



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

Crim Case No. SB-19-CRM-0050

For: Violation of Sec. 3(e) of R.A.
3019, as amended

- versus -

Present:

LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

ESTER B. OGENA,
REBECCA C. NUEVA
ESPAÑA, FLORENCE A.
ALLEJOS, and JOSEPH G.
LUCENO,

Accused.

Promulgated:

February 17, 2023

X-----X

RESOLUTION

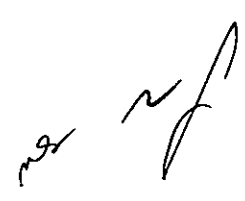
LAGOS, J.:

For the Court's consideration are Demurrers to Evidence filed by each accused in this case and the prosecution's corresponding Oppositions thereto, to wit:

- (i.) Accused Rebecca C. Nueva-España's (**España**) Demurrer to Evidence¹ dated November 28, 2022, and the Prosecution's Opposition² dated December 7, 2022;

¹ Records, Vol. 8, pp. 335-346 and Vol. 9, pp. 4-15, inclusive of Attachment Annex "A"

² Id., pp. 484-524, and Vol. 9, pp. 56-96



x-----x

- (ii.) Accused Florence Ablang Alejos's ^{on}(**Allejos**) Demurrer to Evidence³ dated November 30, 2022, and the Prosecution's Opposition⁴ dated December 15, 2022;
- (iii.) Accused Ester Balating Ogena's (**Ogena**) Demurrer to Evidence⁵ dated December 3, 2022, and the Prosecution's Opposition⁶ dated December 7, 2022.
- (iv.) Accused Joseph G. Luceño's (**Luceño**) Demurrer to Evidence⁷ dated December 5, 2022, and the Prosecution's Opposition⁸ dated December 12, 2022; and

This criminal case revolves around the Information filed by the prosecution on April 5, 2019 which reads:

INFORMATION

xxx

That from 22 June 2011 to 25 July 2011, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officers ESTER BALATING OGENA (Ogena), University President, REBECCA CORPUZ NUEVA ESPAÑA (España), Vice President for Finance and Administration, FLORENCE ABLANG ~~AL~~ LEJOS (Alejos), Budget Office⁹ Head, and JOSEPH GEPANAGA LUCEÑO (Luceño), Director, Financial Management Service,¹⁰ all of the Philippine Normal University (PNU), while in the performance of their administrative and/or official functions and conspiring with one another; acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there wilfully (sic), unlawfully and criminally give unwarranted benefits, advantage, or preference to Universal News Ltd. (UNL), by entering into an advertising contract with it for a half-page advertorial in the Foreign Policy Magazine, without the requisite public bidding, and instead, through unjustified resort to Direct Contracting; despite the lack of budget; and in violation of the austerity measure under Section 1(a)(4) of Administrative Order No. 103 suspending paid media

³ Vol. 8, pp. 347-358

⁴ Id., pp. 273-310

⁵ Id., pp. 362-412, and Vol. 9, pp. 220-269, inclusive of attachments.

⁶ Id., pp. 444-483, and Vol. 9, pp. 16-55

⁷ Id., pp. 413-443, and Vol. 9, pp. 173-218, inclusive of attachments.

⁸ Vol. 9, pp. 97-134 and pp. 135-172

⁹ There appears a correction in pencil mark adding the letter "r" to the word "Office".

¹⁰ "Director, Financial Management Service" is crossed out in pencil and replaced it with the phrase "Officer-in-Charge, Accounting Office".

advertisement, among other things; and thereafter causing the payment (illegally sourced from the Special Trust Fund) to the said magazine of more or less Php1,095,916.86, paying in advance 50% of the contract price without the approved Disbursement Voucher (DV); with España and Allejos certifying in the Budget Utilization Request (BUR) that the supporting documents were valid, proper and legal and that there was available budget; and with Luceño certifying in the DV that the documents were complete and proper; and Ogena approving the payment, in violation of accounting and auditing rules and RA 9184, otherwise known as the Government Procurement Reform Act, and its implementing Rules and Regulations to the damage and prejudice of the government

CONTRARY TO LAW.

Quezon City, Philippines, 13 June 2018

Accused Ogena, Allejos, Luceño, and España, assisted by their respective counsels, were arraigned and pleaded not guilty on June 21, 2019.

The Antecedents

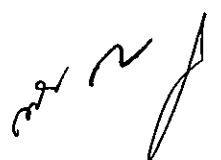
The following Case Background¹¹ is lifted from the Complaint dated March 24, 2015, filed in the Office of the Ombudsman (OMB) by the **Field Investigation Office** (FIO), represented by Atty. Marie Beth S. Almero as Graft Investigation and Prosecution Officer I (GIPO I):

The complaint is based on the following facts:

x x x
x x x

5. On 25 April 2011, Commission on Higher Education (CHED) Chairperson Patricia B. Licuanan (Licuanan) sent a letter to respondent Ogena regarding *Foreign Policy Magazine* and the team of Rafaela Villaceros and Mario Berta who are producing a “very strong campaign for the magazine. At the time, the team was doing a report which promotes the collective vision of higher education in the Southeast Asian region and highlights the top universities in Thailand, Malaysia, Brunei, Singapore, Indonesia, Hongkong, and the Philippines. In the said letter, Licuanan emphasized her belief on the strength of the magazine for the purpose of raising the overall profile of Southeast Asia as an education

¹¹ Vol. 1, pp. 4-30



destination and strongly recommended that PNU participate in the campaign.

6. As a result, the PNU, represented by respondent Ogena and the Universal News Ltd., represented by Mr. Berta, entered into an Advertising Contract for a half-page advertorial amounting to \$25,000.00. Per letter dated 25 May 2011, Mr. Berta of Universal News provided two (2) invoices to respondent Ogena for the payment of the subject half-page advertorial. The first invoice of \$12,500.00 was due on 24 June 2011 while the second invoice of another \$12,500.00 was due on 22 July 2011.

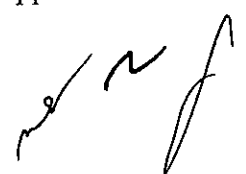
7. On 14 June 2011, respondent Ogena instructed respondent Nueva España through a Routing Slip to facilitate the payment of the subject half-page advertorial. On even date, said routing Slip was referred to Harry P. Huliganga (Huliganga), then Director of the FMS, for his appropriate action. Consequently, Huliganga sent a note to respondent Nueva España stating that: (1) the transaction does not fall under the modes of procurement provided under RA No. 9184; (2) specific budget for advertisement is not enough to cover the amount involved; and (3) if realignment of budget be made, it needs approval by the PNU BOR.

8. Per Memorandum dated 17 June 2011, respondent Nueva España directed Huliganga to facilitate the process of payment to Universal News in the amount of \$25,000.00. She attached a copy of respondent Ogena's justification for the advertisement stating that the advertisement was made pursuant to the request of the CHED Chairperson to universities considered to be the country's top to showcase their programs coupled by respondent Ogena's agenda on global positioning as a strategy for PNU to have collaboration for programs with foreign institutions and funders, to showcase its programs and reach out to foreign students and gain respect in the international community of universities.

9. Consequently, Budget Utilization Request (BUR) No. 209-2011-06-229 dated 22 June 2011 in the amount of ₱550,160.86, the prevailing exchange rate for \$12,500.00, was prepared to cause the payment of the first invoice to Universal News for the subject half-page advertorial. Respondent Nueva España, as VP-FA, certified that the supporting documents are valid, proper and legal while respondent Allejos, as Supervising Administrative Officer, certified that budget is available and was earmarked/utilized for the purpose as indicated in the BUR.

10. On 22 June 2011, PNU applied for the issuance of Land Bank of the Philippines (LBP) Manager's Check in the amount of ₱550,160.86 in favor of Universal News. The source of fund for the payment of the subject advertisement is the Special Trust Fund (Fund 164) of the university. A Debit Advice in the amount of ₱550,160.86 was then issued by the LBP on even date.

11. On 05 July 2011, respondent Ogena issued another justification to cover the second payment for the advertisement made. According to respondent Ogena, the returns to investment for PNU are expected to cover the expanded recognition (of the PNU) on the global scale, support



from funding institutions abroad, collaborations with foreign universities that will support PNU's agenda for moving towards international standard and recognition and potentials for more visiting professors and experts who will be interested to serve the university.

12. Routing Slips were then issued for the facilitation of the second payment for the subject advertisement.

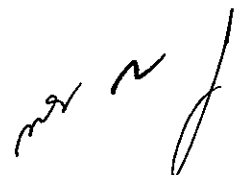
13. Thus, BUR No. 209-2011-07-249 dated 21 July 2011 in the amount of ₱545,756.00, the prevailing exchange rate for \$12,500.00, was issued as payment of the advertisement to Universal News. Respondent Nueva España, as VP-FA, certified that the supporting documents are valid, proper and legal while respondent Allejos, as Supervising Administrative Officer, certified that budget is available and was earmarked/utilized for the purpose as indicated in the BUR.

14. PNU applied for the issuance of LBP Manager's Check in the amount of ₱545,756.00 in favor of Universal News. The source of fund for the payment of the subject advertisement is the Special Trust fund (fund 164) of the university. On 19 July 2011, the LBP issued a Debit Advice in the amount of ₱545,756.00.

15. Disbursement Voucher (DV) No. 1100401632 dated 25 July 2011 shows that the amount of ₱545,756.00 was paid to Universal News for the subject advertisement. Box "A" of the DV was signed by respondent Luceño, as Head of Accounting Unit, to certify that the supporting documents are complete and proper and that cash is available while Box "B" was signed by respondent Ogena, as PNU President, to approve the payment.

16. In a letter dated 04 June 2012 to Ms. Lea E. Desalisa, State Auditor IV of the Commission on Audit (COA) assigned at the PNU, respondent Ogena defended and justified the subject advertisement with *Foreign Policy International Magazine*. According to respondent Ogena, *Foreign Policy* was considered as the "highest in ranking among the most credible of influential competitors." As said magazine made a special edition on Asian Universities, PNU was encouraged by CHED Chairperson Licuanan to publish in the special edition of the said magazine.

17. In a Certification dated 22 February 2013 issued by Alpheus Eugenio V. Ferreras (Ferreras), University and Board Secretary, there are no available records of any Board Resolution: (1) approving the procurement of a half-page advertisement amounting to \$25,000.00 from Universal News by the PNU in year 2011 through direct contracting; and (2) approving the realignment of budget for the said procurement. Notably, in a letter dated 01 October 2014, Ferreras intimated that pursuant to RA 7168, otherwise known as the Philippine National University Charter, the PNU President seeks the approval of the Board of Regents on matters concerning, among others, the receipt and appropriation of all sums as may be provided for the support of the University in the manner it may, in its discretion, determine to carry out the purposes and functions of the University.



18. Meanwhile, in a letter dated 08 April 2013, Bids and Awards Committee (BAC) Chairman Larry A. Gabao (Gabao) clarified that the advertisement was in compliance with the recommendation of CHED Chairperson Licuanan and no bidding was necessary for the advertisement considering that the *Foreign Policy* magazine was the strongly recommended publication by the CHED Chairperson. Nonetheless, Gabao added that the publication of the half-page advertisement by Universal News is among those excused from the conduct of a public bidding under the provisions of RA 9184. According to him, among those enumerated is the process of Direct Contracting or otherwise known as Single Source Procurement wherein a supplier is simply asked to submit a price quotation or a pro forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.

19. On 18 October 2013, COA issued Notice of Suspension (NS) No. 13-004-164(STF)-(11) to respondent Ogena regarding the subject half-page advertorial in *Foreign Policy*. The amount of ₱1,095,916.86 was suspended in audit and PNU management was required to submit documents/valid explanations regarding the transactions.

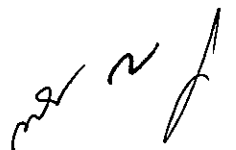
20. On 16 January 2014, respondent Ogena sent a letter to Ms. Elenita C. Abesamis, Supervising Auditor of COA-PNU reiterating that the subject advertisement was in compliance with the recommendation of CHED Chairperson Licuanan and that no bidding was necessary for the said advertisement. Respondent Ogena likewise submitted the following documents:

- a. Approved Annual Procurement Program and Supplemental Annual Procurement Plan for CY 2011;
- b. Consolidated Special Trust Fund (STF) Budget for CY 2011, which shows that the budget for Advertising Expenses amounts to only ₱100,000.00 for the five (5) PNU campuses;
- c. Financial Report of Operations on STF as of September 30, 211 of the PNU Main Campus, which shows that the approved budget for advertising expenses is only ₱50,000.00 but the obligations incurred has already amounted to ₱1,182,382.00; thus, the university has an unobligated balance in the amount of ₱1,132,382.09;
- d. Board of Regents Secretary's Certificate on the approved Memoranda of Agreement of collaboration between PNU and other foreign universities, visiting professors, and funding institutions abroad, which however did not include the Advertising Contract entered into by and between the PNU and the Universal News Ltd.

21. On 30 October 2014, COA issued an Auditor's Rejoinder.

xxx xxx xxx

22. Consequently, Notice of Disallowance (ND) No. 14-009-101(11) and ND No. 14-009-164(STF)-(11), both dated 14 November 2014, were issued to PNU, disallowing the amount of ₱1,095,916.86 paid to Universal News, Ltd., United Kingdom, due to non-adherence with various laws.



The foregoing Case Background is followed by a section called Discussion, leading to the complainant's conclusion, "that **ESTER BALATING OGENA, REBECCA CORPUZ NUEVA ESPAÑA, JOSEPH GEPANAGA LUCEÑO, and FLORENCE ABLANG ALLEJOS** be held liable for violation of Section 3(e) of RA No. 3019."¹² (Emphasis in the original.)

The Pre-trial Conference and Pre-trial Order

Pre-trial Conference commenced on July 9, 2019.¹³ At the conclusion thereof, the court issued its Pre-trial Order¹⁴ on July 16 2021, duly conformed to and signed by the parties and their counsels. In the Pre-Trial Order, the parties agreed on the following stipulation of facts, as proposed by the prosecution, viz.:

1. All the above-named accused are the same persons named in the Information and held the following positions in the Philippine Normal University (PNU) at the time material to the allegations, with "counter proposal" on the part of Luceno that his appointment was only effective starting June 21, 2011 to which the prosecution agreed.
2. There was an advertising contract with Universal News Ltd. (UNL) for a half-page advertorial of PNU in the Foreign Policy magazine.
3. The amount of Php1,095,916.86 was paid in two installments to UNL for the advertisement of PNU in the Foreign Policy magazine.
4. The advertorial of PNU was published in the Foreign Policy magazine.

Of the various proposals for stipulation proffered by each of the accused, the prosecution agreed to stipulate only as to the following:

- For accused Ogena:¹⁵

"1.1. Dr. Licuanan wrote Dr. Ogena on 25 April 2011 strongly recommending PNU's participation in the campaign of the Foreign Policy Magazine (FPM) to raise the overall profile of Southeast Asia as an education destination and to show support for the higher education

¹² Vol. 1, p. 28; emphasis in the original.

¹³ Vol. 2, p. 92

¹⁴ Vol. 3, p. 111

¹⁵ Id., pp. 112-113

x-----x

sector in the Philippines. - Not stipulated except for the existence of the 25 April 2011 letter.”

- For accused Nueva España:¹⁶

“1. Accused Nueva España during the times material to the complaint was the Vice-President for Administration, Finance and Development of the Philippine Normal University (PNU); - Stipulated in so far as Nueva España VP for finance and admin” and

x x x

“3. There was an advertisement contract with Universal News Ltd. (UNL) for a half-page advertorial of PNU in the Foreign Policy magazine; - Stipulated.”

Trial commenced on September 23, 2021 and proceeded thereafter, as scheduled by the court.

The prosecution rested its case, together with the testimonies of its witnesses, upon admission by the Court of the documentary evidence in its Formal Offer of Evidence,¹⁷ per Resolution¹⁸ dated October 26, 2022, amidst the accused opposition. Subsequent thereto, each accused filed **Motions for Leave to File Demurrer to Evidence** pursuant to Section 23, Rule 119 of the Rules of Court, which provides that, “After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. xxx” (Underscoring supplied.) The court granted “leave of court” in its Resolution¹⁹ dated November 22, 2022, over the objection of the prosecution. There is no issue or dispute as to the timeliness of the filing of the foregoing demurrers to evidence nor with the prosecution’s oppositions.

The Evidence for the Prosecution

Witnesses for the Prosecution

The following prosecution witnesses testified, based on their judicial affidavits, supplemented by their oral testimony on direct-examination, cross-examination, or redirect, if any:

¹⁶ Vol. 3. P. 116

¹⁷ Vol. 7, p. 52

¹⁸ Vol. 8, p. 80

¹⁹ Id., p. 300

Maria Jenevie V. Berba, Officer-in Charge, BAC Secretariat of PNU

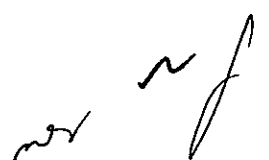
The prosecution's first witness is Maria Jenivie V. Berba, the current Administrative Assistant of the Philippine Normal University (PNU).

In the Judicial Affidavit of the witness, she stated that she is with the PNU since 2006 and the current Head of the Bids and Awards Committee (BAC) Secretariat of said university. As head, some of her duties and functions include monitoring the documents related to public bidding, in-charge of the minutes of the meeting, and custodian of the records of the BAC Secretariat. In the subpoena issued, Berba mentioned that she was required to submit the following documents in relation to the advertising contract entered into by PNU with University News Ltd. for a half-page advertorial in the Foreign Policy Magazine in 2011:

1. All Bid Documents, to include but not limited to:
 - a. Invitation to Apply for Eligibility and to Bid;
 - b. Proof of Publication;
 - c. Minutes of the Pre-Bid Conference;
 - d. Bid Tenders of all applicants;
 - e. Abstracts of Bids;
 - f. Minutes of the Bidding;
 - g. BAC Resolution;
 - h. Notice of Award;
 - i. Notice to Proceed;
 - j. Delivery Receipt;
 - k. Acceptance and Inspection Report;
2. Contract/Agreement with the winning bidder; and
3. Other pertinent documents.

Furthermore, the witness stated that she was not able to produce the abovementioned documents thus, she issued a Certification to that effect.

During cross-examination, Berba affirmed that she became head of the BAC Secretariat of PNU on June 1, 2018. Prior to that, she was a member of the Technical Working Group (TWG) from 2012 until May 31, 2018. She maintained that she was not part of the secretariat during the period when the subject advertorial was procured by the university. She said that she was aware that in 2013, the BAC Secretariat was merely on an *ad hoc* basis, and that there was only an *ad hoc* Secretariat for very procurement that would pass through the BAC. Berba then affirmed that she was not part of the BAC when the subject advertorial was entered into by PNU and that she has no personal knowledge about the circumstances surrounding the contract for the subject advertorial publication. The witness affirmed that there are records prior to the establishment of the BAC in 2013. She further affirmed that the reason she could not produce the listed documents was because the BAC was only



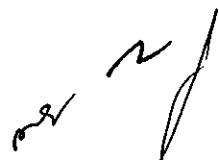
established in 2013. However, witness confirmed that she knew that Florence Ablang Allejos was a member of the BAC in 2011.

During the re-direct examination of Berba, she mentioned that the records prior to 2013 are in the Office of the BAC Secretariat. She further explained that the BAC Secretariat is under the BAC office and in 2013, the BAC Secretariat was renamed as Bids and Awards Unit (BAU). In the said unit, public biddings are being carried out as requested by the university. Then, the BAU was renamed as the Procurement Management Unit (PMU). She then averred that the BAC is a different entity from the PMU, but the custodian of all the documents is the BAC Secretariat under the BAC. She also mentioned that there was already a BAC way back in 2011. During that time, Berba was one of the canvassers of PNU. The witness stated that there was only an informal turnover of records when she assumed as BAC Head since she was already a TWG member since 2012. She also maintained that from all the records turned over to her, there was no record pertinent to the subject transactions. Due to such, Berba stated that she would not know if there were any record pertinent to the subject transaction which is based on the files of the previous BAC in 2011.

Gina Dagumboy Cruz, former BAC member

The prosecution's second witness is Gina D. Cruz, a retired employee of the Philippine Normal University (PNU).

In the Judicial Affidavit of the witness, she stated that she was the Director of the Administrative Services of PNU. She also disclosed that the duties and functions of a Bids and Awards Committee (BAC) member include giving recommendations on what mode of procurement to apply, reviewing technical specifications, preparing and reviewing bid documents, conducting post-qualification reviews, recommending the Notice of Awards, and other BAC functions. Cruz denied any participation in the subject advertisement since this did not pass through the BAC, no public bidding was conducted and said the subject advertisement was not covered in the Annual Procurement Plan for 2011. She then elaborated on the proper procedure for procurement of advertising contracts, that as a general rule, said contracts should be procured through regular public bidding, except if it falls under the alternative modes of procurement. But for the case in question, it should have passed through the BAC in order to determine what mode of procurement to use. She also explained that the BAC should still review the subject advertising contract even if alternative modes of procurement were considered since the BAC determines the terms and conditions. Cruz said that for this case, the subject transaction did not comply with the standard procedure for alternative modes of procurement. The witness also affirmed that she was a Supply Officer IV and one of her duties was to prepare the Annual Procurement Plan



(APP) of Common Use Supplies and Equipment, and in the APP for 2011, she did not find the subject advertisement.

During the cross-examination, Cruz confirmed that she was a BAC member since 2011. She also confirmed that a certain Harry Huliganga was the BAC vice chairperson in 2011. She maintained that she did not know about the matter of the subject advertisement even if she was the officer-in-charge (OIC) of the Administrative Services. Cruz then stated that the signature located below the name *Rebecca Corpuz Nueva España* in the Budget Utilization Request (BUR) dated 21 July 2011 seems to be her signature, but she needs to look at the original copy of the document for her to confirm it. She explained that she attached her initials in the said document under the belief that service has been rendered and due payment must be made. The witness answered that she does not remember the exact date when she prepared the 2011 APP for common supplies nor the date when the procurement for the subject advertorial was first brought up with the university. Cruz said that she did not note the nature of the advertorial that was being procured for the said payment. The witness maintained that in her affidavit, she did not identify any document other than the APP nor did she identify any advertisement contract in said affidavit.

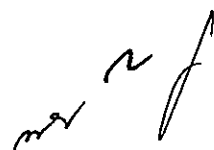
Harry P. Huliganga, Financial & Management Officer II

The prosecution's third witness is Harry P. Huliganga, Financial Management Officer II of the Philippine Normal University (PNU).

In the Judicial Affidavit of the witness, he stated that he filed a Complaint-Affidavit before the Office of the Ombudsman regarding the half-page advertisement of the PNU in the Foreign Policy Magazine alleging violation of the Government Procurement Reform Act; that the said transaction and related documents passed through his office in June 2011. He received the routing slip dated June 14, 2011 of accused Rebecca Nueva España and attached were the following documents:

1. Letter dated May 25, 2011 of Mario Berta;
2. Advertising Contract with UNL for a half-page advertorial of the PNU;
3. Invoice for the first installment of the half-page advertorial of the PNU; and
4. Invoice for the second installment of the said half-page advertorial.

The witness mentioned that accused Nueva España's signature appears in the subject Routing Slip. He then elaborated that after he scrutinized the documents, he issued a note dated June 14, 2011 addressed to accused Nueva España and stated the following:

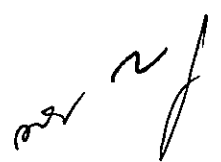


1. Said transaction does not fall under the modes of procurement provided under the Government Procurement Reform Act;
2. Specific budget for advertisement is not enough to cover the amount involved; and
3. If realignment of budget is made, it needs approval by the Board of Regents (BOR).

Huliganga also stated that prior to the first payment, there was no approval yet from the BOR. He then mentioned that he received a Memorandum dated June 17, 2011, with the attached Justification for the Advertisement of accused Ester Ogena, PNU President. Said memorandum ordered to process the payment of the first invoice for the advertisement in the amount of US \$12,500. The witness mentioned that after he referred it to the Accounting Office and Budget Office, he got suspended for three months due to alleged irregularities regarding "Kapitilya Operation, under the auxiliary services" and he was subsequently reassigned to other offices. Huliganga said that the procedure regarding PNU procurement activities should include compliance with the documentary requirements, and in case of contracts, there must be submission of Notice of Award, Notice to Proceed, BAC Resolutions and other bidding documents. He stated that the subject procurement was made through direct contracting since no public bidding was conducted and hence, there were no bidding documents. Huliganga said that based on the documents submitted, accused Nueva España and Ogena wanted to directly pay Universal News. The witness also affirmed that no BAC resolution was issued specifying the use of any of the alternative modes of procurement. He said that the advertising expenses for the PNU main campus was only P50,000 pesos and based on the letter dated May 25, 2011 of Mario Berta of Universal News, the amount proposed to be paid to the publisher was US \$25,000. Huliganga explained that when the supporting documents are lacking, the accounting office should pre-audit the attachments of any disbursement and certify the completeness thereof, and in case that the budget is lacking, the head of the Budget Office shall inform the Division Chief or the Vice-President for Finance of the status or availability of the funds or allotment.

When asked the question "*What happened after you referred it to the Accounting Office and Budget Office referring to Memorandum 2011?*", the witness answered that upon receiving the Memorandum, he wrote a note that said order is for compliance.

During the cross-examination, Huliganga confirmed that he was the Vice Chairman of the Bids and Awards Committee (BAC) of PNU during the period in 2011 for the procurement in question. He then explained that at that time, he is aware that the procurement law default is for public bidding and that the procurement in question did not pass through the BAC. The witness explained that he did not specifically mention the mode of procurement



because in the routing slip of Ogena, it already states the order of payment, which means that they are now requesting for payment of the transaction which did not pass through the procurement process. (Underscoring supplied.) He affirmed that the routing slip marked as “Exhibit J-1” was addressed to him, asking for his appropriate action on the matter. Huliganga confirmed that he scrutinized the attached documents and did the appropriate action as the Financial Management Officer II of PNU at that time. The witness explained that the Board of Regents of PNU subsequently approved the subject procurement after it had been disallowed by the Commission on Audit (COA).²⁰ Huliganga explained that the title *Director of Financial Management Services* (FMS) is only a designation. Huliganga then affirmed that they were suspended in 2011 for alleged irregularities by the accused Ester Ogena. He pointed out that as not to prolong the discussion by returning it to accused España, he made a note that the order is for compliance but he had reservations regarding concurrence to the subject transaction.

He also explained that he can be charged with insubordination if he did not follow the order. Huliganga stated that the Accounting Office should first perform the pre-audit process and he confirmed that as Director of FMS, the Accounting Office is under his department. He also explained that when he filed the case with the Office of the Ombudsman, the respondents were accused Ogena, España and Luceño; he excluded accused Allejos because he believed that she is not a party in the commission of the contract. He stated that as long as there is an approval from the Board, the budget office is allowed by law to augment funds concerning the Maintenance and Other Operating Expenses (MOOE) item of the budget. According to the witness, it is only the Board of Regents that can modify or realign the budget.

Alpheus Eugenio V. Ferreras, University and Board of Regents (BOR) Secretary, PNU. He was a former University and Board Secretary of the Philippine Normal University (PNU).

In the Judicial Affidavit of the witness, he stated that he came to know about the case in question when he received the *subpoena duces tecum* regarding the procurement for advertisement of the university. He made mention that he was required to produce the board resolutions regarding the procurement contract and approval of realignment of budget, but these were not submitted because no such documents exist. Instead, the witness submitted a Certification of No Records. Ferreras then submitted a document enumerating the decisions or transactions that require the approval of the Board of Regents (BOR). He also maintained that based on the records of the Office of the Board Secretary, there was no board resolution in 2011 approving the advertisement contract. Furthermore, he stated that he executed

²⁰ See TSN dated February 22, 2022, pp. 25-27; underscoring supplied.

other certifications, the University and Board Secretary's Certification dated January 16, 2014.

During the cross-examination, the witness maintained that he did not consult the matter of procurement of the advertorial with accused Ogena in 2011. He said that the subject was not discussed between them until 2015. Ferreras stated that there is no board resolution that directly pertains to the subject procurement. He then affirmed that the Board, as a matter of normal practice or routine, normally augments or realign special trust fund to answer for the expenses of the previous year. He then stated that he does not remember informing the prosecution about Board Resolution No. U-2346, Series of 2015, wherein the Board expressed full support for the PNU's procurement of the advertisement in an international magazine in 2011. The witness confirmed that the word advertisement does not appear in Republic Act No. 7168 or the PNU Charter. He then affirmed that the name of accused Florence Allejos is not mentioned in his testimony or indicated in the documents he presented in court.


During the re-direct examination, Ferreras said that it is beyond his authority and competency to determine whether a matter requires approval of the BOR.

Virginia R. Baptista, State Auditor III, Audit Team Leader

The prosecution's witness is Virginia R. Baptista, former Commission on Audit (COA) State Auditor.

In the Judicial Affidavit of the witness, she mentioned that the audit team in 2013 found out that the Philippine Normal University (PNU) incurred obligations in excess of allotment for the Special Trust Fund without the approval of the Board of Regents (BOR). The team also discovered unused capital outlay allotments and irregularities in the subject advertisement contract of PNU with Universal News Limited (UNL). The audit was said to be conducted in October 2013. Baptista said that among the irregularities found in the transaction was that there were no bidding documents pertaining to the advertisement. Due to such, the team decided to issue a Notice of Suspension. Furthermore, Baptista stated that the irregularities found in the transaction include:

1. No approval from the Office of the President (OP) for exemption from Administrative Order No. 103 dated August 31, 2004 on paid media advertisements;
2. No bidding documents with BAC resolutions;
3. No price quotations from two foreign advertising agencies offering advertisement similar to the subject contract;



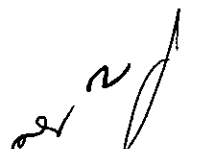
4. No reason as to why the contract was coursed through the Universal News Ltd. United Kingdom instead of direct contract with Foreign Policy Group;
5. No approved disbursement voucher for the first payment;
6. No exemption from Section 88 of Presidential Decree No. 1445 on the 50% advance payment on June 22, 2011 for advertisement on PNU that was published in the July-August 2011 issue;
7. No Official Receipt acknowledging the receipt by UNL of the payment made by PNU;
8. No verifiable beneficial results to PNU of the advertisement; and
9. No tax withheld and remitted in favor of the Philippines government, only bank charges were deducted from the claim.

The former state auditor explained that they required the respondents to submit additional documents to establish the existence of fund allocation and validity of their claims. According the witness, accused Ogena sent a letter justifying the advertisement contracted by PNU, but the audit team did not find merit in her justification. Baptista also stated that there were more irregularities from the documents submitted to them, which include the following:

1. Subject advertisement was not included in the approved Annual Procurement Plan (APP) for 2011;
2. Allocation for advertisement in 2011 was only 50,000 pesos;
3. There is no BOR resolution authorizing the charging of the payment to the Special Trust Fund; and
4. There was no certification by the accountant of the availability of funds.

The witness maintained that accused Ogena justified the non-requirement of a bidding process for the subject advertisement since the Foreign Policy Magazine was strongly recommended by the Chairperson of the Commission on Higher Education (CHED). In addition, according to Baptista, accused Ogena said that publication of the half-page advertisement is among those excused from the conduct of a public bidding under the provisions of the Government Procurement Reform Act. Instead of submitting the BOR resolution authorizing the charging of the payment to the Special Trust Fund, the witness said that what was submitted was the BOR Secretary's Certificate on approved Memorandums of Agreement (MOA) of collaboration between PNU and foreign universities, visiting professors and foreign funding institutions. She then said that since accused Ogena's explanations were not meritorious, the audit team issued the Notice of Disallowance.

During the cross-examination, the witness maintained that she was not consulted after the Notice of Suspension was appealed. She also was not aware that a budget realignment was made in 2011 subsequent to the COA

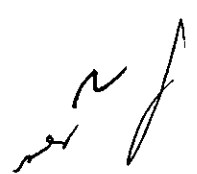


audit. Baptista stated that they did not find out why the accused have to go through Universal News Limited instead of going to the Foreign Policy Magazine. The witness affirmed that even if the featured articles are specific in the subject magazine only, they still require public bidding. Baptista said that they sent letters to Mario Bernardo to confirm receipt of the payment but they received no response. According to her, there should be an official receipt attached to every disbursement, but in this case, they did not get a document similar to an official receipt. She also affirmed that they verified the money as deposited to the account of Universal News Limited. The witness confirmed that she did not re-examine her audit nor conduct a follow-up audit. She confirmed that she is not aware of the status of the notice of disallowance that they issued. Baptista's answers were unresponsive when the defense counsel asked her if the certification she was referring to in the Notice of Disallowance refers to the Certification made on July 25, 2011. She finally confirmed that the disbursement voucher pertains only to the second installment. The witness attested that accused Luceño was not involved in the procurement of print ads in Foreign Policy magazine by PNU but she said that Luceño is involved in the first installment since he prepared the journal entry voucher. She said that she did not verify accused Luceño's position in the PNU. The witness stated that she did not ask if it was accused Luceño who instructed PNU's accounting and budget office to proceed with the payment to UNL on June 21, 2011. Baptista confirmed that she is not certain if the signature in Exhibit K belongs to accused Luceño. She confirmed that she did not note any interaction between Luceño and his co-accused from the time of execution of the subject contract up until June 21, 2011. Baptista affirmed that she did not find Harry Hulganga liable even if there were disbursements for both installments. Furthermore, she confirmed that she did not find Hulganga liable in the Notice of Disallowance. She answered in the affirmative when asked that a different treatment is given to accused Luceño even if both he and Hulganga have exercised similar functions at that time. Baptista said that the Notice of Suspension and rejoinder are addressed to accused Ogena only.

During the re-direct examination, the witness confirmed that accused Ogena, Nueva España, Luceño and Allejos submitted the requirements in support of the transaction in question after the audit was conducted but not after the notice of disallowance was issued.

Victoria Rojas Yumang, former Commission on Audit (COA) State Auditor

In the Judicial Affidavit of the witness, she stated that she submitted the certified true copies of pertinent documents relevant to the case at hand to the Office of the Ombudsman. She said that the original copies of said documents are kept in their office, gathered in the course of the audit conducted by the previous COA auditors of the Philippine Normal University (PNU) regarding the advertisement of the PNU in the Foreign Policy magazine.



When she was called to the witness stand, her oral testimony was dispensed with, considering the stipulation of the markings on the due execution and authenticity of documents marked as Exhibits “F” to “AA”, “CC”, “LL” to “MM”, “PP” to “QQ.”

Marie Beth Almero, GIPO I, FIO-OMB

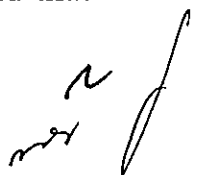
The prosecution then presented Atty. Marie Beth S. Almero, Graft Investigation and Prosecution Officer III of the Office of the Ombudsman.

In her Judicial Affidavit, she narrated that the current case was initiated when complainant Harry Huliganga denounced accused Ogena for allegedly directly negotiating with Universal News Limited (UNL) for a half-page advertorial published in the Foreign Policy magazine without authority from the Philippine Normal University (PNU) Board of Regents (BOR) and without the conduct of a public bidding. She said that their team conducted the investigation process and gathered the necessary documents relevant to the case. Almero said that their team found basis to hold the accused criminally liable, namely:

1. Accused Ogena for entering into an advertising contract with UNL and authorizing payment for the same without the requisite public bidding;
2. Accused Nueva España for facilitating the payment of the advertisement to UNL by certifying that the supporting documents were valid, proper and legal despite knowing that the advertisement did not pass through competitive bidding and that the budget was not enough to cover the expense for the same;
3. Accused Allejos for facilitating the payment of the advertisement to UNL by certifying that the budget was available despite knowing that the advertisement did not pass through competitive bidding and that the budget was not enough to cover the expense for the same; and
4. Accused Luceño for certifying in the Disbursement Voucher dated July 25, 2011 that the supporting documents were complete and proper and that cash was available despite knowing that the advertisement did not pass through competitive bidding and that the budget was not enough to cover the expense for the same.

After the conduct of the investigation, Atty. Almero narrated that they recommended the filing of appropriate charges against the accused.

During the cross-examination, the witness affirmed that when they asked the Board Secretary, there was no Board Resolution that realigned the Special Trust Fund, as shown in the Certification issued by the Board Secretary on February 22, 2013. After the said date, Atty. Almero said that



x-----x

she never made any request for documents. She also is not aware that it was Harry Huliganga who asked the Budget and Accounting Office to comply with the order for payment of the subject procurement. She also is not aware that it was Huliganga's signature in the notation found in the Memorandum marked as exhibit "L." The witness explained that based on the documents, it was accused España who certified as to the validity, propriety and legality of the transaction. Atty. Almero said that she did not review the other documents, only the ones that their team gathered for the instant case. She also did not find irregularities with respect to the routing of the documents from one PNU personnel to another. The witness stated that the duties and responsibilities of Huliganga as Director of the Financial Management Service are not part of the documents that their team gathered. She stated that she has seen the signature of Huliganga in the Complaint Affidavit (Emphasis supplied.) In the Memorandum of accused Nueva España to facilitate the payment for the transaction, Atty. Almero said that she is not sure if the signature therein belongs to accused Luceño. When shown the notation and asked if the signature therein is Huliganga's, she said that she was informed by the previous counsel that it was his signature. She confirmed that the Accounting Office released the first payment not upon the orders of Huliganga. Atty. Almero continued to assert that Huliganga is not liable in the transaction and that accused Luceño did not collaborate with his co-accused based on the record. She maintained that she has no record or any documentation to show what Huliganga did when he was advised to facilitate the payment. Based on the investigation, the witness testified that accused Ogena directed the payment and accused Nueva España facilitated the payment. She further explained that the duties of accused Allejos is to the availability of appropriation, allotment, budget and from all types of claims from all sources and to control the release of the allotment to the university. She stated that accused Allejos has discretion to say if there is available budget and she mentioned that the duties of accused Allejos include as to the availability of the appropriation of funds, and she has knowledge and control over the release of the budget allotment. Atty. Almero narrated that Huliganga raised his concerns to accused Nueva España only and not to the other accused personalities in the instant case.

Jenith M. De Guzman, Officer-in-Charge, Supply and Property Unit

The testimony of witness Jenith M. de Guzman was dispensed with based on the following stipulations:

1. That she is the Officer-in-Charge (OIC) and custodian of the records of the Supply and Property Unit of the Philippine Normal University (PNU);
2. That the Supply and Property Unit of the PNU has an original copy of the Annual Procurement Plan (APP) for Calendar Year 2011 marked as Exhibit "HH to HH-44";



3. That in compliance to the subpoena she received from the Office of the Ombudsman, the witness issued a certified true copy from the original copy of Exhibit “HH to HH-44” and submitted the same to the Office of the Ombudsman;
4. That in compliance to the subpoena she received from the Office of the Ombudsman, the witness issued the Certification dated June 20, 2019 marked as Exhibit “RR” and submitted the same to the Office of the Ombudsman; and
5. She will identify Exhibits “HH to HH-44” and “RR” and to prove their existence, authenticity and due execution.

The testimony of de Guzman was mainly to identify said documents/exhibits.

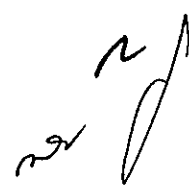
John Peter N. Naoe, Administrative Assistant III, COA

The testimony of witness John Peter N. Naoe was dispensed with based on the following stipulations:

1. That he is an Administrative Assistant III of the Commission on Audit (COA), NGAS, Cluster 5 – Education and Employment;
2. That he has the authority to issue certified true copies of records from their files when authorized or instructed by his superiors;
3. That he was instructed by his superior, Ms. Marjorie Demabildo – Administrative Officer IV, to issue a Certified Photocopy of Decision No. 2016-026 marked as Exhibit “SS to SS-9”;
4. That upon instruction by his superior, he retrieved the original copy of Decision No. 2016-026 marked as Exhibit “SS to SS-9” from their files and photocopied the same;
5. That after assessing that the photocopy was the same with the original, he stamp-marked the copy as “Certified Xerox Copy” and signed the same;
6. That after stamping the copies, he submitted the Certified Photocopy of Decision No. 2016-026 marked as Exhibit “SS to SS-9” to his superior Marjorie Demabildo; and
6. He will identify Exhibit “SS to SS-9” and to prove its existence, authenticity and due execution.

The testimony of Naoe was mainly to identify the said documents/exhibits.

Rosa M. Clemente, Director IV, Procurement Service (PS), Philippine Government Electronic Procurement System (PhilGEPS)



The prosecution’s witness is Rosa Maria M. Clemente, Director IV at the Procurement Service – Philippine Government Electronic Procurement system (PhilGEPS).

In the Judicial Affidavit of witness Clemente, she stated that her duties and functions include providing direction with regards to the continuous development, maintenance and operation of the PhilGEPS as the single central electronic portal for all procurement information, and she has the authority to verify the records or information posted in the PhilGEPS website. The witness narrated that she received a subpoena from the Office of the Ombudsman requiring her to submit a certification of whether the procurement for advertisement of the Philippine Normal University (PNU) had been posted in the PhilGEPS website in 2011. Clemente explained that she issued a Certification of No Record of Posting dated August 7, 2019 in compliance to the subpoena. She declared that the procurement for the advertisement of the PNU needed to be posted in the PhilGEPS website.

Maribel G. Gerundio, Supervising Administrative Officer, Human Resource Management Office IV, designated as Director of Human Resource Management and Development Services of PNU

The witness for the prosecution is Maribel G. Gerundio, Director of Human Resources Management and Development Services (HRMDS) of the PNU.

In the Judicial Affidavit of witness Gerundio, she stated that her duties and functions involve selection and recruitment of personnel, maintenance of personnel records, monitoring of personnel performance and conduct learning and development training for PNU personnel. The witness enumerated the duties and functions of accused Ogena, Nueva España, Allejos and Luceño in their respective official capacities as officers of the PNU.

List of Prosecution Exhibits

The prosecution offered the following documentary exhibits²¹ and the same were duly admitted by the court in its Order²² dated October 26, 2022, to wit:

Exhibit Markings	Description
A to A-203	Complaint dated 24 March 2015 with Annexes of the Field Investigation Office, Office of the Ombusman
B to B-4	Personal Data Sheet (PDS) of Ester B. Ogena
B-5 to B-6	Service Record of Ester B. Ogena

²¹ Vol. 7, pp. 52-91

²² Vol. 8, pp. 88

B-7	Letter Appointment of Ester B. Ogena as SUC IV at the PNU
B-8	Letter dated 29 March 2011 of Chairman Francisco T. Duque III regarding the appointment (promotion) of Ester B. Ogena as SUC President IV
C to C-4	PDS of Rebecca C. Nueva España
C-5 to C-6	Service Record of Rebecca C. Nueva España
C-7	Letter of Appointment of Rebecca C. Nueva España as Professor VI at the PNU
C-8 to C-9	Letter dated 14 August 2014 designating Rebecca C. Nueva España as Vice President for Finance and Administration (PNU Special Order No. 274, Series of 2014)
D to D-5	PDS of Florence A. Allejos
D-6 to D-7	Service Record of Florence A. Allejos
D-8	Letter of Appointment of Florence A. Allejos as Supervising Administrative Officer at the PNU
D-9	Memorandum for Florence A. Allejos dated 21 June 2011 designating her as the Officer-in-Charge in the Office of the Financial Management Service in a concurrent capacity as Budget Officer
D-10	Memorandum for Florence A. Allejos dated 28 June 2011 specifying her functions, duties and responsibilities
E to E-3	PDS of Joseph G. Luceño
E-4	Service Record of Joseph G. Luceño
E-5 to E-6	Letter of Appointment of Joseph G. Luceño as Accountant III at the PNU
E-7	Memorandum for Joseph G. Luceño dated 21 June 2011 designating him as Officer-in-Charge in Accounting Office
F	Letter dated 25 April 2011 of Chairperson Patricia B. Licuanan to Dr. Ester B. Ogena regarding <i>Foreign Policy</i> magazine
G	Advertising Contract with UNL for a half-page advertorial of the PNU
H	Letter dated 25 May 2011 of Mario Berta, Project Coordinator of UNL, to Dr. Ogena regarding the two invoices for the half-page advertorial to be published in the <i>Foreign Policy</i> magazine
I	Invoice for the first installment of the half-page advertorial of PNU
I-1	Invoice for the second installment of the half-page advertorial of PNU

J	Routing Slip of Ester B. Ogena to Dr. R. Nueva España
J-1	Routing Slip of Rebecca C. Nueva España to Harry P. Huliganga
K	Letter dated 14 June 2011 of Harry P. Huliganga informing Dr. Rebecca C. Nueva España of the following: <ol style="list-style-type: none"> 1) The transaction does not fail under the modes of procurement provided under R.A. 9184 (Government Procurement Reform Act). 2) Specific budget for advertisement is not enough to cover the amount involved. 3) If realignment of budget be made, it needs approval by the BOR.
L	Memorandum dated 17 June 2011 of Rebecca C. Nueva España to Harry P. Huliganga regarding the facilitation of the payment to UNL of the two invoices in the amount of \$25,000.00 for a half-page advertorial to be published in <i>Foreign Policy</i> magazine
M	Justification for the Advertisement dated 17 June 2011 of Ester B. Ogena
N	Journal Entry voucher with No. JEV-2011-06-004308 dated 22 June 2011 in the amount of Php550,160.86
N-1	Journal Entry voucher with No. JEV-2011-06-003246 dated 30 June 2011 in the amount of Php550,160.86
O, O-1, O-2	Budget Utilization Request with No. 209-2011-06-229 dated 22 June 2011 for the payment of the first invoice for a half-page advertorial to be published in <i>Foreign Policy</i> magazine in the amount of USD12,500 or Php550,160.86 and the signatures of Rebecca C. Nueva España and Florence A. Allejos appearing therein
P, P-1, P-2, P-3	Approved Application for Manager's Check, Demand Draft, Electronic Money Transfer, Traveller's check, Gift Check at the Landbank – Arroceros Branch for the payment of the advertisement to UNL by Ester B. Ogena and Rebecca C. Nueva España in the amount of Php550,160.86 and their signatures appearing therein including the portion indicating that the source of fund is the Special Trust Fund
Q	Monitoring Form: "(Memo-Payment-Universal News Advertisement-Foreign Policy Magazine

x-----x

R	Landbank Debit Advice dated 22 June 2011 in the amount of Php550,160.86 in favor of UNL
S	Justification for the Advertisement dated 5 July 2011 of Ester B. Ogena
T	Routing Slip of Ester B. Ogena to Dr. R. Nueva España
T-1	Routing Slip to Joseph of the Financial and Management Services dated 11 July 2011
T-2	Routing Slip of Rebecca C. Nueva España to Florence A. Allejos
U	Journal Entry Voucher with No. JEV-2011-07-004307 dated 19 July 2011 in the amount of Php545,756.00
V, V-1, V-2	Budget Utilization Request with No. 209-2011-07-249 dated 21 July 2011 for the payment of advertisement in the amount of Php545,756.00 and the signatures of Rebecca C. Nueva España and Florence A. Allejos appearing therein
W, W-1, W-2, W-3	Approved Application for Manager's Check, Demand Draft, Electronic Money Transfer, Traveller's Check, Gift Check at the Landbank for the payment of the advertisement to UNL by Ester B. Ogena and Rebecca C. Nueva España in the amount of 545,756.00 and their signatures appearing therein including the portion indicating that the source of fund is Special Trust Fund
X	Landbank Debit Advice dated 19 July 2011 in the amount of Php545,756.00 in favor of UNL
Y, Y-1, Y-2	Disbursement Voucher with No. 1100401632 dated 25 July 2011 for the payment to UNL of the amount of Php545,756.00 for the advertisement of the PNU and the signatures of Joseph G. Luceño and Ester B. Ogena appearing therein
Z	Letter of Mario Berta to Dr. Ogena Re: Copies of the Report
AA to AA-101	Foreign Policy Magazine issue containing the advertisement of PNU
CC to CC-12	Letter dated 4 June 2012 with attachments of Ester B. Ogena to State Auditor Lea E. Desalisa regarding the justification for the advertisement with Foreign Policy International Magazine
DD	Certification of No Records dated 22 February 2013 of the University and Board Secretary of the PNU certifying that a thorough search of their files revealed no records of the following Board Resolutions:

x-----x

	<ol style="list-style-type: none"> 1. Board Resolution approving the procurement of a half-page advertisement with US\$25,000.00 from UNL by the PNU in CY 2011 through direct contracting; and 2. Board Resolution approving the realignment of budget for the aforementioned procurement.
EE to EE-2	Letter dated 1 October 2014 of Alpheus Eugenio V. Ferreras, University and Board Secretary, to Dir. Maria Olivia Elena A. Roxas of the GIB-B, FIO I, Office of the Ombudsman, regarding the submission of a certification stating the University President decisions and/or transactions which require the approval of the Board of Regents
FF to FF-1	Letter dated 8 April 2013 of Larry A. Gabao, Chairman, Regular BAC, to Dir. Maria Olivia Elena A. Roxas of the Field Investigation Bureau-B, Office of the Ombudsman
GG	Certification Under Oath dated 11 June 2019 from the Head of BAC Secretariat regarding the bid documents in the half-page advertisement of the PNU
HH to HH-44	Annual Procurement Plan (APP) for CY 2011 of the PNU
HH-45 to HH-67	Supplemental APP for CY 2011 of the PNU
II to II-5	Special Trust Fund Budget (Consolidated) for CY 2011 of the PNU
II-a	Portion in the Special Trust Fund Budget (Consolidated) for CY 2011 of the PNU indicating that the STF Budget for Advertising Expenses of the PNU Main Campus is only Php50,000.00
II-1-a	Portion in the Special Trust Fund (Consolidated) for CY 2011 of the PNU indicating that the STF Budget for Advertising Expenses of the PNU Main Campus is only Php50,000.00
JJ to JJ-1	Financial Report of Operations as of 30 September 2011 of the PNU Main Campus
JJ-a	Portion in the Financial Report of Operations as of 30 September 2011 of the PNU Main Campus indicating that the approved budget for Advertising Expenses is only Php50,000.00
KK	University and Board Secretary's Certification dated 16 January 2014
LL to LL-2	Notice of Suspension (NS) with NS No. 12-004-164(STF)-(11) dated 18 October 2013 issued by the COA

x-----x

MM to MM-2	Letter response dated 16 January 2014 of Ester B. Ogena to the Notice of Suspension with NS No. 13-004-164(STF)-(11) issued by the COA
NN to NN-2	COA's rejoinders to Ester B. Ogena's reply on the audit requirements
OO to OO-2	Notice of Disallowance (ND) with ND No. 14-009-101(11) dated 14 November 2014 issued by the COA
PP to PP-2	Notice of Disallowance (ND) with ND No. 14-009-164(STF)-(11) dated 14 November 2014 issued by the COA
QQ to QQ-114	COA Annual Audit Report (PNU) for the year ended December 31, 2013
QQ-115 to QQ-223	COA Annual Audit Report (PNU) for the year ended December 31, 2014
RR	Certification dated 20 June 2019 of Jenith M. De Guzman, Officer-in-Charge of the Supply and Property Unit of PNU
RR-1	Certification of No Record of Posting dated 7 August 2019 of Rosa Maria M. Clemente, Director IV of the Philippine Government Electronic Procurement System (PhilGEPS)
SS to SS-9	Decision No. 2016-026 of the Office of the Cluster Director, COA, National Government Sector, Cluster 5 – Education and Employment

The Accused's Demurrers to Evidence and the Prosecution's Opposition

On Demurrer to Evidence

Simply put, a demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is sanctioned under Sec. 23, Rule 119 of the Rules of Court quoted earlier. It is akin to "a motion to dismiss that is filed by the accused after the prosecution has rested its case."²³ Stated differently, it is "an objection by one of the parties in an action to the effect that the evidence which [the] adversary has produced is insufficient in point of law to make out a case or sustain the issue."²⁴ It is in effect a challenge on the sufficiency of the prosecution's evidence, and the court's action on a demurrer to evidence rests on the sound exercise of judicial discretion.²⁵

²³ See Riano, Willard B., *Criminal Procedure (The Bar Lectures Series)*, (Updated 2011 ed.), pp. 540.

²⁴ *Id.*, p. 541

²⁵ See Atty. Salvador N. Moya II, LL.M., *The 2000 Rules of Criminal Procedure, Notes and Cases*, (2017 ed.), p. 632.

• *Ogena's Demurrer to Evidence*

Ogena maintains that the prosecution failed to adduce evidence to prove that she exhibited manifest partiality since the prosecution did not present evidence that there was another supplier or there were several suppliers for the subject advertisement so as to justify the requirement of bidding or against whom she could be accused of having been biased; that "she could not possibly be partial to only one available supplier," for "that would be having no choice." There was no unwarranted benefit or advantage or preference given to Foreign Policy magazine which was "the only one magazine that was going to publish the feature on Southeast Asian universities." She also insists that the prosecution knew that the advertisement was brought to her attention, which she knew nothing beforehand, "by the then Chairperson of the Commission on Higher Education and concurrently the Chairperson of the Board of Regents ("BOR") of the Philippine Normal University (PNU), Patricia B. Licuanan ("Chairperson Licuanan"), which "showed good faith" on her part, instead of bad faith. The prosecution knew the "justification" she had made for the subject procurement, clearly demonstrating "due diligence" on her part. The prosecution failed to present evidence of undue injury to the government. Instead, "the advertisement elevated PNU to the attention of the international audience...and highlighted its strengths that placed it at par with the other premier universities in the region." The prosecution failed to adduce evidence that the accused gave unwarranted benefit or advantage or preference to the Foreign Policy magazine, as there was only one magazine involved. Neither has prosecution proven that PNU overpaid for the publication, but instead "got more for what it paid."²⁶

In its opposition, the prosecution contends that whether there were other "suppliers" or not is a matter of evidence which the accused has the burden to prove, the same way that the presence or absence of the elements of the crime is evidentiary that may be passed upon after a full-blown trial; that evidence has established that procurement did not undergo the "processes of competitive bidding" and that the immediate resort to "direct contracting" and "without any hint or effort to find other suitable alternatives and without complying with the terms, conditions, and prerequisites of the alternative modes of procurement" lead to no other conclusion that accused Ogena was manifestly partial to UNL. In its Opposition, the prosecution claims that the accused's "eagerness to advertise PNU with the Foreign Policy magazine to the point of violating R.A. 9184, P.D. 1445, A.O. 103, NGAS, among others only shows that she is willing to give unwarranted benefits, advantage, or preference to UNL; that despite the opportunity given by COA, she, together with the other accused, failed "to show alleged benefit to PNU" brought about by the advertisement. She cannot "shift the blame to Mr. Huliganga for allegedly failing to stop the transaction", based on her discussion in support

²⁶ Vol. 8, p. 363



of her demurrer, “when in fact she was the one who entered in a contract (Exhibit “G”) with the publisher and was the one who initiated the process for payment of the advertisement;” that nothing will absolved all the accused in this case, “because the fact remains that that the subject advertisement lacks the requisite public bidding, lacks budget, lacks approval from the BOR, and other violations and irregularities attendant to the transaction.” That, if accused really acted in good faith, “...she should have complied with R.A. 9184 and other pertinent laws and rules in force at that time.”²⁷ In response to the accused’s argument “that the prosecution should have proved that bidding was required in the first place,”²⁸ the prosecution replied, “This is ridiculous. R.A. 9184 or the law itself requires that all procurement, including advertisement, be done through competitive bidding. This is *jus scriptum*.”²⁹ Whatever “freebies” PNU may have gotten as claimed by the accused is irrelevant and immaterial; that the problem lies in how the advertisement was procured; that the advertisement enhanced the reputation of PNU is pure speculation; there is nothing in the letter of CHED chairperson that “ordered, requested or even invited accused to advertise in the Foreign Policy magazine; that the argument about the subsequent realignment and approval of the Board of Regents, which according to the prosecution “is a common defense” among the accused, “does not deal with the sufficiency or insufficiency of the prosecution’s evidence” and a “mere after thought calculated to soften the blow since herein accused was already having problems with the COA.”³⁰ Responding to the accused’s claim that the testimonies of the prosecution’s witness are “inadequate,”³¹ the prosecution countered that “the totality of evidence and the relation of the pieces of evidence with one another,” i.e., the “depth and coverage of the Judicial Affidavits and cross-examination” of witnesses, together with the documentary exhibits, must be considered in its totality.³²

- Accused España’s Demurrer to Evidence³³

According to España, “[t]he complaint alleges that accused Nueva España, together with the other accused, committed evident bad faith and inexcusable negligence, in violation of Section 3(e) of R.A. 3019, in processing with the subject advertorial transaction with the Foreign Policy Magazine despite the fact that Mr. Huliganga raised several issues concerning the subject transaction (no conduct of public bidding, the lack of budget and the need for BOR approval in case budget is aligned). In sum, the prosecution puts forth the theory that accused by affixing her signature in the subject

²⁷ Vol. 8, pp. 446-448

²⁸ See Ogena’s Demurrer to Evidence at Vol. 8, p. 374.

²⁹ See Opposition, Vol. 8, pp. 444 at 448, par. 24. *Jus scriptum* means “[s]trict law; law interpreted without any modification, and in its utmost rigor. (Black’s Law Dictionary, 6th ed.)

³⁰ Vol. 8, p. 453

³¹ Ogena’s Demurrer to Evidence, Vol. 8, p. 385

³² Opposition, Vol. 8, p. 454

³³ Vol. 8, pp. 335-342



Budget Utilization Requests (BUR) facilitated the payment of the subject advertorial transaction despite the said issues. Thus, an alleged irregularity tantamount to a violation of Section 3(e) of R.A. 3019,”³⁴ particularly, with reference to the elements of the crime: “xxx (3) that the act was done thorough manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the government, or give any unwarranted benefits, advantage or preference.”³⁵

She claims that the prosecution failed to present evidence that accused “acted with manifest partiality, evident bad faith or gross inexcusable negligence.”³⁶ She “merely facilitated the payment of the advertisement contract... only after the appropriate action made by Mr. Huliganga who at that time was the Vice-Chair of the Bids and Awards Committee (BAC) and head of the Accounting/Budget Department, who signified his assent to the said payment by forwarding the June 17, 2011 memorandum with the note stating for compliance with this Order, that the said payment was processed and facilitated by PNU.”³⁷

She files her Demurrer to Evidence considering that the prosecution failed to present any evidence that: (a) she acted with manifest partiality, evident bad faith or gross inexcusable negligence, and (b) there is no evidence to prove undue injury was inflicted on any party, including the government and that a party was given any unwarranted benefits, advantage or preference.

Moreover, according to her, “The prosecution failed to present evidence to prove undue injury was inflicted on any party, including the government and that a party was given any unwarranted benefits, advantage or preference.”³⁸

She contends that, “...[T]he procurement of the subject advertorial contract of PNU in the Foreign Policy magazine is exempted from the requirement of public bidding, since the subject procurement for advertisement with Foreign Policy magazine is qualified under alternative procurement methods such as Direct Contracting otherwise known as Single Source Procurement.”³⁹ That, “[I]t was actually Larry A. Gabao, Chairman, Regular BAC, who opined in his letter dated April 8, 2013 which was offered in evidence by the prosecution as its Exhibit “FF to FF-1”, to Hon. Director Maria Olivia Elena A. Roxas, of the Field Investigation Bureau-B Office of the Ombudsman, that the publication of the half-page advertisement by Universal News is among those excused from the conduct of public bidding

³⁴ Vol. 8, p. 335-343

³⁵ Id., p. 336

³⁶ Id., p. 336; emphasis omitted.

³⁷ Id., p. 339

³⁸ Id., p. 339; emphasize omitted.

³⁹ Id., p. 339

x-----x

under the provision of RA 9184....”⁴⁰ She contends that “the advertisement may fall under Sec. 50 (c) of R.A. 9184” which reads: “(c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.”⁴¹

The prosecution observed that accused España has reiterated the same arguments “as those contained in her *Motion for Leave of Court to File Demurrer to Evidence*. In her demurrer, she maintains that the evidence presented by the prosecution is not sufficient to warrant a conviction; that the 3rd and 4th elements of the crime under Sec. 3 (e) are absent in this case.

The prosecution claims that the accused cannot shift the blame to Mr. Huliganga for allegedly failing to stop the transaction considering that as matter of fact, “she was the one who was charged with the responsibility to facilitate the payment by accused Ogena,” per latter’s Routing Slip, Exhibit “J”; that if “she was not in conspiracy with accused Ogena, or that she acted in good faith, she should have been the first one to point out the irregularities of the transaction and recommend the right course of action and that is to comply with R.A. 9184 and other pertinent laws and rules in force at that time.” Her claim that she had not benefited in the transaction is “misleading”, since “[I]t is the giving of unwarranted benefits, advantage, or preference to the publisher, and the damage and prejudice to the Government that are being established by the prosecution through its evidence.” The “benefit” in question is the unwarranted benefit given to UNL and not benefit to the accused.⁴²

The prosecution maintains that “R.A. 9184 requires that all procurement shall be done through Competitive Bidding as a rule;” that under its Implementing Rules and Regulations (IRR), “default procurement is always through public bidding.” And, “[a]s established by the evidence of the prosecution, the use of the alternative mode of direct contracting by all the accused was unjustified as the same failed to comply with the terms, conditions, and other prerequisites before resort thereto could be made,” such as the role of the BAC, which is “tasked to oversee the procurement process.”⁴³ Citing the IRR, the prosecution quotes:

“12.1. The BAC shall have the following functions: x x x
(j) recommend to the Head of the Procuring Entity
[HoPE] the use of Alternative Methods of
Procurement as provided for in Rule XVI hereof;”

⁴⁰ Vol. 8, p. 339-340

⁴¹ Id., p. 340

⁴² Id., p. 486-488

⁴³ Id., p. 489

Moreover, as mentioned by the prosecution, the IRR also requires that the method of procurement to be used shall be indicated in the approved Annual Procurement Plan (APP) and, if the original mode of recommended in the APP cannot be pursued, “the BAC through a resolution, shall justify and recommend the change in the mode of procurement,”⁴⁴ citing Sec. 48.3 of Rule XVI – Alternative Method of Procurement of the 2009 Revised Implementing Rules and Regulations.

As pointed out by the prosecution, (1) the resort to the alternative mode of direct contracting did not pass through BAC, (2) even when the alternative modes are resorted to, the BAC is indispensable in the procurement process. Here, accused Ogena took upon herself to enter into the advertising contract without the same going thru the BAC.⁴⁵ “It is now incumbent upon accused España to adduce evidence that the recourse to the exception of Direct Contracting is justified.”⁴⁶ If it needs to be addressed, España’s claim that all the accused relied in good faith on the advice of “COA Auditor Desalisa” is “evidentiary in nature and should be proven by her presenting her evidence.” The same argument applies to her claim that the PNU Board of Regents had already confirmed the “augmentation/reallocation of Special Trust Fund (STF) for CY 2011 in its BOR Resolution No. U-270, s. 2014.” The same rule would pertain to Court of Appeals Decision adverted to by the accused in her demurrer. As pointed out by the prosecution, “A demurrer to evidence only concerns itself on the sufficiency of the evidence provided by the prosecution and not on the merits of her defense.”⁴⁷

With respect to witness Larry Gabao which accused España has cited, the prosecution explained that the prosecution presented the letter of Mr. Gabao (Exhibit “FF” to “FF-1)) “to prove that the transaction proceeded despite the absence of a public bidding and to prove the unjustified resort to the alternative modes of procurement”, which by virtue of his letter, “he admitted the absence of public bidding” and proved “that the advertisement did not undergo the process of public bidding and the same did not pass thru the BAC.”⁴⁸

- Accused Allejos’s Demurrer to Evidence

^{mw}
Allejos underscores the fact that based on the testimony and admission of witness Larry Huliganga, who was “her direct superior at the Philippine Normal University, she was not included in said witness’s Affidavit-Complaint with the Ombudsman because “...she is not part, she is not party in the commission of the contract, Sir.”⁴⁹ During the same testimony, witness

⁴⁴ Vol. 8, p. 490

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Id., p. 491

⁴⁸ Id., p. 495

⁴⁹ Demurrer to Evidence, Vol. 8, p. 347 at 351, citing TSN dated February 22, 2022.

Huliganga identified only three of the accused, namely “Dr. Ogena, Dr. Espana and Lucenios (sic)” as “original respondents” in the Complaint-Affidavit he filed in the Office of the Ombudsman. In the same Complaint-Affidavit, ^{men}Allejos was also not named as regard the payment and award of the advertisement.

She claims she is not liable for violation of RA 9184 since there is no evidence that she was involved in “entering into an advertising contract...for a half-page advertorial in the Foreign Policy Magazine, without the requisite public bidding, and instead, through the unjustified resort to Direct Contracting; xxx”, as alleged in the Information.

Explicitly, she contends that as can be gleaned from the Information itself, “the elements of *manifest partiality, evident bad faith, or gross inexcusable negligence, unlawfully and criminally giving unwarranted benefits, advantage* refer to the acts of entering into the advertising contract in violation of RA 9184, not to the subsequent payment. xxx”⁵⁰ Parenthetically, she maintains that “[t]here is insufficient evidence to prove that accused ^{men}Allejos’ processing of the BUR was a violation of Section 3(e) of R.A. 3019 because she was instructed by her superiors, including witness Huliganga, to process the same.”⁵¹ She claims that based on the testimony of witness Huliganga, “**Prior** to the processing of the BUR, Harry Huliganga, in his handwritten directive, ordered the Budget Office, together with the Accounting Office, to ‘**comply with the payments.**’” Also, “**Prior** to the processing of Box ‘B’ by the Budget Office, the BURs had already been processed by the Accounting Office with the annotation in Box ‘A’ that ‘*Charges to appropriation/allotment necessary, lawful and under my supervision; and supporting documents valid, proper and legal.*’”⁵² The accused mentioned “she had to look for other available sources of fund by realigning from the trust fund,” and reference to a “dismissal of the Court of Appeals of the administrative,” but such matters are not covered among the evidence of the prosecution, hence, they may not be subject of the accused’s demurrer to evidence, although the prosecution addressed the issues nonetheless.

On the accused’s claim of “non-participation” in the negotiation and awarding of the contract, the prosecution maintains that “[t]he evidence presented... points to a conspiracy among all the accused,” and as such, “She is a conspirator, thus every act committed by the other co-accused in furtherance of the crime can be imputed to her.”⁵³ The prosecution counters further that, “The presence of partiality, evident bad faith, or gross inexcusable negligence are not present only in the act of awarding the contract. The Information mentioned several violations and irregularities in the transaction and the same were also attended by the presence of manifest partiality, evident

⁵⁰ Vol. 8, pp. 351-352; italics in the original.

⁵¹ Id., p. 352; emphasis omitted.

⁵² Id., p. 353; emphasis in the original.

⁵³ Vol. 9, p. 224

bad faith, or gross inexcusable negligence.”⁵⁴ That her certification in Box “B” of the BUR attesting that “Budget available and earmarked/utilized for the purpose as indicated” was part of her responsibilities “to check whether there was really available budget,” on top of her normal duties, and “not merely a transitory duty or special assignment...,” and “anything short of this verification would amount to gross inexcusable negligence.” And as shown by the evidence, the advertisement in the Foreign Policy magazine was not even part of the PNU’s Annual Procurement Plan (APP) and Supplemental APP for calendar year 2011.⁵⁵ The comments of the prosecution regarding the Court of Appeals “decision” brought up by the accused in her demurrer to evidence, it remains an extraneous matter insofar as the prosecution’s evidence is concerned.

- Accused Luceño’s Demurrer to Evidence

Accused Luceño reiterates his claim in his previous Motion⁵⁶ for leave of Court to file demurrer to evidence dated November 2, 2022, and asserted anew that the prosecution failed to establish beyond reasonable doubt: (1.) the jurisdiction of this Honorable Court, as the position of the accused Luceño at that time material to this case (Accountant III) is not classified as Salary Grade 27 or higher, nor does it fall among the positions covered by Presidential Decree (P.D.) No. [10660], Section 4, as amended; (2.) the existence of conspiracy between accused Luceño and his co-accused in committing the crime charged; and (3.) the manifest partiality, evident bad faith or gross inexcusable negligence supposedly exhibited by the accused Luceño regarding the procurement of the print advertisement in Foreign Policy magazine by the Philippine Normal University.⁵⁷ He argues that, “In this case, the Information states that accused Luceño’s participation in the alleged crime was his act of ‘certifying in the [Disbursement Voucher] that the [procurement] documents were complete and proper.’”⁵⁸ The prosecution’s evidence failed to present evidence his certification was “with knowledge that the subject advertisement did not pass through any competitive bidding and that the budget was not enough to cover the expenses for the same.” According to the Luceño, the evidence presented by the prosecution show that he only got involved, as accounting office OIC for the processing of the “2nd payment” and by that time “the procurement stage of the transaction was already done.” He was not involved in the first payment.⁵⁹ Even assuming that he knew about the subject procurement when he made the subject certification on the Disbursement Voucher No. 1100401632 dated July 25, 2011, “such knowledge alone will not suffice in proving the existence of conspiracy,” nor

⁵⁴ Vol. 9, p. 275

⁵⁵ Id., p. 276

⁵⁶ Vol. 8, p. 125

⁵⁷ Id., p. 416

⁵⁸ Id., p. 424

⁵⁹ Id., 8, p.425

can the same be said as motivated by “ill-will or other perverse motive.”⁶⁰ He contends that “the discretion to facilitate payment to UNL came from Mr. Huliganga who was then the Financial Management Officer II of PNU and “responsible for the planning, directing and controlling the activities of the Accounting, Budget, and Cashier offices” who instructed Budget and Accounting for compliance with the order for him to facilitate the process of payment to UNL.⁶¹ “Notably, Mr. Huliganga, who himself gave the order for the release of payment to UNL, was not even indicted by the prosecution for the crime which his subordinate, Mr. Luceño is now being tried,” lamented the accused.⁶² Arguably, according to the accused, “[I]t would be the height of injustice to impute liability upon a public officer whose only fault was to sign documents in the course of its transit through standard operating procedure.”⁶³ The accused maintains that “[t]here is no manifest partiality, evident bad faith, or gross inexcusable negligence exhibited by the accused regarding the procurement of the print advertisement.”⁶⁴

In response to the accused Luceño’s claim about the court’s lack of jurisdiction since his position “is not classified as Salary Grade 27 or higher, nor does it fall among the position’s covered in Presidential Decree (P.D) 1660 (sic), Section 4, as amended,” the prosecution counters, “In this case, the Information alleges conspiracy among accused, particularly Ogena – whose position as PNU President belongs to Salary Grade (SG 30), and Luceño is being charged as co-conspirator and therefore a co-principal in the Information.” The prosecution cites Sec. 4 of R.A. 10660, to wit:

SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense: x x x

The prosecution claims that Luceño needs to appreciate the “totality of the evidence”; that it was his responsibility to certify in Box A of the Disbursement Voucher that: (i.) Supporting documents complete and proper, (ii.) Cash available; and (iii.) Subject to ADA where applicable; that evidence has shown that no public bidding was conducted, hence, no bid documents to support as bases for the transaction. If alternative modes of procurement were

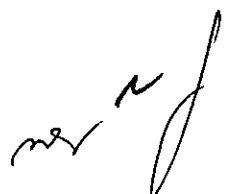
⁶⁰ Vol. 8, 426-427

⁶¹ Id., pp. 428-429

⁶² Id., p. 427

⁶³ Id., p. 430, citing *Marcarandang v. Sandiganbayan*, 170 SCRA 308 (1989); emphasis omitted.

⁶⁴ Id., pp431-433. The October 29 Court of Appeals decision mentioned by the accused is noted by the court.



x-----x

followed, “there must be a BAC resolution to justify and recommend the change in the mode of procurement. There being no bid documents, there was no basis for statement “supporting documents complete and proper” in the DV; that by affixing his signature in the DV is a sign of “bad faith;” that “his role in the transaction in conjunction with those of the other accused...points to a common design which justifies the finding of conspiracy.” The question on whether Mr. Huliganga should have been indicted or not lies on the “discretion of the public prosecutor regarding the institution of criminal cases.”⁶⁵

The Court has observed that while the prosecution has directly addressed each Demurrer separately, it has also added a “**Part II**”, which in much detail asserts that “all the elements for violation of Sec. 3(e) of R.A. 3019 are present in this case.”

FINDINGS of FACT

On April 25, 2011, Dr. Patricia B. Licuanan, PhD, as Chairperson of the Commission on Higher Education Education (CHED), wrote a letter (Exhibit “F”) to then President of the Philippine Normal University (PNU), accused Patricia B. Ogena, PhD, to wit:

Republic of the Philippines
OFFICE OF THE PRESEIDENT
COMMISSION ON HIGHER EDUCATION

April 25, 2011

Dear Dr. Ogena

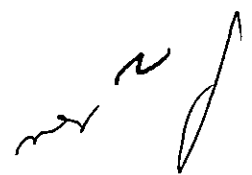
I have recently met Ms. Rafaela Villaceros and Mr. Mario Berta who are producing a very powerful campaign for Foreign Policy magazine, recently ranked the most influential and credible periodical in America, above the Economist, Wall Street Journal and New York Times.

The team is doing a report that will promote the collective vision of higher education in the whole region, highlighting the top universities in Thailand, Malaysia, Brunei, Singapore, Indonesia, Hongkong and the Philippines.

I believe in the strength of the magazine for the purpose of raising the overall profile of Southeast Asia as an education destination, considering its very targeted and specialized audience.

I strongly recommend that you participate in their campaign and show a strong and collective support for the higher education sector in the Philippines.

⁶⁵ Vol. 9, pp. 103-104



x-----x

Yours sincerely,

(Sgd.) Patricia B. Licuanan, Ph. D.
Chairperson

Consequently, Ogena entered into an Advertising Contract (Exh. "G") with Universal News Ltd. (UNL) for a half-page advertorial of PNU in the Foreign Policy magazine. Though the copy of the contract itself is hardly legible, particularly the date of the contract, the parties herein have stipulated on the "due execution and authenticity" of Exhibit "G".⁶⁶ UNL is an in-house advertising agency that designs corporate image advertisements for clients, among other services. In 2009, it entered into special distribution network agreement with Foreign Policy Magazine.⁶⁷

Through its letter dated May 25, 2011, Mario Berta as Project Coordinator of UNL, wrote Ogena to confirm that he had sent to her two (2) invoices "for the total sum of 25,000 USD for half page advertorial to be published in Foreign Policy magazine" (Exh. "H"), with the first invoice (Exh. "I") of 12,500 due by June 24, 2011 and the second invoice (Exh. "I-1") for the same amount due by July 22. The due execution and authenticity of the rest of the herein mentioned exhibits were also stipulated on by the parties.

Ogena then referred the said letter to accused España via a Routing Slip (Exh. "J") dated June 14, with the following Remarks: "Kindly facilitate the payment for this. The deadline for payment is June 24" (Exh. "J"). On the same day, España from her personal note pad as Vice-President for Administration, Finance and Development, wrote (Exh. J-I") to Harry P. Huliganga (Huliganga), who was then Financial & Management Officer II of PNU, the following: (i.) For your information and (ii.) For appropriate action. Immediately that same day, Huliganga wrote back to España, marked as Exh. "K", to wit:

"I would like to state the following:

- "1. This transaction does not fall [underscoring added] under the modes of procurement under R.A. 9184 (Gov't Procurement Reform Act[.]
 - "2. Specific budget for advertisement is not enough to cover the amount involved.
 - "3. If realignment of budget is made, it needs approval by the BOR.
- "For your information and appropriate action."

⁶⁶ See prosecution's Offer of Evidence Vol. 7, p. 52 at 57.

⁶⁷ Vol. 1, p.39 at 41, Joint Resolution in OMB-C-C-15-0203.



x-----x

On June 17, 2011, España sent the following Memorandum (Exh. "L") for Huliganga:

MEMORAMDUM for -

Mr. Harry P. Huliganga

Director, Financial Management Services

Please facilitate the process of payment to Universal News for the two invoices in the total amount of Twenty Five Thousand US Dollars (\$25,000.00) for a half page advertorial to be published in Foreign Policy Magazine. The first invoice in the amount of **Twelve Thousand Five Hundred US Dollars (\$12,200.00)** should be paid **on or before June 24, 2011.** (Emphasis in the original.)

Attached is the justification for the advertisement.

For your appropriate action.

At the bottom of the said one page Memorandum, Huliganga scribbled and signed with his signature/initial the following: **"Acctg/Budget[:] For compliance with this order."** (Emphasis added.)

During his testimony on February 22, 2022, Huliganga acknowledged writing the subject note and admitted his signature/initial on Exh, "L".⁶⁸

The prosecution formally offered **Exhibits "AA to AA-101"** -- which includes, among other things, the Foreign Policy magazine issue containing the PNU advertisement, "to prove that the half-page advertorial of the PNU was published in the Foreign Policy magazine."⁶⁹

The PNU advertorial was included in the **"July/August 2011"** issue of the Foreign Policy magazine as part of its Special Advertising Section, marked as Exh. "AA-67". The prosecution offered Exhibits "N", "O", "P", "Q" and "R",⁷⁰ with sub-markings, and Exhibits "U", "V", "W", "X", and "Y",⁷¹ with sub-markings, "to prove that the first and second installments, respectively, had been paid to Universal News Ltd." (Underscoring supplied.)

Then came the *Notice Suspension* from the Commission on Audit (COA), followed by its the *Notice of Disallowance*. In this connection, the 1987 Constitution, under Article IX-D THE COMMISSION ON AUDIT, Section 2 (1), provides:

SECTION 2 (1). The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts

⁶⁸ TSN dated February 22, 2022, p. 24

⁶⁹ Prosecution's Formal Offer, Vol. 7, p. 52 at 18

⁷⁰ Id., p. 52 at 61

⁷¹ Id., Vol. 7, p. 52 at 66

pertaining to the revenue and receipts of, and expenditures and uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition or subsidy or equity. Xxx

Historically, the Philippine Normal University was originally established as the Philippine Normal School (PNS), an institution for the training of teachers, by virtue of Act No. 74 of the Philippine Commission enacted on January 21, 1901. PNS was converted into the Philippine Normal College (PNC) in 1949 through Republic Act No. 416 (also known as the PNC Charter). PNS was converted into the Philippine Normal College (PNC) in 1949 through Republic Act No. 416 (also known as the PNC Charter).⁷² On December 26, 1991, Philippine Normal College was converted into a state university now known as the Philippine Normal University under R.A. 7168. Under Section 4 thereof, "The University shall have the general powers of a corporation set forth in the Corporation Law. The Administration of the University and the exercise of its corporate powers shall be vested exclusively in the Board of Regents and the President of the University insofar as authorized by the Board."

COA's Notice of Suspension

On October 18, 2013, COA issued its Notice of Suspension, particularly NS No. 13-004-164(STF)-(11) (Exh. "LL" to "LL-2") suspending in audit the amount of P1,095,916.86 – the Philippine peso equivalent of the payments made to UNL for the PNU advertisement, covered by JEV (Journal Entry Voucher) No. 2011-07-4307 dated July 19, 2011 for the amount of P545,756.00 and JEV-06-4308 dated June 22, 2011 for the amount of P550,160.86. The Notice of Suspension was issued by Virginia R. Baptista, Audit Team Leader, and Elenita C. Abesamis, Supervising Auditor – OIC, Other SUCs Audit Group.

COA required the submission of the following documents/valid explanations:

⁷² https://en.wikipedia.org/wiki/Philippine_Normal_University; visited on January 31, 2023.



x-----x

1. Approval from the Office of the President (OP) for exemption from Administrative Order No. 103 dated August 31, 2004 on paid media advertisement;
2. Bidding documents with BAC resolutions to support the procurement, in the absence of this documents, basis why this procurement activity did not pass thru the BAC;
3. Price quotations from two foreign publications/advertising agencies offering advertisement similar to the subject contract as basis for the reasonableness of the contract price;
4. Why the contract was coursed thru the Universal News Ltd. United Kingdom instead of direct contract with Foreign Policy Group, a division of the Washington Post Company, which publishes the Foreign Policy Magazine with address at 11 DUPONT CIRCLE NW, SUITE 600 WASHINGTON, DC 20036;
5. Approved Disbursement Voucher for the first payment of P550,160.86;
6. Exemption from Section 88 of PD No. 1445 on the 50% advance payment on June 22, 2011 for advertisement on PNU that was published in July-August 2011 issue;
7. Official receipt acknowledging the payment made by PNU amounting to US25,000.00 or P1,095,916.86;
8. Verifiable beneficial results to PNU of the advertisement;
9. Reason as to why no tax was withheld and remitted in favor of the Phil. Government; only bank charges were deducted from the claim. (Emphasis supplied.)

To establish further the existence of fund allocation and validity of claims, please submit the:

1. Approved Annual Procurement Program (APP) for CY 2011
2. Approved Special Budget on Income Utilization for CY 2011;
3. BOR Resolution authorizing the charging of the payment to the Special Trust Fund; and
4. Certification by the Accountant of the availability of funds.

COA had determined the following persons **responsible** for compliance with the above-mentioned requirements, namely:

1. Joseph G. Luceño, OIC Accounting Division
2. Florence A. Allejos, Supervising Administrative Officer
3. Dr. Rebecca C Nueva España, VP for Administration, Finance and Development
4. Dr. Ester B. Ogena. PNU President
5. Dr. Patricia B. Licuanan, Chairperson CHED
6. Mario Berta, Project Director, Universal News

Note that CHED Chairperson Dr. Patricia B. Licuanan and UNL's Mario Berta were included as persons responsible⁷³ for compliance with the

⁷³ Vol. 7, p. 549-550



x-----x

above-mentioned requirements. In the prosecution's Offer of Evidence,⁷⁴ however, any reference to Dr. Licuanan and Mario Berta were omitted.

In compliance with the requirements in the Notice of Suspension, Ogena submitted a reply dated January June 16, 2014, addressed to the above-named auditors (Exh. "MM"), giving the following "justification", to wit:

**** * * * * *

"xxxThe advertisement was in compliance with the recommendation of the Hon. Patricia B. Licuanan, CHED Chairperson, in her letter dated April 25, 2011 to the undersigned as President of PNU.xxx

xxx

xxx

No bidding was necessary for the advertisement considering that the Foreign Policy magazine, a relatively inexpensive magazine by international standards promoted by Universal News, was strongly recommended publication by the CHED Chairperson.

Moreover, the half-page advertisement was published to reach out to top companies and institutions in the world. It was to earn goodwill for PNU. Thus, it is difficult, if not impossible to require the bidding of the said advertisement because no international publisher will participate or compete for a small project.

At any rate, the publication of the half-page advertisement by Universal news is among those excused from the conduct of a public bidding under the provisions of RA 9184, Section 48, Article XVI of the said law lists down the alternative methods of procurement as follows:

- a) Limited Source Bidding or Selective Bidding;
- b) Direct Contracting or Single Source Procurement;
- c) Repeat Order;
- d) Shopping; and
- e) Negotiated Procurement

Among those enumerated in the process of *Direct Contracting* or otherwise known as *Single Source Procurement* wherein a supplier is simply asked to submit a **price quotation** or a **pro forma Invoice** together with the conditions of sale, which offer may be accepted immediately or after some negotiations. [Citing Section 48(b), Article XVI, RA 9184, as FN 1.] This alternative method of procurement is available in the following instances: (Emphasis added.)

- a) Procurement of items of proprietary nature which can be obtained from the proprietary source, i.e., when patents, trade secrets and copyright prohibit others from manufacturing the same item; [Underscoring in the original.]

⁷⁴ Vol. 7, p. 79



XXX XXX XXX

Universal News owns the copyright for the editorial featuring the Philippine Commission on Higher Education (CHED), which they have formulated and published, together with a photo of the façade of PNU, in the special advertising section of their magazine, in essence, recourse to direct contracting as an alternative method of procurement is allowed.

As regards preparation of Approved Disbursement Voucher, disbursement voucher is used for issuance of checks as a matter of policy, The transaction, however, is through electronic money transfer with authority to debit advice to Landbank of the Philippine-YMCA branch signed by the President and the Vice President for Administration, Finance & Development. Considering that the dollar exchange rate fluctuates rapidly, the document used by the Accounting Unit in recording the payment is the debit advice with the amount reflected in the bank statement. The mode of payment through electronic money transfer has always been opted to in similar transactions such as payment for institutional membership fee in international academic societies and organizations.

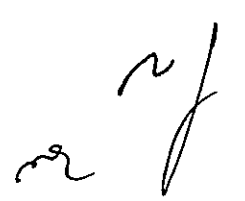
Per negotiation with the publisher, PNU will pay the first invoice not later than 24 June 2011 and the second invoice to be paid after the publication of the article on the Philippines and the advertisement on the first week of July but not later than 22 July 2011. The payment of 50% in advance on June 22, 2011 was resorted to so that the University is assured of the publication of the advertisement in the July-August 11 issue.

The returns to investment for PNU as results of the advertisement are something which cannot be downplayed and ignored, such as expanded recognition on the global scale, support from funding institutions abroad, collaboration with foreign universities, and the coming of visiting professors as experts to serve in the University.

The payment for this transaction was done through STF for CY 2011 (Annex "C-1") under Item MOOE pertaining to Advertising Expenses in the amount of fifty thousand pesos (Php50,000.00). The amount was augmented from other line items under MOOE on STF as authorized under GAA for 2011, Sec. 62, *Augmentation of Maintenance and Other Operating Expenses Items*. As a matter of practice, augmentation of MOOE does not require prior approval of the Board of Regents (BOR) nor the Department of Budget and Maintenance (DBM).

XXX XXX XXX

On October 30, 2014, the same COA auditors who issued the Notice of Suspension issued their "rejoinders" (Exh. "NN") vis-a vis the above reply. In their rejoinder, the audit team announced that in view thereof and "as a normal recourse pursuant to the Revised Rules of Procedures of the Commission on Audit, **ND No. 14-009-101 (11) dated November 14, 2014 is hereby issued.**" (Emphasis supplied.) It appears the notice of disallowance was postdated.



Notice of Disallowance

There were actually two identical Notices of Disallowance, both dated November 14, 2014, and jointly signed by auditors Virginia R. Baptista and Elenita C. Abesamis, with one (Exh. "OO") identified as ND No. 14-009-101 (11) and the other (Exh. "PP") as ND No. 14-009-164(STF) (11). Both were addressed to Dr. Ester B. Ogena, except Exh "OO" was sent to the attention of Rebecca C. Nueva España, Vice President for Finance and Administration and Joseph G. Luceño, Accountant III - Director for Finance, while Exh. "PP" was sent attention to: Brenda C. Dela Cruz, OIC – Accounting Office only. In both NDs, the amount of P1,095,916.86 was mentioned disallowed due to non-adherence with RA 9184 on procurement procedures, Section 88 of PD 1445 and Administrative Order No. 103 dated August 31, 2004, and in view of the unmeritorious justifications submitted and non- submission of/non-compliance with the required documents contained in the Notices of Suspension. The same persons held "responsible" in Notice of Suspension (NS) were determined "liable in the NDs. Again, in the prosecution's Offer of Evidence both Dr. Licuanan and Mario Berta were omitted from the list in the ND as persons liable for the transaction compliance.⁷⁵ (Underscoring supplied.)

The disallowance dated November 14, 2014 amounting to P1,095,916.86 for "unauthorized payment of advertising contract" is shown in the Consolidated Annual Audit Report on the Philippine Normal University System For the Year Ended December 31, 2013, marked as Exh. "QQ-116" at "QQ-207", sub-marked "QQ-207-a".

To note, in Exhs. QQ-1 and Q-12, it was recommended by COA Director Rizalina Q. Mutia to Ogena to "[s]ecure *ex post facto* BOR approval for the obligations incurred in excess of allotment to preclude disallowance."⁷⁶

Appeal to COA Office of the Cluster Director,
National Government Sector (NGS)

It appears that an appeal reached the Office of the Cluster Director of the COA-National Government Sector, Cluster 5 – Education and Employment. In a Decision No. 2016 – 026 ("Exh. "SS"), the appeal was described, as follows:

Subject: Appeal Memorandum and Supplemental to Appeal Memorandum dated April 10, 2015, and August 10, 2015, respectively of Ms. Ester B. Ogena, Mr. Joseph

⁷⁵ Vol. 7, p. 52 at 558-563

⁷⁶ Vol. 7, Exh. "QQ-1" on p. 565 and Exh. "QQ-12" on p. 576.

x-----x

G. Luceño, Ms, Florence A. Allejos, and Dr. Rebecca C. Nueva Espana, all of Philippine Normal University (PNU) Manila, represented by the Office of the Government Corporate Counsel, relative to Notice of Disallowance (ND) No. 14-009-164(STF)-11) dated November 14, 2014.

In the subject Decision, signed by Director IV Cecilia B. Camon, the appeal was disposed of, as follows:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ND No. 14-009-164(STF)-(11) dated 14 November 2014, in the amount of One Million Ninety Five Thousand Nine Hundred Sixteen Pesos and 86/100 (P1,095,916.86 is hereby **AFFIRMED**.

The decision, however, is *not yet final* and the party herewith may file an appeal to the Commission Proper in accordance with Section 1 to 3, Rule VII of the 2009 Revised Rules of the Commission on Audit. (Emphasis in the original; underscoring and italics supplied.)

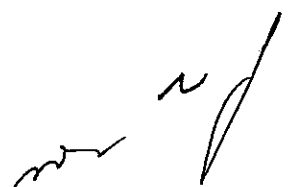
Exhibit “SS” is the prosecution’s last documentary evidence.

DISCUSSION and RULING

At the center of the controversy in this case is the 2011 contract entered into by Ogena, as President of PNU, with UNL for a half-page “advertorial”⁷⁷ or advertisement featuring PNU in the Foreign Policy magazine costing \$25,000.00.

It was the strong letter-recommendation of CHED Chairperson, Dr. Patricia B. Licuanan, Ph.D which Ogena alleged that induced her, as President of PNU, to “participate in the powerful campaign for Foreign Policy magazine” by Ms. Villaceros and Mr. Mario Berta who were “doing a report that will promote the collective vision of higher education in the whole region, highlighting the top universities in Thailand, Malaysia, Brunei, Singapore, Indonesia, Hongkong and the Philippines.” It does not appear that Ogena herself had any inkling at the outset about the said campaign.

⁷⁷ A form of advertisement in a newspaper, magazine or a website which involves giving information about the product in the form of an article
[<https://www.google.com/search?q=advertorial+meaning&oq=advertorial&aqs=chrome.1.69i57j0i512l9.5966j1j7&sourceid=chrome&ie=UTF-8>]



x-----x

According to the prosecution, the advertorial contract was consummated without going through public bidding, hence, a clear violation of R.A. 9184 or the “Government Procurement Reform Act” of 1994. Article IV, Sec. 10 of the said law mandates that, “All procurement shall be done through Competitive Bidding, except as provided in Article XVI of this Act.” The exception adverted to under Article XVI refers to “Alternative Methods of Procurement.”

It was in the manner the payment for the advertorial was processed and paid that the prosecution saw the accused violating Section 3(e) of RA 3019 which provides:

SECTION 3. *Corrupt practices of public officers.* – In addition to acts or omissions of officers already penalized by existing laws, the following shall constitute corrupt practices of any public officer and are hereby declared unlawful:

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his [her] official functions through manifest partiality, evident bad faith or gross negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

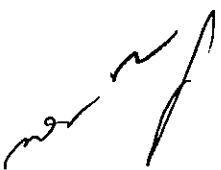
There are two ways by which a public official violates Section 3 (e), viz.: (1) by causing undue injury to any party, including the government, or (2) by giving any private party any unwarranted benefits, advantage or preference.

The Philippine Normal University is a public coeducational university in the Philippines.⁷⁸ The parties have stipulated that during the time material to this case, the accused held the following positions in the Philippine Normal University, respectively:⁷⁹

- | | |
|--------------------------------|---|
| 1. Ester Balating Ogena | - University President |
| 2. Rebecca Corpuz Nueva Espana | - Vice President for Finance and Administration |
| 3. Florence Ablang Allejos | - Budget Officer |
| 4. Joseph Gapanaga Luceno | -Office-in-Charge in Accounting Office |

⁷⁸ https://en.wikipedia.org/wiki/Philippine_Normal_University; viewed on February 8, 2023.

⁷⁹ Vol. 3, p. 111. Luceño offered a counter-proposal that his appointment was only effective starting on June 21, 2011, to which the prosecution agreed.



Based on the Information, there are separate and specific questionable acts attributed to each accused which show the alleged violation of Sec. 3(e), to wit:

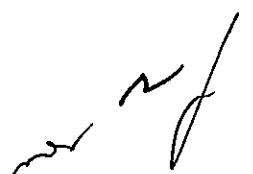
- *As to Ogena, as PHU President* - For “entering into an advertising contract with [UNL] for a half-page advertorial in the Foreign Policy Magazine, without the requisite public bidding, and, instead, through the unjustified resort to Direct Contracting...and thereafter causing the payment (illegally sourced from the Special Trust Fund) to the said magazine of more or less Php1,095,916.86, paying in advance 50% of the contract price without the approved Disbursement Voucher ...and approving the payment...” (Underscoring supplied.)
- *As to both España and Allejos, as PNU Vice President for Finance and Administration and Budget Officer, respectively* - For “certifying in the Budget Utilization Request (BUR) that the supporting documents were valid, proper, and legal and that there was available budget.”
- *As to Luceño, as Officer-in-Charge in Accounting* - For “certifying in the DV that the documents were complete and proper.”

In the prosecutor’s view, the acts of the accused exhibited “manifest partiality, evident bad faith, or gross inexcusable negligence,” which caused undue injury to the government or gave unwarranted benefit, advantage or preference to UNL.

Ogena maintains in her demurrer to evidence that, “No evidence was presented and offered by the prosecution to prove that the procurement of the advertisement required bidding.” With reference to the testimonies of prosecution’s witnesses, she concludes that, “They all said that there was no bidding conducted on the procurement of the advertisement as if this was a smoking gun....”⁸⁰ Ogena misses the point. The testimonies on “lack of bidding” conform with the prosecution’s theory of the case that, together with the rest of the action or inaction of Ogena, the same led to her unjustified resort to direct contracting.

Indeed, the prosecution’s evidence clearly shows, and which Ogena concedes, that no public bidding was ever conducted to procure the advertorial contract. Nor was there a BAC resolution that recommended adopting an alternative mode such as direct contracting. She may have had her own reasons. She thus argues that the advertorial was subject of copyright and therefore exempt from the public bidding requirement. However, this is a

⁸⁰ Vol. 8, p. 374



matter of defense that needs proof or evidence to be credible. At this stage of the proceedings, such a claim cannot yet be given evidentiary weight or value. Presently, the court is tasked only to focus on the totality of the prosecution's evidence to determine sufficiency of evidence to find accused guilty of the charge of violation of Sec. 3(e) of R.A. 3019. It is the theory of the prosecution that because of accused Ogena's violation of the Procurement Law, she is guilty of Sec. 3(e) of R.A. 3019. Ogena cannot simply hide behind the "strong recommendation" of CHED Chairperson Licuanan to exculpate her from the charge of giving unwarranted benefit to the advertiser. She was PNU President and Vice Chair of its Board. She had the duty of diligence to perform which she failed to abide with by unjustifiably resorting to direct contracting. Her manifest partiality towards UNL is evident from her unjustified resort to direct contracting without any legal basis.

The Information alleges conspiracy among the accused. Under Article 8 of the Revised Penal code, "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." In conspiracy, the act of one is the act of all and each of the conspirators is liable for all of the crimes committed in furtherance of the conspiracy.⁸¹ There is a caveat, however, in that, "As a facile devise by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principal of criminal law requiring proof beyond reasonable doubt before conviction. xxx"⁸²

The evidence shows that accused Ogena acted alone, and without active, express, or even tacit, involvement of España, Allejos, and Luceño, when she entered into the advertorial contract with UNL. The contract and all subsequent communications were exclusively between her and the UNL's representative. It is part of the plaintiff's evidence that Ogena entered into contract with UNL based on the "strong" letter-recommendation dated April 25, 2011 of CHED Chairperson Dr. Patricia B. Licuanan. Ogena herself may not have been party to any discussion or negotiation between the CHED Chairperson and the UNL representatives. However, Ogena appears not to have even notified or had the PNU Board of Regents clear the contract.

As PNU President, and most likely following office protocol, Ogena referred the matter with "documents" attached to España, who was then Vice President for Finance and Administration, to "Kindly facilitate the payment for this." (Exh. "J")

España herself first became aware of the contract and the other documents attached, when Ogena sent her the note dated July 14, 2011 with

⁸¹ People vs. Peralta, et al., G.R. No. L-19069, October 29, 1968

⁸² People vs. Jessalva, G.R. No. 227306, June 19, 2017, citing People vs. Tividad, G.R. No. L 21469, June 30 1967, 20 SCRA 549, 554; underscoring supplied.

x-----x

specific instruction for España to: **“Kindly facilitate the payment for this. The deadline for payment is June 24.”** (Exh. “J”). The June 24 deadline refers to the due date for payment of \$12,500.00 on the first of two invoices on the advertorial. España endorsed the job, together with Ogena’s note to Harry P. Hulganga, Financial & Management Officer II of PNU, on the same date. On even date, Hulganga wrote back to España for “Appropriate Action” and “For Information” the following: “1) This transaction does not fall under the modes of procurement provided under R.A. 9184 (Government Procurement Reform Act)[;] 2) Specific Budget for advertisement is not enough to cover the amount involved[; and] 3) If realignment of budget is made, it needs approval by the BOR” (Exh. “K”). In his Judicial Affidavit,⁸³ which Hulganga identified, admitted and acknowledged as his own, he enumerated the following documents as accompanying España Routing Slip, to wit:

1. Letter dated 25 May 2011 of Mario Berta;
2. Advertising Contract with UNL for a half-page advertorial of PNU;
3. Invoice for the first installment of the half-page advertorial of PNU; and
4. Invoice for the second installment of the half-page advertorial.

Then later on June 17, 2011, España sent a Memorandum (Exh. “L”) to Hulganga, as follows:

“Please facilitate the process of payment to Universal News for the two invoices in the total amount of Twenty Five Thousand US Dollars (\$25,000.00) for a half page advertorial to be published in Foreign Policy Magazine. The first invoice in the amount of Twelve Thousand Five Hundred US Dollars (\$12,500.00) should be paid on or before June 24, 2011.

“Attached is the justification for the advertisement.

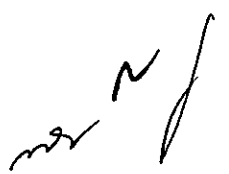
“For your appropriate action.”

Attached to España’s June 17, 2011 Memorandum, among others, is the following (Exh. “M”), signed by Ogena:

JUSTIFICATION FOR THE ADVERTISEMENT

The Philippines is expected to be featured in internationally respected Universal News journal that will put focus on the opportunities as the upcoming Asian Hub. No Less than the President of the Philippines,

⁸³ Vol. 3, pp. 279-287



Chair of the Commission on Higher Education and situations in top ranking universities in the country will be featured. The magazine serves as a vehicle to reach out to top companies and institutions in the world, and read by high end educators and students. Considering the request of the Chair of CHED (please see attached) to universities considered to be the country's top which should show case their programs (UP, ADMU, DLSU, UST, MIT, Miriam College, Adamson U, and PNU, among others) and the PNU President's agenda on *global positioning* as a strategy for PNU to have collaboration for programs with foreign institutions and funders, to show case its programs and reach out to foreign students and gain respect in the international community of universities, the advertisement at Universal News journal, considered in the intellectual and economic communities in the world as the highly influential, had been considered. In addition, the journal is expected to be distributed in the international meetings and visits of the President of the Philippines and will showcase the best universities in the country. While other ASEAN countries will likewise be part of the publication and will likewise advertise their best universities, the journal with put on the top cover President Benigno S. Aquino III and provides signals to the best institutions in the country, the high potentials of the Philippines for economic investment and others.

The returns to investment for PNU are expected to cover the following: expanded recognition on the global scale, support from funding institutions abroad, collaborations with foreign universities universities (sic) that will support our agenda for moving towards international standard and recognition and potentials for more visiting professors an experts who will be interested to serve at the university.

Per negotiation with the publisher, PNU will pay the first invoice not later than 24 June 2011 and the second invoice will be paid after the publication of the article on the Philippines and the advertisement on the first week of July but not later than 22 July 2011.

For consideration an appropriate action.

(Sgd.) ESTER B. OGENA

President

Clearly, España's action was in obedience to Ogena's orders and supported by the above justification prepared and given by Ogena. Her routing slip to Huliganga followed office procedure and proves that España did not have any intent to skip or shortcut the process.

At the bottom of the said España's June 17, 2011 Memorandum (Exh. "L"), Huliganga wrote:

Acctg/Budget

For compliance with this order.

Sgd. (with Huliganga's initial)
6/21/11



Following Huliganga's referral to Budget and Accounting, financial documents were processed, particularly, the Budget Utilization Request (BUR) No. 209-211-06-229 dated June 22, 2011 for Php55,160.86 (Exh. "O") which España and Allejos signed covering payment for the first installment. and, for the second installment, BUR No. 209-2011-07-249 dated July 21, 2011 for Php545,276.00 (Exh. "V"). There was a Disbursement Voucher (DV) (Exh "Y") only for the second installment and the same was signed by Alejo and Ogena.

In both BURs, Espana certified in Box A that, "Supporting documents valid, proper and legal," while Allejos certified in Box "B" that, "Budget available and earmarked/utilized for the purpose as indicated above." In Luceño's situation, he is particularly included in the suit for certifying in Box "A" of Disbursement Voucher (DV) that, "Supporting documents complete and proper" and "Cash available". Luceño at that time had only been on his second day on the job as Officer-in-Charge in the Accounting Office. Ogena signed the DV approving the payment as President.

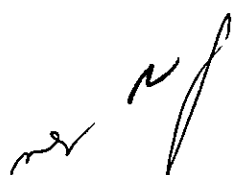
After a judicious review and evaluation of the facts and circumstances present in this case, the Court is not persuaded that España, Allejos, and Luceño had violated Sec. 3(e) of R.A. 3019; nor was there a conspiracy among them when they executed the documents assigned to them for signature.

The prosecution has maintained there were accounting irregularities with regard to the BURs and the DV. The court believes that those alleged irregularities or infraction, if any, do not rise to the level of graft and corruption as punished under Sec. 3(e) of R.A. 3019. As quoted from *Macadangdang vs. Sandiganbayan*, G.R. No. 75440-43, February 14, 1989:⁸⁴

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

In the BURs (Exhs. "O" and "V"), España certified, "[s]upporting documents valid, proper and legal". The documents España had in her possession consisted of the letter dated May 25 of Mario Berta, the advertorial contract and the two invoices forwarded to her by Ogena, as earlier mentioned. The prosecution has not shown if any of the documents adverted to in the

⁸⁴ See *Bongon, et al. vs. Brutas*, G.R. No. 229894 and *Office of the Ombudsman vs. Bongon, et al.*, G.R. No. 230314, (September 7, 2020).



BURs were invalid, improper or illegal. Allejos certification in the BUR was "Budget available and earmarked/utilized for the purpose as indicated above." There may have been budgetary issues or irregularities involved on the cash allotment, but such cannot per se amount to a violation of Sec. 3(e). The same is true with respect to Luceño's certification in the DV (Exh. "Y") i.e., supporting documents complete and proper and cash available. The prosecution questions the validity of the said Luceño's certification. No supporting documents were proven to be missing. Moreover, no amount of money had been found lost or misappropriated with respect to the payments for the advertorial contract.

There are three essential elements for violation of Sec. 3(e), namely:

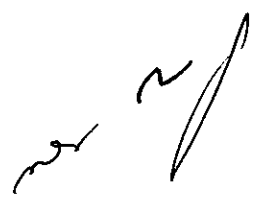
- (i.) that the accused is a public officer discharging administrative, judicial or official functions;
- (ii.) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- (iii.) that the accused caused undue injury to any party including the government or giving any private party unwarranted benefits, advantage or preference in the discharge of his [her] functions.

The first element has been stipulated on by the parties. The second element which enumerates the different **modes** by which the offense penalized in Sec. 3(e) may be committed has been explained,⁸⁵ as follows:

Xxx "**Partiality**" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished rather than as they are." "**Bad faith**["] does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intern or ill will; it partakes of a nature of fraud." "**Gross negligence**["] has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences is so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant a conviction.

Black's Law Dictionary (6th ed.) defines **manifest** to mean "[e]vident to the senses, not obscure or hidden; **evident** to mean plain, obvious and conclusive; and **gross** to mean "great, culpable and absolute."

⁸⁵ Atty. Noel G. Villaroman, Laws and Jurisprudence on Graft and Corruption, (3rd ed.), p. 147, citing Fonacier, et al. vs. Sandiganbayan, et al., 238 SCRA 655 (1994); emphasis in the original.




How could accused España, Allejos^{men} and Luceños be judged as “partial” when, insofar as they were concerned, all they were given was a copy of the contract and the invoices to be paid with the name of the payee. They were never involved when LNU was selected. There was no other party to choose from or being partial with or against. Based on the prosecution’s evidence, neither could they be found in bad faith, i.e., with “a dishonest purpose or some moral obliquity and conscious doing of a wrong.” Neither could they be liable for gross negligence because they relied on documents they were furnished. The evidence shows that the accused España, Allejos and Luceño, only performed their duties in accordance with their positions and in obedience to their superior’s orders and directives, as well as this was in accordance with the agreement or contract at hand. The third element, which is that accused “caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his [her] functions,” was not proven by the prosecution as regards to España, Allejos, and Luceño, considering Our finding that they did not act with manifest partiality, evident bad faith or gross inexcusable negligence.


As held in the consolidated cases of *Caunan vs. People*, G.R. Nos. 181999 & 182001-04 and *Marquez vs. Sandiganbayan*, et al., G.R. Nos. 182020-24:

In criminal cases, to justify conviction, the culpability of an accused must be established by proof beyond a reasonable doubt. The burden of proof is on the prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence. The court, in ascertaining the guilt of an accused, must, after having marshalled the facts and circumstances, reach a moral certainty as to the accused’s guilt. Moral certainty is that degree of proof which produces conviction in an unprejudiced mind. Otherwise, where there is reasonable doubt, the accused must be acquitted.

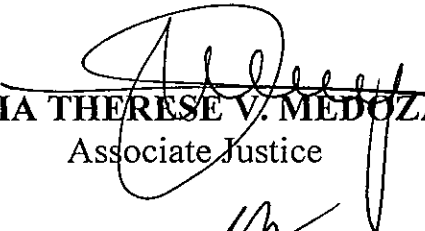
WHEREFORE, premises considered, the Court finds that there is insufficient evidence to prove beyond reasonable doubt that accused España, Allejos^{men}, and Luceño, violated Sec. 3(e) of R.A. 3019. Their demurrers to evidence are therefore **GRANTED**, and the charge against them is **DISMISSED**. As to accused Ogena, her demurrer is **DENIED**, as the Court finds sufficient evidence against her. There is a need for her to present her evidence to rebut the prosecution’s evidence.

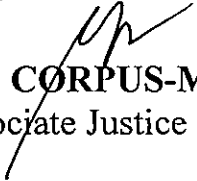
SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson




WE CONCUR:


MARIA THERESE V. MEDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

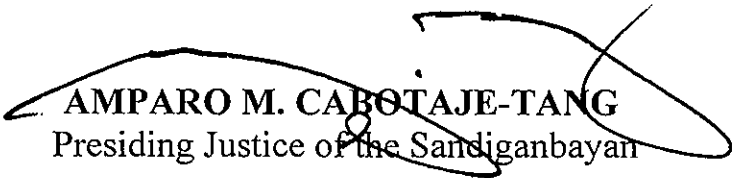
ATTESTATION

I attest that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


RAFAEL R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson’s foregoing *Attestation*, it is certified that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice of the Sandiganbayan