

pertinent records thereof xxx that a probable cause for Disloyalty to the Republic and to the Filipino people exists against you."

Likewise on the same date, Secretary Drilon placed Sagsago under preventive suspension for ninety (90) days pending formal investigation of the charge to be conducted by 2nd Assistant City Prosecutor Cielito N. Mindaro pursuant to Department Order No. 267 also dated March 9, 1990; the preventive suspension, however, expired on February 19, 1991. Subsequently, or on November 26, 1990, Department Order No. 283, designating State Prosecutor Cesar Solis to prosecute the case, was issued.

In his letter to Secretary Drilon dated November 21, 1990, and affirmed at the hearing on November 26, 1990, T.s.n., Session of November 26, 1990, 3-4, 8, 10, Sagsago denied the charge of disloyalty. While admitting his presence at the North Harbor, Manila, in the evening of November 30, 1989, he termed his presence as an act of indiscretion ("indescrption"), for which he begged "y/our acceptance of my remorse and apologies" "If only to relieve some of the burdens I now carry." Then followed his manifestation to adopt as parts of his answer his testimony in, certain exhibits presented to, all documents submitted to, the Davide Commission, Id., 10-11, T.s.n., Session of December 6, 1990, 7, and his letter of November 26, (21), 1990, T.s.n., Session of December 6, 1990, 7.

After formal investigation, Acting Secretary of Justice Silvestre H. Bello III submitted his Memorandum, dated 2 August 1991, containing his findings and recommendation, for my consideration.

The Acting Secretary of Justice succinctly summarized the evidence as follows:

"Culled from the testimonies, it appears that sometime in the second week of October 1989, the respondent attended a gathering (Comments of the Respondent, p. 143, Folder I; tsn., 10 January 1991, pp. 13-17, Folder II; p. 101, Folder III); that among those present in the said gathering were Lt. Col. Eduardo 'Red' Kapunan, Sgt. Ocon and Sgt. Mendez; that on 26 November 1989, at the Orange Country Tavern in Baguio City, Sgt. Rodolfo Ocon learned of a general meet-

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ting which would be scheduled and which would be held at Pier 8, North Harbor, Manila (tsn., 11 January 1991, pp. 1-2, Folder II); that at about 3 o'clock in the afternoon of 28 November 1989, at the Tondo Restaurant in Baguio City, Sgt. Ocon was informed by MSgt. Abe about another assembly or general meeting at 5 o'clock in the afternoon of 30 November 1989 at Pier 8, North Harbor and for him to inform the other members who might be interested in attending that meeting (Folder III, p. 124; tsn., 10 January 1991, pp. 35-36, Folder II); that sometime in mid-November, Sgt. Ocon told Sgt. Mendez that there was going to be a meeting at the North Harbor (tsn., 11 January 1991, pp. 37-38, Folder II; tsn. 31 May 1990, p. 10 Folder VI); that Sgt. Ocon told Sgt. Antonio Alimbuyao about the general meeting of the Guardians (tsn., 11 January 1991, pp. 21-26, Folder II); that at about 6 o'clock in the morning of 30 November 1989, Sgt. Mendez informed Sgt. Jovito Marron about a meeting at Pier 8; that Sgt. Mendez asked Sgt. Marron to tell the respondent about it (tsn., 27 December 1989, pp. 14-16, Folder II; tsn., 31 May 1990, p. 11, Folder VI); that at about 6:30 o'clock in the morning of 30 November 1989, Sgt. Marron instructed Nena P. Edduba to inform her uncle, the respondent, about the meeting; that Edduba, relayed the message to her uncle at about 7 o'clock in the morning of 30 November 1989 (tsn., 26 November 1990, pp. 32-38, Folder II); that at around 9 o'clock in the morning, the respondent, Ikeuchi and three (3) others asked Daniel T. Fariñas if he knew of a driver for Manila (tsn., 26 November 1991, pp. 13-32); that at about 8:25 o'clock in the evening of 30 November 1989, Sgt. Ocon proceeded to the restaurant as told to him by Msgt. Abe at the North Harbor (tsn., 10 January 1991, p. 38); that Sgt. Camacho arrived at Pier 8, between 6 and 7 o'clock in the evening of 30 November 1989; that Sgt.

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Alimbuyao arrived alone at Pier 8 at past 5 o'clock in the afternoon of 30 November 1989; that Sgt. Mendez and Sgt. Daza, in civilian clothes and unarmed, arrived at North Harbor in the afternoon of 30 November 1989 (tsn., 31 May 1990, p. 12, Folder VI); that the respondent and Ikeuchi left Baguio City at about 9:30 o'clock in the morning of 30 November 1989 (tsn., 5 May 1990, p. 17, Folder V); that they reached Pier 8 about 6:30 o'clock in the evening of that day (Sworn Statement of the respondent, Folder III, p. 36; tsn., 10 January 1991, pp. 36-45, Folder II); that the respondent and Ikeuchi saw Sgt. Mendez and Sgt. Ocon together with some 12 to 15 soldier-members from the PMA sitting in one of the restaurants thereat (Sworn Statement of the respondent, Folder III, p. 36); that Sgt. Ocon met Sgt. Camacho and Sgt. Alimbuyao thereat (tsn., 10 January 1991, pp. 36-45, Folder II); that they passed the time in the restaurant; that, meanwhile, other members from the PMA had started arriving until their total number reached thirty (30); that at about 9:30 o'clock in the evening, someone asked them if their group came from Baguio City, to which they answered in the affirmative; that they were asked by the person to follow him and they went to the building of the Philippine Ports Authority (PPA) (tsn., 10 January 1991, pp. 36-45, Folder II; Sworn Statement of the respondent, Folder III, p. 36); that the place was filled with people and that there was some sort of festivity inside; that after partaking of the food and drinks thereat, the respondent went outside; that the respondent, Sgt. Alimbuyao and Sgt. Camacho remained outside because it was hot inside the building (Ibid.); that at about 11 o'clock, a certain 'somebody' arrived; that this 'somebody' announced at the gathering about the 'good news' which is to change the government because it is corrupt; that this 'somebody' asked if the Baguio group was joining; that Sgt. Ocon

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answered, 'if it is for the good of the country' (tsn., 10 January 1991, pp. 36-45, Folder II; tsn., 31 May 1990, Folder VI); that the respondent called to Ikeuchi who, in turn, called Sgt. Mendez who also called to Sgt. Ocon; and that the respondent told them something wrong was happening so they were not joining and they were going to disperse quietly in groups of two's or three's (Sworn Statement of the respondent, Folder III, p. 37; tsn., 31 May 1990, pp. 20-35, Folder VI; tsn., 10 January 1991, pp. 36-45, Folder II; tsn., 11 January 1991, pp. 31-33);" (at pp. 3-4).

Evaluating the evidence, the Acting Secretary of Justice found these insufficient to support the charge for disloyalty to the Republic and the people, saying, in his Memorandum for me, Id., at 5-6, that:

12 "For the reasons stated hereunder, we do not find sufficient evidence to hold the respondent liable for Disloyalty to the Republic and to the people, but find, however, that the evidence would sustain respondent's liability for Conduct grossly prejudicial to the best interest of the service.

"It is admitted that the respondent is the President of the Guardians Centre Foundation, Inc. (GCFI) in Region I. It is also conceded that the respondent, together with Ikeuchi, Sgt. Ocon, Sgt. Mendez, Sgt. Camacho and Sgt. Alimbuyao, left Baguio City in the morning of 30 November 1989 to attend a meeting of the GCFI at Pier 8, North Harbor. It has been established that they and other members of the GCFI, totalling about thirty (30) in all, were present on that evening at the North Harbor. However, it has not been shown that they were armed and/or provided with firearms to indicate their support for the December 1989 coup attempt.

"From the testimonies given during the investigation, there appears to be inconsistencies as to the presence of the respondent inside the room when the

announcement concerning the 'good news' that the government would be changed because it is corrupt, was made. However, the fact remains that when the announcer (the 'somebody' referred to in the testimonies of witnesses) asked for the reaction of the Baguio group, it was Sgt. Ocon who replied, 'if it is for the good of the country'. All witnesses, namely: Sgt. Ocon, Sgt. Mendez, Sgt. Camacho, Sgt. Alimbuyao, and even Ikeuchi in his testimony before the Davide Commission, were unanimous in saying that the respondent had decided, then and there to warn his group that something wrong was happening, that they were not joining the coup d'etat, and that they should disperse quietly in groups of two's or three's.

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 "Obviously, these are not acts of Disloyalty which, as an administrative offense, is punishable with dismissal under Civil Service Commission (CSC) Memorandum Circular No. 30, s. 1989, entitled 'Guidelines in the Application of Penalties in Administrative Cases'. Disloyalty is not defined nor is it mentioned as one of those grounds for disciplinary action enumerated under Section 36 of Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines.

"The offense of Disloyalty, however, can be inferred from Republic Act No. 6713, otherwise known as the 'Code of Conduct and Ethical Standards for Public Officials and Employees' (20 February 1989), the pertinent portion of which reads as follows:

"SEC. 4 (A). Every public official and employee shall observe the following standards of personnel conduct in the discharge and execution of official duties. xxx xxx xxx

(g) Commitment to democracy - Public officials and

and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability, and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the Constitution and put loyalty to country above loyalty to persons or party."

ff "On the basis of the foregoing, the respondent, in deciding not to join the December 1989 coup attempt and enjoining his members not to participate therein, manifested by deed the supremacy of civilian authority over the military, and therefore, his commitment to democracy.

"Assuming arguendo that at about 11 o'clock in the evening of 30 November 1989, respondent was then inside the PPA room and that he merely kept silent when a certain 'somebody' asked what the Baguio group can say about the 'good news', his silence thereat cannot be construed as Disloyalty. Furthermore, respondent's decision for him and his group not to join the December 1989 coup and instead leave the premises quietly discounts acts of Disloyalty. In the case of United States vs. Ravidas, 4 Phil. 271 (1905), the Supreme Court held that Act No. 292 of the Civil Commission defines and specifies the acts which shall be punished as insurrection, but among those acts, the silence of the defendant as regards the existence of some insurgents in a certain place is not enumerated; however reproachful the silence of the defendant may be, it does not in itself constitute the crime of insurrection."

However, the Acting Secretary of Justice saw such conduct as "Conduct Grossly Prejudicial to the Best Interest of the Service", explaining, that:

"The respondent admits having attended a meeting where Lt. Col. 'Red' Kapunan, a known rebel, was present, yet

being a public officer, he did not report the presence and/or his sighting of the rebel officer, thereby contributing to, if not actually hindering, the Government's efforts at capturing rightist rebels. This fact, in conjunction with his presence on the eve of the coup at the Pier in North Harbor, where people were gathering in strength for the launching of the coup d'etat, albeit the fact that he did not, by overt acts, join the coup itself, his presence thereat, being then a public officer, caused the Government and this Department great embarrassment, a fact which the respondent admits and realizes as a fault. As the respondent puts it, he 'did not exercise proper caution, judgment, or wisdom.'" (6-7)

fl Accordingly, he recommended the imposition of the penalty of suspension for a period of one (1) year without pay.

I agree with the findings and recommendation of the Acting Secretary of Justice. It bears noting that Sagsago himself, in his letter to Secretary Drilon of November 21, 1990, decried his own conduct as follows:

"I am fully aware that my presence at the North Harbor caused too much embarrassment to the Department particularly to the Secretary of Justice in view of my official position. The event has made me anachronistic to the Department which is presently prosecuting rebels whether of the left or the right,"

even as he continued:

"In the light of the present charge against me, it may appear and seem suspect, if not insincere, were I to say I am sorry. But truly I am and more than this, I feel so much ashamed because my very Superiors in the Department are affected by my indiscretion. If I am humbling myself, it is not so much as to save my career - or what is left of it now - but because, it is only proper for I am the cause of all these troubles.

"If only to relieve some of the burdens I now carry, may I beg your acceptance of my remorse and apologies."

WHEREFORE, Fourth Assistant City Prosecutor ELMER MANUEL SAGSAGO of Baguio City is hereby found guilty of Conduct Prejudicial to the Interest of the Service and, accordingly, suspended from office for a period of one (1) year without pay, effective upon his receipt of a copy of this Administrative Order.

DONE in the City of Manila, this 24th day of September, in the year of Our Lord, nineteen hundred and ninety-one.

Ferron S. Aquino

By the President:

Mariano Sarmiento II

MARIANO SARMIENTO II
Deputy Executive Secretary

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