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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

THE REPUBLIC OF THE PHILIPPINES and NATIONAL POWER CORPORATION, Plaintiffs, v. WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE INTERNATIONAL, PROJECTS COMPANY and BURNS AND ROE ENTERPRISES, INC., Defendants.	Civil Action No. 88-5150 (DRD)

SUGGESTION OF INTEREST OF THE UNITED STATES

1. This Suggestion of Interest is filed by the Attorney General of the United States pursuant to Section 517, Title 28, of the United States Code. It is well established that the United States enjoys the right to inform the courts of its view in proceedings in which it has an interest. See, e.g., International Products Corp. v. Koons, 325 F.2d 403, 408 (2d Cir.

1963). Accordingly, we wish to inform the Court of the following views of the United States.

2. The United States understands that on May 10, 1990, defendant Westinghouse served plaintiff Republic of the Philippines with notices for the depositions of Corazon Aquino and Salvador Laurel. The Republic of the Philippines has to date refused to produce either Ms. Aquino or Mr. Laurel. At a hearing on June 7, 1990, this Court directed Westinghouse to submit a formal motion to compel the depositions. Transcript, 6/7/90, at 71. At the same hearing the Court instructed counsel for the Republic of the Philippines to inform the Departments of State and Justice that the Court invited them to appear as Amici curiae on this motion. Id. at 72. Accordingly, we submit these views for the Court's consideration in that connection.

3. Corazon Aquino is President and Head of State of the Republic of the Philippines, a country friendly to the United States. Salvador Laurel is Vice President of the Republic of the Philippines.

4. Discovery in U.S. courts involving such high level officers of a friendly foreign state is novel and implicates the foreign policy interests of the United States. Because such cases are also rare in other countries, U.S. practice may well influence how foreign courts handle this issue in the future. In

particular, foreign courts confronted with a request to compel discovery against a U.S. President or Vice President could apply reciprocally the standards used by U.S. courts. The United States frequently brings civil suits as a plaintiff in foreign courts. If we were to confront a request to depose our President or Vice President in such a case, we would want the court to grant the request only upon a showing of necessity and materiality that was at least as strong as a U.S. court would require before allowing personal discovery against such a high-ranking U.S. official. See United States v. Poindexter, 732 F. Supp. 142, 147 (D.D.C. 1990) (ordering deposition of former President Reagan upon a showing "that his testimony would be material as tested by a meticulous standard, as well as being necessary in the sense of being a more logical and more persuasive source of evidence than alternatives that might be suggested.") (footnotes ommitted); Halperin v. Kissinger, 401 F. Supp. 272, 274 (D.D.C. 1975) (ordering deposition in civil case of former President Nixon upon a "strong demonstration of need without an undue invasion of presidential privacy").

5. The United States therefore believes that U.S. courts should not require personal discovery from a foreign head of state or vice head of state in the absence of a demonstrated need for testimony concerning material facts in the personal knowledge of that individual. Cf. Societe Nationale Industrielle Aerospatiale v. United States District Court, 482 U.S. 522, 546

(1987) (enjoining U.S. courts to "exercise special vigilance to protect foreign litigants from the danger that unnecessary, or unduly burdensome, discovery may place them in a disadvantageous position" and to "demonstrate due respect . . . for any sovereign interest expressed by a foreign state.").

6. In addition, the United States believes that it would be appropriate for the Court, to the extent consistent with principles of fairness to the parties concerned and with the needs of the Court, to be receptive to proposals to minimize any intrusion on the dignity of President Aquino's and Vice President Laurel's offices, and on the performance of their official duties, that personal discovery can entail.

7. The United States takes no position on whether the testimony of President Aquino or Vice President Laurel is, in fact, required in these proceedings, and, if so, when, in what form or on which issues. Similarly, as we understand that no exercise of compulsory jurisdiction over President Aquino or Vice President Laurel personally is currently under consideration by the Court, we do not express a view on whether they may enjoy any form of immunity from the jurisdiction of the courts of the United States in connection with these proceedings. Accordingly, our silence on these or any other issues in these proceedings

should not be taken as an indication of our views.

Dated: July 9, 1990

Respectfully submitted,

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