EN BANC

In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012.

Promulgated:

FEBRUARY 14, 2012

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CONCURRING AND DISSENTING OPINION

SERENO, *J.*:

It is inevitable that every Member of this Court concurs with the general proposition of the Resolution that judicial privilege can be invoked to: (a) deny access to specific portions of the Court's records to the Members of the House Prosecution Panel and the Senate Impeachment Court, and (b) to prevent the oral disclosure of specific matters by the Justices or officials of the Supreme Court before the Senate Impeachment Court. However, judicial privilege cannot be invoked to impose a general or absolute gag order on Members and officials of the Judiciary. Neither can it deny the Senate Impeachment Court and the public in general "informations on matters of public concern," by draping a complete cloak on the Court's records. Judicial privilege is a qualified, not an absolute, privilege. It is but implied in the judicial power, and thus must yield to the categorical imperatives imposed by the Constitution for public accountability. I therefore dissent from certain statements and dispositions in the Resolution.

To draw in sharp lines the extent to which I disagree with some of the language and dispositions of the Resolution, let me state my belief that some of the language in the Resolution violate the Constitution when such language: (a) attempt to regulate or obstruct the duty to explain the dissent

of the minority in the Court; (b) prohibit the disclosure of Gloria Arroyo's notarized Special Power of Attorney (SPA) – thus a public document – that was submitted to the Court; and (c) prohibit the disclosure of a matter as administrative as the time and date my Dissenting Opinion in the *Arroyo TRO* cases[1] was submitted to the Clerk of Court.

Public Accountability and Qualified Judicial Privilege

The pattern for the rights and privileges of Philippine judges are generally drawn from those granted to American judges. Judicial privilege, a child of the doctrine of separation of powers, likewise draws its origins from the American treatment of "privileges." Thus, in U.S. jurisprudence, judicial privilege has always been qualified and had been found to exclude any protection for administrative and non-adjudicatory matters in cases where a Member of the judiciary is being investigated for criminal acts or wrongdoing.

In *Williams v. Mercer*,[2] the United States Court of Appeals Eleventh Circuit had occasion to dwell on the limits of judicial privilege claimed by the staff members of the office of Alcee Hastings, a Judge of the US District Court for the Southern District of Florida. Judge Hastings was the subject of an investigation by the Judicial Council for, among others, conspiring to obtain a bribe in return for an official judicial act. Some of Judge Hastings' staff members were subpoenaed by the Judicial Council to appear before it and produce "appointment diaries, daily schedules or itineraries, calendars, travel itineraries, guest and/or client sign-in sheets, telephone message books, logs and memoranda."

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[1] G.R. No. 199034 (*Gloria Macapagal-Arroyo v. Hon. Leila M. De Lima, in her capacity as Secretary of the Department of Justice and Ricardo A. David, Jr., in his capacity as Commissioner of the Bureau of Immigration*) and G.R. No. 199046 (*Jose Miguel T. Arroyo vs. Hon. Leila M. De Lima, in her capacity as Secretary, Department of Justice, Ricardo V. Paras III, in his capacity as Chief State Counsel, Department of Justice and Ricardo A. David, Jr., in his capacity as Commissioner, Bureau of Immigration*).

[2] 783 F.2d 1488 (20 February 1986).

In their defense, the staff members claimed judicial privilege to prevent them from testifying before the Judicial Council against the actions of Judge Hastings. Denying their claims of confidential information and ordering them to comply with the subpoena of the Judicial Council, the Court of Appeals, speaking through Chief Judge Levin H. Campbell, found that the subpoenaed documents did not come within the purview of the generalized claim of judicial privilege:

> **V. Appellant's Claim of a Privilege Protecting Communications Among Judge Hastings and Members of His Staff**
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> Appellants urge this court to decline to enforce the subpoenas directed to Williams, Ehrlich, Simons, and Miller because they have invoked a testimonial privilege — claimed by Judge Hastings and honored by his staff — **that purportedly protects against disclosure of confidential communications among an Article III judge and members of his staff regarding the performance of his judicial duties.** Appellants liken this privilege to the executive privilege surrounding Presidential communications, the protection expressly accorded Congressional activities by the Speech or Debate Clause of the Constitution, Art. I, § 6, clause 1, and common-law privileges such as that protecting the confidentiality of communications between attorney and client. Enforcement of these subpoenas, it is urged, would require that Williams, Ehrlich, Simons, and Miller reveal confidences entrusted to them by Judge Hastings and would thereby threaten the independence and the effective functioning of the judiciary by chilling and obstructing the full and frank exchange of ideas within chambers necessary to a judge's performance of his official duties.
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> **Although we have found no case in which a judicial privilege protecting the confidentiality of judicial communications has been applied, the probable existence of such a privilege has often been noted.** In *Nixon v. Sirica,* 487 F.2d 700, 717 (D.C.Cir.1973), the District of Columbia Circuit analogized President Nixon's executive privilege, "intended to protect the effectiveness of the executive decision-making process," to that "among judges, and between judges and their law clerks." The same court subsequently reiterated this analogy in *Senate Select Committee on Presidential Campaign Activities v. Nixon,* 498 F.2d 725, 729 (D.C.Cir.1974). Judge MacKinnon's dissent in *Nixon v. Sirica* traced such authorities as existed to support the recognition of a judicial privilege, noting, "Express authorities sustaining this position are minimal, undoubtedly because its existence and validity has been so universally recognized. Its source is rooted in history and gains added force from the constitutional separation of powers of the three departments of government." In a concurring opinion in *Soucie v. David,* 448 F.2d 1067, 1080 (D.C.Cir.1971), Judge Wilkey, discussing Freedom of Information Act exemptions from disclosure of certain executive branch information, stated, "[I]t must be understood that the privilege against disclosure of the decision-making process is a tripartite privilege, because precisely the same privilege in conducting certain aspects of public business exists for

the legislative and judicial branches as well as for the executive. It arises from two sources, one common law and the other constitutional."

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The Supreme Court's reasons for finding a qualified privilege protecting confidential Presidential communications in *United States v. Nixon,* 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), support the existence of a similar judicial privilege. The Court based the executive privilege on the importance of confidentiality to the effective discharge of a President's powers, stating,

> [T]he importance of this confidentiality is too plain to require further discussion. **Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision making process.**

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The Court discerned the constitutional foundation for the executive privilege — notwithstanding the lack of any express provision — in the constitutional scheme of separation of powers and in the very nature of a President's duties:

> [T]he privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of Presidential communications has similar constitutional underpinnings.

If so, the same must be true of the judiciary. The Court, indeed, likened "[t]he expectation of a President to the confidentiality of his conversations and correspondence" to "the claim of confidentiality of judicial deliberations." *United States v. Nixon,* 418 U.S. at 708, 94 S.Ct. at 3107. **Judges, like Presidents, depend upon open and candid discourse with their colleagues and staff to promote the effective discharge of their duties.** The judiciary, no less than the executive, is supreme within its own area of constitutionally assigned duties. **Confidentiality helps protect judges' independent reasoning from improper outside influences. It also safeguards legitimate privacy interests of both judges and litigants.**

We conclude, therefore, that there exists a privilege (albeit a qualified one, *infra*) protecting confidential communications among judges and their staffs in the performance of their judicial duties. But we do not think that this qualified privilege suffices to justify either Williams' noncompliance with the Committee's subpoena duces tecum, or Simon's and Miller's refusals to answer the questions directed to them by the Committee.

A party raising a claim of judicial privilege has the burden of demonstrating that the matters under inquiry fall within the confines of the privilege. **The judicial privilege is grounded in the need for confidentiality in the effective discharge of the federal judge's duties.**

In the main, the privilege can extend only to communications among judges and others relating to official judicial business such as, for example, the framing and researching of opinions, orders, and rulings. Accordingly, Williams had the burden of showing that the Committee's subpoena duces tecum called for the production of documents that would reveal communications concerning official judicial business. We conclude that she has failed to meet that burden.

The Committee's subpoena duces tecum served upon Williams directs her to produce only the following documents:

> 1. Appointment diaries, daily schedules or itineraries, calendars, travel itineraries;
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> 2. Guest and/or client sign-in sheets;
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> 3. Telephone message books, logs and memoranda....

From this description alone, we cannot determine that the above documents would come within a judicial privilege. Most such documents would not ordinarily be expected to reveal the substance of communications among Judge Hastings, his colleagues, and his staff concerning Judge Hastings' official duties. That Judge Hastings met or spoke with a particular visitor at a particular time, without more, would not involve the substance of the communications between them *Cf. In re Grand Jury Proceedings,* 689 F.2d 1351, 1352 (11th Cir.1982) (attorney-client privilege ordinarily applies only to content of communications, not to dates, places, or times of meetings).

Moreover, even if the subpoenaed materials were to include some substantive matters that fell within the privilege, we conclude, for reasons stated subsequently in our discussion relating to Simons and Miller, that the privilege would not support Williams' refusal to comply. The seriousness of the Committee's investigation, and the apparent relevance of the subpoenaed documents to that investigation, would justify enforcement of the subpoena in these circumstances regardless of the assertion of privilege, the privilege being qualified, not absolute. We accordingly reject Williams' assertion of privilege to justify non-compliance with the Committee's subpoena duces tecum.

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Turning next to the testimony of Simons and Miller before the Committee, our review of the transcripts leaves little doubt that the boundaries of the judicial privilege do encompass the subject matter of the Committee's inquiries to them. They invoked the privilege in response to questions probing the core of the confidentiality interest at stake: communications among Judge Hastings and his staff concerning matters pending before Judge Hastings. **That the privilege applies, however, does not end the matter. The judicial privilege is only qualified, not absolute; it can be overcome in an appropriate case.**

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The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art. III. In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.

While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

To read the Art. II powers of the President as providing an absolute privilege as against a subpoena essential to enforcement of criminal statutes on no more than a generalized claim of the public interest in confidentiality of nonmilitary and non diplomatic discussions would upset the constitutional balance of "a workable government" and gravely impair the role of the courts under Art. III.

The judicial privilege, arising from similar constitutional underpinnings, shares similar limitations and restrictions. Like any testimonial privilege, the judicial privilege must be harmonized with the principle that "'the public ... has a right to every man's evidence.'" This principle is no less applicable to proceedings under the Act than to criminal proceedings.

Once the party asserting the privilege has met the burden of showing that the matters under inquiry implicate communications among a judge and his staff concerning performance of judicial business — as Simons and Miller have shown here — those matters are presumptively privileged and need not be disclosed unless the investigating party can demonstrate that its need for the materials is sufficiently great to overcome the privilege. **To meet this burden, the investigating party can attempt to show the importance of the inquiry for which the privileged information is sought; the relevance of that information to its inquiry; and the difficulty of obtaining the desired information through alternative means.** The court then must weigh the investigating party's demonstrated need for the information against the degree of intrusion upon the confidentiality of privileged communications necessary to satisfy that need. We hold that **the judicial privilege asserted by Simons and Miller on Judge Hastings' behalf is overridden, under the circumstances present here, by the Committee's need for Simons' and Miller's testimony to further its investigation.**

There can be no question that the Committee's investigation is a matter of **surpassing importance.** While criminal remedies may no longer be in issue, **a proceeding which could result in recommending the exoneration of a sitting Article III judge, or in certifying to the House of Representatives that consideration of impeachment may be warranted, obviously implicates concerns of fairness and thoroughness of a high order.** And the charges being investigated — particularly the allegation of bribery — are grave. As we said in our previous opinion arising out of the Hastings investigation,

> **Moreover, the question under investigation — whether an Article III judge should be recommended for impeachment by the Congress, otherwise disciplined, or granted a clean bill of health — is a matter of great societal importance. Given the character of an investigating committee and what is at stake — the public confidence in the judiciary, the independence and reputation of the accused judge — paragraph (c)(5) must in our view be read, with very few strings, as conferring authority to look into whatever is material to a determination of the truth or falsity of the charges.** (Emphasis supplied; citations omitted.)

Even Kevin C. Milne,[3] whose work is relied upon by the majority in the *Per Curiam* Resolution, stated that judicial privilege is **not absolute**. He traced the evolution of judicial privilege in the United States and concluded that the concept was a development of their country's judicial experience throughout the years. The American delegates to the Constitutional Convention of 1787 sought to break from the British tradition and install a balanced government where the judiciary was independent.[4] According to Milne, there was a strong sense to insulate the federal judiciary from the influence of the other branches of government, considering that the previous models of government made the salaries of judges and their removal from office subject to the legislature's capriciousness. Past experiences taught them that legislatures may seek to investigate and punish judges for unpopular decisions and therefore, impede the judicial decision-making process.[5] Yet, the acknowledgment of the privilege in favor of federal judges never extended to completely exclude legislative or executive inquiry into its affairs.[6] **Thus, the rule on judicial privilege only came as an implied**

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[3] Kevin C. Milne, THE DOCTRINE OF JUDICIAL PRIVILEGE: THE HISTORICAL AND CONSTITUTIONAL BASIS SUPPORTING A PRIVILEGE FOR THE FEDERAL JUDICIARY, 44 Wash & Lee L. Rev. 213 (1987).

[4] "The accounts of delegates who participated in the Constitutional Convention of 1787 reveal that the doctrine of judicial privilege find legitimacy in the delegates' struggle to define the judiciary's role within the new system of government. The delegates recognized the need for a balanced government that could unite the burgeoning nation economically and politically. The Framers had learned, however, that a balanced government could not exist with a weak judiciary that could not act freely and without an apprehension of the political consequences of its act." (Milne, *id.*, pp. 214-215)

[5] Milne cited *Trevett v. Weeden*, (R. Pound, The Spirit of the Common Law 61-62 [1921]) where the Rhode Island General Assembly summoned judges to appear before the Assembly to explain the judges' basis for holding that the statute abrogating the right to jury trial was in violation of the State Constitution. (Milne, *id.*, pp. 216-217)

[6] In *The Statement of the Judges*, 14 F.R.D. 335 [N.D. Cal. 1953]) a House subcommittee investigating the Department of Justice subpoenaed Judge Louis E. Goodman to testify regarding judicial proceedings that transpired in the Northern District of California. Judge Goodman delivered a letter written by him and six other judges that defended his refusal to testify before the subcommittee asserting that it would contravene the doctrine of separation of powers and would amount to an unlawful interference by the legislature in the function of the judiciary. (Milne, id., pp. 220-221)

adjunct of judicial power to provide partial protection from legislative interference, but still allowed congressional questioning as regards matters other than judicial proceedings.[7]

Milne discussed in length the legal bases for the qualifications to judicial privilege, citing *Williams v. Mercer*,[8] *Gravel v. United States*,[9] and *Nixon v. United States*[10] to wit:

> The rationale supporting the legitimacy of privileges for government communications provided the basis for a recent Eleventh Circuit decision, *Williams v. Mercer,* **which explicitly acknowledged the existence of a qualified privilege that protects the confidentiality of communications between a federal judge and his staff.** In *Williams,* two federal district court judges of the Eleventh Circuit instituted disciplinary proceedings against federal district court Judge Alcee L. Hastings under the Judicial Councils Reform and Disability Act of 1980. The two judges alleged that Hastings had engaged in conduct that was inconsistent with his position as a federal judge and that had diminished the integrity of the federal judiciary. As part of the proceedings against Judge Hastings, an investigating committee of the Eleventh Circuit issued subpoenas to Judge Hastings' present and former legal assistants, summoning the legal assistants to appear before the investigating committee. The purpose of the legal assistants' appearance was to disclose the substance of confidential legal communications that had transpired between the judge and the legal assistants. Judge Hastings' staff claimed a privilege to the substance of the communications and filed suit in the United States District Court for the District of Florida to enjoin enforcement of the subpoenas that the investigating committee had issued. The United States District Court for the District of Florida dismissed the action for lack of subject matter jurisdiction, and Hastings and his staff appealed from the dismissal to the United States Court of Appeals for the Eleventh Circuit.
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> In response to the contention of Judge Hastings and his staff that enforcement of the subpoenas would impair the effective functioning of the judiciary, the Eleventh Circuit concluded that a qualified privilege protected the subject matter of the communications between Judge Hastings and his staff. The *Williams* court explained that absent an overriding need for confidential information which passes between a judge and his clerks, communications regarding a judge's performance of his official duties ordinarily should remain undisclosed to protect the integrity of the judicial decision-making process. The *Williams* court reasoned that the conversation between a federal judge and his staff are part of a judge's core function. The *Williams* court justified its recognition of a privilege for communications between a judge and his staff by explaining that the privilege prevented unnecessary intrusion into the substance of judicial communications that would disrupt a judge's ability to operate effectively.

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[7] Id.
[8] Supra note 2.
[9] 408 U.S. 606 (1972).
[10] 418 U.S. 683 (1974).

Although the Eleventh Circuit in *Williams* concluded that a qualified privilege exists that protects communications between a federal judge and his legal assistants, **the Eleventh Circuit found that the information regarding Judge Hastings' alleged judicial misconduct warranted a limited intrusion into the confidentiality of the communications. The *Williams* court explained that the investigating committee's grant of authority to aid in preserving the integrity of the federal judiciary justified an intrusion into the substance of the communications. Furthermore, the *Williams* court noted that the confidential nature of the committee's proceedings mitigated the severity of the intrusion into Hastings' expectation of confidentiality and probably would not inhibit the free exchange of ideas between judges and clerks to the extent that Judge Hastings claimed.** The Eleventh Circuit, therefore, upheld the investigating committee's issuance of the subpoenas and issued an order to compel the staff members to appear at the committee's proceedings and to disclose the information.

The Eleventh Circuit's reasoning behind establishing a qualified judicial privilege protecting the confidentiality of communications between a judge and his staff members finds support among Supreme Court decisions clarifying the scope of the legislative and the executive privileges. In *Gravel v. United States,* for example, the Supreme Court expounded upon the purpose of the privilege applicable to the communications between legislators and their aides. In *Gravel,* a federal grand jury investigating possible criminal conduct regarding the release and publication of the Pentagon Papers issued a subpoena to an aide of United States Senator Mike Gravel, directing the aide to appear before the grand jury and to explain the aide's involvement in the publication of the documents. Senator Gravel sought to quash the subpoena on the ground that the Speech and Debate Clause of the United States Constitution prohibited the questioning of an aide who assisted a Senator in performing legislative functions. The United States District Court for the District of Massachusetts denied the motion to quash and the United States Court of Appeals for the First Circuit modified the decision of the district court.

In addressing Senator Gravel's challenge to the enforceability of the subpoena, the Supreme Court in *Gravel* explained that the purpose of the legislative privilege embodied in the Speech and Debate Clause is to permit the legislature to perform its duties free from the threats of or intimidation by the executive branch. The *Gravel* Court stated that because of the legislative privilege, the executive branch could not question a member of Congress about any act that is an integral part of the deliberative and communicative process through which members of Congress formulate and enact legislation. The Court noted, moreover, that the executive branch could not interfere with the legislative process by requesting congressional aides to account for the aides' acts performed in assisting members of Congress, because congressional aides often perform acts vital to the functioning of the legislative process. Although the Court in *Gravel* stated that the legislative privilege extended to congressmen and their aides, **the Court indicated that the legislative privilege did not protect areas of legislative activity that were not crucial to the deliberative and communicative processes of formulating and enacting legislation.** Consequently, the Court in *Gravel* found that the grand jury properly could question Senator Gravel's aide about any

activity performed on Senator Gravel's behalf that did not impugn a genuine legislative act.

The *Williams* decision, acknowledging a qualified privilege for communications between a judge and his staff, also finds support in the Supreme Court's decision in *Nixon v. United States,* in which the Court held that a qualified privilege existed for communications between the President and his aides. In *Nixon,* a federal grand jury issued a third party subpoena *duces tecum* directing President Richard Nixon to produce certain tape recordings of conversations with presidential aides who were under indictment for charges of conspiracy to obstruct justice. The President moved to quash the subpoena *duces tecum.* The President claimed that the executive privilege protected all communications between the President and his aides, including the tapes that the district court had ordered the President to produce.

Despite the President's claim that an absolute privilege existed for all communications with his aides, **the Supreme Court in *Nixon* rejected a finding of an absolute privilege for all presidential communications.** The *Nixon* Court recognized that indiscriminate intrusion into, and the resulting public disclosure of, the substance of the President's conversations with his advisors would impair the President's ability to solicit candid and honest assessments from his aides. **The *Nixon* Court found, however, that an absolute privilege would conflict with the intent of the Framers to form a balanced government and would burden unduly the administration of justice.**

The *Nixon* Court thus determined that absent the need to protect diplomatic or military secrets the President's "generalized interest" in the confidentiality of his discussions warranted only a qualified privilege that could be overcome upon a showing of substantial need for the information as evidence in a pending criminal trial.

Although *Gravel* and *Nixon* support the *Williams* court's recognition of a qualified judicial privilege protecting the decision-making process of the judiciary, **some commentators have advocated greater disclosure of the judicial decision-making process.** One commentator has noted that **judicial decisions often have significant social consequences that affect substantive legal rights.** Within the last twenty years, for example, courts have had to resolve controversial and politically charged issues regarding capital punishment, abortion, and school desegregation. Because of the significant political effects of judicial decisions, commentators object to the circumstance that published opinions represent the full extent to which judges must reveal the influences that shape their decisions. **Opponents of judicial confidentiality, arguing that the secrecy surrounding the judicial decision making process is undemocratic, demand that judges provide the public with greater access to the process through which judges formulate judicial decisions.**[11] (Emphasis supplied, citations and footnotes omitted.)

[11] Id. at 224-229..

He then ends his work by clarifying that judicial privilege will yield to greater and significant public interests, to wit:

> **The privilege for judicial communications, however, is not absolute and must yield if significant interests outweigh a judge's interest in confidentiality. For example, the demonstrated need for evidence in a criminal prosecution or in an investigation of judicial misconduct warrants an intrusion into confidential judicial communications.** In considering whether to compel disclosure of judicial communications, courts should realize, however, that indiscriminate or unnecessary intrusions into the confidentiality of judicial communications may infringe upon a judge's independence and would inhibit the exchange of ideas between judges and persons who assist them in their official duties.[12] (Emphasis supplied.)

In similar vein, the matter of impeachment of the highest judicial officer of the land, like the possible impeachment of Judge Hastings in *Williams v. Mercer* who was then under criminal investigation, is of such **paramount societal importance** that overrides the generalized claim of judicial privilege being asserted by the majority. Contrary to the assertion made in the *Per Curiam* Resolution, the principle of comity in fact behooves this Court to extend respect to the Senate acting as an Impeachment Court and give it wide latitude in favor of its function of exacting accountability as required by the Constitution.

The Resolution noted that a Justice of the Supreme Court may testify on bribery committed by an accused fellow Justice — participation in bribery being external to the adjudicative function — as an exception to the prohibition against Justices providing their testimony before the Impeachment Court. Note however, that while Judge Hastings in the above case was being investigated for possible bribery, what were being subpoenaed were documents and testimony from his staff **not on the act of bribery itself, but logbooks, diaries, telephone message books, logs and memoranda** — documents that appear to be records of details of Judge Hastings' daily contacts. These were held by the United States Court of Appeals to be not covered by judicial privilege. Similarly, where an article for impeachment is sought to be proven through logbook entries and time

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[12] Id. at 234-235.

stamps, no judicial privilege can be invoked, as these do not interfere with the mental deliberative process in adjudication.

Unaccountability, especially of impeachable officers enjoying fixed tenures, is unacceptable and intolerable in our system of democratic government. If there is anything that the Filipino people sought to achieve in enacting the 1987 Constitution, it was to ensure that governmental power will never again be centralized in one person and that an effective system of checks-and-balances is established. Proper constitutional safeguards were put in place to ensure that the people will have some control and protection against public abuse for those who betray the public trust.[13]

One of these accountability measures is the process of impeachment.[14] Impeachment is the process by which 31 specified public officers, who otherwise enjoy a fixed term or tenure, can be removed from office for culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.[15] Shall the public's demand for accountability undertaken by the Impeachment Court through the issuance of subpoenae be severely emasculated by the general claim of keeping internal deliberations of the Court and other documents confidential? I disagree with this idea because unlike judicial privilege that is qualified, the legal mandate to make public officers accountable to the people is absolute and unconditional. One needs to just look at the primacy afforded to such concept in our constitutional framework. The only constitutionally acceptable approach that this Court can adopt with respect to the subpoena, is to justify, **through specific and responsive reasons,** its denial of access to every item of information that the *Per Curiam* Resolution has decided to withhold.

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[13] "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." (CONSTITUTION, Art. XI, Sec. 1)

[14] Significantly, the constitutional provisions dealing with impeachment process are found in the article dealing with the accountability of public officers. (CONSTITUTION, Art. XI, Sec. 2 and 3)

[15] CONSTITUTION, Art. XI, Sec. 2.

Although the operational necessity of keeping internal deliberations of the Court in confidence is, by and large, traditionally recognized, the privilege cannot be cavalierly invoked to defeat the accountability measure of the impeachment process. The grant of judicial privilege, much like other exclusionary privileged communications under the rules of evidence,[16] is premised on an accepted need to protect a trust relationship, in this case between justices performing their adjudicatory function during deliberations in executive sessions.

For communication and correspondences to be considered privileged, there must be an advantage derived from the protection that outweighs, in the hierarchy of governmental and societal values, the detrimental effect of the privilege on the search for truth.[17] In short, once higher societal values, such as the public's right to information, and the constitutional directive to extract accountability from public officers, are found to supersede the advantages of protecting confidential information, qualified judicial privilege must necessarily succumb. In this case, the compulsory processes of the Impeachment Court, for some of the information being withheld by the *Per Curiam* Resolution, have passed those standards and the Court can no longer hide behind the cover of judicial privilege. The injury to society would indeed be greater if the Court upholds unconditionally the judicial privilege against all inquiries on its adjudicatory processes and denies outright the powers of the Impeachment Court to determine the truth and the public's demand for accountability of impeachable judicial officers.

In fact, this Court categorically recognized the limitations of privileged communications enjoyed by government officials and denied the privilege when it comes to the investigation of criminal actions or wrongdoing. Non-disclosure by public officers based on privileged

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[16] The disqualification of testimonial evidence based on privileged communications include the following: marital communications privilege, attorney-client, doctor-patient and priest-penitent. (Rules of Court, Rule 130, Sec. 24)

[17] "The most influential rationale for the law of privilege is the utilitarian justification advocated by Dean John H. Wigmore. He believed that a given communication should be privileged only if the benefit derived from the protection outweighed the detrimental effect of the privilege on the search for truth." (Robert S. Catz and Jill J. Lange, *Judicial Privilege*, 22 Ga. L. Rev. 89, 96 [1987], citing Wigmore, EVIDENCE IN TRIALS AT COMMON LAW, §2290, at 72 [J. McNaughton rev. ed. 1961])

communications can never be justified as a means of covering mistakes, avoiding embarrassment or for political, personal or pecuniary reasons.[18]

In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*,[19] the Court discussed in great detail the nuances of the claim of executive privilege invoked by petitioner Romulo I. Neri, the then Director of the National Economic and Development Authority, against the orders of the Senate Committee on Accountability of Public Officers and Investigations. The Committee was then investigating the NBN-ZTE contract entered into by the government. Although there were several separate opinions on the extent of executive privilege, there was no dispute[20] that "executive privilege does not guard against a possible disclosure of a crime or wrongdoing."[21] In his Dissenting and Concurring Opinion, Justice Carpio explained that executive privilege can only be invoked pursuant to official powers and functions and may not extend to hide a crime:

> Executive privilege must be exercised by the President in pursuance of official powers and functions. **Executive privilege cannot be invoked to hide a crime because the President is neither empowered nor tasked to conceal a crime.** On the contrary, the President has the constitutional duty to enforce criminal laws and cause the prosecution of crimes.
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> Executive privilege cannot also be used to hide private matters, like private financial transactions of the President. Private matters are those not undertaken pursuant to the lawful powers and official functions of the Executive. However, like all citizens, the President has a constitutional right to privacy. In conducting inquiries, the Legislature must respect the right to privacy of citizens, including the President's.
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> Executive privilege is rooted in the separation of powers. Executive privilege is an implied constitutional power because it is necessary and proper to carry out the express constitutional powers and

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[18] US Attorney-General William Rogers, Constitutional Law: The Papers of the Executive Branch, 44 A.B.A. J.941 (1958), http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/abaj44&div=245&id=&page= (Last accessed on 15 February 2012)

[19] G. R. No. 180643, 25 March 2008, 549 SCRA 77.

[20] "That executive privilege cannot be invoked to conceal a crime is well-settled. All Justices of this Court agree on that basic postulate. The privilege covers only the official acts of the President. It is not within the sworn duty of the President to hide or conceal a crime. Hence, the privilege is unavailing to cover up an offense." (Separate Opinion of Justice Ruben T. Reyes, *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G. R. No. 180643, 04 September 2008, 564 SCRA 152, 308)

[21] "Respondent Committees argue that a claim of executive privilege does not guard against a possible disclosure of a crime or wrongdoing. We see no dispute on this." (*Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G. R. No. 180643, 25 March 2008, 549 SCRA 77, 123)

> functions of the Executive free from the encroachment of the other co-equal and co-ordinate branches of government. Executive privilege springs from the supremacy of each branch within its own assigned area of constitutional powers and functions.[22] (Emphasis supplied.)

Neither the doctrine of separation of powers nor the need for confidentiality of internal deliberations will support an unconditional and all-encompassing grant of immunity to Members of this Court against the Impeachment Processes of the Senate, under all circumstances. It is not because the Court should view judicial privilege as an unessential facet of judicial functioning, but that greater value should be placed on the duty of the Impeachment Court to effectively try and decide cases of impeachment.[23]

Requested and Subpoenaed Court Records

The question arises whether the court documents listed in the letters-request and the subpoena fall outside the protection of the rule of qualified judicial privilege.

The letters dated 19 and 25 January 2012 of Cong. Joseph Emilio A. Abaya, as House Prosecution Panel Manager, requested for the examination of the *rollos* and certified true copies of the pleadings and other related documents thereof, including the Agenda and the Minutes of the Deliberations, in connection with the following cases: (1) *League of Cities v. COMELEC*, G. R. Nos. 176951, 177499 and 178056; (2) *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.*, G. R. No. 178083; (3) *Navarro v. Ermita*, G. R. No. 180050, 12 April 2011; and (4) *Ma. Merceditas N. Gutierrez v. The House of Representatives Committee on Justice, et al.*, G. R. No. 193459, 15 February 2011.

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[22] Id., pp. 278-279.
[23] CONSTITUTION, Art. XI, Sec. 3 [6].

Meanwhile, in the *Subpoena ad testificandum et duces tecum* and *Subpoena duces tecum* both dated 09 February 2012 issued by the Senate Impeachment Court, Attys. Enriqueta Vidal and Felipa Anama, as the En Banc Clerk of Court and Deputy Clerk of Court, respectively, were directed to appear before the Impeachment Court and bring original and/or certified true copies of documents pertaining to these two cases: *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.*, G. R. No. 178083 and *Gloria Macapagal-Arroyo v. Hon. Leila De Lima*, G. R. Nos. 199034 and 199046.

Considering that the letters-request of the Impeachment Prosecution Panel and the subpoena issued by the Impeachment Court are limited to only court documents and records, our discussion on these matters will be confined to whether the requested documents are covered by judicial privilege or are subject to public scrutiny. Since the Impeachment Court has denied the request of the House Prosecution Panel for the appearance of some of the Justices of this Court to testify before it,[24] it is unnecessary for us to discuss this matter in the meantime. Any disposition in relation to this matter in the *Per Curiam* Resolution is simply obiter and will not bind its Members when the issue becomes ripe in the future.[25]

As a preliminary matter, all official records, including court records, are without doubt subject to the constitutional right to information of the people:

> 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.[26]

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[24] TJ Burgonio, *Senate: No Subpoena for 4 Supreme Court Justices*, 09 February 2012, http://newsinfo.inquirer.net/142241/senate-no-subpoena-for-4-supreme-court-justices (Last accessed 15 February 2012)

[25] "The principle of comity or inter-departmental courtesy demands that the highest officials of each department be exempt from compulsory processes of the other departments." (*Per Curiam* Resolution dated February 2012, p. 24)

[26] CONSTITUTION, Art. III, Sec. 7.

No less than this Court expressed the presumption in favor of public disclosure of information generated or held by the Court:

> 1. The Supreme Court shall provide maximum responsible disclosure of timely, accurate and relevant information to the public without betraying those aspects of the decision-making process which require utmost confidentiality.
>
> 2. There shall be a presumption in favor of public disclosure of information generated or held by the Supreme Court. The presumption shall be subject to exceptions to be determined by the Task Force.[27]

Thus, the general rule covering court documents and records is disclosure, while confidentiality is the exception. As an exception, confidentiality must be strictly construed.

John Louis Kellog, another authority cited in the *Per Curiam* Resolution,[28] describes an instructive two-step guideline for determining whether court documents are to be covered under the judicial privilege covering the adjudicatory process of courts:

> Application of the privilege involves a two-step analysis: (1) to determine whether the documents in question are in fact deliberative and (2) to perform a balancing of party's interests. The courts held that because the privilege was qualified, a balancing test weighing the need for confidentiality against the opposing party's evidentiary need for disclosure was appropriate. Courts noted that an *in camera* inspection of the materials could aid in applying the balancing test, although the requesting party's need must be demonstrable. Courts also recognized the options of partial disclosure or protected disclosure as possible compromises to the conflicting concerns.

Following Kellog's two step-analysis in this instant case where court personnel are being asked by the Impeachment Court to disclose information regarding the records of this Court, the correct interpretation would be to allow disclosure in all court records, except those documents that are directly and intimately connected to the adjudicatory functions of the Justices. Administrative, operational and other non-adjudicatory matters

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[27] SC Administrative Circular No. 2-02 effective 25 January 2002.
[28] *Per Curiam* Resolution dated 14 February 2012, p. 11, footnote 9.

being requested by the House Impeachment Panel and required by the Impeachment Court must be subsumed under the general rule of open and transparent government that gives full force and protection to the right of information. The balance of interest must tilt in favor of the Impeachment Court in its mandate to hold a Member of the Supreme Court accountable under the present impeachment proceedings. The public's right to information and the Court's own presumption in favor of open and transparent disclosure further persuade us to conclude that judicial privilege must succumb in this instance.

Thus, I concur with the majority that all documents which are directly and intimately connected to the adjudicatory function performed by Justices, such as drafts, research materials, internal memorandum, minutes,[29] agenda,[30] recommended actions, and other similar documents that are "predecisional" and "deliberative", fall within the rule on qualified judicial privilege and cannot be disclosed or be the subject of compulsory processes of the Impeachment Court. However, **those court documents which pertain to administrative and non-adjudicatory matters should be made available for public scrutiny, especially when its production is being compelled by the Impeachment Court.**

With respect to the request for examination of the *rollos*[31] of the above-mentioned cases, I also believe that documents, which are public in nature, should be covered by the general rule of public disclosure and

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[29] "The Offices of the Clerk of Court and of the Division Clerks of Court are bound by strict confidentiality on the action or actions taken by the Court prior to the approval of the draft of the minutes of the court session release of the resolutions embodying the Court action or actions."

"A resolution is considered officially released once the envelope containing a final copy of it addressed to the parties has been transmitted to the process server for personal service or to the mailing section of the Judicial Records Office. Only after its official release may a resolution be made available to the public." (Internal Rules of the Supreme Court [IRSC], Rule 11, Sec. 5)

[30] "The Clerk of Court and the Division Clerks of Court shall ensure that all pleadings, communications, documents, and other papers duly filed in a case shall be reported in the Agenda for consideration by the Court en banc or the Division. The Agenda items for each case shall adequately apprise the Court of relevant matters for its consideration." (IRSC, Rule 11, Sec. 1)

[31] "All original pleadings and other documents filed under the same docket number shall be encased in a folder or *rollo* with a Court en banc-approved, color-coded cartolina cover indicating the G.R. or UDK number, the title of the case, the date of filing, the date of submission for decision, and the nature of the case. The pages of the pleadings and other documents shall be consecutively numbered and attached to the *rollo* preferably by stitching or any method that ensures the integrity of the contents of the *rollo*." (IRSC, Rule 6, Sec. 9)

subject to examination by the House Prosecution Panel as well as the compulsory processes of the Impeachment Court. These include petitions, motions and other pleadings filed by the parties (with all annexes) as well as promulgated decisions, orders, resolutions and notices of the Court, which are matters of public record.

In *Cuenco v. Cuenco,*[32] the Court had already ruled that pleadings of the parties form part of official records that are open to the public for examination and scrutiny. Further, we stated that:

> [P]leadings are presumed to contain allegations and assertions lawful and legal in nature, appropriate to the disposition of issues ventilated before the courts for the proper administration of justice and, therefore, of general public concern. Moreover, pleadings are presumed to contain allegations substantially true because they can be supported by evidence presented in good faith, the contents of which would be under the scrutiny of courts and, therefore, subject to be purged of all improprieties and illegal statements contained therein.

In *Hilado v. Reyes,*[33] the Court exhaustively discussed the matter in this wise:

> On the merits of the petition for mandamus, Section 7 of Article III of the Constitution provides:
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> > SECTION 7. 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**.(Emphasis and underscoring supplied)
>
> The above-quoted constitutional provision guarantees a general right – the right to information on matters of "public concern" and, as an accessory thereto, the right of access to "official records" and the like. **The right to information on "matters of public concern or of public interest" is both the purpose and the limit of the constitutional right of access to public documents.**
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> Insofar as the right to information relates to judicial records, an understanding of the term "judicial record" or "court record" is in order.

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[32] G.R. No. L-29560. 31 March 1976, 162 Phil 299.
[33] G.R. No. 163155, July 21, 2006, 496 SCRA 282.

The term "judicial record" or "court record" does not only refer to the orders, judgment or verdict of the courts. **It comprises the official collection of all papers, exhibits and pleadings filed by the parties, all processes issued and returns made thereon, appearances, and word-for-word testimony which took place during the trial and which are in the possession, custody, or control of the judiciary or of the courts for purposes of rendering court decisions.** It has also been described to include any paper, letter, map, book, other document, tape, photograph, film, audio or video recording, court reporter's notes, transcript, data compilation, or other materials, whether in physical or electronic form, made or received pursuant to law or in connection with the transaction of any official business by the court, and includes all evidence it has received in a case.

In determining whether a particular information is of public concern, there is no right test. In the final analysis, it is for the courts to determine on a case to case basis whether the matter at issue is of interest or importance as it relates to or affect the public.

It bears emphasis that **the interest of the public hinges on its right to transparency in the administration of justice, to the end that it will serve to enhance the basic fairness of the judicial proceedings, safeguard the integrity of the fact-finding process, and foster an informed public discussion of governmental affairs.** Thus in *Barretto v. Philippine Publishing Co.*, this Court held:

> xxx The foundation of the right of the public to know what is going on in the courts is not the fact that the public, or a portion of it, is curious, or that what is going on in the court is news, or would be interesting, or would furnish topics of conversation; but is simply that it has a right to know whether a public officer is properly performing his duty. In other words, the right of the public to be informed of the proceedings in court is not founded in the desire or necessity of people to know about the doing of others, but in the **necessity of knowing whether its servant, the judge, is properly performing his duty.** xxx
>
> The case in *Cowley vs. Pulsifer* (137 Mass. 392) is so pertinent to the questions presented for our decision in the case at bar that we cannot refrain from quoting extensively therefrom. xxx
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> xxx "The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings."xxx
>
> "The chief advantage to the country to which we can discern, and that which we understand to be intended by the foregoing passage, is the security which publicity gives for the proper administration of justice.xxx It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because **it is of the highest moment that those who administer justice**

> **should act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed."**
>
> From this quotation it is obvious that it was not the idea of the supreme court of Massachusetts to lay down the proposition that simply because a pleading happened to be filed in a public office it becomes public property that any individual, whether interested or not, had the right to publish its contents, or that any newspaper was privileged to scatter the allegations contained therein to the four corners of the country. The right of the public to know the contents of the paper is the basis of the privilege, which is, as we have said, **the right to determine by its own senses that its servant, the judge, is performing his duties according to law.**xxx

Decisions and opinions of a court are of course matters of public concern or interest for these are the authorized expositions and interpretations of the laws, binding upon all citizens, of which every citizen is charged with knowledge. **Justice thus requires that all should have free access to the opinions of judges and justices, and it would be against sound public policy to prevent, suppress or keep the earliest knowledge of these from the public.** Thus, in *Lantaco Sr. et al. v. Judge Llamas*, this Court found a judge to have committed grave abuse of discretion in refusing to furnish *Lantaco et al.* a copy of his decision in a criminal case of which they were even the therein private complainants, the decision being "already part of the public record which the citizen has a right to scrutinize."

Unlike court orders and decisions, however, pleadings and other documents filed by parties to a case need not be matters of public concern or interest. For they are filed for the purpose of establishing the basis upon which the court may issue an order or a judgment affecting their rights and interests.

In thus determining which part or all of the records of a case may be accessed to, the purpose for which the parties filed them is to be considered.

xxx xxx xxx.

If the information sought then is not a matter of public concern or interest, denial of access thereto does not violate a citizen's constitutional right to information.

Once a particular information has been determined to be of public concern, the accessory right of access to official records, including judicial records, are open to the public.

The accessory right to access public records may, however, be restricted on a showing of good cause. How "good cause" can be determined, the Supreme Judicial Court of Massachusetts in *Republican Company v. Appeals Court* teaches:

> The public's right of access to judicial records, including transcripts, evidence, memoranda, and court orders, maybe restricted, but only on a showing of "good cause." "To determine whether good cause is shown, a judge must **balance the rights of the parties based on the particular facts of each case."** In so doing, the judge "must take into account all relevant factors, 'including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request.'"

And even then, the right is subject to inherent supervisory and protective powers of every court over its own records and files.

The Supreme Court of Canada, expounding on the right of the court to exercise supervisory powers over materials surrendered into its care, held:

> It follows that the court, as the custodian of the exhibits, is bound to inquire into the use that is to be made of them and, in my view, **is fully entitled to regulate that use by securing appropriate undertakings and assurances if those be advisable to protect competing interests.**xxx
>
> **In exercising its supervisory powers over materials surrendered into its care, the court may regulate the use made of it.** In an application of this nature, the court must protect the respondent and accommodate public interest in access.xxx In an application of this nature the court must protect the respondent and accommodate the public interest in access. **This can only be done in terms of the actual purpose, and in the face of obvious prejudice and the absence of a specific purpose, the order for unrestricted access and reproduction should not have been made.**

In fine, access to court records may be permitted at the discretion and subject to the supervisory and protective powers of the court, after considering the **actual use** or purpose for which the request for access is based and the **obvious prejudice** to any of the parties. In the exercise of such discretion, the following issues may be relevant: "whether parties have interest in privacy, whether information is being sought for **legitimate purpose** or for improper purpose, whether there is threat of particularly serious embarrassment to party, whether information is important to public health and safety, whether sharing of information among litigants would promote fairness and efficiency, whether a party benefiting from [the] confidentiality order is [a] public entity or official, and whether [the] case involves issues important to the public." (Emphasis supplied.)

One of the strangest disposition in the Resolution is the majority's denial of access to the SPA dated 15 November 2001 submitted by

petitioners Gloria Macapagal-Arroyo and Jose Miguel Arroyo in G. R. Nos. 199034 and 199046 in favor of Atty. Ferdinand Topacio. That denial of access is incongruent with the fact that the SPA is already a public record, with its **notarization** by an accredited notary public in accordance with the Rules on Notarial Practice.[34] Documents acknowledged before a notary public are considered under the evidentiary rules as public documents.[35] It strains reason why a Special Power of Attorney made a public document by law suddenly becomes a confidential record covered under judicial privilege by the mere fact of its having been filed with the Court.

Considering that their purpose is in pursuit of the legitimate end of ferreting out the truth in the impeachment proceedings, the House Prosecution Panel and the Impeachment Court are entitled to certified true copies of the court records of the identified cases, subject to reasonable regulation and costs for photocopying.

I am also compelled to dwell on the availability of the results of the **raffle** of these selected cases since it occupies a special place in judicial processes with respect to confidential information. The raffling of the case is undoubtedly part of the adjudicatory process because it identifies which among the fifteen justices of the Court will be the Member-in-Charge responsible for studying the case and circulating a draft of a decision for the consideration of the Court.[36] Nonetheless, the **Internal Rules of the Supreme Court itself has opened the results of the raffle to the parties in the case and their respective counsel**, except in cases of (a) bar matters; (b) administrative cases; and (c) criminal cases where the penalty imposed by the lower court is life imprisonment. [37] Hence, I concur with the majority's

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[34] A.M. No. 02-8-13-SC (2004), as amended.
[35] RULES OF COURT, Rule 132, Sec. 19.
[36] "Every initiatory pleading already identified by a G.R. or a UDK number shall be raffled among the Members of the Court. The Member-in-Charge to whom a case is raffled, whether such case is to be taken up by the Court en banc or by a Division, shall oversee its progress and disposition unless for valid reason, such as inhibition, the case has to be re-raffled, unloaded or assigned to another Member." (IRSC, Rule 7, Sec. 1)
[37] "The Clerk of Court shall make the result of the raffle available to the parties and their counsels or to their duly authorized representatives, except the raffle of (a) bar matters; (b) administrative cases; and (c)

denial of the request of the House Prosecution Panel and the compulsory process of the Impeachment Court to obtain the results of the raffle in the cases identified, since it pertains to matters of qualified judicial privilege. This does not however prevent them from requiring the parties to these cases as well as their counsel from divulging the results of the raffle, which information the latter are entitled to extract from the Clerk of Court.

Having explained my partial concurrence with the majority on the court records, I must then explain my points of divergence on the matter of court records that are being withheld by the Resolution.

First, the disclosure of confidential information by a public officer is made criminally punishable only if it is **unauthorized**. The Anti-Graft and Corrupt Practices Act,[38] which was erroneously quoted in the *Per Curiam* Resolution,[39] punishes the release of confidential information to **unauthorized persons**. All the three penal laws relied upon by the majority only point to a public officer who **voluntarily** reveals information received in the performance of their functions and acquired in confidence. This does not cover an instance when the public officer is **mandatorily** made to disclose by a compulsory process of a **superior authority**, such as the Impeachment Court. In addition, a threshold issue must always first be resolved on whether the matter sought to be elicited from the public officer is indeed confidential information subject to the qualified protection of judicial privilege.

Contrary to what is being implied in the Resolution, it does not appear that the Impeachment Court is granting any immunity from criminal prosecution to anyone to reveal confidential information. The matter of the availability of the justifying circumstance of "obedience to a lawful order" to

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criminal cases where the penalty imposed by the lower court is life imprisonment, and which shall be treated with strict confidentiality." (IRSC, Rule 7, Sec. 3)

[38] "Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position **to unauthorized persons**, or releasing such information in advance of its authorized release date." (Republic Act No. 3019, Sec. 3 [k])

[39] *Per Curiam* Resolution dated 14 February 2012, p. 18-19, footnote 29.

escape criminal liability under the Revised Penal Code[40] was a mere discussion and was broached as a possible defense in a criminal suit against a public officer lawfully compelled to reveal information.

Second, it is incongruous and operationally inefficient for the majority to claim that every waiver of judicial privilege must be subject to the Supreme Court's consideration and approval:[41]

> These privileges belong to the Supreme Court as an institution, not to any justice or judge in his or her individual capacity. Since the Court is higher than the individual justices or judges, no sitting or retired justice or judge, or even the Chief Justice, may claim exception without the consent of the Court.

This point (albeit incidental to the discussion of the majority) is rife with dictatorial dangers that are incompatible with our democratic system. Particularly in this case, the subject of the impeachment proceeding is the head of the collegial body that will decide whether or not to waive judicial privilege in favor of court personnel who are called to testify before the Impeachment Court. Also, will retired justices or judges be now required to seek dispensation and approval from the Supreme Court if required to testify by the Impeachment Court even on matters of administration and non-adjudicatory operations of the Court?[42] I think the above language in the Resolution dangerously preempts the Impeachment Court in a way that constitutes unconstitutional interference.

Not only has the majority overly extended the limits of qualified judicial privilege – which does not find any express basis under the Constitution unlike executive privilege – but it likewise seeks to expand its

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[40] "Any person who acts in obedience to an order issued by a superior for some lawful purpose." (REVISED PENAL CODE, Art. 11 [6]).

[41] "These privileges, incidentally, belong to the Judiciary and are for the Supreme Court (as the representative and entity speaking for the Judiciary), and not for the individual justice, judge, or court official or employees to waive. Thus, every proposed waiver must be referred to the Supreme Court for its consideration and approval." (*Per Curiam* Resolution dated 07 February 2012, p. 20)

[42] In the Compliance dated 27 January 2012, the House Prosecution Panel submitted to the Impeachment Court a list of its intended witnesses, which included incumbent and retired justices of the Supreme Court and Court of Appeals.

influence in a manner similar to the President's by arrogating unto itself the decision on when such privilege can be exercised or waived.[43]

Third, although the qualified judicial privilege extends to court personnel, other than judges and justices, the *Per Curiam* Resolution should not be construed to mean that it extends to all other aspects of their official responsibilities.[44] Similar to the case of Judge Hastings in *Williams v. Mercer*, court personnel are only granted limited judicial privilege in cases where the documents, communications or correspondences sought to be divulged are intimately and directly related to the adjudicatory function of the judge or justice that they serve. Administrative and other non-adjudicatory information, such as those contained in logbooks, appointment diaries, daily schedules, itineraries, calendar of activities, travel itineraries, guest sign-in sheets and telephone message books, logs and memoranda, date and time of filing of petitions, and the like, are **outside the scope of qualified judicial privilege** and thus, within the proper scope of inquiry by the Impeachment Court. Hence, the Subpoena dated 09 February 2012 of the Impeachment Court in relation to the case of *Macapagal-Arroyo v. De Lima*, in G. R. No. 199034 and 199046, pertaining to the date and time the petition of Gloria Macapagal-Arroyo and the SPA in favor of Atty. Topacio was filed and received by the Court; the Chief Justice's travel orders or leave applications; the logbook and the receiving copy showing the time the Temporary Restraining Order (TRO) was received by the parties; the logbook showing the date and time the dissents to the 22 November 2011 Resolution were received; the Sheriff's Return of Service of the TRO; and, the certification from the Fiscal Management and Budget Office regarding the time the cash bond in relation to the TRO was received, should be

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[43] "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." (CONSTITUTION, Art. VI, Sec. 22; *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra.)

[44] "As a last point and mainly for purposes of stress, the privileges discussed above that apply to justices and judges apply *mutatis mutandis* to court officials and employees with respect to their official functions." (*Per Curiam* Resolution dated 14 February 2012, p. 23)

respected and must be obeyed. These documents are administrative matters that have no relation or are merely incidental to the adjudicatory function of the Court, and must be subject to the Court's general policy of full disclosure.

The Constitutional Duty of a Justice of the Supreme Court to Explain a Dissent

I wish to raise issue with the operation of judicial privilege *vis-à-vis* the constitutional duties of Members of this Court, especially by those in the minority, to explain their votes. Judicial privilege cannot be invoked to stifle or obstruct the constitutional right and duty of justices to defend their votes in a separate opinion.

The high responsibility imposed on justices, especially for dissenting ones, to explain their votes, finds resonance in our constitutional history. On 17 January 1935, the judiciary committee of the 1934 Constitutional Convention introduced the following provision on the judiciary:[45]

> The conclusions of the Supreme Court shall be reached in consultation before the case is assigned for writing the opinion. The decision shall be in writing, and signed by the justices concurring therein. Every point fairly arising upon the briefs shall be considered and decided, and the facts and the law upon which the decision or judgment is based shall be clearly stated. Any justice dissenting therefrom shall give the reasons of such dissent in writing over his signature.

It was later revised to read:

> The conclusions of the Supreme Court in any case submitted to it for decision shall be reached in consultation before the case is assigned to a Justice for the writing of the opinion of the Court. Any Justice dissenting from a decision shall state the reasons for his dissent.

[45] Jose M. Aruego, I FRAMING OF THE PHILIPPINE CONSTITUTION 509 (1949).

> No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based.[46]

According to Aruego:[47]

> The first part of the provisions was intended to oblige all the Justices of the Supreme Court to study every case before that body. At the time of the drafting of the Constitution, there was the general belief that a majority of the decisions of the Supreme Court were decisions of only one Justice, the penning Justice. Under the Constitution, so the Convention intended, the Justices should study the case. They should then come into consultation with respect to the conclusions. With the conclusions already arrived at, the case would then be assigned to a Justice for the writing of the opinion of the Court. Thus the decision in any case would be really the decision of the Supreme Court, not a one-man decision. The part of the provision requiring a dissenting Justice to state the reasons for his dissent was intended to insure a study of the case; for it was observed in many cases that the mere words, "I dissent," without giving the reasons, was in the words of Delegate Francisco, "only intended to make the parties of the public believe that the case has been studied and discussed thoroughly by the Court when in fact and in truth it is just the contrary. Moreover, there have been cases in this jurisdiction where a well-reasoned dissenting opinion has been adopted as the decision of the majority in a subsequent case."

Thus, Article VIII, Sec. 11, of the 1935 Constitution, reads:

> The conclusions of the Supreme Court in any case submitted to it for decision shall be reached in consultation before the case is assigned to a Justice for the writing of the opinion of the Court. Any Justice dissenting from a decision shall state the reasons for his dissent.

It was maintained in the 1973 Constitution through Article X, Sec. 8:

> The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. Any Member dissenting from a decision shall state the reasons for his dissent. The same requirements shall be observed by all inferior collegiate courts.

It is therefore evident that the purpose of this mandate is consistent with the constitutional duty to be transparent and to be accountable to the people. It was obviously intended as an assurance to the public that the

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[46] Id. at 510.
[47] Id.

Justices exercised the utmost care and diligence in reaching their decisions, which should be founded on facts, laws and reason.

This principle was not only reiterated in the 1987 Constitution, but was further reinforced when the phrase "shall state the reasons for his dissent" was replaced by "**must** state the reason therefore."

Article VIII, Sec. 13 of the 1987 Constitution now reads:

> The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. **Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor.** The same requirements shall be observed by all lower collegiate courts.

In introducing this amendment, we refer to the Records of the 1987 Constitutional Commission:

> MR. MAAMBONG: Thank you, Mr. Presiding Officer.
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> I will proceed to the last sentence which reads:
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> Any Member dissenting or abstaining from a decision shall state the reason for his dissent or abstention.
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> We are all aware, Mr. Presiding Officer, that there are so many decisions of the Supreme Court mentioned in the Philippine Reports and the Supreme Court Reports, Annotated, wherein a member merely mentions, "I concur" and sign or "I abstain" and sign or "I dissent" and sign.
>
> Before I propose any amendment, I would like to know from the Committee if this last sentence means that a member of the court who dissents or abstains should state, as a matter of a mandatory requirement, the reason for his dissent or abstention, or, could a member who dissents or abstains just do the usual thing and place there, "I dissent" or "I abstain," then sign?
>
> MR. REGALADO: **We will make it mandatory. May I explain? The line here says: "Any Member dissenting or abstaining from a decision shall state the reason for his dissent or abstention." This is to eliminate the practice of just saying "no part," and then, he places therein his initials or comment "I dissent."** The Gentleman wants it to

be more or less mandatory because of the phrase "shall state the reason for his dissent or abstention."

MR. MAAMBONG: I just would like to know the intention, Mr. Presiding Officer.

MR. REGALADO: **If the Gentleman wants it to be a little stronger and in a more mandatory manner, I think the Committee will have no objection to changing the word "shall" to MUST.**

MR. MAAMBONG: Then, I so move, Mr. Presiding Officer, to change the word "shall" to MUST with the following clarification: **If it is already acceptable to the Committee that when a member who dissents or abstains will not indicate his reasons, would that be a nonfeasance in the performance of official duty**?

MR. REGALADO: **That would be a culpable violation, unless he explains why he was not able to indicate his reasons. In the rules on impeachment, it is not only a violation of the Constitution but a culpable violation thereof. So, if despite this directive which is about the strongest we can use without ruffling the sensibilities of the members of the Supreme Court — the word "must" is already an indication of the mandatory nature of that requirement — and they have no reason whatsoever for not complying therewith then it is not only a violation, but a culpable violation, without prejudice to such action as may be taken against him by his own peers in the Supreme Court.**

MR. MAAMBONG: Just one final point, Mr. Presiding Officer. Could a justice just say on the bottom of the decision, "I take no part," then sign it?

MR. REGALADO: He has to say, for instance, "I take no part because I am disqualifying myself for the following reasons," and some of them are the reasons for disqualification from participation.

MR. MAAMBONG: Thank you.

MR. REGALADO: But if he just says, "no part," considering the mandatory nature, that would already be a violation.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.[48] (Emphasis supplied.)

The mandatory observance of this rule was of such nature that "[a]ny willful failure to comply with these provisions was intended to constitute a culpable violation of the Constitution, one of the grounds for impeaching

[48] Records of the Constitutional Commission No. 29, 14 July 1986.

Justices of the Supreme Court."[49] From the quoted portion of the Records of the Constitutional Commission, this remains true to date.

In an unprecedented move, the majority now seeks to propose a system by which the Justices' opinions and decisions shall first undergo a determination by the majority whether their contents contain privileged communication before they are published. Without a doubt, this is a form of censure and a curtailment of the Justices' constitutional duty to explain their reason for their opinions.

I agree with the general and limited view that court deliberations are confidential in nature and these should not be divulged on a whim. However, the privilege on confidentiality must be balanced with the constitutional duty to inform the public of the basis for the Court's decisions, especially when the subject matter is of national interest. This is an exacting demand and a necessary attribute of our judicial system. Again, the public interest of seeing the fulfillment by a justice of his or her constitutional duty to freely express his or her vote on a particular case is superior to the generalized claim of judicial privilege.

The advantages of giving free rein to members of the Court to express their ideas and votes in cases pending before it adheres to the adjudicatory function of dispensing justice, not by personal whim or caprice, but by rational thought based on the Constitution, statutes, jurisprudence and legal precedents. The value of a dissent is rooted in the democratic set-up of the Supreme Court, where the vote of a majority of fifteen justices, shall prevail:

> I argue that oral dissents, like the orality of spoken word poetry or the rhetoric of feminism, have a distinctive potential to root disagreement about the meaning and interpretation of constitutional law in a more democratically accountable soil. Ultimately, they may spark a deliberative process that enhances public confidence in the legitimacy of the judicial

[49] Aruego supra note 45 at 511.

> process. Oral dissents can become a crucial tool in the ongoing dialogue between constitutional law and constitutional culture.[50]

Separate opinions, whether concurring or dissenting, in fact support judicial privilege insofar as it reveals the deliberative nature of the Court's adjudicatory function. It gives the people, who are excluded from its internal deliberations, the impression and guarantee that decisions are based on rational debates among those privileged enough to hold these exalted and highest of public offices.

> To other past and present Justices, most famously Chief Justice Harlan Stone and Justice William Brennan, dissent is a healthy, and even necessary, practice that improves the way in which law is made. We get better law, ceteris paribus, with dissent than without. Their counter position rests in part on two ideas: first, dissents communicate legal theories to other Justices, lawyers, political actors, state courts, and future Justices, and have sometimes later won the day as a result of this; and, second, **dissents are essential to reveal the deliberative nature of the Court, which in turn enhances its institutional authority and legitimacy within American governance**. Justice Brennan describes the first idea as Justices 'contributing to the marketplace of competing ideas' in an attempt to get at the truth or best answer. Chief Justice Charles Evans Hughes captured this latter point when he observed that dissent, when a matter of conviction, is needed **"because what must ultimately sustain the court in public confidence is the character and independence of the judges.**[51] (Emphasis supplied.)

In numerous instances, the Justices of this Court have narrated court deliberations without fear of censorship or retribution.

People v. Caruncho[52] caught the attention of the public when, on live television, Mayor Emiliano R. Caruncho, Jr. and his companions manhandled reporter Salvador F. Reyes. While the discussion of the case was very short, court deliberations and processes were tackled lengthily. The *ponencia* of Justice Abad Santos related the process of assignment of the decision to the Justices prior to and during the writing of the decision. In particular, Justice Abad Santos recalled particular conversations between specific justices as to the assignment of landmark cases and the complaint of

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[50] Lani Guinier, *Foreword: Demosprudence through Dissent*, 122 Harv. L. Rev. 4, 14 (2008)
[51] M. Todd Anderson, *From Seriatim to Consensus and Back Again: A Theory of Dissent*, 2007 Sup. Ct. Rev. 283 (2007)
[52] G.R. No. L-57804, 23 January 1984, 212 Phil. 16.

Justice Melencio-Herrera regarding the length of time it took to dispose of the case. Then Chief Justice Fernando also wrote a separate concurring opinion, discussing the manner of assignment of the case and the voting thereon. Justice Melencio-Herrera likewise wrote a separate opinion detailing at length the manner of voting of the justices on the case on different agenda dates, and the court's, and the Chief Justice's, actions thereafter.

In his concurring opinion, Justice Gutierrez remarked that **the opening up of the deliberations of the Supreme Court to the public (as when the voting was recited in detail) may be helpful to the general public and do away with unfounded speculations as to how decisions are reached.**[53]

In *Misolas v. Panga*,[54] Justice Sarmiento also revealed how the case "journeyed from *ponente* to *ponente* and opinion to opinion, which, rather than expedited its resolution, [had] delayed it—at the expense of the accused-petitioner."

It is in this light that the separate concurring and dissenting Opinions promulgated in *Arroyo v. De Lima*[55] necessitated a discussion of the court deliberations, because what was a core issue was whether the 22 November 2011 Resolution accurately reflected the discussions of the Court *en banc* during the 18 November 2011 Session.

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[53] The concluding paragraphs of J. Gutierrez's opinion reads as follows:

> "I do not know if there was an intent in the recital of the voting of the Justices in Justice Melencio-Herrera's opinion to suggest a liberalization of the rule that all our deliberations must be in strict confidence. In the Court of Appeals, we normally asked the Division Clerk of Court to sit with us and a stenographer to take notes whenever we were discussing a case. The raffle of cases is public and the assignments of cases to Divisions and Justices is not confidential.
>
> The more complex nature of our cases, the fact that the passing of the buck stops with this Court, and the resolution of the majority of cases through minute resolutions warrants a greater amount of confidentiality in our deliberations. However, I have an open mind on the matter. If the Supreme Court considers opening our deliberations to the general public or at least decides to have a stenographer taking verbatim notes of every matter discussed during our sessions, I will have no objections. **In that way, litigants and the general public would have a way of knowing when the need arises on how we arrive at our decisions especially where petitions are denied on minute resolutions. Unfounded and unfortunate speculations about the decision making process would disappear and the interests of justice would thereby be served.**" (Emphasis supplied.)

[54] G.R. No. 83341, 30 January 1990, 260 Phil. 702.

[55] G.R. Nos. 199034 & 199046, 13 December 2011.

Indeed, in a variety of other contentious cases of significant importance, the events and discussions in the internal deliberations of the Court, including the voting, have been the subject of separate opinions of both the majority and the minority.[56]

In the *Per Curiam* Resolution, the majority, however, insisted that the internal deliberations included in the Separate Opinions of Justices Antonio T. Carpio, Presbitero J. Velasco, Jr., Arturo D. Brion, Roberto A. Abad, and Maria Lourdes P. A. Sereno in *Arroyo v. De Lima*, are still well within the purview of the Court's claim of judicial privilege, despite its promulgation and publication:

> The [Dissenting, Concurring or Separate] Opinion refers to the personal opinion of the writer [who has the constitutional duty to explain his/her Dissent], and is a matter of public record after this was published. The Court, however, as the institution entitled to the deliberative process privilege, cannot waive the confidentiality of certain portions of this [Dissent, Concurring, Separate Opinion] for being part of the privilege.
>
> The Court shall allow the witness to issue a certified true copy of this [Dissent, Concurring, Separate] Opinion, subject to this reservation.[57]

This pronouncement gives the impression that the confidentiality rule even extends to promulgated written opinions by the Members of this Court containing its internal deliberations. This is unmitigated overexpansion of the rule of judicial privilege that does not appear to be aimed at protecting judicial independence and even veers dangerously close to censorship and curtailment of the constitutional duty of the minority. What is more absurd is that these Opinions are already within the realm of public knowledge having been promulgated and even posted in the Court's website. Any attempt by the majority to censure or regulate the use of these promulgated Opinions by the Impeachment Court amounts to unchartered extension of the judiciary's limited confidentiality rule. Whatever is contained in these Opinions are decidedly public records, which the House Prosecution Panel can rely on to

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[56] *In Re: Benigno Aquino, Jr., et al., v. Enrile*, G. R. No. L-35546, 17 September 1974, 59 SCRA 183; *Chavez v. Gonzalez*, G. R. No. 168338, 15 February 2008, 545 SCRA 441.
[57] *Per Curiam* Resolution dated 14 February 2012, Annex "A", Nos. 16-19.

support its cause. Nevertheless, the prerogative lies with the Impeachment Court on how to appreciate their contents. For the Court to clip this right vested on the Impeachment Court by reserving for itself the power to identify which parts of a promulgated Opinion the Senator-Judges can consider and which to turn a blind eye to is already tantamount to undue interference with the Senate's sole duty to try and decide impeachment cases, and contravenes the doctrine of separation of powers.

Furthermore, the censorship sought to be imposed on Justices in the writing of their respective opinions finds no place in the present Resolution, which primarily addresses the request by subpoena and by letter, for access to court documents and information. The Court's response to the subpoena *duces tecum* issued by the Senate Impeachment Court should not be used as an excuse to obstruct or regulate the constitutional duty of the Justices to explain their vote nor for the majority to hold the dissenters liable for expressing strong views on the deliberative processes the Court has undertaken in specific cases.

What the majority fails to appreciate is that while the confidentiality rule finds its bases in statutes and in the internal rules of this court, the duty to explain one's vote is a constitutional conferment. It is therefore supreme irony for the majority, to state on the one hand that "the rules on confidentiality will enable the Members of the Court to 'freely discuss the issues without fear of criticism for holding unpopular positions' or fear of humiliation for one's comments,'" and on the other hand, to promote exactly such evils with the proposed prior censorship or threats of liability for opinions rendered by the dissenters.

A final note. The internal workings of this Court require us, to some extent, to shield and protect it from the glare of political pressures. However, when the process of impeachment as a lamp of transparency and accountability is lit, this Court must demonstrate that it is not just quenching

the light when it invokes judicial independence. It must show that it is ready to balance the demand of the people for accountability with the need to preserve the efficient operations of the Supreme Court. It must carefully observe the legitimate bounds for judicial privilege to apply.

WHEREFORE, I vote to **PARTIALLY GRANT** the Letter Requests of the House Impeachment Prosecution Panel and to **DIRECT** the responsible court personnel to partially comply with the *Subpoena Duces Tecum* issued by the Impeachment Court, more specifically:

A. Letters dated 19 and 25 January 2012 of Cong. Joseph Emilio A. Abaya of the House Prosecution Panel:

1. On the FASAP v. PAL[58] *rollo*	
a. Information Sheet	Confidential and privileged
b. List of Legal Fees	Confidential and privileged
c. Pleadings with annexes	Public record
d. Decisions, Orders and Resolutions which have been released to the parties	Public record
e. Internal Resolutions	Confidential and privileged
2. On the *rollo* of *Navarro v. Ermita*[59]	Public record as case has been closed and terminated.
3. On the *rollo* of *Ma. Merciditas N. Gutierrez. House of Representatives*[60]	Public record as case has been closed and terminated.
4. On the *rollo* of *League of Cities v. COMELEC*[61]	Public record – considered closed and terminated.

B. Subpoena *ad testificandum et duces tecum* dated 09 February 2012 of the Senate Impeachment Court

1. **Rollo of the FASAP case (G.R. No. 178083)**	
a. Records/Logbook of the Raffle Committee showing the assignment of the FASAP case	Privileged and confidential (but results of the raffle are available to the parties and their counsel)
b. Four letters of Atty. Estelito Mendoza dated 13 September	Public record

[58] G.R. No. 178083.
[59] G.R. No. 180050.
[60] G.R. No. 193459.
[61] G.R. Nos. 176951, 177499 and 178056.

2011, 16 September 2011, 20 September 2011, 22 September 2011.	

C. Subpoena *duces tecum* dated 09 February 2012 of the Senate Impeachment Court in *Arroyo v. De Lima*, G.R. Nos. 199034 and 199046.

1. Supreme Court received (with time and date stamp) Petition for Special Civil Actions for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction filed by Gloria Macapagal Arroyo (G.R. No. 199034) [GMA TRO Petition], including the Annexes thereto.	Public record
2. Supreme Court received (with time and date stamp) Petition for Special Civil Actions for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction docketed as (G.R. No. 199046) [Mike Arroyo TRO Petition], including the Annexes thereto	Public record
3. Official Leave of Respondent Corona's travel order or leave applied for days within the month of November 2011	Public record
4. Minutes of the Supreme Court Raffle Committee which handled the GMA and Mike Arroyo TRO Petition	Confidential and privileged
5. Appointment or Assignment of the Member-in-Charge of the GMA and Mike Arroyo TRO Petition	Confidential and privileged, but available to parties and their counsel
6. Resolution dated 15 November 2011 on the GMA and Mike Arroyo TRO Petition as published	Public record

7. Logbook or receiving copy showing the time the TRO was issued to the counsel for GMA and Mike Arroyo as well as the date and time the TRO was received by the sheriff for service to the parties	Public record
8. Temporary restraining Order dated 15 November 2011 issued in the GMA and Mike Arroyo TRO Petition	Public record
9. Special Power of Attorney dated 15 November 2011 submitted by GMA and Mike Arroyo in favor of Atty. Ferdinand Topacio appointing him "to produce summons or receive documentary evidence" with the official date and time stamp of the Supreme Court	Public record
10. Official Receipt No. 00300227-SC-EP dated 15 November 2011 issued by the Supreme Court for the Two Million Pesos Cash Bond of GMA and Mike Arroyo with the official date and time stamp	Public record
11. November 15 and 16, 2011 Sheriff's Return of service of the GMA and Mike Arroyo TRO dated 15 November 2011 upon the Department of Justice and the Office of the Solicitor General	Public record
12. Certification from the Fiscal Management and Budget Office of the Supreme Court dated November 15, 2011 with the date and time it was received by the Supreme Court Clerk of Court showing it to be November 16, 2011 at 8:55 am	Public record
13. Resolution dated 18 November 2011 issued on the GMA and Mike Arroyo TRO Petition, as published	Public record

14. Resolution dated 22 November 2011 on the GMA and Mike Arroyo TRO Petition	Public record
15. Logbook showing the date and time of Justice Sereno's dissent to the 22 November 2011 Resolution was received by the Clerk of Court En Banc	Public record
16. Dissenting Opinions of Justice Sereno in G.R. Nos. 199034 and 199046 as published on 15 November 2011, 18 November 2011 and 13 December 2011	Public record
17. Dissenting Opinions of Justice Carpio dated 15 November 2011 and 13 December 2011 in G.R. Nos. 199034 and 199046 as published	Public record
18. Separate Opinion of Justice Velasco dated 13 December 2011 in G.R. Nos. 199034 and 199046	Public record
19. Concurring Opinion of Justice Abad dated 13 December 2011 in G.R. Nos. 199034 and 199046	Public record
20. Official Appointment of Respondent Corona as Associate Justice of the Supreme Court	Public record
21. Official Appointment of Respondent Corona as Chief Justice	Public record
22. Separate Opinion of Justice Abad dated 13 December 2011	Public record

I vote that the Clerk of Court, or any other duly authorized representative, be **DIRECTED** to provide the certified true copies of the court documents to the House Impeachment Panel and the Senate Impeachment Court, as permitted, during regular office hours and to appear before the Senate Impeachment Court on administrative and non-

adjudicatory matters that do not fall under the rule on qualified judicial privilege. The requesting parties shall **PAY** the costs of the reproduction of these documents.

MARIA LOURDES P. A. SERENO
Associate Justice