the **complainants**? I was the “whistleblower” of this case. I did not receive any subpoena or at least some invitation or hint from the previous Ombudsman to participate in this case, despite my diligent attempts at follow-ups. I did not receive any notice that another person who is a total stranger to me is appearing as the “complainant” in this case. There was so much secrecy about the Ballot Secrecy Folder Plunder case that even the identity of the “complainant” on paper was top secret under the previous Ombudsman.

Starting from Good Friday (2 April 2010) until around a week thereafter, reporters and major news networks were broadcasting interviews with then Senator *Aquilino “Nene” Q. Pimentel Jr.* who was then, and until now, strongly condemning the scam. This case became a “case” precisely because of his verbal complaint spoken before a national audience. The P690M became government savings (instead of plunder loss) due to his efforts. Moreover, he did not slumber on the case, for, on 10 February 2011, he sent a follow-up letter to the previous Ombudsman. Just the same, the previous Ombudsman did not notify Senator *Nene* of the actions taken and the result thereof, in violation of the Constitution (Article XI, Section 12).

ADMINISTRATIVE LAW ISSUE

Under the Administrative Code,¹⁵ the Executive Director **shall** be “**responsible** for [the] **economical**, efficient and effective administration ... of programs and projects.” Is P690M for worthless folders **economical**?

¹⁴ Constitution, Article XI, Section 12

¹⁵ Administrative Code, Book V, Title I, Subtitle C, Chapter 2, Section 8, Subsection 4

BACKGROUND

A product of the University of the Philippines College of Law and in the Roll of Attorneys since 02 May 1995, I was in the private practice of law until when I became a public servant from around 28 June 2004 to 07 November 2004 in the Court of Appeals, and from 08 November 2004 to 30 November 2007, as Court Attorney VI in the Supreme Court, under Justice Cancio Castillo Garcia. In addition to my regular duties, I was a “Member” and later a “Vice Chairman” of the TECHNICAL WORKING GROUP (TWG) of the BIDS AND AWARDS COMMITTEE (BAC) of the Supreme Court. I did not expect, and it came as a surprise, that my moderate exposure to government procurement laws was to become the reason for my whirlwind hiring into another government agency with an awful procurement history, the COMMISSION ON ELECTIONS (Comelec).

Setting the mood for my entry into Comelec, on 10 November 2007, Comelec Law Department Director **Alioden Dalaig** was shot dead by an assassin whose identity is still uncertain until now. On 24 March 2008, his replacement, **Wynne Asdala**, was also shot dead by an assassin whose identity is still uncertain until now. That evening, Corazon Enrile Poblador (Secretary of former Supreme Court Justice **Jose Armando R. Melo**) told me to go to Comelec the very next day, 25 March 2008. I was at a loss as to what was the reason for the rush, why I must go to a place where bullets are flying around, but I did go as told, out of respect.

On 25 March 2008, Justice Melo took his oath as Comelec Chairman. I was given special instructions to serve as Attorney VI of the Chairman and to be his “eyes and ears” for the seemingly hopeless Comelec bidding problems.

Performing my duty, the first bidding I was able to observe in Comelec was on the first day of April 2008 (April Fools Day). It was the bidding for the OPTICAL MARK READER (OMR) system for certain areas in the AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM). Presiding over the bidding was the Comelec Executive Director and concurrent BAC Chairman **Jose Marundan Tolentino**. Except for the BAC Chairman, all the other BAC Members were mysteriously missing.¹⁶ The BAC TWG Head (Ester Lomaad Villaflor Roxas) was also mysteriously missing. The BAC Secretariat Head (Estrella Pimentel De Mesa) was also mysteriously missing. I tried asking my co-observer seatmates (representatives of election watchdogs) why in a bidding involving, with due respect, no less than the cheating capital of the Philippines, the BAC Chairman was functioning like a **one man band**. No one was able to give a satisfactory answer. Be that as it may, there were only two bidders: *Active Business Solution* and *Avante International*. However again, the demo OMR machine of *Active* was also missing, so *Avante* became the last surviving bidder.

Sometime later in the month, Chairman Melo was out of the country, and the Acting Chairman was then former Justice **Romeo A. Brawner**. Routinely, I was told that there were some documents on my table from Justice Brawner. Among others, the documents describe a continuation of a project costing more than **200 Million Pesos** plus another **100 Million Pesos**, therefore a total project price of approximately **300 Million Pesos**.

¹⁶ BAC Vice Chairman **Julio Thaddeus P. Hernan** and Members = **Minda Zita M. Jongko** + **Maria Norina de los Santos Tangaro Casingal** + **James Arthur B. Jimenez**

VOTER REGISTRATION RECORDS (VRR) Plastic Pageholder Scam

More specifically, the project involves 335,549 holders/binders and 53,359,800 plastic fillers (Memorandum No J07-348 dated 30 October 2007 of *Judy L. Lorenzo* thru *Divina S. Blas Perez* to Executive Director *Pio Jose S. Joson*). Initially, the proponent was silent about its cost, and so the Commission En Banc resolved to refer the cost aspect to the ELECTION BARANGAY AFFAIRS DEPARTMENT (EBAD) for estimation (En Banc Minute Resolution No 06-0782 dated 27 July 2006).

Regrettably, the cost per item remained unclear for more than a year until after 14 February 2008 when the Finance Services Department (FSD) issued a Certification that **99.582 Million Pesos** is available for the purchase of VRR binders and plastic fillers, chargeable against the 2007 Barangay Election Funds (Certification issued on 14 February 2008 by Budget Officer *Minda Zita M. Jongko* and noted by Director *Eduardo Dulay Mejos*).

On 19 February 2008, then Acting Chairman *Romeo A. Brawner* wrote a memorandum to BAC Chairman **Jose M. Tolentino, Jr.**, the pertinent part of which reads:

In connection with the procurement of binders and plastic fillers for Voters Registration Records, please hold in abeyance the conduct of the public bidding for said items until such time as the Commission en banc has been fully apprised by the Finance Services Department of the current financial status of the Commission.

If and when the Commission en banc is satisfied with the report of the FSD, you shall be advised accordingly, and only then shall the BAC be authorized to proceed with the conduct of the public bidding or the subject items.

In Memorandum No J08-009 dated 11 March 2008, Attorney *Judy L. Lorenzo* urgently requested Acting Chairman *Romeo A. Brawner* to approve the purchase of 42,000 VRR binders and 8,400,000 plastic fillers, claiming that the said items are necessary for the ARMM elections which was then still five months away.

The Comelec En Banc resolved to confirm the action taken by Acting Chairman *Romeo A. Brawner* on the suspension of bidding until after the FSD submits a report on the Comelec's current financial status (En Banc Minute Resolution No 08-0364 dated 11 March 2008).

Later, in that very same En Banc meeting, some clever character was able to recycle the proposal back to the En Banc again, an event that is highly unusual and irregular. The document is a Memorandum dated 07 March 2008 signed by no less than the Executive Director himself, **Jose M. Tolentino, Jr.** The Comelec En Banc reiterated holding in abeyance any bidding of said items until after the FSD submits the report (En Banc Minute Resolution No 08-0375 dated 11 March 2008).

On 29 April 2008, the Comelec En Banc resolved to schedule the presentation of the FSD report on 14 May 2008 (En Banc Minute Resolution No 08-0497 dated 29 April 2008). Surprisingly, on 12 May 2008 or two days prior to when the FSD must report, the Executive Director and concurrent BAC Chairman **Jose M. Tolentino, Jr.** went ahead with the bidding of VRR holders/binders, plastic fillers, and thumb and fingerprint takers, in open defiance of the clear directives in En Banc Minute Resolutions No 08-0364 and 08-0375.

Surprisingly, on 12 May 2008 or two days prior to when the FSD must report, the Executive Director and concurrent BAC Chairman **Jose M. Tolentino, Jr.** went ahead with the bidding of VRR holders/binders, plastic fillers, and thumb and fingerprint takers, in open defiance of the clear directives in En Banc Minute Resolutions No 08-0364 and 08-0375.

Emerging as one of the winners from the openly defiant bidding was a mysterious company that is not a corporation but only a single proprietorship of Willy Kwok Young using the name ONE TOUCH CARBON (**OTC**) **Paper Supply**.

VRR Plastic Pageholder Scam Summary

The true cost of each VRR plastic pageholder ranges from only Fifty Centavos to One Peso per piece but the project's procurement documents made the price skyrocket to approximately Ten Pesos per piece. Commissioner Brawner led the En Banc in resisting the project. Executive Director Tolentino sneaked around Commissioner Brawner's resistance. Comelec paid a total project price of approximately **300 Million Pesos** for worthless plastic page holders.

Under the Administrative Code,¹⁷ the Executive Director **shall** be "**responsible** for [the] **economical**, efficient and effective administration ... of programs and projects." Is P300M for worthless plastic page holders **economical**?

OTC Paper Supply and the Ballot Secrecy Folder Scam

There is no law requiring the use of ballot secrecy folders. The Comelec's ANNUAL PROCUREMENT PLAN (APP) for year 2010 says nothing about ballot secrecy folders. Administrative Services Department Director *Julio Thaddeus P. Hernan*, Finance Services Department Director *Eduardo Dulay Mejos*, the Executive Director, and Chairman *Jose Armando R. Melo* signed the APP.

On 26 November 2009, the Comelec En Banc issued Minute Resolution No 09-0850, therein reactivating the Committee on Specification whose members at that time were the Executive Director, Deputy Executive Director for Administration (DEDA) *Estrella Pimentel de Mesa*, Election Records Statistics Department (ERSD) Director *Ester Lomaad Villaflor Roxas*, two new members plus one position with rotating membership.



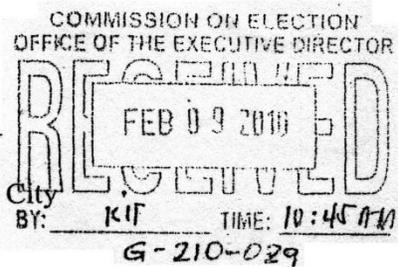
¹⁷

Administrative Code, Book V, Title I, Subtitle C, Chapter 2, Section 8, Subsection 4

On 5 February 2010, Henry Kwok Young of OTC Paper Supply sent the following Letter "**Thru: Committee on Specification**" to the Comelec.

OTC PAPER SUPPLY

451 M. dela Cruz St., Sta. Quiteria, Caloocan City
Tel Nos: 9843603-04, Fax: 9842852



February 5, 2010

Hon. Jose A.R. Melo
Chairman
Commission on Elections
Intramuros, Manila

Dear Chairman Melo:

Thru: Committee on Specification

With your attention focused mainly on the reliability of the PCOS machines and the transmission of results, may we be allowed to point out some minor details which the Committee might have overlooked.

The school desks presently used during voting might not provide enough security and support for the new ballot paper which will be around 25 inches long.

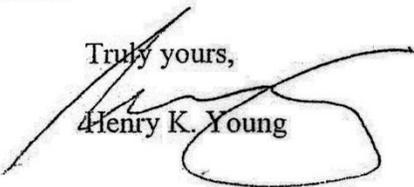
We would like to offer for your consideration, our Ballot Secrecy Folder. This folder is comprised of a top layer made of 0.65 mm flexible plastic sheet and a bottom layer made of 3.0 mm hard plastic board, with a width of 9.5 inches and length of 28 inches, held together by an expandable spine made of 0.2 mm thick PVC plastic film, with a metal clip on top. This type of folder offers the following advantages:

1. The folder will provide more than adequate support and stability for the voters to fill up the ballot.
2. The folder will greatly reduce the risk of the ballot being crumpled or bent during transport from the BEI to the desk and vice versa, and during actual shading process as well, thereby ensuring the unimpeded, speedy and efficient scanning by the PCOS machine.
3. The smooth and stiff surface will make shading more convenient.
4. The metal clip will hold the ballot in place thereby avoiding mis-markings. The marking pens can also be tethered thereby preventing loss of the marker.
5. With the ballot placed between the top and bottom layers, the secrecy of the voter's choices will be secure.
6. The inside top portion can be printed with instructions on the proper method of shading and insertion into the PCOS machine.
7. The folder is re-usable for subsequent elections.

Attached is a sample for your approval and evaluation.

Truly yours,

Henry K. Young



At that time, the Executive Director held the concurrent position of PROJECT MANAGEMENT OFFICE (PMO) Head, while the Planning Department Director, Esmeralda Amora Ladra, held the position of ELECTION SUPPORT GROUP (ESG) Head. I was the ESG Assistant Head.

The 5 February 2010 memorandum of Director Ladra to Chairman Melo is a comment to the ballot secrecy folder of Willy Kwok Young. The comment reads:

MEMORANDUM

FOR : HON. JOSE A. R. MELO
Chairman

FROM : Head, Election Support Group

SUBJECT : COMMENT TO THE BALLOT SECRECY FOLDER OFFERED
BY MR. WILLY K. YOUNG

DATE : FEBRUARY 5, 2010

On election day, our ballot secrecy folder will protect the voter's ballot from being read by other people. This is in compliance to the constitutional provision of providing the voters a system of ensuring the secrecy and sanctity of the ballot.

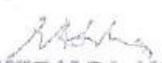
The ballot secrecy folder offered by Mr. Willy K. Young is thus timely. However, by way of comment, as requested by Your Honor in its Memorandum of even date, undersigned respectfully submits that the materials used will not make the voting comfortable to the voter, especially to the sick, the weak and/or the elderly. The plastic, both at the bottom and top layers, as well as the metal clip, are very hard that a voter has to exert some efforts to carry it, put the ballot inside it and to strongly hold the top of the folder while shading.

As to the size of 9.5" x 28", the same is enough to cover our 27-inch ballot for the ARMM. The size for the non-ARMM regions can be decreased from 28" to 26" considering that our ballots for these areas are only 25" in length.

For the ballot secrecy folder, may be the following are important to consider:

- 1) 9.5" x 28" in length for the ARMM region; 9.5" x 26 for the non-ARMM
- 2) Voter-friendly or easy-to-use
- 3) Made of light materials i.e. our secrecy folder that was used in the manual elections
- 4) Have some features that can put a hold to our ballot, without damaging it, while the voter is shading.
- 5) Other features that we deem fit for voting to be more comfortable for the voter

Respectfully submitted,


ATTY. ESMERALDA AMORA-LADRA
Head

In short, Director Ladra is against the proposal for various reasons such as discomfort to the weak and elderly. The Office of Chairman Melo received the 05 February 2010 memorandum of Director Ladra on 11 February 2010.

Obviously, since the Planning Director was against the Plunder Plan, during the En Banc special meeting held on 11 February 2010, Executive Director Jose Marundan Tolentino accused Planning Director Esmeralda Amora Ladra of “**LUMALABAN**” against the secrecy folder.

**Partial Transcript of Stenographic Notes
of the Special En Banc
Held on February 11, 2010**

Present:

Chairman	Jose A.R. Melo
Commissioner	Nicodemo T. Ferrer
Commissioner	Armando C. Velasco
Commissioner	Elias R. Yusoph

OB:	Commissioner	Rene V. Sarmiento
	Commissioner	Lucenito N. Tagle
	Commissioner	Gregorio Y. Larrazabal

Discussions on Secrecy Folder

Exec. Dir. Tolentino, Jr. Sir me’rong sinubmit parang for comment si Dir. Ladra, secrecy folder, eh lumalaban Sir eh, so another kwan, there’s a letter addressed to the Chairman thru the Committee on Specifications, I thing it’s,

Chairman Melo Committee on?

Exec. Dir. Tolentino, Jr. Committee on Specs Sir, dati kasi ito siya

Chairman Melo Baliktad eh

Exec. Dir. Tolentino, Jr. Dina Sir, lumalaban siya, and then another one was given Sir a letter addressed to you by the Committee on Specs, ganito na Sir, hindi na siya, kasi ito pag nagkamali ka kung mabitawan mo, possibleng

Chairman Melo Parehong bidder,

Exec. Dir. Tolentino, Jr. Yes Sir, OTC Sir

Repeating for emphasis, the Executive Director was referring to the “comment” of the Planning Director versus the security folder. According to the Executive Director, the Planning Director was “**lumalaban**” against the secrecy folder. The fifth paragraph is very important. As counter “laban” to the one who was “lumalaban”, the “**Committee on Specs**” came out with “**another one**” that purports to be easier to hold when “nagkamali ka kung mabitawan mo” and which the “**parehong bidder**” will supply. The Executive Director identified that “parehong bidder” as “Yes Sir, **OTC** Sir”.

During the En Banc meeting held on 17 February 2010, the Executive Director misled the En Banc into thinking that the ballot secrecy folder project will undergo bidding.

**Partial Transcript of Stenographic Notes
of the Regular En Banc
Held on February 17, 2010 (AM)**

Present:

Chairman	Jose A.R. Melo
Commissioner	Nicodemo T. Ferrer
Commissioner	Lucenito N. Tagle
Commissioner	Armando C. Velasco
Commissioner	Gregorio Y. Larrazabal

OB: Commissioner	Rene V. Sarmiento
Commissioner	Elias R. Yusoph

Ref. No. 335-10 (Ballot Secrecy Folder)

Chairman Melo	Ballot Secrecy Folder	
Exec. Dir. Tolentino, Jr.	Sir ito iyung last week Sir	
Chairman Melo	Iyung mahaba?	
Exec. Dir. Tolentino, Jr.	Yes Sir, ang sa akin if we agree to this design we can say ok, agreed iyung design and then we will let the BAC take appropriate action for the procurement	✓
Comm. Tagle	Ang ganda	
Chairman Melo	Ano, ano, mag papa-bid tayo niyan, o hind na	✓
Exec. Dir. Tolentino, Jr.	Yes	
Comm. Larrazabal	I'll borrow it later	
Exec. Dir. Tolentino, Jr.	Sir ito Sir, ah, we'll just direct the BAC to proceed with the procurement process and then bahala na ang BAC kung ano ang gagawin nila	✓

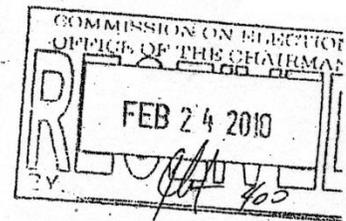
Repeating for emphasis, after the "**Ang ganda**" remark of Commissioner Lucenito Nolasco Tagle, Chairman Melo asked: "Ano, ano mag papa-**bid** tayo niyan, o hindi na?" Executive Director Tolentino answered "**Yes**" ... "we'll just direct the BAC to proceed with the procurement process and then bahala na ang BAC kung ano ang gagawin nila."

The Executive Director "presented" the new design which is the "another one" of the "Committee on Specs" which did not pass thru the "Iumalaban" Planning Director Esmeralda Amora Ladra. That very same day, 17 February 2010, the Comelec En Banc issued Minute Resolution No 10-0251.

**EXCERPT FROM THE MINUTES OF THE REGULAR EN BANC
MEETING OF THE COMMISSION ON ELECTIONS
HELD ON FEBRUARY 17, 2010**

Present:

Chairman Jose A. R. Melo
Commissioner Nicodemo T. Ferrer
Commissioner Lucenito N. Tagle
Commissioner Armando C. Velasco
Commissioner Gregorio Y. Larrazabal



On Official Business:

Commissioner Rene V. Sarmiento
Commissioner Elias R. Yusoph

XXXX

XXXX

XXXX

**10-0251 IN THE MATTER OF THE PROCUREMENT OF THE BALLOT
SECRECY FOLDERS IN CONNECTION WITH THE MAY 10, 2010
AUTOMATED NATIONAL AND LOCAL ELECTIONS**

This pertains to the design of the ballot secrecy folder which will be used for the May 10, 2010 Automated National and Local Elections. Said design was presented by Executive Director Jose M. Tolentino Jr. to the members of the Commission during its meeting on February 17, 2010 (A.M.).

The Commission **RESOLVED**, as it hereby **RESOLVES**, as follows:

1. to approve the design of the ballot secrecy folder to be used in the May 10, 2010 Automated National and Local Elections with the following specifications:

Top Layer:

Size: 9.5 inches (width) x 28 inches (length)
Thickness: 0.65 mm
Material: Polypropylene Sheet
Color: Royal Blue
Printing: One Color Print Comelec Logo and "Ballot Secrecy Folder"

Expandable Spine:

Size: 2 inches (width) x 28 inches (length)
Thickness: 0.2 mm
Material: Polypropylene Sheet
Color: Ultrasonic welded with the Top Layer joined by rivets with the Bottom Layer

Bottom Layer:

Size: 9.5 inches (width) x 28 inches (length)
Thickness: 3.0 mm
Material: Polypropylene Board
Color: Royal Blue

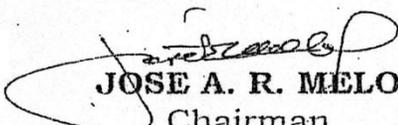
Minute Resolution No 10-0251 page 2

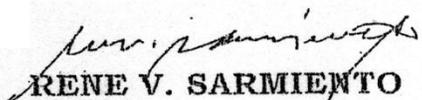
Page 2 of 2, MR No. 10-0251

2. to direct the Bids and Awards Committee to take appropriate action for the procurement of said ballot secrecy folders.

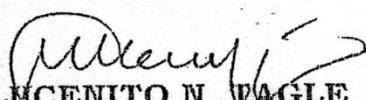
Let the Bids and Awards Committee implement this resolution.

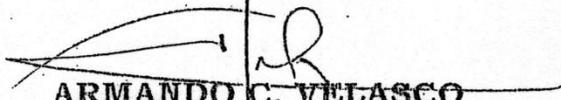
SO ORDERED.

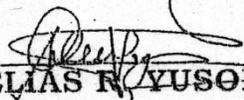

JOSE A. R. MELO
Chairman

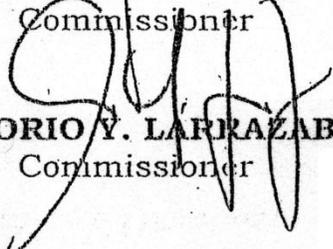

RENE V. SARMIENTO
Commissioner


NICODEMO T. FERRER
Commissioner


LUCENITO N. PAGLE
Commissioner


ARMANDO C. VELASCO
Commissioner


ELIAS N. YUSOPH
Commissioner


GREGORIO Y. LARRAZABAL
Commissioner

cc: Chairman
All Commissioners
Executive Director
Deputy Executive Director for Operations
Bids and Awards Committee

RECAPITULATION

The ballot secrecy folder project was originally a proposal written in a letter under the letterhead of **OTC Paper Supply** (a single proprietorship of **Willy Kwok Young**) with the signature of **Henry Kwok Young** who sent the proposal **“Thru: Committee on Specification”** (whose active members at that time were Executive Director **Jose Marundan Tolentino** and DEDA **Estrella Pimentel De Mesa** and ERSD Director **Ester Lomaad Villaflor Roxas**) which Executive Director Tolentino **“presented”** to Chairman **Jose Armando R. Melo** who routed the letter for comment by Planning Director **Esmeralda Amora Ladra** who wrote a memorandum that is **“lumalaban”** against the ballot secrecy folder. As counter **“laban”** against the **“lumalaban”** (Director Ladra), the **“Committee on Specs”** gave **“another one”** that is **“ang ganda”** and purports to be easier to hold when **“nagkamali ka kung mabitawan mo”** which the **“parehong bidder”** (**“Yes Sir, OTC Sir”**) will supply, says the Executive Director.

The price of the proposal is written in the 27 February 2010 Letter of Henry Kwok Young to the BAC Chairperson, Maria Lea Robles Alarkon, which reads:

OTC PAPER SUPPLY

451 M. dela Cruz St., Sta. Quiteria, Caloocan City
Tel Nos: 9843603-04, Fax: 9842852

February 27, 2010

Atty. Lea R. Alarkon
Chairman
Bids and Awards Committee
Commission on Elections
Intramuros, Manila

Dear Atty. Alarkon:

We would like to respectfully submit for your consideration, our proposal for 1,815,000 pcs. Plastic Ballot Secrecy Folder at Php 380.00/pc with the following specifications:

Top Layer:

Size: 9.5 inches (width) x 28 inches (length)
Thickness: 0.65 mm
Material: Polypropylene Sheet
Color: Royal Blue
Printing: One Color Print Comelec Logo and "Ballot Secrecy Folder"

Expandable Spine:

Size: 2 inches (width) x 28 inches (length)
Thickness: 0.2 mm
Material: Polypropylene Sheet
Color: Black
Joint: Ultrasonic welded with the Top Layer and joint by rivets with the Bottom Layer

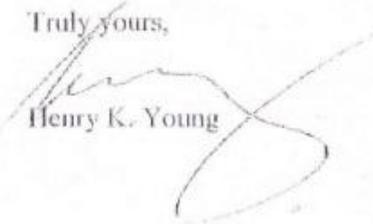
Bottom Layer:

Size: 9.5 inches (width) x 28 inches (length)
Thickness: 3.0 mm
Material: Polypropylene Board
Color: Royal Blue

Attached is a copy of the Certification from the Intellectual Property Office with Application No. 2-2010-000050, affirming our patent application for the above mentioned folder. Also attached is a copy of the Deed of Assignment for the Patent of the Improved File Folder, executed by myself in favor of OTC Paper Supply.

Thank you for your prompt attention and kind consideration.

Truly yours,


Henry K. Young

I was absent starting 03 March 2010 when my sister died. I was not able to check the 05 March 2010 BAC memorandum which reads:

REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
Intramuros, Manila, Philippines 1002

(OFFICE OF THE BIDS AND AWARDS COMMITTEE)

BAC RESOLUTION NO. 85-2010

(Supply and Delivery of 1,815,000 Pieces of Ballot Secrecy Folder for the May 10, 2010 National and Local Elections (BAC-M-REF#2009-023))

WHEREAS, on 17 February 2010, the Honorable Commission En Banc issued Comelec Minute Resolution No. 10-0251 approving the design presented by Executive Director Jose M. Tolentino, Jr. for the procurement of the Ballot Secrecy Folder for the May 10, 2010 National and Local Elections;

WHEREAS, on 27 February 2010, **OTC PAPER SUPPLY** submitted to the Bids and Awards Committee (BAC) its proposal to supply the above-subject procurement with attachment of its Improved File Folder whose technical specifications are very much in unison with the design approved by the Honorable Commission En Banc as well as its attachment of the certification issued by the Intellectual Property Office certifying that it had a pending patent application on the aforesaid Improved File Folder;

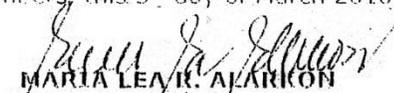
WHEREAS, Section 48.1 in relation to Section 53.2 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, provides that in emergency cases, where immediate action is necessary to restore vital public services, the procuring entity may resort to alternative methods of procurement;

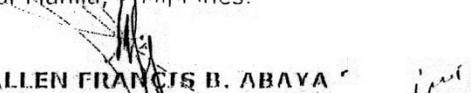
WHEREAS, Section 50 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 provides that alternative mode of direct contracting is applicable in case of procurement involving goods of proprietary nature which can be obtained only from a proprietary source, i.e., when patents, trade secrets, and copyrights prohibit others from manufacturing the same item, and when the procurement of critical plant components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract;

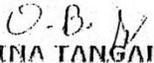
WHEREAS, after a careful evaluation of the proposal and the accompanying eligibility documents, as well as its application for copyright, the BAC finds that only **OTC PAPER SUPPLY** can supply and deliver the necessary ballot secrecy folder for the May 10, 2010 National and Local Elections by virtue of its claim of copyright over the design of the ballot secrecy folder;

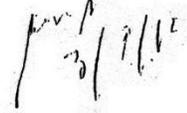
WHEREFORE, in view of the foregoing, the BAC hereby recommends to the Honorable Commission En Banc to award the contract for the Supply and Delivery of the 1,815,000 pieces of Ballot Secrecy Folders for the May 10, 2010 National and Local Elections at the rate of P380.00 per piece to **OTC PAPER SUPPLY**;

APPROVED and **SIGNED** by the undersigned Chairman, Vice Chairman and its Members, this 5th day of March 2010, in the City of Manila, Philippines.


MARIA LEA R. ALARCON
(Chairman)


ALLEN FRANCIS B. ABAYA
(Vice-Chairman)


MARIA NORINA TANGARO-CASINGAL
(Member)


MARTIN B. MIEDO
(Member)


ANTONIO S. SANTELLA
(Member)

COMMISSION ON ELECTIONS
Office of the Commission Secretary
CERTIFIED TRUE COPY OF THE ORIGINAL ON FILE
Cynthia Patricia B. Pareja 4/13/2010
Board Secretary II

After the burial of my sister on 07 March 2010, I was back in Comelec starting 08 March 2010.

On various dates during the week, I saw in the Office of the Chairman a lady by the name of **Emily G. Cam Bacoto**, complaining against what she claims to be an infringement of her intellectual property right to a secrecy folder design, accusing OTC Paper Supply of being a copycat. I told her to raise her grievance before the Intellectual Property Office. When she said that the price of OTC is **380 Pesos per Folder**, I told her that it may be only a typographical error because the price of the original folder is only **P3.80** so maybe the decimal point fell into the wrong location. Just the same, I told her to submit her own bid, come bidding day. At that time, I was still relying on the assurance of the Executive Director that the project will undergo public bidding.

At around noon of 11 March 2010, I had lunch with Director Esmeralda Amora Ladra at the NATIONAL PRINTING OFFICE (NPO) canteen. To recall, she was the ELECTION SUPPORT GROUP (ESG) Head, therefore the overall supervisor for ballot printing activities in the NPO, while I was the ESG Assistant Head. She told me about her word wars with the Executive Director for various reasons, one of which was her resistance to the ballot secrecy folder project.

Later that afternoon, I went to Comelec for a meeting about the Zonroxable ink problem because an observer from the PARISH PASTORAL COUNCIL FOR RESPONSIBLE VOTING (PPCRV), Doctor Arwin Albaña Serrano, was able to prove that the indelible ink can melt easily in a bleaching agent known as Zonrox.

Later, while I was listening to an intensely serious discussion between Serrano (a Bicolano) speaking in a local dialect with **Matias Gimeno Din** (also a Bicolano working as Public Relations Officer for Chairman Melo), Din told me that the *sindikato* have been civil to the “Melo boys” before but the situation is different now because what is at stake is so huge that they (*sindikato*) will not hesitate to execute the “final solution” if we stand on their way.

Din and I have been co-workers in the Office of Chairman Melo since April 2008 until March 2010 (two years). This was the first time for me to ever see and hear Din speak with so much fear and trembling. It was during that eerie conversation when I was able to confirm that the ballot secrecy folder price proposal was really **380 Pesos per Folder** which adds up to an astronomical budget of almost **689.7 Million Pesos!**

I tried to visit BAC Chairperson Alarkon for confirmation. Unfortunately, whenever I go to her office, I see Executive Director Tolentino inside.

From late afternoon until around 7PM of Friday 12 March 2010, there were still plenty of people, mostly politicians and their fixers, wandering around the 8th Floor of the Comelec in Palacio del Gobernador, Intramuros, Manila. Two men were pacing outside the Chairman’s Office (8th Floor) waiting for Din who was with me inside the Chairman’s Office. Past 7PM, Din went out of the Chairman’s Office and spoke to the two. From inside the Chairman’s Office there is a one-way glass window where I can see them but they cannot see me. I tried to eavesdrop on what they were talking about.

What I overheard is a conversation full of code names, cloak-and-dagger language, cut throat gestures, grave threats, “isang bala ka lang” etcetera. I tried pushing the door slightly open to peep at the faces of the two men. One of the two saw me and said “Siya yun!” in a very menacing manner. When the security guard (who at that time was taking his dinner break) came back, the two men left. Din told me to ride with him in his car. During the ride, he explained the complexity of the problem.

In short, my understanding is that the *sindikato* are angry at him (Din) and me. The P700M for the folders is ransom money. The election is the hostage. If they do not get the P700M, they will kill us and sabotage the election.

The next two days, Saturday and Sunday, 13 and 14 March 2010, PPCRV’s Arwin Serrano was persistently texting and calling me, asking about the real reasons for Din’s disappearance! I tried calling Din but his cellular phone was always dead. If the grim scenario is true, then **am I the next?** Sensing clear and present danger, I sent this email to PPCRV.

Dear **ARWIN A. SERRANO**

Parish Pastoral Council for Responsible Voting (PPCRV)
Accountable Material Verifiable Audit Trail (AMVAT)

Greetings Fellow Crusader:

If something happens to me, let this letter be the evidence.

Remember *Marlene Garcia Esperat*? She spoke against the 728 million peso fertilizer scam of *Joc Joc Bolante*. On Maundy Thursday 24 March 2005, in Tacurong, Sultan Kudarat, an assassin shot her dead with a single bullet in front of her children. That is what 728 million pesos can do.

The Commission on Elections (COMELEC) is also another favorite hunting ground of large scale corruption. Its Executive Director, *Jose Marundan Tolentino*, does not seem to care about redeeming his name or at least deodorizing the stench of his stinking reputation. Recently, he orchestrated another scam by persuading the COMELEC En Banc to approve a tailor-fitted design for ballot secrecy folder. On 17 February 2010, the En Banc promulgated Resolution 10 0251, therein approving Tolentino’s design and directing the Bids & Awards Committee (BAC) to take “appropriate action” without mentioning the price.

Somehow, after the papers went along its route from the En Banc then thru the BAC then to ... I do not know exactly where the papers went, sometime in the second week of March 2010, a certain *Emily G. Cam Bacoto* came with documents showing that Tolentino’s secrecy folder is the sole participant in a **lightning speed bidless bidding** at a Goliath price of **380 pesos per folder** for an **astronomical budget of 689 million pesos!** That can qualify in the Guinness World Records as the **most expensive folder in human history!**

The budget for all ballot boxes for the entire Philippines is approximately only 200 million pesos. Why is the budget for secrecy folder three times larger? The budget for packing the ballots is approximately 175 million pesos. Why is the budget for secrecy folder almost four times larger?

During the past elections, the secrecy folder looks like any ordinary folder available in any ordinary book store. The market price ranges from one peso to ten pesos. Let us assume the worst at 10 pesos. Increase the length to three times the original size to accommodate a 30 inch long ballot. This means that the folder must now cost approximately 30 pesos per piece. The price is still forgivable even if we jack up to 50 pesos or even 100 pesos per piece. But at a behemothically monstrous **380 pesos per piece**, that is **ransom!**

Your “**hostage theory**” is correct. The *sindikato* is like an *Abu Sayaf* group, holding as hostage the automation of the 2010 elections. We want to rescue the victim. How? If we investigate the *sindikato* now, they will pre-emptively strike by sabotaging the automation. Imagine a situation where a merciless group kidnaps your child. Surely you will be willing to pay the ransom, no matter how much, pay your entire lifetime savings, and even offer your own life in exchange, just to save your child! That is the dilemma of the En Banc because the trend of events show that the *sindikato* may get the ransom and kill the victim just the same. I am therefore requesting for prayers because prayers of the righteous avail much (James chapter 5 verse 16).

Thank you for your support for the success of the elections.

On 15 March 2010, Finance Service Department Budget Division Head **Martin Banawan Nieto** issued a certification that **689.7 Million Pesos** is available for the ballot secrecy folders. Finance Service Department Director **Eduardo Dulay Mejos** noted the certification.



REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
Intramuros, Manila

COMPTROLLER BAC
RECEIVED
BY: *[Signature]* DATE: 3/15/10
TIME: 2:29 PM

CERTIFICATION

This is to certify that funds are available for the procurement of Ballot Secrecy Folder in the amount of Six Hundred Eighty Nine Million Seven Hundred Thousand Pesos Only (P689,700,000.00), broken down as follows:

- a) Five Hundred Sixty Million (P560,000,000) – chargeable against the 2010 NLE Supplies and Materials; and
- b) One Hundred Twenty Nine Million Seven Hundred Thousand (P129,700,000) – chargeable against the Preparatory 2010 NLE Supplies and Materials.

Issued this 15th day of March 2010.

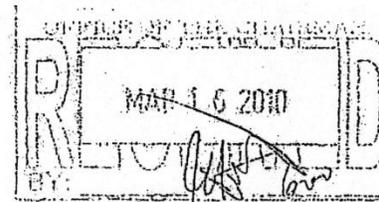
[Signature]
ATTY. MARTIN B. NIEDO
Budget Officer V
Finance Services Department

Noted by:

[Signature]
EDUARDO D. MEJOS
Director IV
Finance Services Department

On 15 March 2010, the Comelec En Banc promulgated Resolution No 8795:

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila
EN BANC



IN THE MATTER OF BAC RESOLUTION
NO. 85-2010, RE: RECOMMENDATION
OF THE BIDS AND AWARDS
COMMITTEE TO AWARD THE
CONTRACT FOR THE SUPPLY AND
DELIVERY OF 1,815,000 PCS. OF
BALLOT SECRECY FOLDER FOR THE
MAY 10, 2010 NATIONAL AND LOCAL
ELECTIONS

Chairman, Jose A.R. Melo
Commissioner Rene V. Sarmiento
Commissioner Nicodemo T. Ferrer
Commissioner Lucenito N. Tagle
Commissioner Armando C. Velasco
Commissioner Elias R. Yusoph
Commissioner Gregorio Y. Larrazabal

Promulgated: March 15, 2010

x-----x

RESOLUTION NO. 8795

This pertains to the Memorandum dated March 8, 2010 of Director Maria Lea R. Alarkon, Chairman, Bids and Awards Committee, submitting BAC Resolution No. 85-2010, re: recommendation to award the contract for the supply and delivery of 1,815,000 pieces of ballot secrecy folder for use in the May 10, 2010 National and Local Elections.

BAC Resolution No. 85-2010 reads:

"WHEREAS, on 17 February 2010, the Honorable Commission En Banc issued Comelec Minute Resolution No. 10-0251 approving the design presented by Executive Director Jose M. Tolentino, Jr. for the procurement of the Ballot Secrecy Folder for the May 10, 2010 National and Local Elections;

WHEREAS, on 27 February 2010, OTC PAPER SUPPLY submitted to the Bids and Awards Committee (BAC) its proposal to supply the above-subject procurement with attachment of its Improved File Folder whose technical specifications are very much in unison with the design approved by the Honorable Commission En Banc as well as its attachment of the certification issued by the Intellectual Property Office certifying that it had a pending patent application on the aforesaid Improved File Folder;

WHEREAS, Section 48.1 in relation to Section 53.2 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, provides that in emergency cases, where immediate action is necessary to restore vital public services, the procuring entity may resort to alternative methods of procurement;

WHEREAS, Section 50 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 provides that alternative mode of direct contracting is applicable in case of procurement involving goods of proprietary nature which can be obtained only from a proprietary source, i.e., when patents, trade secrets, and copyrights prohibit others from manufacturing the same item, and when the procurement of critical plant components from a specific supplier is a condition precedent to hold a

Comelec En Banc Resolution No 8795 page 2:

Page 2

contractor to guarantee its project performance, in accordance with the provisions of its contract;

WHEREAS, after a careful evaluation of the proposal and the accompanying eligibility documents, as well as its application for copyright, the BAC finds that only OTC PAPER SUPPLY can supply and deliver the necessary ballot secrecy folder for the May 10, 2010 National and Local Elections by virtue of its claim of copyright over the design of the ballot secrecy folder;

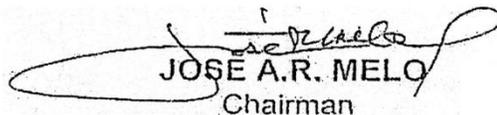
WHEREFORE, in view of the foregoing, the BAC hereby recommends to the Honorable Commission En Banc to award the contract for the Supply and Delivery of the 1,815,000 pieces of Ballot Secrecy Folders for the May 10, 2010 National and Local Elections at the rate of P380.00 per piece to OTC PAPER SUPPLY;

xxx."

The Commission RESOLVED, as it hereby RESOLVES, to approve the foregoing recommendation of the Bids and Awards Committee as embodied in BAC Resolution No. 85-2010 to award the contract for the supply and delivery of one million eight hundred fifteen thousand (1,815,000) pieces of ballot secrecy folder for use in the May 10, 2010 National and Local Elections to OTC PAPER SUPPLY.

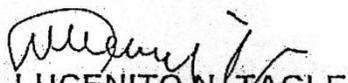
Let the Bids and Awards Committee implement this Resolution.

SO ORDERED.

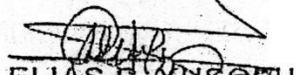

JOSE A.R. MELO
Chairman

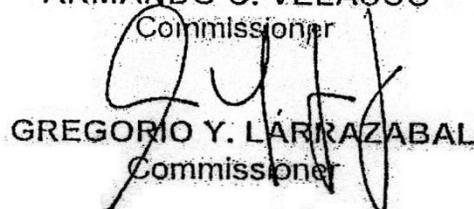

RENE V. SARMIENTO
Commissioner

On Official Business
NICODEMO T. FERRER
Commissioner


LUCENITO N. TAGLE
Commissioner

On Official Business
ARMANDO C. VELASCO
Commissioner


ELIAS R. YUSOPH
Commissioner


GREGORIO Y. LARRAZABAL
Commissioner

- Cc: Chairman
- All Commissioners
- Executive Director
- Deputy Executive Director for Operations
- Bids and Awards Committee
- Project Management Office
- Internal Audit Office
- COA Resident Auditor

Condemning the plunder, Law Department Director **Ferdinand T. Rafanan**, on 23 March 2010, wrote Memorandum No 10-1276, and on 29 March 2010, Memorandum No 10-1431, strongly recommending to the Comelec En Banc the cancellation of the ballot secrecy folder purchase.

Defending the plunder, the Executive Director said these during the 30 March 2010 En Banc session.

Comm. Sarmiento	Lumalabas iyung 380 per baka Jun masyadong malaki
Exec. Dir. Tolentino, Jr.	Sir ano iyan, that was submitted by the BAC and then naka indicate naman sa recommendations nila na ito iyung quantity ito iyung unit price then in-approve naman, Sir ang palagay ko Sir ang iniisip nila dito sa ballot secrecy folder is like this it is not, in fact diba nga sinasabi natin, it's so sturdy even without desk even if you are on a bench you can put it in your lap, right now sinasabi natin we can use it only once if we decide to automate sa next election using a paper based elections at least reusable

Under the Administrative Code,¹⁸ the Executive Director **shall** be **responsible** for the **economical** administration of projects. Executive Director Tolentino did not care about the uneconomical squandering of P700M and even misled the En Banc into thinking that there is no more turning back because “the BAC already issued a notice of award” when in truth and in law the En Banc has authority to cancel.

Comm. Sarmiento	That is in the event may... automation eh kung wala sayang iyung 700 million
Exec. Dir. Tolentino, Jr.	Kasi Sir on the basis of the resolution approving it
Chairman Melo	Yah, yah, we know that
Exec. Dir. Tolentino, Jr.	The BAC already issued a notice of award
Chairman Melo	Ang ano diyan there was a resolution from the BAC which we approve the design, diba the design then later on the BAC came up with a resolution again saying na parang direct negotiation
Exec. Dir. Tolentino, Jr.	Yes Sir

He said he was “not defending” but he went on defending the folder all the way down to the tiniest details.

Comm. Sarmiento	Ang issue malambot
Exec. Dir. Tolentino, Jr.	Yes Sir, I am not defending the reason why we had a stacking folder is to make sure that when the voter will write hindi ma ...paganoon sa desk or what in addition

¹⁸

Administrative Code, Book V, Title I, Subtitle C, Chapter 2, Section 8, Subsection 4

He does not know the deadline for the project and yet was quick to find an excuse for justifying the blitzkrieg speed of the P700M purchase.

Comm. Sarmiento	Kailan ang deadline nito Jun?
Exec. Dir. Tolentino, Jr.	Kaya iyan minadali Sir kasi iyung Shipping Committee wanted to include that doon sa non accountable forms and supplies

Aha! There was no Purchase Order yet. How come the Shipping Committee knew about how to include the folders in the early shipment of accountable forms and supplies? Was the script for the blitzkrieg written a long time ago?

Must the En Banc cancel or continue the plunder? The Executive Director was intransigent about his stand.

Exec. Dir. Tolentino, Jr.	Sir ang sa akin naman Sir, probably it wouldn't be proper to cancel it kasi nag issue na nag notice of award eh baka tayo naman ang ma demanda niyan
Exec. Dir. Tolentino, Jr.	Most siguro Sir, negotiate for a lower price but not to cancel it kasi noong nag notice of award most probably nag order na iyan, and the only reason hindi nakaka-deliver is because of the requirement that the purchase order must first be issued before delivery

Aha again! That was an admission that the price was very very wrong in the first place. Under the Administrative Code,¹⁹ the Executive Director **shall** be **responsible** for the **economical** administration of projects. Can Executive Director Tolentino escape from responsibility for the colossally uneconomical ballot secrecy folder project?

The next day, during the 31 March 2010 En Banc session, while the Chairman and all Commissioners were struggling on how to resolve the avalanching opposition against the ballot secrecy folder plunder, the Executive Director kept on repeating his "purchase order" mantra.

Exec. Dir. Tolentino, Jr.	Sir di kasi maka deliver without the purchase order eh,
Chairman Melo	Wala papala namang na di-deliver
Exec. Dir. Tolentino, Jr.	Iyun na lang talaga ang hinihintay, I think the stocks is already at the customs?
Comm. Sarmiento	Dumating na
Exec. Dir. Tolentino, Jr.	Kasi may notice of award na eh,

¹⁹ Administrative Code, Book V, Title I, Subtitle C, Chapter 2, Section 8, Subsection 4

- Exec. Dir. Tolentino, Jr. Ang requirement lang ng COA is before you deliver you need a P.O.
- Chairman Melo Ito ba na audit na iyan?
- Exec. Dir. Tolentino, Jr. Sir ano Sir ang kulang na lang d'yan is the P.O. paara i-deliver nila kasi hung hindi,

Echoing the view of the Executive Director was Commissioner **Nicodemo Tulagan Ferrer** who had the gall to say that there is “no legal basis to cancel the contract” when there is no contract yet.

- Exec. Dir. Tolentino, Jr. Yes Sir para ma-deliver na iyan
- Comm. Ferrer No legal basis to cancel the contract

Towards the end of the meeting, when the Chairman and Commissioners were already contemplating about renegotiating the price or the contract on the ground of poor quality, the Executive Director stood on stubbornly to his excuse that the folders are waiting in the Custom and Pier.

- Chairman Melo I-reduce, babawasan daw natin ang ating ano of one hundred something
- Comm. Tagle Poor quality na lang
- Comm. Velasco Poor quality na lang masyadong mahal iyon eh
- Exec. Dir. Tolentino, Jr. Ang alam ko lang Sir, nasa Custom na, nasa Pier
-
- Exec. Dir. Tolentino, Jr. Info lang Sir, manufacturing has been completed, shipment na lang
- Comm. Larrazabal Manufacturing of the raw material?
- Exec. Dir. Tolentino, Jr. Shipment na lang ang kulang
- Comm. Larrazabal Sorry, question on two things, first is the manufacturing of the item itself or the raw materials
- Exec. Dir. Tolentino, Jr. Of the item

In short, while everyone else were searching for ways and means to either reduce the price or else cancel the contract, here comes the Executive Director saying it's too late, it's a done deal, “manufacturing has been completed”, the “items” are already in the “Custom” and “Pier”, “shipment na lang ang kulang” and so therefore Chairman Melo must sign the Purchase Order.

Regarding the Purchase Order, I vehemently opposed it because at the upper right portion it is written that the "Mode of Procurement" is "Public Bidding" when it truth there was no public bidding of the ballot secrecy folders.

Commission on Elections
Intramuros Manila

PURCHASE ORDER

Supplier: OTC PAPER SUPPLY	P.O. Number: 10-03-0208AC
Address: 451 H. delos Cruz St., Sta. Cruz, Calabar, Palawan City	Date: March 23, 2011
	Mode of Procurement: Public Bidding

Gentlemen:
Please furnish this office the following article/s subject to the terms and conditions contained herein.

Place of Delivery: Property Division, ASD	Delivery Term: _____
Date of Delivery: _____	Payment Term: _____

Stock No.	Unit	Qty.	Description	Unit Cost	Amount
	pcs.	68800	BALLOT SECRECY FOLDER	100.00	6887000.00
			Top Layer:		
			Size: 9.5 inches (width) x 28 inches (length)		
			Thickness: 0.05 mm		
			Material: Polypropylene Sheet		
			Color: Royal Blue		
			Folder: 1/4 inch fold (Covered top and bottom, 3/4 inch fold)		
			Separable Spine:		
			Size: 2 inches (width) x 28 inches (length)		
			Thickness: 0.2 mm		
			Material: Polypropylene Sheet		
			Color: Black		
			Join: 0.4 inches (width) with the Top Layer and Joint by 3/8 inch with the Bottom Layer		
			Bottom Layer:		
			Size: 9.5 inches (width) x 28 inches (length)		
			Thickness: 0.2 mm		
			Material: Polypropylene Sheet		
			Color: Royal Blue		
			DELIVERY DATE: April 7, 2010 - 1st 30%		
			April 14, 2010 - 2nd 30%		
			April 21, 2010 - Remaining 40%		
			Five (5%) percent Performance Bond - Php - 4,486,000.00		
			For use in the forthcoming Automated FILE on May 10, 2010		
			PR: Duly Approved (Attached) 10-03-0208		
			Ref: Abstract of Prices, Notice of Award and Correlac.		
			Resolution No. 8795 dated March 16, 2010		
			OBRW 10-03-2024, P.P.A.-NLE 10, P.WLE, AC 755		
(Total Amount in Words) SIX HUNDRED EIGHTY EIGHT MILLION SEVEN					8887000.00
HUNDRED THOUSAND PESOS ONLY					

In case of failure to make full delivery within the time specified above, a penalty of two (2%) of one percent for every day of delay shall be imposed.

Very truly yours,
JOSE A.R. MELO
Chairman

(Signature over printed name)

(Date)

Chief Accountant

AMOUNT: **4,486,000.00**

Starting from Good Friday, 2 April 2010, until around a week thereafter, reporters and major news networks were broadcasting interviews with then Senator Aquilino “Nene” Q. Pimentel Jr. who was calling for investigation of the ballot secrecy folder overprice.

PIMENTEL:

COMELEC BOUGHT BALLOT FOLDERS FOR P380 EACH

SOPHIA REGINA M. DEDACE
2010/04/04 | 01:43 PM

Election officials had bought nearly two million ballot secrecy folders for the May 10 elections at an overpriced rate of P380 each, Senate Minority Leader Aquilino Pimentel Jr. alleged on Sunday.

Citing information from a confidential source, Pimentel claimed there had been no bidding for the folders, which will be used to cover the ballot during voting. He declined to name the company that had bagged the contract from the Comelec.

“I want Chairman [Jose] Melo to investigate this matter because this will taint the integrity of the Comelec. It looks like more than P300 per piece is too much... I cannot name my source because doing so will endanger his life,” Pimentel told GMA News.TV in Filipino.

Under Comelec Resolution 8786, there should be 22 folders per clustered precinct. This means the poll body must shell out P638 million for 1.68 million folders for the 76,340 clustered precincts in the upcoming elections.

Comelec spokesman James Jimenez said the poll body would answer Pimentel’s allegations on Monday. “We’ll respond to this at our [press briefing] tomorrow,” he said in a text message to GMA News.TV.

‘Anomalous’ contract. On Sunday, Pimentel said the absence of a public bidding allows a contractor to bloat the price of his product service.

Under Republic Act 9184 or the Government Procurement Reform Act, state agencies must bid out procurements to ensure the most competitive price for the government.

The law was crafted to promote transparency in government procurement to establish a system of accountability for public officials and contractors. Despite his allegations, Pimentel said the Comelec under Melo is more credible than when it was still under his predecessor Benjamin Abalos Sr.

The complete audio visual content of the above interview before a national audience is available in this internet link:

<http://www.gmanews.tv/story/187669/pimentel-comelec-bought-ballot-folders-for-p380-each>



During the 5 April 2010 En Banc session, the Executive Director said:

- Exec. Dir. Tolentino, Jr. Sir in fairness naman to the BAC, the quantity that they caused to be procured came from the Allocation Committee, hindi naman sila mag pa-pa procure Sir ng basta batang walang basis, so it was based on the submission of the Allocation Committee which I even think was approved by the En Banc that's why iyun ang pinabili nila
- Comm. Ferrer No contract
- Chairman Melo No contract yet in as much as that reso has not been signed ...
- Exec. Dir. Tolentino, Jr. Ang sunod naman Sir is iyung the conclusion that the price of three hundred eighty (380.00) is exorbitant, just like the statement of Dr. Serrano and Ferdie, there was no statement or study made to show that this is indeed exorbitant it's just a subjective
- Chairman Melo Ako akala ko three pesos and eighty centavos (Php 3.80) ✓

Speaking with **gross dishonesty**²⁰ and **gross neglect of duty**²¹ and **gross misconduct**²² and **gross inefficiency and incompetence**,²³ the Executive Director was still insisting that the price is not "exorbitant" in the "open market" when even the least competent lowest ranking janitor knows that the price range of folders is closer to **P3.80** and not the monstrous **P380.00** per folder adding up to almost **P700M!**

- Exec. Dir. Tolentino, Jr. Ang sa akin lang Sir is we should not immediately conclude it is exorbitant without saying na we went to the open market and looked at a material,

A very strong indicator proving the **gross dishonesty** and **gross neglect of duty** and **gross misconduct** and **gross inefficiency and incompetence** of the Executive Director is the fact that no less than the supplier itself was willing to crash land the price from the stellar P380.00 to down by P137.74 per piece.

- Exec. Dir. Tolentino, Jr. Sir at 10:20 Sir Dir Alarkon submitted to my office a transmittal of the, I mean the offer of OTC Paper nanalo d'yan Sir, because if we recall last En Banc meeting, diba sinabi mahal ang presyo so you ask for price reduction ✓
- Chairman Melo Oh, that was last Wednesday

- Exec. Dir. Tolentino, Jr. That was before the Holy Week, so may memo dito si Leah dated today transmitting the offer of OTC dated today also ang sinasabi nila that binigyan sila ng discount of one hundred thirty seven point seventy four pesos (Php 137.74) per piece #

²⁰ Administrative Code, Book V, Title I, Subtitle A, Chapter 6, Section 46 (b) (1)

²¹ Administrative Code, Book V, Title I, Subtitle A, Chapter 6, Section 46 (b) (3)

²² Administrative Code, Book V, Title I, Subtitle A, Chapter 6, Section 46 (b) (4)

²³ Administrative Code, Book V, Title I, Subtitle A, Chapter 6, Section 46 (b) (8)

The Executive Director held on stubbornly with barnacle grip on his plunder clutch even when there is no law requiring the use of ballot secrecy folders, for, simple banana leaves can serve the purpose.

Exec. Dir. Tolentino, Jr. Sir but still we need a folder just to make,

Chairman Melo We need something to cover it, it can be a piece of paper it can be banana leaf

Regarding Senator Nene Pimentel's demand for an in-depth investigation, the Executive Director said:

Exec. Dir. Tolentino, Jr. Sir actually, GMA sent me a text message last Good Friday, sabi niya is it true daw iyung statement of Senator Pimentel na ganito, overpriced iyung pag-procure and without public bidding so I responded based on the last discussion last week, sabi ko there is no overpricing and the procurement was done in accordance with R.A. 9184 which was the basis naman by the BAC in saying na under Sec 50 of 9184 we can procure it based on patent etc., etc, then I stopped there, sabi ko the issue is pending with the En Banc, it's better if you just wait for whatever resolution that will come out, Sir in fact because of the instructions given to Lea last week now the BAC has forwarded to my office it's resolution saying nga na why they procured it at that cost, they even submitted a basis for comparison which was the procurement done for secrecy folders no, rather other document folder which is smaller

Later that day, I was told to go with a batch of "Trainors" which must take off tomorrow (Tuesday 6 April 2010) to Leyte, to a hotel belonging to the family of Commissioner **Gregorio Yrastorza Larrazabal**, to assist in trainings.

I had no choice but to obey.

Sometime between Wednesday to Sunday (7 to 11 April 2010), while I was in Sabin Hotel in Tacloban City, there were news reporters from ABS CBN asking questions about a certain "Tony Mags" who was in "exile" and apparently with the Comelec group in the hotel. I overheard the conversation of some of the news reporters. To my surprise, from what I overheard, they were looking for me but do not know how I look like. The "Tony Mags" they were searching for is actually "Attorney Mags" (Attorney Magdamo). I kept quiet.

Realizing the gravity of the situation that I was into at that time, I wrote the draft of my first affidavit involving this case. Since I was still not certain as to whether or not an assassin is lurking around, waiting for just the ripe moment to pull the trigger, I wrote a comprehensive affidavit covering a broad range of topics relevant to my crusade against corruption, so that the affidavit may serve in part as my last will and testament.

Starting from Thursday 15 April 2010, while on my way to report to the Comelec head office, I was smothered and overwhelmed by an avalanche of ambush interviews. I wanted to resign but Chairman Melo said the timing of my resignation may spark more investigations.

Starting Tuesday 20 April 2010, I did not expect (and it was beyond my control) the prime time news broadcasts of the ambush interviews.



The rest is history.

On 29 April 2010, I went to the Office of the Ombudsman. Journalist Anthony Taberna and his staff were with me and took some video footage. A certain **Caesar D. Asuncion** did not allow the entry of the news reporters. His investigation team led me into a room with one-way mirrors (they can see me while I cannot see them). Thereafter, the discussions were very comprehensive and exhaustive, starting from mid morning thru lunch and all the way to mid afternoon. Considering that under the Ombudsman Rules, complaints or grievances or requests for assistance “may be in **any form**, either **verbal** or in writing” for as long as the complaining party indicates his address and telephone number, if any,²⁴ I told the investigation team of **Caesar D. Asuncion** that this marathon hearing of 29 April 2010, despite being verbal, shall serve as my complaint + grievance + request for assistance. Ever since then, I was willing and ready, and until now I am still willing and ready, to cooperate with whatever additional investigation the Ombudsman may deem necessary.

Ever since then, I was waiting for the Office of Ombudsman **Merciditas Navarro Gutierrez** to comply with the constitutional duty to **notify the complainant of the actions taken and the result thereof**.²⁵

I resigned on 04 May 2010. Sometime on or after 28 June 2010, the Comelec Fact-Finding Panel (Law Department Director **Ferdinand T. Rafanan** and Operations Department Director **Divina E. Blas Perez**) submitted a Fact-Finding Report to the Comelec En Banc which in turn submitted the same to the Ombudsman. Neither the Comelec nor the Ombudsman gave me a copy of the fact-finding report. According to a reporter from UNTV, there is a Comelec resolution threatening to punish anyone who attempts to leak a copy of the Fact-Finding Report to the general public (including me).

²⁴ Ombudsman Rules of Procedure, Section 3

²⁵ Constitution, Article XI, Section 12

Obviously, as peace offering to the new President, **Benigno Aquino III**, on or around 29 July 2010, Ombudsman Gutierrez preventively suspended at least six respondents in the case, namely: Comelec Executive Director Jose Marundan Tolentino, Comelec BAC Chairperson Maria Lea Robles Alarkon, and Comelec BAC members = Allen Francis Bravo Abaya + Maria Norina Tangaro Casingal + Martin Banawan Niedo + Antonio Serrano Santella.

It appears that the BAC Chairperson and members (minus the Executive Director) went up to the Court of Appeals which, on or around 21 December 2010, upheld the preventive suspensions. Just the same, since Ombudsman Gutierrez slept on the case, by end of January 2011, all six are back in power.

All the while, I was willing and ready to help in the investigation, and I was still waiting for Ombudsman Gutierrez to comply with the constitutional duty to **notify the complainant of the actions taken and the result thereof**.

Around this time, the Senate and House of Representatives were conducting hearings in aid of legislation to draft the Whistle Blowers Act. There I met and became a close friend of fellow whistleblower Jose “**Boy**” Biaco **Barredo** who was the **root** whistleblower of the fertilizer fund scam, similar to my being the **root** whistleblower of the ballot secrecy folder scam. Being in a parallel predicament and suffering equivalent sacrifices and persecutions plus grave threats against genuine whistleblowers, I was able to earn his trust and became his *de facto* legal counsel. Inevitably, we became vital resource persons in the snowballing preparations for the articles of impeachment by the OMG (Oust Merci Gutierrez) movement, and we have been appearing in various news interviews where we spoke about how Merci slept on our exposés. The eye-opener between us whistleblowers is **we do not exist** in our very own cases pending in the Office of the Ombudsman.

Ever since 1 December 2005 when Merceditas Gutierrez became the Ombudsman, within a span of a half decade thereafter, the Senate held public cross-examinations of whistleblower Boy Barredo. Major news networks in the Philippines reported his testimony. Notwithstanding, Ombudsman Gutierrez made it appear that whistleblower Boy Barredo **does not exist** in the fertilizer fund scam case that took her office a half decade to investigate.

The striking similarity is that I was the root whistleblower in the ballot secrecy folder scam. I submitted at least three long affidavits to the Fact-Finding Panel which found me a credible witness and upheld my testimony. The Panel officially transmitted the entire case records to the Office of the Ombudsman which thereafter issued a preventive suspension order against six respondents. Major news networks reported my allegations. After all was said and done, Ombudsman Gutierrez made it appear that **I do not exist** in the ballot secrecy folder scam investigations, while all others who rode on the issue were able to exchange pleadings and counter-pleadings.

Around 10 February 2011, Senator Nene Pimentel and I sent a follow-up letter, inquiring from Ombudsman Gutierrez about the status of the case. We (Senator Nene Pimentel and me) were ready to help in the investigation, but Ombudsman Gutierrez did not comply with the constitutional duty to **notify the complainants of the actions taken and the result thereof**.

I was one of the active resource persons in the impeachment proceedings. Around this time (March to April 2011), Deputy Ombudsman **Orlando C. Casimiro** has been publicly denouncing those working for the impeachment, which includes me. After showing bias, how can he be neutral in my case?

It appears that on 02 August 2011, the Comelec En Banc promulgated Resolution No 9267 promoting one of the folder scam culprits under suspension, Allen Francis Bravo Abaya, as the De Facto Head of the Comelec Law Department (the very same department that found him guilty in the folder scam) while feigning the appointment of a Commissioner-in-Charge just to kick out **Ferdinand T. Rafanan** who is known to be the last remaining honest Comelec senior official.

TO : ALL DEPARTMENT DIRECTORS/HEADS OF OFFICES
DATE : August 8, 2011
SUBJECT : Temporary Re-Assignment of Senior Officials, REDS and ARED

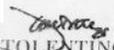
Attached herewith is a copy of COMELEC Resolution No. 9267, promulgated on August 2, 2011, received by this Office today, resolving the following:

1. The temporary re-assignment of the senior officials indicated therein, effective August 1, 2011 until the end of October 2011;
2. The designation of the Honorable Commissioner Rene V. Sarmiento as Commissioner-in-Charge of the Law Department; and
3. The temporary re-assignment of the Regional Election Directors (REDs) and the lone Assistant Regional Election Director (ARED) indicated therein, effective August 1, 2011 until the end of January 2012.

Please be advised that the re-assigned senior officials, REDs and the lone ARED, were given until August 15, 2011 within which to assume the duties of their new assignments to enable them to properly turn-over all their office concerns.

For dissemination to all your respective personnel.

For your information and compliance.


JOSE M. TOLENTINO, JR.
Executive Director

Please note that the resolution kicking out Ferdinand Rafanan from the Comelec Law Department was promulgated August 2 but took effect August 1.

Sometime on or around 10 August 2011, the Court of Appeals upheld the jurisdiction of the Ombudsman in the folder scam case. On 24 August 2011, DZMM Tele Radyo reported about the late release of a **midnight resolution** by the previous Ombudsman whitewashing the most guilty, Executive Director Tolentino, while imposing a slap-on-the-wrist penalty on the “small fishes” (Alarkon + Abaya + Santella).

Thereafter, I went to the Office of the Ombudsman to request a copy of the midnight resolution, if any.

Finally, the constitutional duty to “notify the complainants of the actions taken and the result thereof” had its first ever compliance under the Honorable former Supreme Court Justice now Ombudsman **Conchita Carpio Morales**.

Meantime, I read in the Philippine Star and Manila Times an admission by Comelec Chairman Sixto Serrano Brillantes requesting the whitewash of the case against 2 out of the 3 found guilty = Alarkon plus Abaya minus Santella.



BRILLANTES: I JUST WANTED TO HELP FOLDER SCAM EXECS by SHIELA CRISOSTOMO 2011/09/09: Comelec chairman Sixto Brillantes admitted yesterday that he wanted to help two poll officials involved in the botched P690-million ballot secrecy folder procurement. He clarified that he did not want former Comelec bids and awards committee chair Maria Lea Alarkon and member Francis Allen Abaya to be absolved from the case. "I wanted to help

because I felt that the six-month suspension (imposed on them by the Ombudsman) was too much for simple negligence," he said. Brillantes said he was thinking if the six-month preventive suspension previously served by the two can already cover for their punishment. He admitted that he even wrote Ombudsman Conchita Carpio Morales about this.



COMELEC CHAIRMAN ACCUSED OF UNETHICAL BEHAVIOR by Ellen Tordesillas (VERA FILES) 2011/09/09: The displaced director of the Law Department of the Comelec has accused the chairman of the poll body – Sixto Brillantes Jr. – of unethical behavior for allegedly requesting him to help absolve two Comelec officials ordered suspended by the Office of the Ombudsman for approving the P690-million contract to purchase ballot secrecy folders for the 2010 elections Lawyer Ferdinand Rafanan, who served as head of the Comelec Law Department for three years until he was sacked on

August 15, said that Brillantes had asked him pointblank to talk to the Ombudsman's spokesman on how to clear BAC members Maria Lea Alarkon and Allen Abaya of charges of "simple neglect of duty, simple misconduct and conduct prejudicial to the best interest of the service." The irony was that Rafanan himself had investigated the transaction and concluded an overprice. Aside from Alarkon and Abayan, BAC member Antonio Santella was also ordered suspended for approving the contract, which was exposed before it could be consummated. BAC members Maria Norina Casingal, Martin Niedo and Comelec Executive Director Jose Tolentino were cleared of charges. The Ombudsman released its decision on the contract on August 23. The next day, Rafanan said, Brillantes asked him if he was related to lawyer Asryman Rafanan, the spokesman for new Ombudsman Conchita Carpio Morales. According to the former Law Department head, he replied that he does not know the new Ombudsman spokesman and they have not met. Rafanan said Brillantes then instructed him: "Puntahan mo nga. Gusto ko tulungan natin itong mga kasama natin na may kaso (See him. I'd like to help our two colleagues who have a case). I want to help those two, Alarkon and Abaya." Brillantes, he related, further said, "You were the one who prepared the investigation report. You know the nitty-gritty of this case. You know how to absolve them."

The ballot secrecy folder plunder involves a gargantuan **P689.7 Million Pesos**. I blew the whistle. Ombudsman Gutierrez made it appear that I do not exist. Ombudsman Casimiro did the same. Thus the entire proceeding is a **sham**. The 19 July 2011 **midnight resolutions** in OMB-C-C-10-0289-G and OMB-C-A-10-0301-G are **sham resolutions** that cannot bind me since I was never a party in that very anomalous proceeding. To rescue substantial justice from sacrifice in the altar of devious procedural technicalities, I respectfully pray for INHIBITION of those responsible for the midnight resolutions and start of the real investigation which the Honorable **Conchita Carpio Morales** may deem proper in pursuit of *matuwid na daan*.

Melch Magdamo
MELCHOR GRUELA MAGDAMO

SUBSCRIBED and SWORN to before me this 19 September 2011 in the City of MANILA. I hereby certify that I personally examined the affiant and that I am satisfied that he understood and voluntarily executed this affidavit.

Eduardo R. Menezes, Jr.
EDUARDO R. MENESES, Jr.
Assistant City Prosecutor