

# A SURVEY OF THE DEVELOPMENTS ON THE POWER OF INQUIRY IN THE PHILIPPINE SETTING

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*“Each department of the government has exclusive cognizance of the matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely restrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.”<sup>1</sup>*

Lawmaking is the foremost power of a legislature. It is, as a matter of fact, the main reason for the existence of a country’s legislative body. A necessary implication of this power is the power to conduct legislative investigations in aid of legislation. A country’s lawmaking body has to inform itself of the facts and circumstances to enable it to enact appropriate laws for its constituents. Recognizing this fact, the framers of the 1987 Constitution deemed it proper to expressly incorporate the power of legislative inquiry in the fundamental law of the country. Thus, Article VI, Section 21 of the Constitution provides:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Practically in every country, the right of the legislature to conduct investigations has been challenged. The legal power to compel witnesses to testify and to punish them for contempt has been assailed as a violation of civil liberties and the right to privacy. Moreover, it has usually been contended that every administration had the right to withhold information in the public interest.

Against these contentions, the power of Congress to investigate may be justified on a number of grounds. The main justification is its necessity in affording the legislative branch of the government, which is vested by the Constitution with lawmaking powers, the means to be

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<sup>1</sup> *Angara v. Electoral Commission*, 63 Phil 139 (1936), at 156.

informed of the facts essential to intelligent legislation. Since the “ideas for legislation originate not solely from the Congress but also from the chief executive, administrative agencies, political interest groups, and various party agencies and party spokesmen,”<sup>2</sup> action cannot be intelligently taken without knowledge of the facts and conditions to which it is intended to apply.

In relation to its lawmaking function, the legislature also has the function of checking the other branches of government, referred to as the *congressional oversight*. “Broadly defined, congressional oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted.”<sup>3</sup> The acts done by Congress in the exercise of its oversight powers may be divided into three categories, to wit: scrutiny, investigation, and supervision.<sup>4</sup> The Congress has several means to review administration of the Executive, the most prominent of which is the congressional oversight through investigation, which is exercised by the Congress through inquiries in aid of legislation. This category encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed legislation. In the absence of restrictions upon its authority, Congress and its committees have virtually plenary power to compel information needed to discharge legislative functions from executive agencies, private persons and organizations.<sup>5</sup>

Legislative investigations are necessary likewise to keep the administration sensitive to public opinion. The 1987 Constitution seeks to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to enable them to exercise effectively their constitutional rights,<sup>6</sup> for an informed citizenry is essential to the existence and proper functioning of any democracy. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies

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<sup>2</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 3, citing W. Keefe & M. Ogul, *The American Legislative Process: Congress and the States*, 4th ed. (1977), at 14-15.

<sup>3</sup> *Macalintal v. Commission on Elections*, 405 SCRA 614 (2003), at 705.

<sup>4</sup> *Id.*, at 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> CONST., art. XI, § 1, art. II, § 28, art. III, § 7.

and their effective implementation. “It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people’s will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.”<sup>7</sup>

Legislative investigations are necessary to discover and present the facts so that the electorate can pass judgment upon the government and its policies. They serve to expose problems and abuses in private groups and public agencies, hence, offer extraordinary opportunities for influencing public opinion. Furthermore, publicity itself may lead to the correction of abuses.

Article XI, Section 1 of the Constitution states that:

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

Corollarily, it is provided in Article II, Section 28 that:

Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Furthermore, Article III, Section 7 reads:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

In the 1950 case of *Arnault v. Nazareno*,<sup>8</sup> the Supreme Court recognized that “the power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function. A legislative

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<sup>7</sup> *Valmonte v. Belmonte, Jr.*, 170 SCRA 256 (1989), at 265.

<sup>8</sup> 87 Phil. 29 (1950), at 45.

body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislation body does not itself possess the requisite information – which is not infrequently true – recourse must be had to others who possess it.”

American constitutional authorities dictate that there are three theories on the source of the legislative power to investigate.<sup>9</sup> The first holds that the power is not dependent on any grant of authority in the Constitution. Rather, it is inherent in any duly constituted legislature. The second states that this power may be justified under the doctrine of implied powers. It is necessary and proper to the exercise of the most basic function of Congress, which is to legislate. The third and the last theory holds that the power may be justified under the principle of checks and balances. For the same reason that the Supreme Court was justified in assuming the power to rule on the constitutionality of legislation, the legislature was justified in asserting the power to investigate.<sup>10</sup>

On whatever theory the legislature’s power to investigate stands, history bears out the legislature’s possession of this power. And with the power to conduct inquiries in aid of legislation fully embedded in the Constitution and wholly recognized as valid by the highest court of the land, the said power is solidly rooted in Philippine law and jurisprudence. It can no longer be disputed. Nevertheless, the question as to the limits of inquiry is unsettled. Where does the end of legislative inquiry lie? Its unresolved boundaries make it a hazard – with possibility of abuse and misuse of power.

This paper aims to study the extent – scope and limitations – of the Congress’ power of inquiry. Ultimately, it seeks to determine whether the scope of this power is too broad or too narrow, and to resolve whether the limitations are severe or not severe enough, through a survey of history, jurisprudence and law.

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<sup>9</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 25-26.

<sup>10</sup> *Id.* at 25-26, *citing* O. Stephens, Jr. & J. Scheb II, *American Constitutional Law*, 2nd ed. (1999), at 97.

## HISTORY OF LEGISLATIVE INVESTIGATIONS IN AID OF LEGISLATION

### *A. British, Colonial and U.S. Experience*

Legislative investigations have marked the annals of Congress as early as the 1790s. The power to summon witnesses and compel testimony originated in England, and it is in that country that the scope of legal power is broadest and the potential power of the legislature is greatest.<sup>11</sup> It has been said that the House of Summons could inquire into “everything which it concerns the public weal for them to know; and they themselves... are entrusted with the determination of what falls within that category. Coextensive with the jurisdiction to inquire must be their authority to call for the attendance of witnesses, to enforce it by arrest when disobedience makes that necessary...”<sup>12</sup> Historically, this power was used in inquiries of committees concerned with discovering data for proposed legislative enactments.<sup>13</sup>

By 1689, a host of committees in England was given broad authority to investigate the operations of the government. On June 1, 1689, due to dissatisfaction with the conduct of the war in Ireland, a committee was created “to inquire who has been the Occasion of the Delays in sending Relief over into *Ireland*, and particularly to *Londonderry*.”<sup>14</sup> Redress of grievances over prison administration also necessitated an inquiry to obtain facts inaccessible in the absence of witnesses who may be summoned and examined under oath.

Naturally, the representative assemblies of the Thirteen Colonies in America assumed the powers and privileges of the British House of Commons. In the early days of their existence, the state legislatures in America adopted committees of inquiry. In 1824, for instance, the New York Assembly appointed a committee to discover whether the charter of the Chemical Bank had been procured by corrupt means. According to Judge Daly in New York:

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<sup>11</sup> N. Stamps, *A Comparative Study of Legislative Investigations: England, France, and Weimar Germany* (1952).

<sup>12</sup> *Howard v. Gosset*, 10 Q.B. 359 (1845).

<sup>13</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 7, citing J. Landis, *Constitutional Limits on the Congressional Power of Investigation*, Vol. 40, *Harvard Law Review*, (1926), at 153, 157.

<sup>14</sup> *Id.* at 25-26, citing J. Landis, *supra* note 13, at 153, 162.

"...It is well-established principle of this parliamentary law, that either house may institute any investigation having reference to its own organization, the conduct or qualification of its members, its proceedings, rights, or privileges, or any matter affecting the public interest upon which it may be important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of a law. It is essential to the full and intelligent exercise of the legislative function... In American legislatures the investigation of public matters before committees, preliminary to legislation, or with the view of advising the house appointing the committee is, as a parliamentary usage, as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committee, and to punish for disobedience has been frequently enforced..."<sup>15</sup>

The first investigating committee of the Congress of the United States was created on March 27, 1792. It was tasked to inquire into the disaster to General St. Clair and his army where soldiers were slaughtered at the hands of the Indian tribes of the Northwest territory.<sup>16</sup> One investigation after another was conducted by the U.S. legislature. On December 18, 1818, the Senate, for the first time, appointed a committee with broad powers to investigate and call for persons and papers.<sup>17</sup>

The post-Civil War period was more active compared to the earlier years of legislative investigations. According to Dean Landis,<sup>18</sup> this was brought about by the swift populating of the west, and the tremendous increase of industrialism in the east. He comprehensively explains, thus:

Government penetrates still further into areas hitherto restricted. Scandals evoke Congressional investigations into the workings of government. New problems arise, and legislative control demands that their facts be presented to the body proposing to act upon them. The Spanish-American War brings new territories and problems arising from extending government over a far-flung empire. An outstanding phenomenon of these years of national growth is

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<sup>15</sup> *Id.* at 10-11, *citing* J. Landis, *supra* note 13, at 153, 167-168.

<sup>16</sup> *Id.* at 11, *citing* R. Goldfarb, *The Contempt Power*, (1963), at 196.

<sup>17</sup> *Id.* at 12, *citing* J. Landis, *supra* note 13, at 153, 175-176.

<sup>18</sup> Dean James Landis was Dean of the Harvard Law School and former Chairman of the U.S. Securities and Exchange Commission.

the extension made in the executive arm of government by legislative enactment, by the creation of newer and larger departments, commissions and administrative boards. Their functioning is the continuous subject of Congressional scrutiny, as mismanagement uncovers inefficient organization and abuse reveals want of proper legislative safeguards.<sup>19</sup>

From 1792, when the first legislative investigation was had in the U.S., to 1942, there were only 600 congressional investigations,<sup>20</sup> or just an average of four investigations in one year. This radically changed, however, with the change in the American context. National security and the fear of subversion became prime concerns of the people and government. Legislative investigating committees asserted greater powers. Thus, in thirteen years between 1944 and 1957, there were 226 citations for contempt of Congress.<sup>21</sup> The House Un-American Activities Committee alone held 230 public hearings from 1945 to 1957.<sup>22</sup>

### *B. The Philippine Experience*

There were no provisions on legislative investigations in aid of legislation in the organic acts<sup>23</sup> in force in the Philippines from the onset of the American period. The 1935 Constitution also did not provide for legislative investigations. However, it has been said that the Congress' power of inquiry itself does not need to be expressly granted. It may be implied from the express power of legislation.

The Supreme Court adopted this very same principle in *Arnault v. Nazareno*.<sup>24</sup> This case involved a Senate investigation of the reportedly anomalous purchase of the Buenavista and Tambobong Estates by the Rural Progress Administration, in which the government was allegedly defrauded ₱5,000,000.00. Jean Arnault, who was considered a leading witness in the controversy, was called to testify thereon by the Senate. On

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<sup>19</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 12-13, citing J. Landis, *supra* note 13, at 153, 192.

<sup>20</sup> *Id.* at 19, citing R. Goldfarb, *supra* note 16.

<sup>21</sup> *Id.* at 19, citing R. Goldfarb, *supra* note 16, at 197.

<sup>22</sup> *Ibid.*

<sup>23</sup> McKinley's Instruction to the Second Philippine Commission, The Philippine Bill of 1902, and The Philippine Autonomy Act of 1916.

<sup>24</sup> 87 Phil. 29 (1950), at 45.

account of his refusal to answer a question which he claimed was “self-incriminatory,” he was, by resolution of the Senate, detained for contempt. Upholding the Senate’s power to punish Arnault for contempt, the Court, citing *McGrain v. Daugherty*<sup>25</sup> and *Anderson v. Dunn*,<sup>26</sup> held:

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislation body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who possess it... The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behavior, does not by necessary implication exclude the power to punish for contempt any other person.

Dispelling any doubt as to the Congress’ power of inquiry, such power was provided for for the first time in Article VIII of the 1973 Constitution, which reads:

Sec. 12. (1) There shall be a question hour at least once a month or as often as the Rules of the Batasang Pambansa may provide, which shall be included in its agenda, during which the Prime Minister, the Deputy Minister or any Minister may be required to appear and answer questions and interpellations by Members of the Batasang Pambansa. Written questions shall be submitted to the Speaker at least three days before a scheduled question hour. Interpellation shall not be limited to the written questions, but may cover matters related thereto. The agenda shall specify the subjects of the question hour. When the security of the State so requires and the President so states in writing, the question hour shall be conducted in executive session.

(2) The Batasang Pambansa or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

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<sup>25</sup> 273 U.S. 135; 71 L. ed., 580; 50 A.L.R., 1.

<sup>26</sup> 6 Wheaton, 204; 5 L. ed., 242.

Under the present Constitution, the power is expressly recognized in Article VI, Section 21. It reads:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

This provision is worded exactly as its counterpart in the 1973 Constitution except that, in the latter, it vests the power of inquiry in the unicameral legislature established therein, the Batasang Pambansa and to its committees. The present Constitution also contains a provision on the question hour, embodied in a separate section or under Section 22 of Article VI.

Question hour, is of course, different from inquiries in aid of legislation. As the High Court held in *Senate v. Ermita*,<sup>27</sup> while the question hour is closely related with and complementary to the legislative power of inquiry in aid of legislation, the two should not be considered as pertaining to the same power of Congress. The question hour aims to obtain information in pursuit of the oversight function of Congress. Legislative inquiry, on the other hand, aims to elicit information that may be used for legislation. The Court further expounded that attendance was meant to be compulsory in inquiries in aid of legislation, while the mandatory nature of attendance during the question hour was removed so as to conform more fully to the principle of separation of powers. Congressional oversight may be aided by compulsory process only to the extent that it is performed in pursuit of legislation.

Significantly, the 1987 Constitution recognizes the power of investigation, not just of Congress, but also of “any of its committees.”<sup>28</sup> This constitutes a direct conferral of investigatory power upon the committees, so that the mechanisms which the Houses can take in order to effectively perform their investigative function are also available to the committees.<sup>29</sup>

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<sup>27</sup> 488 SCRA 1 (2006), at 57-58.

<sup>28</sup> CONST., art. VI, § 21.

<sup>29</sup> S.J. Bernas, *The 1987 Constitution of the Republic of the Philippines* (2003), at 739.

## SCOPE OF THE LEGISLATIVE POWER TO INVESTIGATE

### *A. In Aid of Legislation*

The Congress may inquire into any subject matter that is in aid of legislation. This is true whether such legislation is already under consideration or still to be drafted. Indeed, as declared by the Supreme Court in *Sabio v. Gordon*,<sup>30</sup> “[t]he Congress’ power of inquiry, being broad, encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed statutes.” The questions that may be raised in a legislative investigation do not necessarily have to be relevant to any pending legislation. They only need to be relevant to the subject matter of the investigation being conducted. It is not even necessary to expressly state that the inquiry is to the end that the legislature’s findings on the subject matter could be the subject of legislation. The Court is bound to presume that the action of the legislative body was with a legitimate object if it was capable of being so construed, and it has no right to assume that the contrary was intended.<sup>31</sup>

The Congress’ power of inquiry has gained more solid existence with the Supreme Court’s expansive interpretation. In *Senate v. Ermita*,<sup>32</sup> the Court categorically stated that “the power of inquiry is broad enough to cover officials of the executive branch.” That the informing power of the President may be exercised by him indirectly through the Cabinet members, is recognized by the Constitution through the question hour, which is embodied in Article VI, Section 22 thereof. It reads:

The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

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<sup>30</sup> G.R. No. 174390, October 17, 2006.

<sup>31</sup> *Arnault v. Nazareno*, 87 Phil. 29 (1950) at 49.

<sup>32</sup> 488 SCRA 1 (2006), at 42.

This provision will enable the Congress to obtain information from the department secretaries on the manner they are implementing the laws it has enacted and also on matters related to pending or prospective legislation, usually recommended by the administration itself. The operation of government, being a legitimate subject for legislation, is a proper subject for investigation. Since Congress has authority to inquire into the operations of the executive branch, the power of inquiry necessarily extends to executive officials who are the most familiar with and informed on executive operations. If the information possessed by executive officials on the operation of their offices is necessary for wise legislation on that subject, by parity of reasoning, Congress has the right to such information and the power to compel the disclosure thereof.

The deliberations of the 1986 Constitutional Commission<sup>33</sup> show that the provision on investigations in aid of legislation under Article VI, Section 21 and the question hour under Section 22 of the same article, although distinct, are not entirely nor necessarily separate. The legislature's power of inquiry to aid legislation overlaps with its function to check and balance the executive power as provided in the provision on the question hour. This is only logical because the question hour could

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<sup>33</sup> MR. DAVIDE. ...I have only one reaction to the placement of the Question Hour. I propose that instead of putting it as Section 31, it should follow Legislative Inquiries.

THE PRESIDING OFFICER (Mr. Jamir). What does the committee say?

MR. GUINGONA. I ask Commissioner Maambong to reply, Mr. Presiding Officer.

MR. MAAMBONG. Actually, we considered that previously when we sequenced this but we reasoned that in Section 21, which is Legislative Inquiry, is actually a power of Congress in terms of its own lawmaking; whereas, a Question Hour is not actually a power of Congress in terms of its own lawmaking power because in Legislative Inquiry, it is in aid of legislation. And so we put Question Hour as Section 31. I hope Commissioner Davide will consider this.

MR. DAVIDE. **The Question Hour is closely related with the legislative power, and it is precisely necessary as a complement to or a supplement of the Legislative Inquiry. The appearance of the members of the Cabinet would be very, very essential not only in the application of check and balance but also, in effect, in aid of legislation.**

MR. MAAMBONG. After conferring with the committee, we find merit in the suggestion of Commissioner Davide. In other words, we are accepting that and so this Section 31 would now become Section 22. Would it be, Commissioner Davide?

MR. DAVIDE. Yes.

(RECORDS, Vol. V at 900-901).

aid in crafting legislation, or the need for legislation might become evident during the question hour.<sup>34</sup>

***B. Government agencies created by Congress and officers whose positions are within the power of Congress to regulate or even abolish.***

Notably, the power given to the President by the Commonwealth Constitution to prevent the appearance of his secretaries before the Congress has not been retained in the 1987 Constitution.<sup>35</sup> This is a deliberate effort of the present charter to reduce the authority of the President for fear of the resurgence of another dictatorship. The members of the Cabinet may appear before either House of Congress under conditions laid down in Article VI, Section 22 of the 1987 Constitution.

The power of the Congress to conduct inquiries in aid of legislation was emphasized in the case of *Senate v. Ermita*.<sup>36</sup> Therein, the Supreme Court struck down certain provisions of Executive Order No. 464<sup>37</sup> for being unconstitutional to the extent that they bar the appearance of executive officials before Congress. Section 1 of the said order requires all department heads to secure the consent of the President prior to appearing before either House of Congress. Section 2(a) enumerates some confidential or classified information which are covered by the executive privilege while Section 2(b) enumerates who are covered, which include senior officials of executive departments “*who in the judgment of the department heads*” are covered thereby. Section 3 requires all the public officials enumerated in Section 2(b) to secure the consent of the President prior to appearing before either House of Congress.

According to the Court, Section 3, in relation to Section 2(b), is essentially an authorization for implied claims of executive privilege, hence, it contravenes Congress’ power of inquiry. In other words, whenever an

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<sup>34</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 25.

<sup>35</sup> I. Cruz, *Philippine Political Law* (2002), at 166.

<sup>36</sup> 488 SCRA 1 (2006), at 63, 67.

<sup>37</sup> Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation Under the Constitution, and For Other Purposes. Hereinafter referred to as E.O. No. 464.

official invokes E.O. No. 464 to justify his failure to be present, this amounts to a declaration, even without mentioning the term “executive privilege,” that the President, or a head of office authorized by the President, has determined that the requested information is privileged, and that the President has not reversed such determination. Such implied claim deprives Congress of the information in the possession of these officials, without even any specific allegation of the basis of such claim. Indeed, it leaves Congress in the dark on how the requested information could be classified as privileged.

In view of the highly exceptional nature of the privilege, the High Court in that case found it essential to limit to the President the power to invoke the privilege. In other words, the President may not authorize her subordinates to exercise such power. She may of course authorize the Executive Secretary to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is “By order of the President,” which means that he personally consulted with her. “The privilege being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy.”<sup>38</sup>

The Supreme Court also held in *Ermita* that the power of inquiry “even extends to government agencies created by Congress and officers whose positions are within the power of Congress to regulate or even abolish.”<sup>39</sup>

The power of inquiry was again challenged in the case of *Sabio v. Gordon*,<sup>40</sup> wherein the Supreme Court had an occasion to deal with Section 4(b) of Executive Order No. 1.<sup>41</sup> This provision states:

No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance.

Apparently, the purpose of the law is to ensure the unhampered performance by the Presidential Commission against Graft and Corruption (PCGG) of its task. In *Sabio* the Senate invited Chairman Camilo L. Sabio

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<sup>38</sup> 488 SCRA 1 (2006), at 68.

<sup>39</sup> 488 SCRA 1 (2006), at 43.

<sup>40</sup> G.R. No. 174390, October 17, 2006.

<sup>41</sup> Creating the Presidential Commission on Good Government. Hereinafter referred to as E.O. No. 1.

of the PCGG to be one of the resource persons in a public meeting for the purpose of deliberating on Senate Resolution No. 455 introduced by Senator Miriam Defensor-Santiago. The said resolution directs “an inquiry in aid of legislation on the anomalous losses incurred by the Philippine Overseas Telecommunications Corporation (POTC), Philippine Communications Satellite Corporation (PHILCOMSAT), and PHILCOMSAT Holdings Corporation (PHC) due to the alleged improprieties in their operations by their respective Board of Directors.” Chairman Sabio, however, declined the invitation, invoking the aforementioned Section 4(b) of E.O. No. 1. Consequently, Senator Richard J. Gordon issued a subpoena *ad testificandum*, requiring Chairman Sabio and the four PCGG Commissioners to appear in the public hearing scheduled on August 23, 2006 and testify on what they know relative to the matters specified in Senate Resolution No. 455. Again, Chairman Sabio refused to appear. Another notice was sent to Chairman Sabio requiring him to appear and testify on the same subject matter set on September 6, 2006, but Chairman Sabio still did not comply. Eventually, Chairman Sabio and the PCGG Commissioners were arrested for contempt of the Senate and brought to the Senate premises where they were detained.

The Supreme Court declared unconstitutional Section 4(b) of E.O. No. 1, which exempts the PCGG members and staff from the Congress’ power of inquiry. The PCGG belongs to the class of “government agencies created by Congress and officers whose positions are within the power of Congress to regulate or even abolish.” Therefore, it is covered by the Congress’ power of inquiry.<sup>42</sup>

It was further held in that case that “Section 4(b), being in the nature of an immunity, is inconsistent with the principle of public accountability, for it places the PCGG members and staff beyond the reach of courts, Congress and other administrative bodies. Instead of encouraging public accountability, the same provision only institutionalizes irresponsibility and non-accountability.” The provision was also declared to be contrary to the people’s right to information. “It limits or obstructs the power of Congress to secure from PCGG members and staff information and other data in aid of its power to legislate.”<sup>43</sup>

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<sup>42</sup> G.R. No. 174390, October 17, 2006.

<sup>43</sup> *Ibid.*

### *C. Power to call for persons and to commit for contempt*

The power to call for persons and to commit for contempt as an incident of the power to investigate is indisputable. In *McGrain v. Daugherty*,<sup>44</sup> the U.S. Supreme Court held: "Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed." The power of inquiry will not be complete if for every contumacious act, the Congress has to resort to judicial interference.

This power traces its roots to the British Parliament. Dean Landis emphasizes that the power to punish recalcitrant witnesses is a power ancillary and subordinate to the legislative process. Its origins and its exercise are either necessary for the legislature's self-defense or its efficient functioning.<sup>45</sup>

Failure or refusal to attend a legitimate legislative investigation or contumacy of the witness may be punished as legislative contempt. The punishment that may be imposed includes imprisonment. As the Supreme Court held in *Arnault v. Nazareno*,<sup>46</sup> the offender could be imprisoned indefinitely by the Senate, and not merely for the duration of the session, provided that the punishment did not become so long as to violate due process. The same decision declared that the imprisonment, if imposed by the House of Representatives, could last not only during the session when the offense was committed but until the final adjournment of the body. Thus:

"There is no sound reason to limit the power of the legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body."

### LIMITATIONS TO THE LEGISLATIVE POWER TO INVESTIGATE

It has already been stated that the power of legislative investigation does not have to be expressly granted for it may be implied from the

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<sup>44</sup> 273 U.S. 135; 71 L. ed., 580; 50 A.L.R., 1.

<sup>45</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 25-26, citing J. Landis, *Constitutional Limits on the Congressional Power of Investigation*, Harvard Law Review, Vol. 40, (1926), at 153, 157.

<sup>46</sup> 87 Phil. 29 (1950), at 62.

express power of legislation. The fact that Article VI, Section 21 has been incorporated in the Constitution was not so much to authorize the power. On the contrary, it was to limit the conduct of legislative inquiries.<sup>47</sup>

The right of Congress to conduct inquiries in aid of legislation is, in theory, no less susceptible to abuse than executive or judicial power. Indeed, in the past, the Congress' power of inquiry was much abused by some legislators who used it for illegitimate ends or to intimidate witnesses, usually for grandstanding purposes only. There were also times when the subject of the inquiry was purely private in nature and therefore outside the scope of the powers of Congress.<sup>48</sup>

### A. *Judicial Review*

The Congress' power of inquiry may be subjected to judicial review pursuant to the Supreme Court's expanded powers under Article VIII, Section 1 of the Constitution. The jurisdiction to delimit constitutional boundaries has been given to the Court. As noted in *Bengzon, Jr. v. Senate Blue Ribbon Committee*,<sup>49</sup> the Court has jurisdiction "for the purpose of determining the scope and extent of the power of the Senate Blue Ribbon Committee to conduct inquiries into private affairs in purported aid of legislation."

Indeed, the power of legislative inquiry is not absolute or unlimited. There are certain requisites before this power can be exercised. *First*, the investigation must be in aid of legislation. *Second*, the investigation must be in accordance with the duly published rules of procedure of the investigating body. And *third*, the rights of persons appearing in or affected by such inquiries shall be respected. The inquiry itself might not properly be in aid of legislation, hence, beyond the constitutional power of Congress. The Court cited *Arnault v. Nazareno*,<sup>50</sup> wherein it was held that the inquiry, to be within the jurisdiction of the legislative body making it, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate or to expel a member. Legislative inquiries could not usurp judicial functions.

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<sup>47</sup> I. Cruz, *Philippine Political Law* (2002), at 163.

<sup>48</sup> *Ibid.*

<sup>49</sup> 203 SCRA 767 (1991), at 776.

<sup>50</sup> 87 Phil. 29 (1950), at 48.

### ***B. In Aid of Legislation***

The scope of the power of legislative investigation is also its limitation – the Congress may inquire into any subject matter in aid of legislation, provided the same is, indeed, in aid of legislation. “Congress does not have the power to conduct investigations merely for the sake of conducting investigations. Legislative investigation is not an end itself but is merely a means to an end. It is a tool to enable Congress to legislate wisely.”<sup>51</sup>

Indeed, a legislative investigation must have a legislative purpose. For several years, the courts had indulged the presumption that this was so. It was even held by the U.S. Supreme Court in the 1949 case of *Morford v. United States*<sup>52</sup> that such presumption cannot be rebutted by impugning the motives of individual members of the committee of Congress conducting the inquiry.

In the later case of *United States v. Rumely*,<sup>53</sup> however, the U.S. Supreme Court held that the investigation conducted was not in line with the specific legislative purpose authorized in the resolution creating the investigating committee, and thereby narrowed the wide scope of legislative investigations. From then on, the restrictive view of legislative purpose<sup>54</sup> had been adopted. In 1956, the courts went one step further by imposing upon the legislature the duty to show affirmatively the source of authority for each investigation. The Congress was also obliged to prove that the specific question was within the investigating committee’s authority and that the witness’ refusal to answer was willful and deliberate before the latter could be prosecuted for contempt.

Nonetheless, the liberal approach was again adopted in the interpretation of legislative purposes of investigations. The U.S. Supreme Court has held that as long as the legislative purpose is being served by the work of the investigating committee, the improper motives of its members will not vitiate an investigation.<sup>55</sup> It has also been held that even if the

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<sup>51</sup> [www.senate.gov.ph](http://www.senate.gov.ph) (visited on December 20, 2006).

<sup>52</sup> 176 F.2d 54 (D.C. 1949).

<sup>53</sup> 345 U.S. 41 (1953).

<sup>54</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 29.

<sup>55</sup> *Watkins v. United States*, 354 U.S. 178 (1957).

motives which prompted the investigation were purely for the purpose of exposure, the judiciary had no authority to intervene on the basis of such motives so long as Congress acted pursuant to its constitutional power of investigation.<sup>56</sup>

The Philippine Supreme Court has also adopted the swaying position of the U.S. Supreme Court. The liberal approach was observed in *Arnault v. Nazareno*<sup>57</sup> where it was held that “[t]he transaction involved a questionable and allegedly unnecessary and irregular expenditure... of public funds, of which Congress is the constitutional guardian. It also involved government agencies created by Congress and officers whose positions it is within the power of Congress to regulate or even abolish.”

In *Bengzon, Jr. v. Senate Blue Ribbon Committee*,<sup>58</sup> the Court took a restrictive approach when it required that the intended legislation must be evident in the resolution or speech that gave rise to the investigation. It was held therein that the privilege speech of Senator Juan Ponce Enrile calling upon the Senate to look into the possible violation of Republic Act No. 3019 in the take-over of SOLOIL, Inc. by Ricardo Lopa, contained no suggestion of contemplated legislation.

As in the case of *Bengzon, Jr.*, there was also no mention of the intended legislation in the resolution involved in *Arnault*.<sup>59</sup> It was, nonetheless, found that the investigation had a valid legislative purpose. From this, it can be deduced that legislative purpose is presumed when the subject matter of the inquiry is one over which the legislature can legislate.<sup>60</sup>

### C. Due Process

A witness before an investigating committee of Congress should be allowed to know first the question propounded to him or her with the same degree of explicitness and clarity that the Due Process Clause requires in any element of a criminal offense. If the witness objects on grounds

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<sup>56</sup> *Barenblatt v. United States*, 360 U.S. 109 (1959).

<sup>57</sup> 87 Phil. 29 (1950), at 46.

<sup>58</sup> 203 SCRA 767 (1991), at 781.

<sup>59</sup> 87 Phil. 29 (1950).

<sup>60</sup> *Supra* note 54, at 31.

of pertinency of the question under inquiry, the investigating body ought to state for the record the subject under inquiry at that time and how the propounded question is pertinent to the same.<sup>61</sup>

*Arnault v. Nazareno*<sup>62</sup> states the **rule on pertinency** in the Philippines. The Supreme Court held that every question which the investigating body is empowered to coerce a witness to answer must be material or pertinent to the subject matter of the inquiry. It does not follow, however, that every question that may be propounded to a witness be material to any proposed or possible legislation. The materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. It has been stated earlier that the questions that may be raised in a legislative investigation do not necessarily have to be relevant to any pending legislation. They only need to be relevant to the subject matter of the investigation being conducted. It is not even necessary to expressly state that the inquiry is to the end that the legislature's findings on the subject matter could be the subject of legislation.

#### *D. Right to Privacy*

As held in *Barenblatt v. United States*,<sup>63</sup> "the Congress, in common with all the other branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case, the relevant limitations of the Bill of Rights." "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom."<sup>64</sup>

Zones of privacy are recognized and protected under the Philippine laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. These zones are regarded carefully because of the conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized

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<sup>61</sup> *Id.* at 36.

<sup>62</sup> 87 Phil. 29 (1950).

<sup>63</sup> 360 U.S. 109 (1959).

<sup>64</sup> *Morfe v. Mutuc*, 22 SCRA 424 (1968), at 442.

men.”<sup>65</sup> Moreover, the Philippines adheres<sup>66</sup> to the Universal Declaration of Human Rights which mandates that, “no one shall be subjected to arbitrary interference with his privacy” and “everyone has the right to the protection of the law against such interference or attacks.”<sup>67</sup>

There is, undoubtedly, a clash between the right to privacy and the power to cite for contempt in legislative investigations. One view holds that the national interest is always, of necessity, greater than the individual interest. The opposite view holds that individual rights are absolute. Both views pose difficulties. In the former, no individual would be safe from governmental harassment. In the latter, absolute individual freedom would lead to anarchy. These opposing stances must, therefore, be balanced. The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness.<sup>68</sup> An investigation is subject to the prohibition against the enactment of a law abridging freedom of speech. However, freedom of speech is not freedom of silence.<sup>69</sup>

In evaluating a claim for violation of the right to privacy, a court must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion. According to the Court in *Sabio v. Gordon*,<sup>70</sup> the PHC officers and directors in the discharge of their duties as such, “have no reasonable expectation of privacy over matters involving their offices in a corporation where the government has interest, which matters are of public concern and over which the people have the right to information.” The alleged anomalies in the PHILCOMSAT, PHC and POTC, ranging in millions of pesos, and the conspiratorial participation of the PCGG and its officials are compelling reasons for the Senate to exact vital information from the PHC officers and directors, as well as from Chairman Sabio and the PCGG Commissioners to aid it in crafting

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<sup>65</sup> *Ibid.*

<sup>66</sup> CONST., art. II, § 2.

<sup>67</sup> Article 12 of the Universal Declaration of Human Rights.

<sup>68</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 67.

<sup>69</sup> *Id.* at 70.

<sup>70</sup> G.R. No. 174390, October 17, 2006.

the necessary legislation to prevent corruption and formulate remedial measures and policy determination regarding PCGG's efficacy. Indeed, the right to privacy is not absolute where there is an overriding compelling state interest.

### *E. Executive Privilege*

Even where the inquiry is in aid of legislation, there are still recognized exemptions from the power of inquiry, which exemptions fall under the category of "executive privilege." While a transparent government is one of the hallmarks of a truly republican state, even in the early history of republican thought, however, it has been recognized that the head of government may keep certain information confidential in pursuit of the public interest.

The term "executive privilege" is not new in this jurisdiction. It has been used even prior to the promulgation of the 1987 Constitution. Schwartz defines executive privilege as "the power of the Government to withhold information from the public, the courts, and the Congress."<sup>71</sup> The entry in Black's Law Dictionary on "executive privilege" is similarly instructive regarding the scope of the doctrine:

"This privilege, based on the constitutional doctrine of separation of powers, exempts the executive from disclosure requirements applicable to the ordinary citizen or organization *where such exemption is necessary to the discharge of highly important executive responsibilities* involved in maintaining governmental operations, and extends not only to *military and diplomatic secrets* but also to *documents integral to an appropriate exercise of the executive's domestic decisional and policy making functions*, that is, those documents reflecting the frank expression necessary in intra-governmental advisory and deliberative communications."<sup>72</sup>

The doctrine of executive privilege was recognized by the Supreme Court in *Valmonte v. Vasquez*<sup>73</sup> where the Court quoted the U.S. Supreme Court's explanation of the basis for the privilege in *U.S. v. Nixon*.<sup>74</sup>

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<sup>71</sup> B. Schwartz, *Executive Privilege and Congressional Investigatory Power*, Vol. 47, California Law Review 3.

<sup>72</sup> Black's Law Dictionary (6th ed., 1991) at 569-570. (Emphasis supplied)

<sup>73</sup> 244 SCRA 286 (1995), at 295.

<sup>74</sup> 418 U.S. 683 (1974), at 49-50.

“A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately... The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.”

The Supreme Court had the occasion to expound the varieties of executive privilege in the case of *Senate v. Ermita*.<sup>75</sup> One variety of the privilege is the **state secrets privilege** invoked on the ground that the information is of such nature that its disclosure would subvert crucial military or diplomatic objectives. Another variety is the **informer’s privilege**, or the privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law. Finally, a **generic privilege for internal deliberations** has been said to attach to intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.

The Constitutional Committee’s draft of Article VI, Section 22 of the Constitution included a proposal for a Question Hour the intention of which, according to Chairman Davide, was not to require prior presidential approval for the appearance of Cabinet members.<sup>76</sup> This proposal, however, was challenged. It was thought that separation of powers should be preserved and Cabinet members must be protected from being compelled to appear before Congress or its committees. Hence, a substitute provision was proposed which avoided the phrase Question Hour peculiar to the parliamentary system. It was made clear that Congress could not compel Cabinet members to appear but neither could Cabinet members impose their appearance on Congress. Nor may the President be compelled to give his consent.<sup>77</sup> Hence, executive privilege was preserved while at the same time respecting the autonomy of Congress.

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<sup>75</sup> 488 SCRA 1 (2006), at 45-47.

<sup>76</sup> S.J. Bernas, *The Intent of the 1986 Constitution Writers* (1995), at 390.

<sup>77</sup> *Ibid.*

## CONCLUSION

The power to conduct legislative inquiries in aid of legislation is undoubtedly essential to the major congressional functions of legislation, checking the administration, and educating the public. In this light, any subject matter in aid of legislation, whether actual or merely proposed, may be inquired into by Congress. Aside from this, history shows that legislative investigations are sometimes used as a means to achieve primarily the publicity aspirations of the investigator, rather than the legislative purposes of such investigations. Hence, it may be said that the scope of the power of legislative inquiry is broad. Indeed, this power was much abused in the past by the legislators who used it usually for grand-standing purposes only.<sup>78</sup>

Abuse of the power, however, can be minimized, if not prevented all together. There are ways by which the scope of legislative inquiry can be prevented from being too broad. The Constitution itself provides that the investigation should be in aid of legislation. Congress in its invitations to the public officials concerned, or to any person for that matter, usually indicates the subject of inquiry and the pertinent questions to be asked. To further ensure that the investigation to be conducted will achieve its legislative purposes, instead of personal purposes of the investigator, congress may indicate as well in its invitations possible needed statute which prompted the need for the inquiry.<sup>79</sup> This way, there would be less room for speculation on the part of the person invited on whether the inquiry is really in aid of legislation.

It is said that the structure of the Philippine legislature somehow inhibits the educating or informing function of Congress. The said function is easily overlooked for legislative attention has shifted to objectives of “getting the job done” and retaining popular favor, political security and reelection. In this regard, the legislature should remember that legislative inquiries in aid of legislation are intended also to benefit the citizenry, not just Congress. The people are equally concerned with the proceedings and the right to participate therein in order to protect their interests.

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<sup>78</sup> I. Cruz, *Philippine Political Law* (2002), at 163.

<sup>79</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 29-30.

The extent of their participation will largely depend on the information gathered and made to them. To this end, Congress may report committee discussions and decisions. This would greatly enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in the government. Indeed, there is a need to balance the legislative purpose of investigations with the teaching purpose, because “the informing function actuates many inquiries and at times is controlling.”<sup>80</sup>

What makes Congress’ power of inquiry even more powerful is the authority of the investigating body to call for persons and to commit contempt. History shows that some legislative investigations were not observing an adequately high degree of tact or judgment in examining witnesses. As has been discussed earlier, and the Constitution itself provides that, in every legislative investigation, the rights of persons appearing therein or affected thereby shall be respected.<sup>81</sup> However, we are confronted by the problem of how to balance the exercise of the power of Congress to cite for contempt a contumacious witness in a legislative investigation and such witness’ right to privacy. This issue was mentioned by petitioner in *Arnault* but he did not pursue it. Thus, the Court did not have the opportunity to rule on whether the right to privacy is available to a witness in a legislative investigation. Subsequently, in *Sabio*, the Court held that so long as the constitutional rights of witness will be respected by investigating committees, it is the duty of the former to cooperate with the latter in their efforts to obtain the facts needed for intelligent legislative action. “The unremitting obligation of every citizen is to respond to subpoena, to respect the dignity of the Congress and its Committees, and to testify fully with respect to matters within the realm of proper investigation.”<sup>82</sup>

It would seem that whether the scope of the power is too broad or too narrow, or its limitations too severe or not severe enough, is dependent on how the investigator himself understands his power. More than anyone else, he should know the issue, what he seeks to elicit from the witness, and how this information would be pertinent to the issue involved.

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<sup>80</sup> *Supra* note 79, at 5.

<sup>81</sup> CONST., art. VI, § 21.

<sup>82</sup> *Sabio v. Gordon*, G.R. No. 174390, October 17, 2006.

He should also observe a measure of added care in the use of compulsory process. This is but a small price to pay if it would help in ensuring that legislative investigations achieve their legitimate legislative purposes with the least violation of the witness' rights.

To culminate, Chief Justice Reynato S. Puno in his lecture for the second of the Chief Justice Hilario G. Davide, Jr. Distinguished Lecture Series for 2005 said:

How to strike the perfect point of the balance between authority and liberty is a task that requires more than human wisdom. The point of the balance is not static for its moves and seeks to accommodate the greatest good of the greatest number as well as certain inviolable individual rights.<sup>83</sup>

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<sup>83</sup> R. Puno, *Legislative Investigations and the Right to Privacy*, February 28, 2005, at 72.