EN BANC

G.R. No. 212140-41 *(Senator Jinggoy Ejercito Estrada, Petitioner, v. Office of the Ombudsman, Field Investigation Office (FIO)-Office of the Ombudsman, National Bureau of Investigation (NBI), and Atty. Levito D. Baligod, Respondents.)*

Promulgated:

January 21, 2015

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DISSENTING OPINION

VELASCO, JR., *J.*:

The majority has decided to dismiss the petition for certiorari under Rule 65 of the Rules of Court filed by Sen. Jinggoy Ejercito Estrada assailing and seeking to annul the Office of the Ombudsman's **Order dated March 27, 2014** in OMB-C-C-13-0313 and entitled *"National Bureau of Investigation and Atty. Levito Baligod v. Jose 'Jinggoy' P. Ejercito Estrada, et al."*

I cannot find myself agreeing with my distinguished colleagues and so register my dissent.

The Antecedents

In OMB-C-C-13-0313, a preliminary investigation conducted on the complaint filed by the National Bureau of Investigation (NBI) and Atty. Levito Baligod (Atty. Baligod), petitioner Sen. Jinggoy Ejercito Estrada (Sen. Estrada), along with several others, was charged with Plunder. Similarly, in OMB-C-C-13-0397, petitioner was charged with the offenses of Plunder and violation of Republic Act No. (RA) 3019, or the Anti-Graft and Corrupt Practices Act,[1] in the complaint filed by the Field Investigation Office-Office of the Ombudsman (OMB-FIO). Both preliminary investigations pertain to the alleged anomalous scheme behind the implementation of several government projects funded from the Priority Development Assistance Fund (PDAF) of several members of the legislature.

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[1] Specifically, Sen. Estrada was charged with violation of Section 3(e) of RA 3019 which penalizes the following:

> (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 official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable 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.

In compliance with the Ombudsman's Orders, Sen. Estrada submitted, as required, a Counter-Affidavit dated January 8, 2014 to the NBI complaint, and a Counter-Affidavit dated January 16, 2014 in response to the OMB-FIO complaint.

In the meantime, Sen. Estrada's co-respondents named in the adverted complaints filed their respective counter-affidavits, to wit:

1) Ruby Tuason (Tuason) – Two (2) Counter-Affidavits both dated February 21, 2014;
2) Gondelina Amata (Amata) – Counter-Affidavit dated December 26, 2013 to the OMB-FIO Complaint and Counter-Affidavit dated January 20, 2014 to the NBI Complaint;
3) Gregoria Buenaventura (Buenaventura) – Counter-Affidavit dated March 6, 2014;
4) Alexis Sevidal (Sevidal) – Counter-Affidavit dated January 15, 2014 to the NBI Complaint and Counter-Affidavit dated February 24, 2014 to the OMB-FIO Complaint;
5) Sofia D. Cruz (Cruz) – Counter-Affidavit dated January 31, 2014;
6) Evelyn Sucgang (Sucgang) – Counter-Affidavit dated February 11, 2014;
7) Alan Javellana (Javellana) – Two (2) Counter-Affidavits dated February 6, 2014;
8) Victor Roman Cojamco Cacal (Cacal) – Counter-Affidavit dated December 11, 2013 to the OMB-FIO Complaint and Counter-Affidavit dated January 22, 2014 to the NBI Complaint;
9) Ma. Julie A. Villaralvo-Johnson (Johnson) – Two (2) Counter-Affidavits dated March 14, 2014;
10) Rhodora Bulatad Mendoza (Mendoza) – Counter-Affidavit dated March 6, 2014;
11) Maria Ninez P. Guañizo (Guañizo) – Counter-Affidavit dated January 28, 2014;
12) Dennis L. Cunanan (Cunanan) – Two (2) Counter-Affidavits dated February 20, 2014;
13) Marivic V. Jover (Jover) – Two (2) Counter-Affidavits dated December 9, 2013;
14) Francisco B. Figura (Figura) – Counter-Affidavit dated January 8, 2014;
15) Rosario Nuñez (Nuñez), Lalaine Paule (Paule) and Marilou Bare (Bare) – Joint Counter-Affidavit dated December 13, 2013; and
16) Mario L. Relampagos (Relampagos)– Counter-Affidavit dated December 13, 2013.

Alleging that media reports suggested that his co-respondents and several witnesses made reference in their respective affidavits to his purported participation in the so-called "PDAF scam," Sen. Estrada then filed in OMB-C-C-13-0313 a *Request to be Furnished with Copies of Counter-Affidavits of the Other Respondents, Affidavits of New Witnesses and Other Filings* dated March 20, 2014 (*Request*) so that he may be able to fully refute the allegations against him, if he finds the need to do so. Specifically, Sen. Estrada requested to be furnished with copies of the following:

a) Affidavit of Ruby Tuason;
b) Affidavit of Dennis L. Cunanan;

c) Counter-Affidavit of Gondelina G. Amata;
d) Counter-Affidavit of Mario L. Relampagos;
e) Consolidated Reply of the NBI, if one had been filed; and
f) Affidavit/Counter-Affidavits/Pleadings/Filings filed by all the other respondents and/or additional witnesses for the Complainants.

In the assailed Order dated March 27, 2014, the Office of the Ombudsman denied Sen. Estrada's *Request* for the stated reason that his rights as a respondent in the preliminary investigations depend on the rights granted him by law, and that the Rules of Court and Administrative Order (AO) No. 7, or the *Rules of Procedure of the Office of the Ombudsman*, only require respondents to furnish their counter-affidavits to the complainant, and not to their co-respondents. Hence, the Ombudsman concluded that Sen. Estrada is not entitled, as a matter of right, to copies of the affidavits of his co-respondents.

The next day, March 28, 2014, the Ombudsman issued a Joint Resolution in OMB-C-C-13-0313 and OMB-C-C-13-0397 finding probable cause to indict Sen. Estrada with one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019. Sen. Estrada would allege that the Ombudsman used as basis for its Joint Resolution the following documents and papers that were not furnished to him:

1) Sevidal's Counter-Affidavits dated January 15 and February 24, 2014;
2) Cunanan's Counter-Affidavits both dated February 20, 2014;
3) Figura's Counter-Affidavit dated January 8, 2014;
4) Tuason's Affidavits both dated February 21, 2014;
5) Buenaventura's Counter-Affidavit dated March 6, 2014; and
6) Philippine Daily Inquirer Online Edition news article entitled *"Benhur Luy upstages Napoles in Senate Hearing"* by Norman Bordadora and TJ Borgonio, published on May 6, 2014.

Sen. Estrada received both the March 27, 2014 Order and March 28, 2014 Joint Resolution on April 1, 2014.

On April 7, 2014, Sen. Estrada interposed a Motion for Reconsideration seeking the reversal of the adverted Joint Resolution finding probable cause against him.

On May 7, 2014, Sen. Estrada filed with this Court a petition for certiorari assailing the March 27, 2014 Order of the Ombudsman and praying in the main that this Court render judgment declaring (a) that he has been denied due process as a consequence of the issuance of the March 27, 2014 Order, and (b) that the March 27, 2014 Order, as well as the proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397 subsequent to and affected by the issuance of the challenged Order, are null and void. Sen. Estrada also prayed for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin the Office of the Ombudsman

from conducting any further proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397 until his petition is resolved by the Court. In a Motion dated June 27, 2014, Sen. Estrada moved for the conversion of his application for the issuance of a TRO and/or Writ of Preliminary Injunction into that for the issuance of a *Status Quo Ante* Order and return the parties to the last peaceable uncontested status which preceded the present controversy or immediately after the issuance of the Order dated March 27, 2014.

On even date, the Ombudsman issued in OMB-C-C-13-0313 and OMB-C-C-13-0397 a Joint Order dated May 7, 2014 furnishing petitioner with the counter-affidavits of Tuason, Cunanan, Amata, Relampagos, Figura, Buenaventura, and Sevidal, and directing him to comment thereon within a non-extendible period of five (5) days from receipt of said Order. Records do not show whether or not petitioner filed a comment on the said counter-affidavits.

Sen. Estrada claims in his petition that he was denied due process of law when the Ombudsman refused to furnish him with copies of the affidavits of his co-respondents. He posits in fine that, consequent to the Ombudsman's refusal, he was not afforded sufficient opportunity to answer the charges against him contrary to the Rules of Court, the Rules of Procedure of the Ombudsman, and several rulings of this Court applying the due process clause in administrative cases.

Traversing petitioner's above posture, respondents aver in their respective comments[2] to the first petition that Sen. Estrada was in fact furnished with the documents he requested per the May 7, 2014 Joint Order of the Ombudsman. Further, respondents contend that the present petition for certiorari filed by Sen. Estrada is procedurally infirm as he has a plain, speedy and adequate remedy—the motion for reconsideration he filed to question the March 28, 2014 Joint Resolution of the Ombudsman. As a corollary point, the respondents add that Sen. Estrada's petition violates the rule against forum shopping, Sen. Estrada having presented the same arguments in his motion for reconsideration of the March 28, 2014 Joint Resolution filed with the Ombudsman.

Parenthetically, following his receipt of a copy of the Office of the Ombudsman's Joint Order dated June 4, 2014 denying his Motion for Reconsideration (of the Joint Resolution dated March 28, 2014), Sen. Estrada filed another petition for certiorari before this Court, docketed as G.R. No. 212761-62.

The Issue

[2] Public respondents Office of the Ombudsman and its Field Office Investigation Office, and the National Bureau of Investigation filed their Comment dated May 30, 2014 on June 2, 2014. Meanwhile, respondent Atty. Levito D. Baligod filed his Comment dated June 5, 2014 on June 6, 2014.

The main issue in the petition at bar centers on whether the denial via the Ombudsman's Order of March 27, 2014 of petitioner's plea embodied in his *Request* constitutes, under the premises, grave abuse of discretion.[3]

The Majority's Decision

The *ponencia* of Justice Carpio denies the petition on the following grounds:

1) There is supposedly no law or rule which requires the Ombudsman to furnish a respondent with copies of the counter-affidavits of his co-respondents;

2) Sen. Estrada's present recourse is allegedly premature; and

3) Sen. Estrada's petition purportedly constitutes forum shopping that should be summarily dismissed.

My Dissent

I do not agree with the conclusions reached by the majority for basic reasons to be discussed shortly. But first, a consideration of the relevant procedural concerns raised by the respondents and sustained by the *ponencia*.

Petitioner's motion for reconsideration against the Joint Resolution is not a plain, speedy, and adequate remedy.

Under Section 1, Rule 65 of the Rules of Court, a petition for certiorari is only available if "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." In the instant case, Sen. Estrada admits to not filing a motion for reconsideration against the assailed March 27, 2014 Order, but claims that he had no chance to do so as the Order was almost simultaneously served with the March 28, 2014 probable cause finding Joint Resolution. Respondents, on the other hand, counter that the bare fact that Sen. Estrada filed a motion for reconsideration of the March 28, 2014 Joint Resolution shows that a "plain, speedy, and adequate remedy" was available to him. Sen. Estrada cannot, therefore, avail of the extraordinary remedy of certiorari, so respondents argue.

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[3] For perspective, it is proper to lay stress on two critical issuances of the Office of the Ombudsman: (1) March 27, 2014 Order in OMB-C-C-13-0313 denying Sen. Estrada's *Request* to be furnished with copies of his co-respondents' counter-affidavits; and (2) Joint Resolution dated March 28, 2014 in OMB-C-C-13-0313 and OMB-C-C-13-0397 finding probable cause to indict him for plunder and graft and corrupt practices.

I cannot acquiesce with respondents' assertion that the motion for reconsideration to the Joint Resolution finding probable cause to indict petitioner is, vis-à-vis the denial Order of March 27, 2014, equivalent to the "plain, speedy, and adequate remedy" under Rule 65. This Court has defined such remedy as "[one] which (would) equally (be) beneficial, speedy and sufficient not merely a remedy which at some time in the future will bring about a revival of the judgment xxx complained of in the certiorari proceeding, but a remedy which will ***promptly*** relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal' concerned."[4] This in turn could only mean that only such remedy that can enjoin the immediate enforceability of the assailed order can preclude the availability of the remedy under Rule 65 of the Rules of Court. Notably, Section 7(b) of the Rules of Procedure of the Office of Ombudsman is categorical that even a motion for reconsideration to an issuance finding probable cause cannot bar the filing of the information:

> Section 7. Motion for Reconsideration –xxx xxx xxx
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> b) The filing of **a motion for reconsideration**/reinvestigation **shall not bar the filing of the corresponding information in Court** on the basis of the finding of probable cause in the resolution subject of the motion.[5]

Hence, Sen. Estrada may very well be subjected to the rigors of a criminal prosecution in court even if there is a pending question regarding the Ombudsman's grave abuse of its discretion preceding the finding of a probable cause to indict him. His motion for reconsideration to the Joint Resolution is clearly not the "plain, speedy, and adequate remedy in the ordinary course of law" that can bar a Rule 65 recourse to question the propriety of the Ombudsman's refusal to furnish him copies of the affidavits of his co-respondents. Otherwise stated, Sen. Estrada's present recourse is not premature.

The concurrence of the present petition and the motion for reconsideration filed with the Ombudsman does not amount to forum shopping.

The majority, however, maintains that petitioner's filing of the present petition while his motion for reconsideration to the joint resolution was pending, constitutes a violation of the rule against forum shopping. The majority maintains that Sen. Estrada's motion for reconsideration before the Office of the Ombudsman supposedly contained the same arguments he raised in the petition at bar.

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[4] *Okada v. Security Pacific Assurance Corporation*, G.R. No. 164344, December 23, 2008, 575 SCRA 124, 142 *citing Conti v. Court of Appeals*, G.R. No. 134441, May 19, 1999, 307 SCRA 486, 195; underscoring supplied.

[5] Emphasis supplied.

There is a violation of the rule against forum shopping when the requisites for the existence of *litis pendentia* are present.[6] Thus, there is forum shopping when the following requisites concur: (1) identity of parties in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[7] I submit that **there is no subsistence of these elements in the present case,** as the majority posits.

As to the first requisite, it is obvious that the Office of the Ombudsman, the main respondent in this petition, is not a party in the case where the motion for reconsideration was filed by Sen. Estrada. The required identity of parties is, therefore, not present.

The role of the Office of the Ombudsman, as a respondent in this certiorari proceeding, is not only relevant in the determination of the existence of the first requisite. It is also indicative of the absence of the second requisite.

In his petition for certiorari, Sen. Estrada bewails the alleged grave abuse of discretion of the Office of Ombudsman in denying his request to be furnished with copies of the affidavits of his co-respondents. Hence, petitioner prays that the denying Order and all proceedings subsequent to the issuance of the Order be considered null and void. On the other hand, the motion for reconsideration thus interposed with the Office of Ombudsman by Sen. Estrada contends that the former erred in finding probable cause to indict him for plunder and violation of RA 3019, as the evidence against him does not support such finding. He further prayed in his motion for reconsideration the reversal of the Ombudsman's finding of probable cause. Clearly, there is no identity of rights asserted and reliefs prayed between the petition before the Court and the motion for reconsideration filed before the Office of the Ombudsman. The second requisite of *litis pendentia* does not exist.

The difference in the reliefs prayed for in the petition at bar and the motion for reconsideration filed with the Office of the Ombudsman argues against the presence of the third requisite. For a denial of petitioner's motion for reconsideration by the Ombudsman would not affect the resolution of the present petition. Similarly, a favorable resolution of the present controversy would not dictate the Ombudsman to rule one way or the other in the determination of probable cause to indict petitioner for plunder or violation of RA 3019. As the certiorari proceedings before this Court is exclusively concerned with the Ombudsman's grave abuse of discretion in denying the

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[6] *Municipality of Taguig v, Court of Appeals*, G.R. NO.142619, September 13, 2005, 506 Phil. 567 (2005).

[7] *Sps. Marasigan and Leal v. Chevron Phils., Inc.*, G.R. No. 184015, February 08, 2012, 665 SCRA 499, 511.

petitioner his constitutional right to due process, a definitive ruling herein would not amount to *res judicata* that would preclude a finding of probable cause in the preliminary investigation, if that be the case. On a similar note, the resolution of the motion for reconsideration does not bar the present petition. Obviously, the third requisite is likewise absent.

The petition is not mooted by the May 7, 2014 Order.

It is, however, argued that the present recourse has been rendered moot by the Ombudsman's issuance of its Joint Resolution dated May 7, 2014 furnishing Sen. Estrada with copies of the counter-affidavits of Tuason, Cunanan, Amata, Relampagos, Figura, Buenaventura and Sevidal. Such argument is specious failing as it does to properly appreciate the rights asserted by petitioner, i.e., the right to be furnished the evidence against him and the right to controvert such evidence *before* a finding of probable cause is rendered against him. **In this case, the fact still remains that petitioner was <u>not</u> given copies of incriminatory affidavits *before* a finding of probable cause to indict him was rendered. As a necessary corollary, he was <u>not</u> given sufficient opportunity to answer these allegations *before* a resolution to indict him was issued.**

Further, it bears to stress at this point that the same Order gave Sen. Estrada only a *five-day non-extendible* period within which to reply or comment to the counter-affidavits of his co-respondents. Clearly, **the Order furnishing Sen. Estrada with the counter-affidavits not only came too late, it did not provide him with adequate opportunity to rebut the allegations against him *before* the Office of the Ombudsman actually decided to indict him. Hence, the full measure of the due process protection was not accorded to him**. The May 7, 2014 Order cannot, therefore, cancel the Office of the Ombudsman's commission of grave abuse of discretion in trifling with, and neglecting to observe, Sen. Estrada's constitutional right to due process.

It is true that, in the past, the Court has allowed the belated disclosure by the Ombudsman to a respondent of affidavits containing incriminating allegations against him. This may possibly be the reason why the Ombudsman deviated from the spirit of due process, which, at its minimum, is to allow a respondent *prior* notice and afford him sufficient opportunity to be heard *before* a decision is rendered against him. This cannot be further tolerated. **A decision to indict a person must not only be based on probable cause but also with due regard to the constitutional rights of the parties to due process.**

Relying on the case of *Ruivivar v. Office of the Ombudsman*,[8] the majority maintains that petitioner's right to due process had not been violated, as the Office of the Ombudsman belatedly furnished him with *some* of the affidavits that he requested on May 7, 2014, before the said Office rendered its June 4, 2014 Joint Order.

It is worthy to note that Sen. Estrada requested that he be furnished with "affidavit/counter-affidavits/pleadings/filings filed by all the other respondents and/or additional witnesses for the complainants." Yet, Sen. Estrada was only furnished with the affidavits of seven (7) of his co-respondents. His request to be given copies of the affidavits of the other nine (9) respondents, thus, remains unheeded by respondent Ombudsman. Clearly, the fact of the deprivation of due process still remains and not mooted by the Ombudsman's overdue and partial volte-face. And, **unlike in *Ruivivar*, the Office of the Ombudsman did not furnish the petitioner with all the documents he requested, leaving him in the dark as to the entire gamut of the charges against him.**

Further, in *Ruivivar*, petitioner Ruivivar's motion for reconsideration that prompted the Ombudsman to furnish her with copies of the affidavits of private respondent's witnesses came after the Decision was issued by the Ombudsman. Meanwhile, in this case, Sen. Estrada's request was submitted before the Ombudsman issued its probable cause finding resolution. Clearly, the Office of the Ombudsman had all the opportunity to comply with the requirements of due process prior to issuing its March 28, 2014 Joint Resolution, but cavalierly disregarded them. It may be rightfully conceded that its **May 7, 2014 Order is nothing but an afterthought and a vain attempt to remedy the violation of petitioner's constitutional right to due process. By then, petitioner's constitutional right to due process--to be given the opportunity to be heard and have *a decision rendered based on evidence disclosed to him*—had already been violated. It cannot be remedied by an insufficient and belated reconsideration of petitioner's request**. What is more, it seems that the doctrine laid down in *Ruivivar* is not consistent with the essence of the due process: to be heard before a decision is rendered.

This Court has time and again declared that the "moot and academic" principle is not a magical formula that automatically dissuades courts in resolving a case.[9] A court may take cognizance of otherwise moot and academic cases, if it finds that (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires

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[8] G.R. No. 165012, September 16, 2008, 565 SCRA 324.

[9] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, 460.

formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.[10]

Thus, even assuming *arguendo* that the present petition is mooted by the Ombudsman's May 7, 2014 Joint Resolution, it is unquestionable that considering the notoriety of the petitioner and the grave violation of the Constitution he asserts, the majority should have availed itself of the irresistible opportunity to set a controlling guideline on the right of a respondent to be furnished, upon reasonable demand, of all evidence used against him during a preliminary investigation before a resolution thereon is issued.

Respondent Ombudsman committed grave abuse of discretion when it disregarded Sen. Estrada's right to a disclosure of all the evidence against him in the preliminary investigation.

A preliminary investigation is a safeguard intended to protect individuals from an abuse of the overwhelming prosecutorial power of the state. It spells for a citizen the difference between months, if not years, of agonizing trial and jail term, on one hand, and peace of mind and liberty on the other hand.[11] In *Uy v. Office of the Ombudsman*,[12] We ruled:

> A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component of due process in administering criminal justice**.** The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; it is a substantive right. **To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process**.[13]

Thus, **this Court had characterized a preliminary investigation as a *substantive right* forming part of due process in criminal justice;**[14] and, contrary to Justice Leonen's position, it is not merely a technical requirement that can be done away or hastily conducted by state agencies.

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[10] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160 citing *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736; *Lacson v. Perez*, 410 Phil. 78 (2001); *Albaña v. Comelec*, 478 Phil. 941 (2004); *Chief Supt. Acop v. Guingona Jr.*, 433 Phil. 62 (2002); *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482 (2004).

[11] G.R. No. 199082,199085, and 199118, September 18, 2012, 681 SCRA 181.

[12] G.R. Nos. 156399-400, June 27, 2008, 556 SCRA 73.

[13] *Ibid* at pp. 93-94. Emphasis supplied.

[14] *Ibid* citing *Ladlad v. Velasco*, G.R. Nos. 170270-72, June 1, 2007, 523 SCRA 318, 344. See also *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998.

As eloquently put by Justice Brion, "to be sure, criminal justice rights cannot be substantive at the custodial investigation stage, only to be less than this at preliminary investigation, and then return to its substantive character when criminal trial starts."

In *Yusop v. Hon. Sandiganbayan*,[15] this Court emphasized the substantive aspect of preliminary investigation and its crucial role in the criminal justice system:

> **We stress that the right to preliminary investigation is substantive, not merely formal or technical. To deny it to petitioner would deprive him of the full measure of his right to due process.** Hence, preliminary investigation with regard to him must be conducted.
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> xxx xxx xxx
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> In any event, **even the Ombudsman agrees that petitioner was deprived of this right and believes that the basic rudiments of due process are complied with.** For its part, the Sandiganbayan opted to remain silent when asked by this Court to comment on the Petition.[16]

Furthermore, a preliminary investigation is not a one-sided affair; it takes on adversarial quality[17] where the due process rights of both the state and the respondents must be considered. It is not merely intended to serve the purpose of the prosecution. Rather, its purpose is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of public trial.[18] At the same time, it is designed to protect the state from having to conduct useless and expensive trials.[19] In *Larranaga v. Court of Appeals*,[20] this Court elucidated, thus:

> Fairness dictates that the request of petitioner for a chance to be heard in a capital offense case should have been granted by the Cebu City prosecutor. In *Webb vs. de Leon*, we emphasized that "**attuned to the times, our Rules have discarded the pure inquisitorial system of preliminary investigation**. Instead, Rule 112 installed a quasi-judicial type of preliminary investigation conducted by one whose high duty is to be fair and impartial." As this Court emphasized in *Rolito Go vs. Court of Appeals*, "**the right to have a preliminary investigation** conducted before being bound over for trial for a criminal offense and hence formally at risk of incarceration or some other penalty, **is not a mere formal or technical right; it is a substantive right**." xxx[21]

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[15] G.R. No. 138859-60, February 22, 2001.

[16] Emphasis and underscoring supplied.

[17] *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998.

[18] Ibid *citing Tandoc v. Resultan*, 175 SCRA 37 (1989).

[19] *Id*. citing *Doromal v. Sandiganbayan*, 177 SCRA 354 (1980); *Go v. Court of Appeals*, 206 SCRA 138 (1992).

[20] G.R. No. 130644, October 27, 1997 citing *Webb v. De Leon*, 247 SCRA 652, 687 and *Rolito Go v. Court of Appeals*, G.R. No. 101837 February 11, 1992.

[21] Citing *Webb*

As such, preliminary investigations must be *scrupulously* conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage.[22] This Court said so in *Gerken v. Quintos,*[23] thus:

> It is hardly necessary to recall that those who find themselves in the meshes of the criminal justice system are entitled to preliminary investigation in order to secure those who are innocent against hasty, malicious, and oppressive prosecution and protect them from the inconvenience, expense, trouble, and stress of defending themselves in the course of a formal trial. The right to a preliminary investigation is a substantive right, a denial of which constitutes a deprivation of the accused's right to due process. Such deprivation of the right to due process is aggravated where the accused is detained without bail for his provisional liberty. Accordingly, **it is important that those charged with the duty of conducting preliminary investigations do so scrupulously in accordance with the procedure provided in the Revised Rules of Criminal Procedure**.[24]

In this case, a careful observance of the procedure outlined in Rule II of AO No. 7, otherwise known as the *Rules of Procedure of the Office of the Ombudsman* is, therefore, imperative. Section 4, Rule II of AO No. 7 provides that **the respondent in a preliminary investigation shall have access to the evidence on record**, *viz*:

> Sec. 4. *Procedure*. – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:
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> (a) If the complaint is not under oath or is based solely on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.
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> (b) After such affidavit have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainants may file reply affidavits within (10) days after service of the counter-affidavits.
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> (c) If the respondent does not file a counter-affidavit. The investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, **the respondent shall have access to the evidence on record.**[25]

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[22] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, 369 SCRA 293, 302.
[23] A.M. No.MTJ-02-1441, July 31, 2002, 386 SCRA 520.
[24] Emphasis supplied.
[25] Emphasis supplied.

In construing the foregoing provision, however, the Ombudsman is of the view that the respondent's, the petitioner's in this case, access is limited only to the documents submitted by the complainant, and not his co-respondents. Thus, in its March 27, 2014 Order denying Sen. Estrada's request to be furnished with copies of the affidavits of his co-respondents, respondent Ombudsman held:

> This Office finds however finds (*sic*) that the foregoing provisions do not entitle respondent to be furnished all the filings of the respondents.
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> It is to be noted that there is no provision under this Office's Rules of Procedure which entitles respondent to be furnished all the filings *by the other parties*, eg. the respondents. Ruby Tuason, Dennis Cunanan, Gondelina G. Amata and Mario L. Relampagos themselves are all respondents in these cases. Under the Rules of Court as well as the Rules of Procedure of the Office of the Ombudsman, the respondents are **only required to furnish** their counter-affidavits and controverting evidence **to the complainant**, and **not** to the other respondents.

Unfortunately, the majority has subscribed to the Ombudsman's position maintaining that Sections 3 and 4 of Rule 112 of the Rules of Court[26] only require that a respondent be furnished with the copies of the

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[26] Sec.3.*Procedure*. – The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavit of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavit shall be subscribed and sworn to before any prosecutor or government official authorized under oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence shall not be furnished a party but shall be made available for examination, copying or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the **subpoena with the complaint and supporting affidavits and documents**, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of counter-affidavit.

affidavits of the complainant and the complainant's supporting witnesses, and not the affidavits of his co-respondents.

Certainly, the majority has neglected to consider that **AO No. 7 or the *Rules of Procedure of the Office of the Ombudsman* prevails over the provisions of the Rules of Court in investigations conducted by the Ombudsman.** This is plain and unmistakable from Section 3, Rule V of AO No. 7, which states that the Rules of Court shall apply only in a suppletory character and only in matters not provided by the Office of the Ombudsman's own rules:

> Section 3. *Rules of Court, application*. **– In all matters not provided in these rules**, **the Rules of Court shall apply in a suppletory character**, or by analogy whenever practicable and convenient.[27]

As Section 4(c) of AO No. 7, or the Office of the Ombudsman's very own Rules of Procedure, clearly provides that a respondent shall have access to all the "**evidence on record**" without discriminating as to the origin thereof and regardless of whether such evidence came from the complainant or another respondent, the provisions of the Rules of Court supposedly limiting a respondent's access to the affidavits of the complaint only is *not* applicable to investigations conducted by the Ombudsman**.** Put piquantly, this ***restrictive misconstruction* of Sections 3 and 4 of the Rules of Court cannot be applied to Sen. Estrada to deprive him of his right to due process clearly spelled out in AO No. 7.**

In fact, a proper and harmonious understanding of Sections 3 and 4 of the Rules of Court vis-à-vis Section 4 (c) of AO No. 7 will reveal that the common denominator of these provisions is the principle that a respondent in a preliminary investigation be afforded sufficient opportunity to present controverting evidence before a judgment in that proceeding is rendered against him. Hence, **a respondent in a preliminary investigation cannot be denied copies of the counter-affidavits of his co-respondents should they contain evidence that will likely incriminate him for the crimes ascribed to him.**

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> Sec. 4. *Resolution of investigating prosecutor and its review*. – If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complaint and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; **that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence.** Otherwise, he shall recommend the dismissal of the complaint.

[27]Emphasis supplied.

Indeed, while the documents withheld by the Office of the Ombudsman may have been submitted by Sen. Estrada's co-respondents, they constitute evidence against him, not unlike the affidavits of the complainants. Sen. Estrada, therefore, had the right to be given copies thereof and an opportunity to controvert the allegations contained therein pursuant to Section 4 (c) of AO No. 7.

More than the provisions of either procedural rules, this Court cannot neglect the constitutional precept underpinning these rules that "no person shall be deprived of life, liberty, or property without due process of law."[28] **The essence of due process permeating the rules governing criminal proceedings is that the respondent must be afforded the right to be heard before a decision is rendered against him. This right must necessarily be predicated on the opportunity to know all the allegations against him, be they contained in the affidavits of the complainant or of another respondent**.

A respondent in a preliminary investigation cannot, therefore, be denied copies of the counter-affidavits of his co-respondents should they contain evidence that will likely incriminate him for the crimes charged. In other words, it behooves the Office of the Ombudsman to treat a respondent's counter-affidavit containing incriminating allegations against a co-respondent as partaking the nature of a complaint-affidavit, insofar as the implicated respondent is concerned. Thus, it is my opinion that the Office of the Ombudsman should follow the same procedure observed when a complaint is first lodged with it, i.e., furnish a copy to the respondent incriminated in the counter-affidavit and give him sufficient time to answer the allegations contained therein. It need not wait for a request or a motion from the implicated respondent to be given copies of the affidavits containing the allegations against him. A request or motion to be furnished made by the respondent alluded to in the counter-affidavits makes the performance of such duty by the Office of the Ombudsman more urgent.

In the seminal case of *Ang Tibay v. Court of Industrial Relations*,[29] this Court identified the primary rights that must be respected in administrative proceedings in accordance with the due process of law. Not the least of which rights is that the decision must be rendered on evidence disclosed to the parties affected, *viz*:

> (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can**

[28]Section 1, Article III of the 1987 Constitution.
[29]69 Phil. 635 (1940).

> **the latter be protected in their right to know and meet the case against them**.xxx[30]

Thus, in *Office of Ombudsman v. Reyes*,[31] this Court set aside the decision of the Ombudsman that was based on the counter-affidavits of therein respondent Reyes' co-respondents that were not furnished to him before the Ombudsman rendered his decision. The Court held:

> In the main, the evidence submitted by the parties in OMB-MIN-ADM-01-170 consisted of their sworn statements, as well as that of their witnesses**. In the affidavit of Acero, he categorically identified both Reyes and Peñaloza** as the persons who had the prerogative to reconsider his failed examination, provided that he paid an additional amount on top of the legal fees. For his part, **Peñaloza ostensibly admitted the charge of Acero in his counter-affidavit but he incriminated Reyes therein as the mastermind of the illicit activity complained of** ….
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> Reyes faults petitioner for placing too much reliance on the counter-affidavit of Peñaloza, as well as the affidavits of Amper and Valdehueza**. Reyes claims that he was not furnished a copy of the said documents before petitioner rendered its Decision dated September 24, 2001. Reyes, thus, argues that his right to due process was violated.** Petitioner, on the other hand, counters that Reyes was afforded due process since he was given all the opportunities to be heard, as well as the opportunity to file a motion for reconsideration of petitioner's adverse decision.
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> On this point, the Court finds merit in Reyes' contention.
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> Moreover, *Department of Health v. Camposano*restates the guidelines laid down in *AngTibay v. Court of Industrial Relations* that due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) ***the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected***; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.
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> In the present case, the fifth requirement stated above was not complied with. Reyes was not properly apprised of the evidence offered

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[30]Emphasis supplied.
[31]G.R. No. 170512, October 5, 2011, 658 SCRA 626.

> against him, which were eventually made the bases of petitioner's decision that found him guilty of grave misconduct.[32]

It is true that, in this case, the failure to furnish copies of the counter-affidavits happened in a preliminary investigation, and not in an administrative proceeding as what happened in *Reyes*. There is likewise no gainsaying that the quanta of proof and adjective rules between a preliminary investigation and an administrative proceeding differ. In fact, "[i]n administrative proceedings… the technical rules of pleading and procedure, and of evidence, are not strictly adhered to; they apply only suppletorily."[33]

Yet, it must be noted that despite the procedural leniency allowed in administrative proceedings, *Reyes* still required that the respondent be furnished with copies of the affidavits of his co-respondent to give him "a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto." Again, *Reyes* was rendered in a case where at stake was, at worst, only the right of the respondent to hold a public office.

In the present case, Sen. Estrada is not only on the brink of losing his right to hold public office but also of being dragged to an open and public trial for a serious crime where he may not only lose his office and good name, but also his liberty, which, based on the hierarchy of constitutionally protected rights, is second only to life itself.[34] In a very real sense, the observance of due process is even more imperative in the present case.

In fact, this Court in *Uy v. Office of Ombudsman*[35] applied the standards of "administrative" due process outlined in *Ang Tibay* to the conduct of preliminary investigation by the Ombudsman. Wrote this Court in *Uy*:

> [A]s in a court proceeding (albeit with appropriate adjustments because it is essentially still an administrative proceeding in which the prosecutor or investigating officer is a quasi-judicial officer by the nature of his functions), **a preliminary investigation is subject to the requirements of both substantive and procedural due process**. This view may be less strict in its formulation than what we held in Cojuangco, Jr. vs. PCGG, et al.[30] when we said:
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> In light of the due process requirement, **the standards that at the very least assume great materiality and significance are those enunciated in the leading case of *Ang Tibay v. Court of Industrial***

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[32] Ibid at pp. 639-641; emphasis and italicization supplied.
[33] Dissenting Opinion, p. 13.
[34] Secretary of Lantion, *infra*.
[35] G.R. Nos. 156399-400, June 27, 2008.

> ***Relations***. This case instructively tells us - in defining the basic due process safeguards in administrative proceedings - that the decision (by an administrative body) must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them; it should not, however, detract from the tribunal's duty to actively see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.
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> Mindful of these considerations, we hold that the petitioner's right to due process has been violated.[36]

It must be emphasized that, **despite the variance in the quanta of evidence required, a uniform observance of the singular concept of due process is indispensable in all proceedings**. In *Garcia v. Molina*,[37] this Court held, thus:

> The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. **The violation of a party's right to due process raises a serious jurisdictional** issue which cannot be glossed over or disregarded at will. **Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same**.[38]

To be sure, a preliminary investigation is not part of trial and the respondent is not given the right to confront and cross-examine his accusers. Nonetheless, a preliminary investigation is an essential component part of due process in criminal justice. A respondent cannot, therefore, be deprived of the most basic **right to be informed** and **to be heard** before an unfavorable resolution is made against him. The fact that, in a preliminary investigation, a respondent is not given the right to confront nor to cross-examine does not mean that the respondent is likewise divested of the rights to be informed of the allegations against him and to present countervailing evidence thereto. These two sets of rights are starkly different.

In this case, it is not disputed that the March 27, 2014 Order denying Sen. Estrada's *Request* was issued a day before the Ombudsman rendered the Joint Resolution finding probable cause to indict him. The Joint Resolution notably contains reference to the counter-affidavits that were not disclosed at that time to Sen. Estrada. **There is, therefore, no gainsaying that the Office of the Ombudsman violated its duty to inform the**

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[36] Emphasis supplied.
[37] G.R. Nos. 157383 and 174137, August 10, 2010, 627 SCRA 540.
[38] *Ibid* at p. 554. Emphasis and underscoring supplied.

respondent of all allegations against him. In the process, Sen. Estrada was *not* afforded sufficient opportunity to know and refute the allegations against him *before* the Ombudsman acted on those allegations.

The immortal cry of Themistocles: "**Strike! But hear me first!**" distills the essence of due process. **It is, thus, indispensable that the respondent is given "the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.**"[39] As Sen. Estrada was *not* given copies of counter-affidavits containing allegations against him and afforded a chance to refute these allegations *before* the Joint Resolution to indict him was rendered, he was clearly denied his right to the due process of law.

The majority, however, suggests that I have overlooked the Court of Appeal's reasoning in *Reyes* that, pursuant to the doctrine of *res inter alios acta alteri nocere non debet*, the respondent cannot be prejudiced by the declaration of his co-respondent. Justice Carpio then concludes that "[i]n OMB-C-C-13-0313 and OMB-C-C-13-0397, the admissions of Sen. Estrada's co-respondents can in no way prejudice Sen. Estrada."

Clearly, the majority ignores the obvious fact that **Sen. Estrada had already been prejudiced by the affidavits of his co-respondents that were not furnished to him**. The majority Decision pays no heed to the fact that the Joint Resolution of the Office of the Ombudsman precisely invoked the counter-affidavits of Sen. Estrada's co-respondents that were not furnished to him. To recall, the March 28, 2014 Joint Resolution of the Office of the Ombudsman contains reference to the counter-affidavits that were not theretofor disclosed to Sen. Estrada. In finding probable cause to indict Sen. Estrada, respondent Office of the Ombudsman quoted from the withheld counter-affidavits of respondents Tuason,[40] Cunanan,[41] Figura,[42] Buenaventura,[43] and Sevidal.[44] Thus, to state that "the admissions of Sen. Estrada's co-respondents can in no way prejudice Sen. Estrada" is clearly at war with the facts of the case.

With that, the suggestion that a thorough consideration of jurisprudence must be made before they are used as basis for this Court's decisions is appreciated. Contrary to what the majority Decision suggests, the Court of Appeals' disquisition quoted in *Reyes* did not go unnoticed but was simply deemed irrelevant in the present case. In fact, the application of the *res inter alios acta* doctrine was not even considered by this Court in *Reyes*; it was simply a part of the narration of the factual antecedents. Hence,

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[39] *Republic v. Caguioa*, G.R. No. 174385, February 20, 2013, 691 SCRA 306, 319.
[40] Joint Resolution, pp. 57-58, 69, 79-80.
[41] Joint Resolution, pp. 58, 82-83, 85-86.
[42] Joint Resolution, p. 85.
[43] Joint Resolution, pp. 86-87.
[44] Joint Resolution, p. 87.

a discussion of the doctrine in the present controversy is even more unnecessary.

The right to the disclosure of the evidence against a party prior to the issuance of a judgment against him is, to reiterate, a vital component of the due process of law, a clear disregard of such right constitutes grave abuse of discretion. As this Court has held, grave abuse of discretion exists when a tribunal violates the Constitution or grossly disregards the law or existing jurisprudence.[45] In other words, once a deprivation of a constitutional right is shown to exist, the tribunal that rendered the decision or resolution is deemed ousted of jurisdiction.[46] As the Court held in *Montoya v. Varilla*[47]--

> The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. **Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction**.[48]

Given the foregoing perspective, the issuance of the corrective writ of certiorari is warranted in the present controversy.

Effect of irregularity of preliminary investigation.

On one hand, a case for the total nullification of the proceedings, including the filing of the dismissal of the Information filed and the quashal of the arrest warrants, may be made. On the other, a position has been advanced that the irregularity of the preliminary investigation is remedied by the issuance of the arrest warrant, so that a deprivation of the due process during the preliminary investigation is irrelevant.

Between these two extremes, it is my considered view that the irregularity at the preliminary investigation stage arising from a violation of the due process rights of the respondent warrants a reinvestigation and the suspension of the proceedings in court where an information has already been filed.

The grave abuse of discretion committed by the Office of the Ombudsman in its conduct of the preliminary investigation cannot divest the Sandiganbayan of the jurisdiction over the case considering that

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[45]*Fernandez v. COMELEC*, 535 Phil. 122, 126 (2006); *Republic v. Caguioa*, G.R. No. 174385, February 20, 2013, 691 SCRA 306.

[46]*Gumabon v. Director of the Bureau of Prisons*, G.R. No.L-30026, January 30, 1971, 37 SCRA 420, 427; *Aducayen v. Flores*, G.R. No.L-30370, May 25, 1973, 51 SCRA 78, 79.

[47]G.R. No. 180146, December 18, 2008, 574 SCRA 831.

[48]*Ibid* at p. 843 *citing State Prosecutors v. Muro*, Adm. Matter No. RTJ-92-876, 19 September 1994, 236 SCRA 505, 522-523; see also *Paulin v. Gimenez*, G.R. No. 103323, 21 January 1993, 217 SCRA 386, 39. Emphasis supplied.

Informations had already been filed, as in fact a warrant of arrest had already been issued in connection therewith.[49] It is a familiar doctrine that the irregularity in, or even absence of, a preliminary investigation is not a ground for the deprivation of the court of its jurisdiction. So it was that in *Pilapil v. Sandiganbayan*,[50] the Court held, thus:

> We are not persuaded. The lack of jurisdiction contemplated in Section 3(b), Rule 117 of the Revised Rules of Court refers to the lack of any law conferring upon the court the power to inquire into the facts, to apply the law and to declare the punishment for an offense in a regular course of judicial proceeding. **When the court has jurisdiction, as in this case, any irregularity in the exercise of that power is not a ground for a motion to quash**. Reason is not wanting for this view. Lack of jurisdiction is not waivable but absence of preliminary investigation is waivable. In fact, it is frequently waived.[51]

On the other hand, it is erroneous to simply disregard the violation of the due process of law during the preliminary investigation as irrelevant and without any significant effect. Such stance will only serve to "legitimize the deprivation of due process and to permit the Government to benefit from its own wrong or culpable omission and effectively dilute important rights of accused persons well-nigh to the vanishing point."[52] Thus, I submit that the proper recourse to be taken under the premises is the suspension of the proceedings in the Sandiganbayan and the immediate remand of the case to the Office of the Ombudsman[53] so that Sen. Estrada, if he opts to, can file his counter-affidavit and controverting evidence to all the counter-affidavits containing incriminating allegations against him.

The jurisdiction acquired by the trial court upon the filing of an information, as recognized in *Crespo v. Mogul*,[54] is not negated by such suspension of the proceedings or the reinvestigation by the Ombudsman. Surely, this Court's pronouncements in *Crespo* was not intended to curb the power of this Court to supervise lower courts and ensure that the rights of the accused are respected and protected against the all-encompassing powers of the State.

The fine balance recognizing the jurisdiction of the trial court and the right of a respondent to a reinvestigation has been observed in several cases. In *Matalam v. Sandiganbayan*,[55] the petitioner who was not afforded a

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[49] See *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349 and *Tagayuma v. Lastrilla*, G.R. No. L-17801, August 30, 1962, 5 SCRA 937.

[50] *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349.

[51] *Ibid* at pp. 355-35.

[52] *Go v. Court of Appeals*, G.R. No. 101837, February 11, 1992, 206 SCRA 138, 162. See also *Yusop v. Sandiganbayan*, G.R. Nos. 138859-60, February 22, 2001.

[53] See *Arroyo v. Department of Justice*, G.R. No. 199082, 199085, and 199118, September 18, 2012, 681 SCRA 181 *citing Raro v. Sandiganbayan*, G.R. No. 108431, July 14, 2000, 335 SCRA 581; *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60, February 20, 1996, 253 SCRA 773, 792; *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 355.

[54] G.R. No. L-53373, June 30, 1987.

[55] G.R. No. 165751, April 12, 2005.

chance to fully present his evidence during the preliminary investigation stage was afforded a reinvestigation, thus:

> It is settled that the preliminary investigation proper, i.e., the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.
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> ….Accordingly**, finding that petitioner was not given the chance to fully present his evidence on the amended information which contained a substantial amendment, a new preliminary investigation is in order.**
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> Finally, as to petitioner's prayer that the Amended Information be quashed and dismissed, the same cannot be ordered. The absence or incompleteness of a preliminary investigation does not warrant the quashal or dismissal of the information. Neither does it affect the court's jurisdiction over the case or impair the validity of the information or otherwise render it defective. **The court shall hold in abeyance the proceedings on such information and order the remand of the case for preliminary investigation or completion thereof.**[56]

A similar disposition was made in *Torralba v. Sandiganbayan*[57] where the Court held:

> The incomplete preliminary investigation in this case, however, does not warrant the quashal of the information, nor should it obliterate the proceedings already had. Neither is the court's jurisdiction nor validity of an information adversely affected by deficiencies in the preliminary investigation. Instead, **the Sandiganbayan is to hold in abeyance any further proceedings therein and to remand the case to the Office of the Ombudsman for the completion of the preliminary investigation**, the outcome of which shall then be indorsed to Sandiganbayan for its appropriate action.

This course of action was also taken by the Court in a catena of other cases including *Go v. Court of Appeals*,[58] *Yusop v. Sandiganbayan*,[59] *Rodis, Sr. v. Sandiganbayan*,[60] and *Agustin v. People*.[61]

It might be argued that such recourse will only be circuitous and might simply be postponing the inevitable. Surely, it will hold the conduct of the case. But **where the rights of an individual are concerned, the end does not justify the means.** To be sure, "society has particular interest in

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[56] Emphasis supplied.
[57] G.R. No. 101421 February 10, 1994.
[58] G.R. No. 101837, February 11, 1992, 206 SCRA 138, 162.
[59] G.R. Nos. 138859-60, February 22, 2001.
[60] G.R. Nos. 71404-09 October 26, 1988.
[61] G.R. No. 158211, August 31, 2004.

bringing swift prosecutions."[62] Nonetheless, **the constitutional rights of citizens cannot be sacrificed at the altar of speed and expediency.** As enunciated in *Brocka v. Enrile*,[63] the Court cannot, and will not, sanction procedural shortcuts that forsake due process in our quest for the speedy disposition of cases. The Court held:

> We do not begrudge the zeal that may characterize a public official's prosecution of criminal offenders. We, however, believe that this should not be a license to run roughshod over a citizen's basic constitutional rights, such as due process, or manipulate the law to suit dictatorial tendencies.
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> Constitutional rights must be upheld at all costs, for this gesture is the true sign of democracy. These may not be set aside to satisfy perceived illusory visions of national grandeur.: and
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> In the case of J. Salonga v. Cruz Paño, We point out:
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> "Infinitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution . . ." (G.R. No. L-59524, February 18, 1985, 134 SCRA 438-at p. 448).[64]

Indeed, **the prime goal of our criminal justice system remains to be the achievement of justice under a rule of law. This ideal can only be attained if the Ombudsman, and the prosecutorial arm of the government for that matter, ensures the conduct of a proper, thorough, and meticulous preliminary investigation**. The frustration caused by a suspension of the proceedings in the Sandiganbayan to allow the Office of the Ombudsman to correct its error cannot equal the despair of the deprivation of the rights of a person under the Constitution.

Thus, I submit that the Office of the Ombudsman should be ordered to take a second look at the facts of the case after Sen. Estrada is given copies of all the documents he requested and a sufficient chance to controvert, if so minded, all the allegations against him.

For all the foregoing, I vote to partially **GRANT** the Petition in G.R. No. 212140-4, to **SET ASIDE** the assailed March 27, 2014 Order, and to ORDER the immediate **REMAND** to the Office of the Ombudsman of OMB-C-C-13-0313 and OMB-C-C-13-0397 so that Sen. Estrada will be furnished **all** the documents subject of his *Request* dated March 20, 2014 and be allowed a period of fifteen (15) days to comment thereon. Further, I vote that the Sandiganbayan should be *ORDERED* to **SUSPEND** the proceedings

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[62] *Ibid citing Uy v. Adriano*, G.R. No. 159098, October 27, 2006, 505 SCRA 625, 647.
[63] G.R. No. 69863-65, December 10, 1990, 192 SCRA 183.
[64] *Ibid* at pp. 189-190.

in SB-14-CRM-0239 and SB-14-CRM-0256 to SB-14-CRM-0266 until the conclusion of the reinvestigation.

PRESBITERO J. VELASCO, JR.
Associate Justice