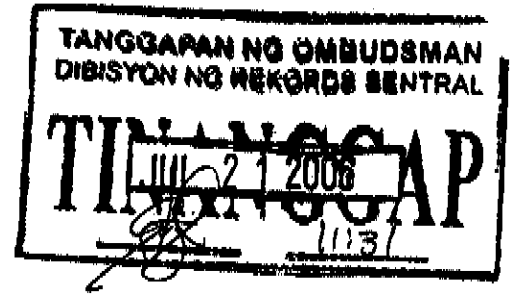


Republic of the Philippines
OFFICE OF THE OMBUDSMAN
Quezon City



REMEDIOS C.BALBIN,
Complainant,

-versus-

OMB.CASE NO. _____
For Viol. Of Rep. Act 3019,as
Amended, and Related RPC
Provisions

Secretary of Justice **Raul Gonzales**;
Secretary of Transportation/Communications
Leandro Mendoza; Capt. **Ceferino L. Manzo**.
of Superferry 14,
Respondents,

x -----x

COMPLAINT

COMES NOW THE COMPLAINANT REMEDIOS C. BALBIN, acting for and by herself, and to the Honorable Ombudsman, respectfully institutes this case for violation of the Anti-Graft and Corrupt Practices Act (Republic Act No.3019, as amended) and of related provisions of the Revised Penal Code, alleging:

I. PARTIES

The **Complainant Remedios Catungal Balbin**, is of legal age, a Filipino national, with post office address at 6/F, Tempus Place Condominium Bldg. II, Matalino St., Diliman District, Quezon City.

She is a bona fide member of the Philippine Bar in good standing since 1960, a law practitioner, and head of the Foundation for Social Justice (1988). It is in these combined capacities that she is involved in the search for truth and justice.

The **Respondent Secretary of Justice Raul Gonzales** has his post office address at the Department of Justice, Padre Faura, Manila.

He is the official who exercises over-all responsibility and supervision in the filing of criminal cases by the team of public prosecutors under him, on the basis of evidence gathered, reviewed, and carefully evaluated before presentation before the courts and/or released to the public subject to his approval. As public officer, public servant, and **alter ego** of the President of the Philippines, he is duty-bound to act with integrity, and remain at all times faithful to the truth in the implementation of the law, particularly in matters pertaining to the State, national security, and public safety.

The **Respondent Secretary of Transportation and Communications Leandro Mendoza** is the head of the Department of Transportation and Communications, located at Columbia Towers, Ortigas Ave., Mandaluyong City. He has administrative and supervisory authority over among others, the Maritime Industry Authority (MARINA), the agency directly responsible for the Philippine shipping industry. As public officer, public servant, and alter ego of the President of the Philippines, he is duty-bound to act with integrity, to remain at all times, faithful to the truth in the implementation of the law, particularly in matters pertaining to the State, national security, and public safety.

The **Respondent Capt. Ceferino L. Manzo**, was vessel master of Superferry 14, at the time when this was destroyed by fire on February 26/27, 2004. As the captain of the Superferry 14, he is directly responsible, and presumed to be fully knowledgeable about the ship's cargo, passengers, condition, and security and safety measures for his passengers and cargo. His omissions and repression of any fact relative to these matters about Superferry 14, on February 26/27 2004, constitute indispensable and knowing participation as would result, as it did result, in the distortion, misrepresentation, and falsification of the real cause of the fire and consequent explosions which destroyed Superferry `14 on February 26/27, 2004.

His address is at the Head office of the Superferry Lines, WGA, at Times Plaza, U.N. Ave., Manila.

II. THE CHARGES

This Complaint is filed pursuant to Section 3 of Republic Act No.3019, as amended, which provides:

“Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:”

* * *

This Complaint under the Anti-Graft Law is filed in relation to Article 171 of the Revised Penal Code on “Falsification by public officer, employee, or military, or ecclesiastic minister” who takes advantage of his official position and falsifies a document by committing any of the following acts, thus:

“Article 171. - The penalty of * * * shall be imposed upon any public officer, employee * * *who, taking advantage of his official position, shall falsify a document by committing any of the following acts:”

* * *

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Making untruthful statements in a narration of facts;

“Article 172. * * * Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another, or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished * * *”

The provisions of Articles 183 and 184 of the Revised Penal Code are likewise invoked against the Respondents, particularly Article 184 which states:

“Art.184.Offering false testimony in evidence.- Any person who shall knowingly offer in evidence a false witness or testimony in any judicial proceeding shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.* * *”

III. PREFATORY FACTS

On February 27, 2004, the Superferry 14, a 192, 10-tonnage ferry, bound for Bacolod and Cagayan de Oro, was destroyed by fire accompanied by explosions while sailing out of Manila, approximately 90 minutes out of port. It reported initially 702 passengers and crew. This figure was later raised to a total of 900, with 63 people killed immediately, and 53 missing and later presumed dead. It was reported that the ferry was in fact allowed to carry 1,747 persons.

Immediately, the PNP blamed it on the Abu Sayyaf, an alleged terrorist group mainly of Muslims based in Southern Philippines. This claim was denied by government authorities, and two days after the incident, President Gloria Arroyo spoke up to personally deny over media that the fire and explosion were the handiwork of terrorists. She stressed that there was no terrorist hand involved. However, despite her public pronouncement, the military and PNP insisted that the explosions, **which occurred after the fire started**, were caused by Muslim terrorists.

MARINA Administrator Oscar Sevilla, by virtue of Special Order 121-04 of February 27, 2004, pursuant to E.O. 125, Section 125-A, promptly took action. He created a team of engineers composed of Rogelio Samonte, Ruben R. Tejada, Jose J. Teano and Marilon C. Morales. With the team was Hisashi Terada, MARINA-JICA expert/ consultant.

The Maritime Industry Authority (Marina), Team under the leadership of the Complaints and Investigation Division, led by Chief Arnie F. Santiago conducted an investigation while the superferry was still afloat although listing on its side, and the evidence of the cause of the fire and explosions, clearly intact. On March 2, 2004, or four (4) days after the incident, it released its report. The copy is attached hereto as Exhibit “A” and made an integral part of this Complaint.

IV. THE MARINA REPORT

The pertinent excerpt of the Report, which was released to media, and which we quote from Mr. Federico Pascual Jr.’s news column. POSTSCRIPTS, The Philippine Star, 3/5/04, p.13. (Exhibit “A-1”)

“The fire occurred in the paint storage beside the fan room at the funnel port side prior to the explosion. The heated fan room caused the transmission of heat to other sidewall through convection, causing fire in another paint storage room.

The bar and electrical panel located at the lower portion of the Paint room and fan room was affected. When the accumulated hot vapors generated by the heat reached ignition temperature, the hot gases caused an explosion and fire occurred.

The explosion that was heard by passengers was the result of the hot vapors between the ceiling and the weather deck that gave off and immediately exploded and resulted to fire.

Due to impact of explosions, the ceilings of the red section was detached and fell on the lower deck causing the breaking of the glass door of the orange section.

Traces of paint indicate that fire occurred in the weather deck prior to the explosion at the bar counter and electrical panel portion at the promenade deck.

The crew fighting the fire used fire-hoses that caused paint to spill on the deck instead of applying CO2 (carbon dioxide) or dry chemical for type-B fire (pain).

The above findings and report were reviewed and unanimously approved by the investigation team created by MARINA Administrator Oscar Sevilla under Special Order 121-04 dated February 27, 2004, under E.O. 125 (See 125-A).

A. THERE WAS NO BOMB OR EXPLOSIVE MATERIALS FOUND WITHIN THE AREA OF THE EXPLOSION.

Despite the above-quoted findings of the MARINA team that there was no bomb or explosive materials within the alleged area of explosion, Respondent Government Officials insisted that the explosion was the handiwork of terrorists, and their respective subordinates confirmed this theory. The Report was later declared inaccessible to the public allegedly for review by higher authorities. However, on October 12, 2004, coinciding with the first one-hundred days of President Arroyo’s presidency after the May 2004 presidential elections, she proclaimed:

“Today, we have solved the Superferry bombing,” President Macapagal-Arroyo said at Camp Bagong Diwa in Taguig, Rizal, where she presented two of the six (Abu Sayyaf) suspects to the media.

* * *

“I am now instructing the police and the military to intensify the manhunt for the two masterminds Khadaffy Janjalani and Abu Solaiman – and their two other accomplices.”

* * *

“A week After the Superferry 14 caught fire and sank off Corregidor Island on February 27, 2004, the al-Qaida-linked Abu Sayyaf claimed responsibility for the bombing. But Ms. Arroyo, who was running for reelection then, scoffed at the Abu Sayyaf’s claim as the work of pranksters.”

With this announcement, the Department of Justice announced that it was charging the following persons with multiple counts of murder, frustrated murder and attempted murder, namely Abu Soliman, Alhamser Manatad Limbong, alias Kosovo; Redendo Cain Delloso, alias Habil Akmad Delloso; Gamal Baharan, alias Tapay, and Kashmir Doe.

B. SUSPECT REDENDO DELLOSA

B.1. Long before the above October 12, 2004 announcement, or on March 22, 2004, at about 11 p.m. Redendo Delloso was abducted while walking home along Boni Avenue, and placed under detention without any criminal charge by the PNP led by a certain PNP officer whose name he later learned to be PNSP Armando L. Barbasa, Jr.

B.2. He was held by the PNP in a “safehouse somewhere”. He was blindfolded and accused of being Passenger No. 51 of Superferry 14. Throughout, he was subjected to intense physical torture and violence on his person, as a result of which he suffered unbearable pain inflicted by unidentified PNP interrogators who ordered him to admit that he blew up the Superferry last February 27, 2004;

B.3. Because of the torture he suffered, he felt exhausted and weak from the brutality inflicted on his person, beginning from the moment of his abduction. His abductors covered his head with a plastic bag, his eyes covered by a black cloth as a blindfolded, with his interrogators simultaneously “pinching” his neck so he could hardly breathe, and electric current was applied to his penis (*kinuryente*). He recalls quite vaguely that in this condition he was made to sign something; or thumbmark something. He does not know what happened but they told him later that they had extracted an admission- a confession from him, about the Superferry incident. (Exhibit “B” affidavit of Delloso before DOJ)

B.4. That his PNP handlers said that he signed or thumbmarked a confession admitting his accountability for the Superferry Bombing and Fire, **although up to this date, no one has shown him a copy of his alleged confession; (Ibid)**

B.5. That a day or so later, he was told at PACER, Camp Crame, that he was not being detained by reason of the Superferry fire but because of his alleged participation in the Tumahabong, Basilan kidnapping, subject of a pending case before RTC Branch 162, Pasig City and later, he was made to join a police line-up and shown to witnesses, on the Tumahubong kidnapping case.

B.6. That although he was told after the October 12 media announcements that the Superferry bombing was solved with his arrest, he has yet to receive to this day, a formal charge of his alleged participation in the Superferry 14 fire and explosions.

C. SUSPECT LIMBONG ALHAMSER MANATAD A.K.A. as KOSOVO

The Philippine Daily Inquirer newspaper dated October 12, 2004, showed Superferry 14 bombing suspects Habil Redondo Dellosa and Alhamser Manatad, alias Kosovo, were presented to the media by President Macapagal-Arroyo and Transport Secretary Leandro Mendoza at NCRPO headquarters in Bicutan, Taguig, on Monday.”

C.1. Dellosa and Limbong, allegedly a cousin of Janjalani, had long been under detention in March in connection with an alleged terrorist plot to bomb malls, trains, an oil depot, foreign embassies and other targets in Metro Manila. Police said 36 kilos of TNT were seized from the two suspects. No details were however released as to how or where the suspects and the explosives were found.

C.2. Limbong was killed in the reported Jailbreak in Camp Bicutan on April 2005, Kosovo was reported in the press as facing trial for Superferry Bombing. There is no record of such a case, however. (Exhibit “B-1”)

V. THE SEARCH FOR THE REPORT APPROVED BY DOTC

That after obtaining a copy of the MARINA report, undersigned legal counsel promptly tried to secure a copy of the report evaluated and approved for release by the DOTC. She was told to wait until the Office of the President had reviewed and approved it before it will be released to the public. Another follow-up merited the answer that the report had to be signed by the President of the Philippines. Finally, on October 12, 2004, without the Report, the President made the announcement, on the occasion of her first 100 days in office as President after the 2004 elections, that:

“in the first 100 days of my administration, we have been able to stabilize our security situation.” (PDI, 10/12/06. P.A-2) (Exhibit A)

To reiterate, the above “glowing announcement” zeroed in on Dellosa who has been accused of blowing up Superferry 14, but who has been under detention at PACER since 2004, and transferred to Camp Bagong Diwa, Bicutan. But he still has to receive copy of the criminal complaint for the Superferry 14 explosion allegedly filed against him for the Superferry 14.

It should be stressed that as early as March 2, 2004, the MARINA had already completed its job of conducting an investigation on Superferry 14 and the circumstances surrounding the incident of February 27, 2004. The investigation by March as mentioned earlier was done **while the vessel was still afloat, and all the evidence intact.**

Despite the above-quoted findings of the MARINA investigation team, that indeed there was no bomb or explosive materials within the alleged area of explosion, Respondent government officials insisted on their position that the fire was caused by an explosion caused by terrorist.

The MARINA REPORT was withheld and withdrawn from circulation. On October 12, 2004, marking the first 100 days of her presidency after the May 2004 elections, President Gloria Macapagal Arroyo proclaimed at a press conference:

“Today, we have solved the Superferry bombing. I am now instructing the police and the military to intensify the manhunt for the two masterminds Khadaffy Janjalani and Abu Solaiman – and their two accomplices. * * * (See Philippine Daily Inquirer, October 14, 2004, A-1)

Respondent Leandro Mendoza explained the delay in the investigation results, conspicuously ignoring the MARINA investigation and report, stated:

“* * *THE INVESTIGATION DRAGGED ON BECAUSE IT TOOK FIVE MONTHS TO RAISE THE FERRY, WHICH ENDED UP LYING IN ITS SIDE IN SHALLOW WATER. ONLY THEN WERE INVESTIGATORS ABLE TO TAKE A CLOSE LOOK AT THE TANGLE OF TWISTED METAL AND CONCLUDE THAT A BOMB HAD CAUSED THE DISASTER”. (Ibid. emphasis supplied.)

Nowhere was there any mention made of the earlier MARINA Report based on the investigation conducted by the MARINA team two days after the incident, and submitted to higher authorities on March 2, 2004, stating unequivocally that there was no bomb or explosion involved in the Superferry 14 incident.

E. FALSE WITNESS: WALTER VILLANUEVA

The same October 2004 report announcing the solution of the Superferry 14 bombing carried the additional information, thus:

“The PNP Criminal Investigation and Detection Group said it has also secured the testimony of a witness to support the complaint it had filed in the Department of Justice against the six suspects, four of whom are at large.”

“Police said in their complaint that Muslim convert Walter Villanueva told them that Dellosa stayed at his Quezon City house where he packed and attached wires to the T.V. set. Dellosa allegedly said that the TV contained TNT and that he was ordered by Janjalani and Soliman to place the bomb aboard the ferry.”

“Dellosa allegedly later told Villanueva by phone that the bomb exploded aboard the ferry and that more terror attacks were in the offing in the capital, police said. * * *Ibid.

The foregoing notwithstanding, the facts are: Walter Villanueva, technician of movie actor Robin Padilla and a Muslim convert himself, had been arrested at the SM Fairview, for illegal possession of firearms. In the five cases filed against him before the Quezon City Courts; RTC Branch 87, RTC Branch 86, RTC Branch 92, RTC Branch 98, and MTC Branch 35, the undersigned was his legal counsel of record pro bono, and therefore she was in constant communication with him at the CIDG, Camp Crame where he was held in solitary confinement.

Villanueva later confided to undersigned legal counsel that he was compelled to testify against Dellosa (labeled by the PNP interrogator as Passenger 51) and Kosovo, and that he was likewise requested to incriminate several others, but he refused to make further false testimonies.

VI. USE OF FALSE TESTIMONY VIOLATIVE OF RPC AND ANTI-GRAFT LAW.

The basis of this present charge is the false testimony or knowingly fabricated, disseminated, and given official sanction by herein Respondents, on the cause of the Superferry 14 fire. The MARINA Report found negligence on the part of Superferry 14, management but the Report of DOTC attributes the fire and explosion to alleged Muslim terrorists such as Dellosa and Kosovo, etc.

The sudden shift in the government's position this time declaring the loss of Superferry 14 as due to an explosion when Respondents knew otherwise, is a criminal act of false testimony in violation of Articles 173, 174 of the Revised Penal Code, aforementioned, and the pertinent provisions of the Anti-graft and Corrupt Practices Act.

A. THE TV SET WITH 3.6 KGS. TNT.

Excerpts published on the Official/ Final Report purportedly coming from the DOTC states that the fire and explosion which resulted in the loss of Superferry 14 was caused by the explosion of the 3.6 kgs of TNT which was placed by Dellosa in a TV set which he brought with him on board Superferry 14.

The Report added that Dellosa had a ticket for the Superferry 14 on February 27, 2006. Several questions may be raised: Passenger No. no. 51 had the luggage, bearing the TV set which carried 3.6 kgs of TNT, how did the TV set with the explosives pass the K-9 sniffers as Dellosa loaded it on the Superferry?

B. DOG SNIFFERS

The K-9 sniffers had been engaged in the anti-terrorist war as early as 1998, because of the 9/11 bombing in New York. The Superferry incident occurred in February, 2004. Clear conclusions can be deduced, thus:

- There were no explosives as later found by Respondents since the sniffers would not have allowed it to be loaded on board the Superferry.

C. PAINT AND OTHER COMBUSTIBLE CARGO

The First Report found that there were several kinds of paint to be used on the Superferry 14 and the finding of the MARINA Team who conducted the investigation found that the fire, which was followed by explosions, came from the room where the paints were stored.

It likewise appears that the Superferry 14 carried several tons of fertilizers. These fertilizers when placed at high temperature can result in explosions, the same way as the paints explode.

These facts were evident and known to the ship captain, Respondent Manzo, yet he did not admit to the truth of these significant pieces of information, nor did he testify to any fact, for fear of incriminating himself as grossly negligent in the performance of his duties as captain.

CONCLUSION

There was a deliberate intent on the part of the Respondents to change the conclusion of the MARINA Report to support a totally different conclusion that indeed, the terrorists led by Dellosa and Limbong caused the fire and explosion. The Respondents saw the government advantage to be gained in ruling out Respondent captain's negligence, which would have negated insurance liability. Hence, the shift to a conclusion of a full blown terrorist attack, with the government also gaining political mileage and propaganda success in the war on terror. President Macapagal Arroyo, immediately rode on the "solution" of the Superferry explosion during the first 100 days of her administration, when in fact, these two persons were long detained without charge, and innocent of any alleged participation.

In other words, the radical shift in the findings is detrimental and highly damaging to private citizens Redendo Dellosa and Limbong who, as a result, continued to be detained in Camp Bagong Diwa, and where the latter lost his life during the jail break of April 2005.

These false statements based on falsified findings were contrived by the two Respondents, Secretary Gonzales and Mendoza, being on top of the investigations which reported the false conclusions that terrorist bombing caused the fire/explosion in the Superferry 14.


WHEREFORE, it is respectfully prayed that after due hearing, the Honorable Ombudsman find the Respondents guilty beyond reasonable doubt of Articles 174, 173, 172 of the Revised Penal Code, and of Section of the Anti Graft and Corrupt Practices Act., and to impose on them the appropriate penalties for their deliberate attempt to mislead the public; the Respondent ship captain, to be imposed a penalty of disqualification from holding any position as master of a vessel for his gross negligence in the command of a vessel.

July 20, 2006, Quezon City

FOUNDATION FOR SOCIAL JUSTICE

6/F Tempus Place, Condo II,
Matalino St., Diliman,
Quezon City

By:


FATEMA H. REMEDIOS C. BALBIN
CTC NO- 12726665/ 01-26-06
PTR NO- 7340547/ 01-30-06
IBP NO- 677067/-06-23-06
ROLL NO- 14857, 03-04-60

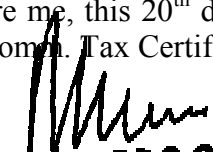
VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

I, REMEDIOS C. BALBIN, subscribing under oath, hereby depose and say:

1. That I am the Complainant in the above-entitled case;
2. That I have prepared the foregoing Complaint;
3. That I have read and reviewed the allegations contained therein and that the same are true and correct of my own knowledge based on my personal investigation of the events and of authentic records;
4. That I have not commenced any other action or proceeding involving the same issues in the Supreme Court or Court of Appeals or other tribunal or agency;
5. That to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, Court of Appeals or any tribunal or agency, either pending or might have been terminated;
6. That should there be a similar action or proceeding that is pending before the Supreme Court or Court of Appeals or any other agency, I undertake to report to this court such fact within 5 days therefrom.


REMEDIOS C. BALBIN
Affiant

SUBSCRIBED AND SWORN to before me, this 20th day of July 2006, by REMEDIOS C. BALBIN, who exhibited to me her Comm. Tax Certificate No. 12726665, issued at Quezon City on January 26, 2006.


ATTY. RICARDO C. NERI
NOTARY PUBLIC
Notary Public
Until Dec. 31, 2006
PTR NO 4556270 I-3-06 M.L.A.
ROLL NO. 34439

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