

[ADMINISTRATIVE ORDER NO. 236, September 24, 1991]

SUSPENDING FOURTH ASSISTANT CITY PROSECUTOR ELMER MANUEL SAGSAGO OF BAGUIO CITY FOR A PERIOD OF ONE (1) YEAR WITHOUT PAY

This refers to the administrative complaint filed by the Department of Justice against Fourth Assistant City Prosecutor Elmer Manuel Sagsago of Baguio City for "Disloyalty to the Republic of the Philippines and to the Filipino People."

The case arose from the transmittal by the Fact-Finding Commission created under Republic Act No. 6832 to investigate the failed December 1989 Coup, otherwise known as the "Davide Commission", of a copy of its Resolution No. 114, "IN RE: RECOMMENDING TO THE DEPARTMENT OF JUSTICE THE PROSECUTION AND/OR INVESTIGATION OF CIVILIANS PROBABLY LIABLE FOR OFFENSES IN CONNECTION WITH THE FAILED DECEMBER 1989 COUP D'ETAT" (September 30, 1990) to my Office, which in turn referred it to the Department of Justice. The Resolution contains, inter alia, the following recital:

"22. ELMER SAGSAGO

an Assistant Prosecutor of the City of Baguio, President of the Baguio Chapter of GCFI, who, with Ikeuchi and Sgts. Ocon and Mendez, left Baguio City in the morning of 30 November 1989 to attend an alleged meeting of the GCFI members at the PPA Building, North Harbor, in the evening of the said date, at which meeting the participants were provided with fire-arms; before the meeting, he met 30 to 40 GCFI members from the PMA among them were Sgts. Jaime Camacho and Alimbuyao."

On November 9, 1990, the Department of Justice, per Justice Secretary, now Executive Secretary Franklin M. Drilon, formally charged Prosecutor Sagsago, as follows:

"This Department has found, after an evaluation of Resolution No. 114 xxx of the Fact-Finding Commission xxx and your testimony, as well as others, before said Commission, as borne by the pertinent records thereof xxx that a probable cause for Disloyalty to the Republic and to the Filipino people exists against you."

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

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

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

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

"Culled from the testimonies, it appears that sometime in the second week of October 1989, the respondent attended a gathering (Comments of the Respondent, p. 143, Folder I; tsn., 10 January 1991, pp. 13-17, Folder II; p. 101, Folder III); that among those present in the said gathering were Lt. Col. Eduardo 'Red' Kapunan, Sgt. Ocon and Sgt. Mendez; that on 26 November 1989, at the Orange Country Tavern in Baguio City, Sgt. Rodolfo Ocon learned of a general meeting which would be scheduled and which would be held at Pier 8, North Harbor, Manila (tsn., 11 January 1991; pp. 1-2, Folder II); that at about 3 o'clock in the afternoon of 28 November 1989, at the Tondo Restaurant in Baguio City, Sgt. Ocon was informed by MSgt. Abe about another assembly or general meeting at 5 o'clock in the afternoon of 30 November 1989 at Pier 8, North Harbor and for him to inform the other members who might be interested in attending that meeting (Folder III, p. 124; tsn., 10 January 1991, pp. 35-36, Folder II); that sometime in mid-November, Sgt. Ocon told Sgt. Mendez that there was going to be a meeting at the North Harbor (tsn., 11 January 1991, pp. 37-38, Folder II; tsn., 31 May 1990, p. 10 Folder VI); that Sgt. Ocon told Sgt. Antonio Alimbuyao about the general meeting of the Guardians (tsn., 11 January 1991, pp. 21-26, Folder II); that at about 6 o'clock in the morning of 30 November 1989, Sgt. Mendez informed Sgt. Jovito Marron about a meeting at Pier 8; that Sgt. Mendez asked Sgt. Marron to tell the respondent about it (tsn., 27 December 1989, pp. 14-16, Folder II; tsn., 31 May 1990, p. 11 Folder VI); that at about 6:30 o'clock in the morning of 30 November 1989, Sgt. Marron instructed Nena P. Edduba to inform her uncle, the respondent, about the meeting; that Edduba, relayed the message to her uncle at about 7 o'clock in the morning of 30 November 1989 (tsn., 26 November 1990, pp. 32-38, Folder II); that at around 9 o'clock in the morning, the respondent, Ikeuchi and three (3) others asked Daniel T. Fariñas if he knew of a driver for Manila (tsn., 26 November 1991, pp. 13-32); that at about 8:25 o'clock in the evening of 30 November 1989, Sgt. Ocon proceeded to the restaurant as told to him by Msgt. Abe at the North Harbor (tsn., 10 January 1991, p. 38); that Sgt. Camacho arrived at Pier 8, between 6 and 7 o'clock in the evening of 30 November 1989; that

Sgt. Alimbuyao arrived alone at Pier 8 at past 5 o'clock in the afternoon of 30 November 1989; that Sgt. Mendez and Sgt. Daza, in civilian clothes and unarmed, arrived at North Harbor in the afternoon of 30 November 1989 (tsn., 31 May 1990, p. 12, Folder VI); that the respondent and Ikeuchi left Baguio City at about 9:30 o'clock in the morning of 30 November 1989 (tsn., 5 May 1990, p. 17, Folder V); that they reached Pier 8 about 6:30 o'clock in the evening of that day (Sworn Statement of the respondent, Folder III, p. 36, tsn. 10 January 1991, pp. 36-45, Folder II); that the respondent and Ikeuchi saw Sgt. Mendez and Sgt. Ocon together with some 12 to 15 soldier-members from the PMA sitting in one of the restaurants thereat (Sworn Statement of the respondent, Folder III, p. 36); that Sgt. Ocon met Sgt. Camacho and Sgt. Alimbuyao thereat (tsn., 10 January 1991, pp. 36-45, Folder II); that they passed the time in the restaurant; that, meanwhile, other members from the PMA had started arriving until their total number reached thirty (30); that at about 9:30 o'clock in the evening, someone asked them if their group came from Baguio City, to which they answered in the affirmative; that they were asked by the person to follow him and they went to the building of the Philippine Ports Authority (PPA) (tsn., 10 January 1991, pp. 36-45, Folder II; Sworn Statement of the respondent, Folder III, p. 36); that the place was filled with people and that there was some sort of festivity inside; that after partaking of the food and drinks thereat, the respondent went outside; that the respondent, Sgt. Alimbuyao and Sgt. Camacho remained outside because it was hot inside the building (Ibid.); that at about 11 o'clock, a certain 'somebody' arrived; that this 'somebody' announced at the gathering about the 'good news' which is to change the government because it is corrupt; that this 'somebody' asked if the Baguio group was joining; that Sgt. Ocon answered, "if it is for the good of the country' (tsn., 10 January 1991 pp. 36-45, Folder II; tsn., 31 May 1990, Folder VI); that the respondent called to Ikeuchi who, in turn, called Sgt. Mendez who also called to Sgt. Ocon; and that the respondent told them something wrong was happening so they were not joining and they were going to disperse quietly in groups of two's or three's (Sworn Statement of the respondent, Folder III, p. 37; tsn., 31 May 1990; pp. 20-35, Folder VI; tsn., 10 January 1991, pp. 36-45, Folder II; tsn., 11 January 1991, pp. 31-33)," (at pp. 3-4).

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

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

"It is admitted that the respondent is the President of the Guardians Centre Foundations, Inc. (GCFI) in Region I. It is also concede that the respondent, together with Ikeuchi, Sgt. Ocon, Sgt. Mendez, Sgt. Camacho and Sgt. Alimbuyao, left Baguio City in the morning of 30 November 1989 to attend a meeting of the GCFI at Pier 8, North Harbor. It has been established that they and other members of the GCFI,