

**COUNTER-AFFIDAVIT
(Consolidated Comment)**

I, **ROLAND G. SIMBULAN**, Filipino and of legal age, after having been sworn to in accordance with law, do hereby state that:

1. I am executing this Counter-Affidavit (Consolidated Comment) as a reply and comment to the *Kontra-Sinumpaang Salaysay* and *Consolidated Rejoinder-Affidavit* of Daniel O. Espinosa, the *Kontra-Salaysay* of Vito T. Jagunos; the *Kontra-Sinumpaang Salaysay* of Victor L. Ancheta, and the *Sinumpaang Salaysay* of their respective witnesses and supposed voluntary or "disinterested" witnesses, who are under investigation by this Honorable Office in connection with the death of my wife, Lourdes "CHIT" E. Simbulan.

1.1. I shall hereinafter refer to my wife as she was fondly known by all - "CHIT". This Counter-Affidavit (Consolidated Comment) was made with the help of my lawyer on matters of law and relevant jurisprudence as they apply to the facts and evidence adduced in this case.

2. The above named respondents shall hereafter respectively be referred to as **ESPINOSA, JAGUNOS** and **ANCHETA** for short. The vehicles involved in the incident shall hereafter, for purposes of brevity, be referred to as follows: the Abu Abbey Taxi with Plate No. TXH 532 driven by JAGUNOS as the "**TAXI**"; the public utility passenger bus driven by ESPINOSA and owned and operated by the Universal Guiding Bus Line with Plate No. UVC-343 as the "**UNIVERSAL BUS**"; the public utility passenger bus driven by ANCHETA owned and operated by Nova Auto Transport with Plate No. TXE-271 as the "**NOVA BUS**".

3. I come before this Honorable Office as a neutral party - neutral only to the claims and assertions by the respondents, but certainly partial in knowing the truth to my beloved CHIT's death. I, my family, CHIT's family and her friends, are solely interested in seeking the truth so that the party or parties responsible for her untimely,

violent and sudden death can be properly brought before the bar of justice and meted out the proper penalties and punishment.

4. I believe that the sole issue before this Honorable Office is to determine whether there is probable cause to believe that ESPINOSA was recklessly imprudent in operating the bus that he was driving on May 13, 2011, thereby resulting in the death of CHIT. In connection with this issue, there is a need to determine the probability of ESPINOSA's claim that he could not have avoided crashing into the taxi because of the alleged concurrent or separate negligence of the drivers of the NOVA BUS and the TAXI, who, ESPINOSA maintains, are the PROXIMATE CAUSE of CHIT's untimely death.

5. It is a fact, and admitted by the respondent, ESPINOSA, and supported by the physical evidence, that he was driving the UNIVERSAL BUS that crashed into the rear end of the TAXI that CHIT was riding on the early evening of May 13, 2011 in the vicinity of Commonwealth Ave., Diliman Q.C. The bus driven by ESPINOSA crashed into the TAXI's rear with such force that it obliterated the taxi's rear baggage compartment and partially crushed its rear passenger compartment where CHIT was seated, thereby killing her. Despite this undeniable fact and one even admitted by ESPINOSA, he now seeks to free himself from any liability whatsoever in the death of CHIT.

6. As we shall show below by mainly utilizing the physical or material evidence adduced, the answer to the issue above points to a reasonable conclusion that there is probable cause to find **DANIEL O. ESPINOSA** guilty of **RECKLESS IMPRUDENCE RESULTING IN HOMICIDE, for the death of CHIT, QUALIFIED BY FAILURE TO LEND AID TO HIS VICTIM AS DEFINED IN THE FIRST AND LAST PARAGRAPHS OF ART. 365 OF THE REVISED PENAL CODE AS AMENDED.**

6.1. It was solely ESPINOSA's reckless and negligent act that caused the death of CHIT. Based on the physical evidence, whatever negligence, if any, of the TAXI or NOVA was not in any way the "proximate cause" of CHIT's death. As will be explained hereunder, with or without the negligent act of the TAXI or the NOVA BUS, ESPINOSA would still have hit the TAXI on that tragic day because he was without a doubt operating his vehicle in a negligent, careless and reckless manner.

VERSIONS OF THE INCIDENT

The versions of what transpired on Commonwealth Ave. according to the respondents and witnesses are essentially as follows:

7. VITO JAGUNOS:

7.1. Respondent Vito Jagunos is the driver of the Abu Abbey Taxi that Chit was riding.

7.2. JAGUNOS' version of the events began when he picked up CHIT near the Tandang Sora Market. He was directed by Chit to be brought to the Ayala Technohub (TECHNOHUB) located on Commonwealth Ave. To get to Commonwealth Ave., JAGUNOS claims that from Tandang Sora, he first turned right on Visayas Ave., then made a U-turn in front of the Shell gasoline station so he could then turn right to Central Ave., and finally made a right turn when he reached Commonwealth Ave. towards the direction of TECHNOHUB.

7.3. Upon nearing the TECHNOHUB, he slowed down and brought his vehicle closer to the outer right lane to bring CHIT down at the unloading dock beyond the main entrance to TECHNOHUB. It was at this point that a speeding bus, later found out to be the NOVA BUS, overtook him on his right side, grazing his right side and hitting his right side view mirror.

7.4. After the NOVA BUS grazed the right side of the TAXI, he was immediately hit from behind by another vehicle. The force of the impact that hit his taxi from behind caused his vehicle not only to swerve to the middle lane of Commonwealth Ave., but also to spin and face the opposite direction.

7.5. He looked at his passenger, CHIT, whom he saw vomiting blood. He got out of his taxi and asked for help from MMDA people and passing motorists. Returning to see CHIT, he saw that she was lifeless.

7.6. It was then that he saw that the vehicle that hit him from behind was the UNIVERSAL BUS. The UNIVERSAL BUS was up on the sidewalk or gutter in front of

TECHNOHUB. The bus even hit and uprooted a small tree on the sidewalk. He later learned that the driver of the bus fled the scene.

7.7. He then executed a sworn statement later that evening at the police station which essentially narrates the above.

7.8. In support of his version of events, JAGUNOS presented the following documents:

1) A map marking the route he took from the place where he picked-up CHIT on Tandang Sora, then turned right on Visayas Ave., then made a U-turn so he could turn right to Central Ave., and finally made a right turn when he reached Commonwealth Ave. up to TECHNOHUB.

2) A Certification from Toyota Otis, Inc. stating as follows:

"This is to certify that the operator of Abu Abbey Taxi of Mr. Delfin Llagas, Toyota Vios 1.3E with plate number TXH 532, engine number 2NZ-2835739 and chassis number MRO53HY4109000885 has been thoroughly **checked the clutch and transaxle operation by our technician. The said components has a normal operation and no oil leakage found, hence car was not in reverse during impact.**" (Emphasis added.)

3) A Certification issued by Virginia K. Reyes, Proprietress of the SMV Chosen Taximeter Gen. Mdse., of the last 100 trip record which was recorded in the taximeter as of May 13, 2011, of ABU-ABBEY TAXI, with plate number TXH-532, operated by Mr. Delfin Llagas and driven by JAGUNOS. The attached trip record shows the last trip to have travelled a distance of **5.8 KILOMETERS** with a Trip Fare of **ONE HUNDRED AND TEN PESOS (Php110.00).**

8. VICTOR ANCHETA:

8.1. Respondent, Victor Ancheta (ANCHETA), is the driver of the NOVA BUS. When investigated by the police, he admitted he was the driver of **NOVA BUS** that was

in the vicinity of the accident. But he claims that he avoided and did not hit the TAXI of JAGUNOS. He however refused to initially put his statement in writing.

8.2. On June 24, 2011 he submitted his *Kontra-Sinumpaang Salaysay* wherein he claims that while traveling along COMMONWEALTH within the speed limit of 60 kph., he almost hit a taxi that suddenly turned right coming from the U-Turn slot on Commonwealth Ave. and headed towards the right lane fronting TECHNOHUB.

8.3. In order to avoid hitting the taxi, ANCHETA claims he steered to the right and applied his brakes moderately in order not to cause his passengers to jerk forward ("sumubsub"). However in trying to avoid the taxi, he claims that a portion of the right underside of the NOVA BUS scraped the sidewalk, causing some damage on the vehicle.

8.4. Aside from that small damage, ANCHETA and his witness, JOHN ELREY P. VILLAROSA, his conductor that day, supposedly claim that they did not hit the taxi that was allegedly in their path; nor did they feel or hear anything that would indicate that they hit the said taxi. VERNALIZA M. GARCIA, passenger on the NOVA BUS at the time of the incident, did not see the taxi but simply supports ANCHETA's claim that the damage to the NOVA BUS was only that shown in the picture attached to his *Kontra-Sinumpaang Salaysay*.

9. DANIEL ESPINOSA

9.1. Daniel Espinosa (**ESPINOSA**) is the driver of the **UNIVERSAL BUS**. He admits having hit the TAXI where Chit was a passenger and also admits that he fled immediately after hitting it.

9.2. **ESPINOSA** claims that while he was traversing Commonwealth Ave. and was operating his bus within the maximum speed limit of 60 kph., two speeding NOVA passenger buses supposedly overtook him. For purposes of completing ESPINOSA's narration, we shall refer to this other NOVA bus (whose very existence remains doubtful given that it continues to remain unidentified until now), as "**NOVA BUS-2**", to distinguish it from the bus ANCHETA was driving, designated earlier as "**NOVA BUS**". According to ESPINOSA therefore, the **NOVA BUS** overtook him on his right side and the **NOVA BUS-2** on his left side. After passing him, the two NOVA buses, which were

now in front of him, continued to race staying side-by-side almost touching each other.

9.3. When the two NOVA buses reached Technohub, the two, according to ESPINOSA, separated because they overtook a taxi in their path. **ESPINOSA admits he never saw the taxi because his sight was blocked by the two NOVA buses racing in front of him. He further admits that he only saw the TAXI when the two buses separated to pass the TAXI, one to the left of the TAXI, and the other to the right.** The NOVA bus that tried to pass the TAXI on the right, according to Espinosa, hit the rear of the TAXI and continued to plow ("inararo") through its right side.

9.4. ESPINOSA therefore claims that his hitting the TAXI was unavoidable, because the NOVA bus hit the TAXI with such force that the TAXI was pushed ("bumalandra") into his path. **He says he was then about seventy (70) meters away from the NOVA bus that plowed through the TAXI when he first saw it.**

9.5. He claims he immediately applied his brakes and steered to the right to avoid the TAXI. He admits that he was finally able to stop only after the bus he was driving climbed the gutter and sidewalk in front of Ayala Technohub and after it also hit a small tree fenced inside a "steel frame" on the sidewalk. **He further admits that he immediately fled the scene of the incident by boarding a bus headed towards Makati, allegedly fearing that he may be mobbed and beaten up by bystanders.**

9.6. In support of his version of the events, ESPINOSA presents several witnesses, who claim as follows:

9.6.1. **Honorio T. Panaga, (PANAGA)** is also a driver of a passenger bus belonging to the same company that employs ESPINOSA, the Universal Guiding Star Bus Line Corporation. He claims to have seen the NOVA BUS first hit and plow ("umararo") the TAXI. He also claims to have seen ESPINOSA apply his brakes and steer his bus to the right to avoid hitting the TAXI that was supposedly pushed into its path by the NOVA BUS-2. But ESPINOSA still hit the right rear portion of the TAXI and his bus grazed ("sumadsad") the sidewalk, and even hit a small tree in front of the TECHNOHUB.

9.6.1.1. PANAGA even claims to have stopped to take on some of the passengers of ESPINOSA's bus and while doing so, he saw all the passengers of the NOVA BUS that hit the taxi disembark a short distance from the exit driveway of Technohub. Some of the passengers of the NOVA BUS that hit the TAXI even rode his bus, according to him.

9.6.1.2. It is interesting to note that PANAGA, even though he works for the same bus company as ESPINOSA, did not even alight from his bus to render any assistance to ESPINOSA or any of his passengers, or even just to check on their condition. As a matter of fact, PANAGA did not even bother to report the accident to his bus company, the Universal Guiding Star Bus Corporation. PANAGA'S callous indifference to the safety and welfare of his co-worker, and his bus company's passengers reveals the lack of training that the Universal Guiding Star Bus Corporation provides its employees on matters regarding public safety and welfare.

9.6.2 **Jonathan Calixtro, (CALIXTRO)** is the conductor of the bus driven by PANAGA on the night of the incident. CALIXTRO claims he first heard a thud ("kalabog"), then saw the bus driven by ESPINOSA bump the TAXI.

9.6.2.1 He claims to also have seen the bus driven by ESPINOSA steer to the right to avoid the TAXI. Then, the bus driven by ESPINOSA went up ("sumadsad") the sidewalk in front of Technohub and also hit a small tree inside an iron fence. The bus that he was riding then stopped to take passengers from the bus driven by ESPINOSA, and left the vicinity.

9.6.3. **Oliver C. Sabellano, (SABELLANO)** is a driver of another passenger bus marked as MGP Bus with Body No. 1517. He claims to have been in the vicinity of TECHNOHUB right after ESPINOSA's bus hit the TAXI, where he took on two passengers.

9.6.3.1. These two passengers, he learned, were allegedly on the NOVA BUS that hit the TAXI. He overheard these passengers say that after the NOVA BUS grazed ("nasagi") the TAXI, the NOVA BUS left them. He claims that the driver of the NOVA BUS left them after learning the

seriousness of the damage the bus caused the TAXI.

9.6.4 **William C. Amandy, (AMANDY)**, a jobless sixty-four (64) year old man, claims he voluntarily presented himself as a witness to the police after he supposedly heard a public call on the radio for witnesses to the incident at Commonwealth that resulted in CHIT's death.

9.6.4.1. He claims that at the time of the incident on May 13, 2011, he was seated on the grass in front of TECHNOHUB with his two (2) year old grandson on his lap.

9.6.4.2. From his supposed vantage point, he claims to have seen a taxi cross from the U-Turn Slot Lane towards the sidewalk. When the said taxi reached the second lane near the sidewalk, he claims he saw it back-up near the main entrance driveway of TECHNOHUB. He then saw a NOVA BUS bump the taxi, and immediately thereafter, the same taxi was hit by the UNIVERSAL BUS.

9.7. On July 1, 2011, ESPINOSA submitted a *Consolidated Rejoinder-Affidavit* to the *Kontra-Salaysay* of Vito T. Jagunos; and the *Reply-Affidavit* of **DELFIN B. LLAGAS (LLAGAS)**, the employer of JAGUNOS and owner of the TAXI. Simply put, ESPINOSA reiterated his claim that he is totally and absolutely blameless for the accident. Instead, he imputes all blame on JAGUNOS and ANCHETA.

9.7.1. First, ESPINOSA takes issue with LLAGAS and the latter's interpretation of the PNP Q.C. Police District Crime Laboratory-Office Station 10 - Chemistry Report No. P1-04-11. ESPINOSA admits that he hit the TAXI and that the paint of the UNIVERSAL BUS was thus transferred and imprinted on the rear of the TAXI. He asserts, however, that the report does not, contrary to LLAGAS' interpretation, disprove his "theory" that two NOVA buses were racing and that a NOVA BUS first hit and scraped the TAXI.

9.7.2. ESPINOSA then raises the issue of the Nova bus company's refusal to allow police investigators to get a paint sample from their bus, thereby claiming that a "reasonable presumption" arises that the NOVA BUS did bump and scrape the TAXI.

9.7.3. ESPINOSA denies ever saying that the TAXI came from the University of the Philippines (U.P.), but admits that: (a) the first time he saw the TAXI was when it was bumped and scraped by the NOVA BUS; (b) he never saw the TAXI make a U-Turn and cross Commonwealth Ave., (c) he relied on AMANDY's affidavit, whom he designates as a "disinterested" and "providential" witness, to prove that the TAXI came from the U-Turn slot fronting TECHNOHUB.

9.7.4. He then asserts that JAGUNOS and LLAGAS were lying as to where the TAXI came from before it reached the front of TECHNOHUB. He is unconvinced by JAGUNOS' and LLAGAS' claim regarding the TAXI's point of origin because he claims that the presence of barriers on the U-turn slots along Visayas Ave. would have made it impossible for JAGUNOS to make a U-turn in front of the Shell gasoline station to reach Central Ave. He further posits that JAGUNOS could not have taken Central Ave. to reach Commonwealth because he says that route is circuitous.

9.7.5. He therefore theorizes that based on the mileage that the TAXI registered from Tandang Sora to TECHNOHUB, presumably referring to the Certification issued by Virginia K. Reyes and attached to JAGUNOS' or LLAGAS' Counter-Affidavit, it was more consistent that JAGUNOS took Visayas Ave. to the Quezon Memorial Circle, turned right on Commonwealth Ave., and made a U-turn in front of TECHNOHUB.

9.7.6. ESPINOSA then posits that if JAGUNOS had come from Central Ave., he would not have been bumped after the entrance to TECHNOHUB where his passenger was supposedly going.

9.7.7. He questions the veracity and relevance of the certification presented by LLAGAS and JAGUNOS from TOYOTA showing that the clutch and transaxle of the TAXI was normal and no leakage was found. This is because, according to ESPINOSA, TOYOTA was not authorized by this Honorable Office to conduct the inspection and that this company was paid to issue the said report by LLAGAS and JAGUNOS. Moreover, he says that it was possible that the JAGUNOS could have been in neutral gear when he was hit.

9.7.8. Lastly, ESPINOSA claims that JAGUNOS and ANCHETA also fled the scene of the accident for no apparent reason, unlike him, who fled because he was afraid for his personal safety.

TRUTH AND FACTS AMIDST CONJECTURE AND SPECULATION.

10. Amidst these conflicting claims is the physical evidence, which can be used objectively to determine the truth of what actually transpired that tragic late afternoon on Commonwealth Ave. that led to CHIT's untimely death. I believe that the physical evidence is the best means, for now, of testing and determining the truth and facts from the conjectures, suppositions and speculations by the respondents. The physical evidence can be the proper basis of determining the issue of probable cause because, unlike the testimonies of the respondents, their witnesses and so-called "disinterested" and even a "providential" witnesses, the evidence is more difficult to create, alter or concoct.

11. Considering further that what is to be determined at this stage in the proceedings is merely the probable cause of guilt in order for the proper party to be brought to court to answer for the death of CHIT, and this is not yet a full-blown trial, it is merely fitting and reasonable that we accept the truth established by the physical evidence, absent any contrary evidence that it has been falsified or is totally contrary to the normal order of things.

THE PHYSICAL EVIDENCE.

12. The physical evidence I deem essential in arriving at probable cause are the following:

12.1. **THE BODY:** - of **LOURDES E. SIMBULAN**, which was recovered in the rear passenger seat of the TAXI.

12.2. **THE CERTIFICATION OF POST-MORTEM EXAMINATION:** of **LOURDES E. SIMBULAN**, dated May 13, 2011 and issued by Dr. Reynaldo P. Romero a Medico-Legal Officer of the NBI, finding that the cause of death was "TRAUMATIC HEAD INJURIES", a copy of which forms part of the records of this case.

12.3. **THE ABU ABBEY TAXI:** A Toyota Vios 1.3E with plate number TXH 532, and the extensive damage it sustained as a result of the **UNIVERSAL BUS** hitting it from behind.

12.4. **PHOTOGRAPHS OR PICTURES OF THE TAXI SHOWING NATURE & EXTENT OF DAMAGE INCURRED:**

12.4.1. Three (3) of the photographs attached to the transmittal letter of PSI Maximo P. Sabio to the Prosecutor's Office of Quezon City in I.S. No. XV-03-INV11E-03792,. The pictures were presumably taken at Commonwealth Ave. immediately after the incident. . They have been enlarged and are attached hereto as **ANNEX "A"**, **"B"** and **"C"** for easy reference. A brief description of what is depicted in the pictures follows:

ANNEX "A" is a picture showing the nature and extent of damage of the TAXI from the rear.

ANNEX "B" is a picture showing members of the Quezon City Department of Public Order and Safety (DPOS) Rescue applying a **"jacking"** mechanism, as shown in the picture, to open the rear passenger compartment of the TAXI presumably to recover the lifeless body of CHIT. The "jacking" mechanism is encircled and marked as **ANNEX "B-1"**. One can get a glimpse of CHIT's clothing manifesting that she was pinned at the rear passenger compartment of the TAXI.

ANNEX "C" is a picture showing the rear passenger compartment of the TAXI after the DPOS-Rescue team were presumably able to "JACK" it open. The mechanism used to pry or widen the passenger rear exit to extricate CHIT is clearly depicted in the photo. The mechanism is encircled and marked as **AANNEX "C-1"**. In this photograph one an notice that the length of the "jacking" mechanism is longer than in **EXHIBIT "B"**. It shows a clearer view of CHIT after the mechanism widened the opening at the back passenger compartment.

12.4.2. Three (3) photographs that show the nature and extent of the damage of the TAXI caused by the collision with the UNIVERSAL BUS driven by ESPINOSA. They are attached and marked as **"ANNEXES "D", "E" and "F"**.

ANNEXES "D" and **"E"** clearly show that the UNIVERSAL BUS driven by ESPINOSA almost hit the entire rear of the TAXI at an angle towards the right and just barely missing the rear left brake and backup lights. The force of impact nevertheless totally crushed the rear baggage compartment of the TAXI.

ANNEX "C" is a photograph taken from above the TAXI that more evidently shows the obliteration of the rear baggage compartment due to the force of impact. Although these three (3) pictures were taken several days after the accident, they are nevertheless the same if not identical to what is depicted in **ANNEX "A"**, the photograph taken by the police immediately after the accident.

12.5. PHOTOGRAPHS OF THE UNIVERSAL BUS:

12.5.1. Attached are SIX (6) photographs of the UNIVERSAL BUS taken at the police impounding compound. They are respectively marked as **ANNEXES "G", "H", "I", "J", "K" and "L"**.

ANNEX "G" is a photograph of the front of the bus showing the external damage it sustained in hitting the rear of the TAXI. The damage starts from a few inches from the center of the bus all the way to its left (right if facing the bus) headlights.

ANNEX "H" is a close-up of the damage to the front of the UNIVERSAL BUS. It shows that the impact caused damage even to the base of its wiper and windshield at the driver's side, which shows a tear from below up to the base of the wiper.

ANNEX "I" is a close-up of the damage of the bus on its left front

side. It also shows that the strength and force of the impact caused the glass on the driver's left side to break.

ANNEXES "J", "K" and "L" are photographs showing the visible damage that the UNIVERSAL BUS incurred in hitting the TAXI taken underneath its front bumper.

ANNEXES "J" shows a square iron bar with red paint that is twisted inwards and beyond another thicker unpainted square iron bar. The red iron bar seems to have broken away from where it was connected under the front grill, which we have encircled and marked as **ANNEX "J-1"**. The big dent on the thicker iron bar is marked as **ANNEX "J-2"**

ANNEXES "K" is a close-up of the same red iron bar showing how far back it was twisted underneath the UNIVERSAL BUS. The picture also shows that the red iron bar almost detached from where it connected to the left side of the bus body. It even shows a big crack where it is connected, which is encircled and marked as **ANNEX "K-1"**.

ANNEX "L" is a close-up of the unpainted but thicker iron bar that seems to run parallel to the red iron bar. This thicker iron bar seems to be connected to the front of the bus somewhere at its middle. The photograph again shows a part of the red iron bar that was twisted inwards and beyond the unpainted thicker iron bar. It also shows that the thicker iron bar was bent inwards with a big dent. The dent is marked as **ANNEX "L-1"**.

ANNEXES "J", "K" and "L", even if taken after the incident, are still similar, if not identical, to the photographs taken by the police of the UNIVERSAL BUS at the scene of the incident, which the police attached to their undated first referral letter of the case to the Office of the City Prosecutor.

12.6. FIBERGLASS FRONT OF THE UNIVERSAL BUS: Is the material that

the front part of the UNIVERSAL BUS is made out of, and is essential in this case. This material is fiberglass. As one knows and can easily verify, fiberglass, when hit or pounded on, does not dent. It will bounce back to its original shape. However, if it is hit with great force, it will shatter or tear. This is what is depicted on **ANNEXES "G", "H", "I", "J", "K"** and **"L"**, above. The UNIVERSAL BUS sustains no dents because it is made out of fiberglass. However, the front of the vehicle shows a tearing of the fiberglass, manifesting the application of great force.

12.7. **SKETCH AT THE SCENE OF THE ACCIDENT:** Is a rough sketch of the scene of the incident made by one of the police investigators who arrived at the scene at 6:30 P.M. A photocopy of the sketch is attached and marked an **ANNEX "M"**.

ANNEX "M-1" is the TAXI in the sketch showing that it was found on the FIFTH (5TH) LANE of Commonwealth Ave., counting the first lane to be that closest to the sidewalk. The sketch also shows that the TAXI was almost directly facing the opposite direction towards Fairview.

ANNEX "M-2" is the part of the sketch on its upper right side with the handwritten words **"ISLAND U TURN SLOT"**. This presumably designates the end in the island barrier for vehicles that take a U-Turn from Commonwealth Ave.

ANNEX "M-3" is the location and position of the UNIVERSAL BUS after it hit the TAXI. Based on the sketch, half of the UNIVERSAL BUS was on the sidewalk and was perpendicular to Commonwealth Ave., with the front of the bus damaged facing TECHNOHUB.

ANNEX "M-4" is the part of the sketch a bit above, and to the left of **ANNEX "M-1"** (TAXI), which consists of dashes and a line and arrow pointing to the handwritten word **"DEBRIS"**. We presume that this is the area where the UNIVERSAL BUS crashed into the TAXI, causing DEBRIS to be located and scattered and recorded by the police upon their arrival at the scene.

12.8. **PAINT ANALYSIS REPORT:** The PNP Q.C. Police District Crime Laboratory Office Station 10 - Chemistry Report No. P1-04-11, of the paint imprinted on rear and right side of the TAXI. The paint stain taken from the rear of the TAXI is consistent with that of the UNIVERSAL BUS, while the paint stain on the right side of the TAXI does not belong to the UNIVERSAL BUS.

12.9. **TAXIMETER OF THE ABU-ABBEY TAXI AND ITS LAST 100 TRIP RECORD:** The contents of the taximeter of the TAXI as downloaded and certified by **VIRGINIA K. REYES** of the SVM Chosen Taximeter Gen. Mdse., which reflects the last trip of the TAXI on May 13, 2011 at around **5:46 P.M.** The TAXI traveled a distance of 5.8 kilometers. and incurred a trip fare of **ONE HUNDRED TEN PESOS (Php110.00)**. I am attaching for easy reference the first page of the 100 TRIP RECORD which is marked as **ANNEX "N"**.

12.10. **THE TAXI'S CLUTCH AND TRANSAXLE ARE NORMAL:** The condition of this physical evidence as having "a normal operation and no leakage found" belies claims that it was the TAXI that was running in reverse when hit by ESPINOSA. A copy of the Certification to this effect by **SALVADOR C. PANTE (PANTE)**, Service Manager, of TOYOTA Otis Inc., is attached for easy reference as **ANNEX "O"**.

12.11. **GUARD AFFIDAVIT & LOGBOOK PAGES:** Attached is the affidavit of **RYAN M. BAYBAY**, the security guard on duty on May 13, 2011 from morning until 7:00 pm at the only entry point into the College of Mass Communications of the University of the Philippines where CHIT is a professor. He attests to the fact that CHIT did not go the college that day. Attached to his affidavit are photocopies of pages 345 and 346 of the security guard logbook showing who went to the college that day. The documents are respectively marked as **ANNEXES "P", "P-1"** and **"P-2"**. I acquired these personally since I wanted to trace her whereabouts immediately prior to her death.

The logbook confirms that CHIT did not come from U.P. going to TECHNOHUB. As she told me when I left the house that morning, she would be staying home to work and would meet her high school classmates at TECHNOHUB for dinner. I was supposed to fetch her there at 9 PM.

Analysis of the physical evidence

13. On the basis of the physical evidence, it is possible to reasonably determine who is probably criminally liable for the death of CHIT. This physical evidence is the best basis to sort through the conflicting claims and finger-pointing of the respondents, to arrive at an accurate re-creation of the events that transpired that fateful day, and ultimately reveal the person who was recklessly responsible for the death of CHIT.

14. There are irrefutable and admitted facts that serve as the starting point for the determination of the truth. The first irrefutable fact is that my wife LOURDES E. SIMBULAN was killed on May 13, 2011. Another irrefutable and admitted fact is that the direct and immediate cause of her death was that the UNIVERSAL BUS driven by respondent ESPINOSA crashed into the rear of the TAXI that she was riding on the late afternoon of May 13, 2011 in front of TECHNOHUB along Commonwealth Ave.

15. ESPINOSA claims that he is totally blameless, and cannot be held liable for causing CHIT's death, despite the fact that the direct and immediate cause of her death was his act of hitting the TAXI. Therefore, what is left to be done, using the physical evidence above, is to verify the truth of ESPINOSA's claim that he was driving within the 60 KPH speed limit and his hitting the TAXI was unavoidable. He claims that the proximate cause for his hitting the bus is attributable to NOVA BUS, operated by ANCHETA, which first hit the TAXI, thereby pushing the TAXI in his path. ESPINOSA further seeks to evade total liability by extending the proximate cause to the TAXI's supposed crossing of Commonwealth Ave. from the U-Turn slot and backing up.

ESPINOSA DROVE THE BUS WITH RECKLESS IMPRUDENCE, AS EVIDENCED BY THE FORCE OF IMPACT ON THE TAXI

16. Let us first verify the truth, if not plausibility, of ESPINOSA's claims or defenses. For if we find that his claims are untrue, and that he was reckless and negligent in operating the UNIVERSAL BUS prior to hitting the TAXI, then he cannot pass on his criminal liability to anyone else. He should thereby be made solely responsible for that criminally reckless and negligent act.

17. Let us therefore determine if ESPINOSA was, as he claims, driving within the

speed limit of 60 KPH and was some SEVENTY (70) METERS behind the NOVA BUS before he hit the TAXI. The truth to this speed and distance which ESPINOSA claims can be logically tested to the actual nature and extent of damage sustained by the TAXI.

18. Based on the photographs showing the nature and extent of damage sustained by the TAXI as shown in **ANNEXES "A", "B", "C", "D", "E" and "F"**, it can be reasonably inferred that it would take a powerful force to cause the damage depicted in these photographs. The photographs show that almost the entire rear baggage compartment was obliterated.

18.1. Even the rear passenger cabin of the vehicle built to withstand great forces to protect its passengers was crushed, necessitating the Q.C. DPOS Rescue personnel to use a jacking mechanism to extricate the body of CHIT.

19. Neither is it true that ESPINOSA was SEVENTY (70) METERS behind the NOVA BUS that scraped the TAXI. To this we have to add also the length of the NOVA BUS. A passenger bus is about TEN to FOURTEEN (10-14) METERS LONG. The total distance therefore of ESPINOSA from the rear of the TAXI would have been **EIGHTY (80) METERS** more or less.

20. **If it were true that ESPINOSA was at a distance of EIGHTY (80) METERS, or what is equivalent to the length of EIGHT (8) passenger buses, from the TAXI, and that he was running only at A MAXIMUM OF SIXTY (60) kph, he would not have hit the TAXI at all. Assuming that ESPINOSA's allegations as to his speed and distance are true, it would be reasonable to conclude that he would have had more than sufficient opportunity to apply his brakes and avoid hitting the rear of the TAXI.**

20.1. It is also important to mention that ESPINOSA in one of his attached photographs of the scene of the incident points to skid marks which he claims to be that of the NOVA BUS. Granting for the sake of argument alone that this claim of his is true, **WHERE ARE THE SKID MARKS OF HIS BUS?!**

20.2. This is a case of the **ABSENCE OF EVIDENCE IS EVIDENCE OF RECKLESS**

NEGLIGENCE. The absence of skid marks of the UNIVERSAL BUS raises the reasonable inference that ESPINOSA due the reckless speed he was operating his vehicle may not even have had time to apply his brakes. Because as he admitted he did not see the TAXI until it was too late. But as we were able to show above he was too close to the rear of the NOVA BUS. This may explain the great damage inflicted on the TAXI that caused CHIT's death. It would also explain why he lost control of his vehicle which was supposedly running only at 60 kph.

20.3. It is a given fact that the brake system of a bus is purposely designed in to make that behemoth of a vehicle immediately stop in emergencies. The only alternative explanation to the absence of skid marks is that the brake system of the UNIVERSAL BUS was defective. Being defective ESPIONOSA was not only unable to avoid hitting the TAXI it also was the reason he lost control of the vehicle and cause it to climb a high sidewalk.

21. Granting that he would have still hit the TAXI from the distance of 80 METERS AND TRAVELING AT 60KPH, the nature and extent of the damage that the TAXI would have sustained would not be that shown in the photographs, nor would CHIT have sustained fatal injuries as a result.

22. The nature and extent of damage also on the UNIVERSAL BUS as also shown in *ANNEXES "G", "H", "I", "J", "K" and "L"* evidently shows that the ESPINOSA had to be operating his vehicle way beyond 60 KPH to have caused the iron bar underneath to break and twist and another thicker iron bar to bend. It would certainly take more than an impact of 60 KPH to cause the fiberglass front of the UNIVERSAL BUS to shatter and tear; and the front windshield and side glass on the driver's side to shatter and crack.

23. The physical evidence therefore belies ESPINOSA's claims of not having been reckless and negligent in operating the UNIVERSAL BUS immediately before hitting the TAXI. It can be reasonably inferred from the nature and extent of damage that ESPINOSA was very close - recklessly close, to the rear of the NOVA BUS and that he was running way beyond the speed limit of 60 KPH.

24. There is some truth when ESPINOSA says he never saw the TAXI until the

NOVA BUS veered to the right to avoid it. He never saw the TAXI because he was too close behind the NOVA BUS. He never saw it because he was speeding behind the NOVA BUS and was caught by surprise when the NOVA BUS turned to avoid the TAXI. Had he been EIGHTY (80) METERS AWAY from the TAXI as he claims, he would not have been caught unaware of the TAXI that the NOVA overtook. Neither would he have hit the TAXI. Neither would CHIT be dead.

25. That ESPINOSA was operating his vehicle negligently and recklessly resulting in his hitting the TAXI is further shown by the fact that the force with which he hit the TAXI caused the TAXI to bounce and swerve two lanes away from where it was hit. This same powerful force that hit the TAXI also caused it to spin and face the opposite direction.

26. It is also a fact that ESPINOSA lost control of the UNIVERSAL BUS. This is evident from the fact that the bus climbed on to the sidewalk and demolished a small tree fronting TECHNOHUB. Had he, as he claims, been merely running at 60 KPH and been at a distance of EIGHTY METERS from the TAXI, he not only would have been able to avoid the TAXI, but would also have had full control of his vehicle.

27. ESPINOSA's claim that the proximate cause of him hitting the TAXI given the above circumstances is therefore unavailing. The manner and place of impact on the rear of the TAXI by the UNIVERSAL BUS disproves ESPINOSA's theory that the TAXI was bumped by the NOVA BUS and pushed onto his path. Had the TAXI been pushed in his path, he would have hit the right side of the TAXI, and not its rear.

**NEGLIGENCE OF NOVA BUS
MERELY INCIDENTAL, NOT
PROXIMATE, CAUSE**

28. This does not discount the great probability that the NOVA BUS did hit the TAXI, but certainly not with the same force and power that the UNIVERSAL BUS did. The paint on the right side of the TAXI most certainly came from the NOVA BUS when it scraped the TAXI. But the damage alone on the right side of the TAXI would show that all it got was a scrape and not a "bump", so much so that the TAXI, after being scraped by the NOVA bus, was still facing forward when the UNIVERSAL BUS violently hit it in its

rear.

29. The liability of the NOVA BUS for its negligent act in scraping the TAXI can be separately and distinctly determined from the damage caused by ESPINOSA and the UNIVERSAL BUS. The liability of the NOVA BUS is to that of the TAXI's damage on its right side. It could not be, as ESPINOSA would want it to be, the proximate cause of his hitting the TAXI and causing the death of CHIT.

30. Based on the physical evidence again, it can be reasonable and logically inferred that because ESPINOSA was too close to the NOVA BUS and was traveling at a speed way beyond 60 KPH, **even if the NOVA BUS had not scraped the TAXI, ESPINOSA would still not have been able to avoid hitting the TAXI. This is because ESPINOSA was too fast and too close that, as he admitted, he only saw the TAXI when the NOVA BUS veered to the right to overtake it.**

**THE TAXI DID NOT ORIGINATE FROM THE
OTHER SIDE OF COMMONWEALTH AVE.**

31. On the basis also of the physical evidence, the theory that the TAXI came from the U-Turn slot and immediately turned right towards TECHNOHUB is more improbable than real. According to ESPINOSA, the TAXI was negligent because it came from the U-turn slot, crossed Commonwealth Ave. towards the yellow lane and then backed-up. ESPINOSA's claim is based on the sworn statement of AMANDY, a so-called "disinterested" witness. This claim can be set aside for being inconsistent with the police sketch (**ANNEX -M**) of the scene of the collision.

32. Based on the police sketch, we can assume that the UNIVERSAL BUS hit the TAXI from behind on the THIRD LANE of Commonwealth Ave. counting from the first yellow lane. This assumption is reasonably based on the presence of **DEBRIS (ANNEX-"M-4")** resulting from the collision found by the police and depicted in their sketch.

33. If the TAXI came from the end of that U-turn island barrier and immediately made a right turn, as AMANDY and ANCHETA claim, the TAXI would have been perpendicular to Commonwealth Ave. with its right side facing the traffic from Fairview. In this position, ANCHETA would then have missed hitting the TAXI directly on its right

side. If this was the position of the TAXI immediately after ANCHETA allegedly missed the TAXI, then ESPINOSA would have hit the TAXI directly on its right side and not its rear. Neither would there also be paint stains on the right side of the TAXI that did not belong to the UNIVERSAL BUS.

34. **ANCHETA'S failure to attach photographs of the LEFT SIDE of the NOVA BUS to his *Kontra-Sinumpaang Salaysay* is also quite telling.** It is important to note that ANCHETA categorically claims that he did not hit the TAXI. To support this, he presents photographs (**ANNEXES "A" to "C"**) of the right side and front NOVA BUS he was driving that day to show that the only damage on the right side of the NOVA BUS was a scratch close to the rear. He even presents affidavits by his witnesses to claim that there was no other damage to the bus.

35. **But the relevant part of the NOVA BUS to determine whether it hit or missed the TAXI is its LEFT SIDE AND NOT ITS RIGHT SIDE.** Its right side would have been the side that would have scraped the TAXI. It would have been easy to provide a photograph of the LEFT SIDE of the NOVA BUS. The picture, which could have been easily provided and would have been readily available, may have been the best evidence that there was no damage to the NOVA BUS, and not the allegations of his witnesses, no matter how "disinterested" they are.

36. This is a deliberate act of suppression of the truth. It would not help ANCHETA any if he will hereafter suddenly present photographs of the right side showing that there was no damage. This being done only after attention was called to his obvious concealment, repairs could have already been made to cover-up the damage or traces thereof on the NOVA BUS.

37. Then again, we have this interesting testimony of a so-called "disinterested" witness in the person of AMANDY. There is too much unknown or unexplained about this so-called "disinterested" witness. The truth of his story, his credibility or even his "disinterestedness" and the timing of his "providential" descending into the police precinct is best left to be determined during trial.

38. If we are to believe ANCHETA that he saw the TAXI supposedly suddenly cross Commonwealth Ave. from the end of the U-Turn barrier, what AMANDY saw, that

the TAXI first reached the yellow lane and then backed up, would therefore be a total lie.

39. For now, his claim that the TAXI was backing up when hit can also be easily dismissed, being contradictory to the physical evidence. As certified by PANTE, the Toyota Otis Service Manager, the TAXI could not have been running in reverse gear at the time it was hit because if it had, its clutch and transaxle would have been damaged and would have shown oil leakage. That the inspection shows that the said components of the TAXI are normal and working clearly refute ANCHETA's allegation.

40. ESPINOSA in his Consolidated Rejoinder-Affidavit says that he never stated in his *Kontra Sinumpaang-Salaysay* that the TAXI emanated from U.P. That may be true, but he certainly intimated it by stating that it came from the direction of the way to U.P. ("... ito ay manggaling sa direksyon papuntang U.P. . .") He could have plainly, if not simply and directly said that the TAXI came from Philcoa.

41. To finally foreclose any doubts that CHIT did not come from U.P., but from our house near Tandang Sora immediately before she was killed on Commonwealth Ave., attached is the affidavit of **RYAN M. BAYBAY**, the security guard on duty at the U.P. College of Mass Communications where CHIT teaches. He attests to the fact that CHIT did not go to the college the whole day of May 13, 2011. Attached to his affidavit are the relevant pages of the guard's logbook. The affidavit and the attachments are respectively marked as **ANNEX "P"**, **ANNEX "P-1"** and **"P-2"**.

42. The route taken by the JAGUNOS to bring CHIT to TECHNOHUB is the route that CHIT and I always take when we go to eat or meet our friends at TECHNOHUB coming from where we live. Thus, it would have been the route that she would have told JAGUNOS to take to go to TECHNOHUB.

43. It is reasonable to accept that the LAST 100 TRIP RECORD of the TAXI, as recorded in its TAXIMETER, is accurate and the best evidence for now to show that the TAXI traveled the route JAGUNOS claims he took. Had he taken any other route, JAGUNOS would not have voluntarily offered the data in his TAXIMETER showing his TAXI traveled a distance of 5.8 Km. This is because his own taximeter's data would disprove his claim and show that he traveled some other route. Considering that this

data can also be easily verified or disproved by traveling the same route he took is further basis to rely on it.

44. Based on the above physical evidence, one may arrive at a reasonable finding that JAGUNOS did not make a U-Turn at Commonwealth Ave. coming from the direction of Philcoa. Not having made a U-Turn, he did not, therefore, make an immediate right turn to cross Commonwealth Ave. and on to the path of the NOVA BUS as ANCHETA and AMANDY claim.

ESPINOSA'S FLIGHT IS GUILT

45. ESPINOSA claims he fled the scene because he feared for his life. This is a claim not sustained by any evidence on his part. It was more imaginary and not real or even imminent. His fear if any was not that he would be hurt or beaten, his fear arose out of guilt because he knew he was negligent and reckless in his driving.

45.1. Granting for the sake of argument alone that ESPINOSA's life was in danger had he remained at the scene, which it was not, Sec. 55, of R.A. 4136 requires him to have reported the incident to the nearest officer of the law. Had his conscience been free of guilt, he could have easily gone to the Philippine National Police Headquarters on EDSA- Kamuning or any of the many, possibly hundreds of police stations along the way of his five (5) day travel. He did not do so because his intent was to go into hiding for his grievous offense.

CONCLUSION

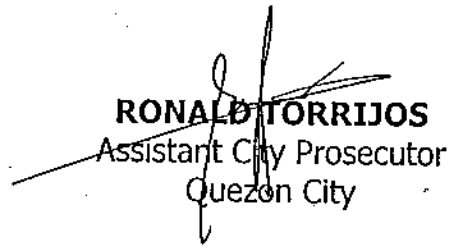
45. All in all, ESPINOSA's defense of denial and laying blame on other people, namely at JAGUNOS and ANCHETA, is not only weak, but has in fact been proven to be mere fabrications. I have clearly discharged the burden of proving that probable cause exists to charge ESPINOSA with Reckless Imprudence Resulting in Homicide, qualified by his act of fleeing the scene of his reckless act without rendering any assistance to CHIT, his victim; as defined by Article 365 of the Revised Penal Code. The filing of an information against ESPINOSA is therefore in order.

IN WITNESS HEREOF, I hereunto set my hand this 8th day of July 2011 in Quezon City.



ROLAND G. SIMBULAN
Affiant

SUBSCRIBED AND SWORN to before me this 8th day of July 2011 in Quezon City.



RONALD TORRIJOS
Assistant City Prosecutor
Quezon City