Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

NATIONAL POWER CORPORATION,
Petitioner-Appellant,

-versus- CBAA CASE NO. L-29

LOCAL BOARD OF ASSESSMENT
APPEALS, PROVINCE OF QUEZON,
Appellee,

-and-

THE MUNICIPALITY OF PAGBILAO,
QUEZON,
Respondent-Appellee.
x - x

D E C I S I O N

This controversy arose when OIC Municipal Treasurer Mr. Aristeo B. Catalla of Pagbilao, Quezon sent a letter-notice of collection, dated March 2, 2000 to Mr. Mauro C. Villamar, Chief Finance Officer of Southern Energy Quezon, Inc. (SEQI) regarding the payment of its real property taxes on the buildings, machineries and equipment in the aggregate amount of P1,532,076,000.00 covered by Tax Declaration Numbers 22-027-577-B and 22-027-578-M.

Originally HOPEWELL POWER PHILIPPINES entered into a contract with the National Power Corporation (NPC/NAPOCOR) known as Energy Conversion Agreement (ECA), wherein Hopewell Power Philippines shall build and construct a power plant in Pagbilao, Quezon under the Build-Operate-and-Transfer (BOT) arrangement with the Philippine Government.

Under the said ECA, "NAPOCOR shall be responsible for the payment of (a) all taxes, import duties, fees, charges and other levies imposed by the National Government of the Republic of the Philippines or any agency or instrumentality thereof to which HOPEWELL or HOPEWELL PHILIPPINES may at any time be or become subject in or relation to the performance of their

obligations of the net income (HOPEWELL/HOPEWELL PHILIPPINES and (ii) construction permit fees, environmental permit fees and other similar fees and charges) and (b) all real estate taxes and assessments, rates and other charges in respect of the Site, the buildings and improvements thereon and the Power Station."

Subsequently Hopewell Energy International Limited assigned all its rights, obligations and interests under ECA to Southern Energy Quezon, Inc., which became the present Mirant (Philippines).

On April 14, 2000, Petitioner NPC filed with the Local Board of Assessment Appeals (LBAA) of the Province of Quezon a Petition to Declare Exempt from Payment of Property Tax on Machineries and Equipment used for Generation and Transmission of Power, as provided for under Section 234(c) of the Local Government Code of 1991 (R.A. 7160). This was opposed by Respondent-Appellee, Municipality of Pagbilao. After Petitioner-Appellant filed its comment Respondent-Appellee filed a motion to dismiss which was objected to by Petitioner-Appellant. The LBAA of Quezon rendered a decision denying the Petition for Exemption of the National Power Corporation.

Hence, this Appeal.

The aforesaid decision is hereby reproduced:

"O R D E R

"Submitted for consideration is the petition filed by the National Power Corporation (NPC) x x x on March 24, 2000 seeking for exemption of Southern Philippines Hopewell from payment of tax amounting to P1,532,076,000.00 representing taxes for the machineries and heavy equipment which was opposed by the Municipality of Pagbilao, Quezon in an opposition dated June 19, 2000 x x x.

"Subsequently thereafter, a motion to dismiss was filed by counsel for the Municipality of Pagbilao which was answered by counsel for Southern Philippines (Hopewell) and offer to compromise the same following the SUAL Plant (Pangasinan Solution). From the evidence on record there is merit in the contention of counsel for the Municipality of Pagbilao, that pursuant to Sec. 252(a) of R.A. 7160 reinforced by Article 343 which mandates that payment shall be made in protest before making any petition or appropriate pleadings relative thereto.

"Finding the petition for exemption from the payment of subject Real Property Tax by the National Power Corporation (NPC) to be without legal and factual basis, the same is hereby denied.

"SO ORDERED."

Apparently, the above-decision is wrought with marked error: it pronounced a judgment without the finding of facts. Unwittingly, neither Petitioner-Appellant nor Respondent-Appellee took notice of said error: the conclusion reached therein, by the Local Board of Assessment Appeals (LBAA) of the Province of Quezon is devoid of premises—it has no leg to stand on.

The Local Board of Assessment Appeals of the Province of Quezon rendered what is generally known as a "sin perjuicio" decision on the 13th day of November, 2000, which decision was a mere pronouncement of its judgment, without stating any of the facts in support of its conclusion.

In the case of Director of Lands vs. Sanz (45 Phil. 121-122), the Supreme Court declared:

> "A reading of the 'sin perjuicio' decision shows that it was nothing more or less than the conclusion of the lower court with reference to the rights of the parties. It did not contain a statement of the facts which were essential to a clear understanding of the issues presented by the respective parties as to the facts involved. Had the appeal come to this court it would undoubtedly, in view of what it has done heretofore, have returned the record to the lower court, requiring it to comply with the mandatory provisions of Section 133[1] (Braga vs. Millora, 3 Phil. 458). That being true, did not the appellant have a right to wait until the lower court should render a decision in accordance with the requirements of the law?
>
> "In view of the decision of this court in the case of Braga vs. Millora, 3 Phil. 458 and many other published decisions, in which the doctrine there announced has been followed, we are of the opinion, and so declare, that <u>the appellant, even though he attempted to perfect an appeal against the "sin perjuicio" decision, had a perfect right to wait until the final decision was filed, complying with said Section 133, and then to perfect his appeal, thereby avoiding a possible delay of having the record returned to the lower court with directions to prepare and file a decision in accordance with the provisions of said section."</u> (Underscoring supplied.)

In Braga vs. Millora, referred to in Director of Lands vs. Sanz (supra), the following was held:

> "Upon deciding a case involving the determination of issues of fact, it is the duty of the trial court to make written findings (a) of the material facts admitted by the pleadings and (b) of the material facts presented in the issue and sustained by the evidence, and a failure to so do is reversible error."

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[1] Sec. 133, Art. 190, now Sec. 1 rule 36 of the Revised Rules of Court in the Philippines. Sec. 1, rule 36 of the Revised Rules of Court in the Philippine reads:

"SECTION 1. <u>Rendition of judgments</u>. – All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, <u>stating clearly and distinctly the facts</u> and the law on which it is based, x x x." (Underscoring supplied.)

This Board discreetly took cognizance of the instant case—which was the better option—instead of remanding the same to the Board below: sending it back to the same Local Board to correct its mistake so that the same may be refilled before this board is a circuitous undertaking and a waste of effort, time and money. The better thing for this Board do is to exercise jurisdiction, as indeed, it has jurisdiction therefor: the proceedings before this Board, as in the Local Boards of Assessment Appeals, is to ascertain the facts without necessarily adhering to technical rules applicable in judicial proceedings.

In its "GROUNDS FOR THE GRANT OF THE INSTANT APPEAL", Petitioner-Appellant faulted Appellee Local Board as follows:

> "I
>
> THE LBAA COMMITTED GRAVE ABUSE OF DISCRETION WITH IT DENIED THE PETITION FOR EXEMPTION OF NPC UPON THE INSTANCE OF THE MUNICIPALITY OF PAGBILAO, PURSUANT TO THE MOTION TO DISMISS APPEAL DATED 19 JUNE 2000 FILED THROUGH COUNSEL AND UPON VERIFICATION OF THE MUNICIPAL MAYOR AND OIC-MUNICIPAL TREASURER OF THE MUNICIPALITY OF PAGBILAO, QUEZON.
>
> "II
>
> THE LBAA COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT PAYMENT OF THE ASSESSED REAL PROPERTY TAXES BY NPC IS A CONDITION PRECEDENT TO THE FILING OF A PETITION FOR REAL PROPERTY TAX EXEMPTION.
>
> "III
>
> THE LBAA COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT NPC'S PETITION FOR EXEMPTION IS WITHOUT LEGAL AND FACTUAL BASIS.
>
> "IV
>
> ASSUMING FOR THE SAKE OF ARGUMENT THAT NPC IS NOT EXEMPT FROM REAL PROPERTY TAX ON THE REAL PROPERTIES CONSTITUTING THE PAGBILAO POWER PLANT, THE AMOUNT OF REAL PROPERTY TAX BEING ASSESSED AGAINST IT IS GROSSLY ERRONEOUS AND EXHORBITANT."

The personality and authority of the Municipality of Pagbilao to oppose Petitioner-Appellant's Petition for real property tax exemption, is questioned. Citing Sec. 232 of the Local Government Code of 1991 (R.A. 7160), which provides that only a province or city or a municipality within the Metropolitan

Manila Area may levy an annual ad valorem tax on real property, Petitioner-Appellant argued:

> "Clearly, based on the provision, it is the Province of Quezon which has the authority to levy real property tax. The Municipality of Pagbilao, not being a municipality within the Metropolitan Manila Area, is devoid of any authority to impose or levy real property tax. Accordingly, being devoid of the power to levy real property tax, it is also without authority whatsoever, to grant or confirm real property tax exemption, or as in this case, oppose a petition for real property tax exemption.

The issue, however, was not raised before the Board below. It is raised, for the first time before this Board, hence Respondent-Appellee's counter argument:

> "X x x. NPC decided to adopt a wait and see attitude on the supposed verdict of the LBAA. When such resolution finally came on 13 November, 2000, by dumping NPC's petition for exemption, NPC streaked before the CBAA imploring its x x x intervention of over-turning the decision of the LBAA by protesting first time the want of authority of the Pagbilao municipal government in imposing the RPT.
>
> "X x x. While jurisdiction can be raised even for the first time on appeal. Yet, there are instances where it CANNOT due to the principle of estoppels to question jurisdiction."

As borne by the record, Tax Declaration Nos. 22-027-577-B and 22-027-578-M, bore the signature of the Provincial Assessor of the Province of Quezon. Who therefore, issued the Notice of Assessment? On the other hand, is not the Assessor of the Municipality of Pagbilao impleaded as Respondent-Appellee in this case? Can not the Municipality of Pagbilao, being such Respondent-Appellee file a Motion to Dismiss?

Petitioner-Appellant's Petition before the Local Board of Quezon was seasonably filed, not under Sec. 252 but by virtue of Sec. 226 of the Local Government Code of 1991 (R.A. 7160), which provides:

> "Sec. 226. Local Board of Assessment Appeals. – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, x x x".

The main issue of the case, boils down to: Whether or not the Pagbilao Power Plant is exempted from the payment of Real Property Tax.

NPC claims exemption thereto the basis of Section 234(c) of the Local Government Code of 1991 (R.A. 7160), which provides:

> "Sec. 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:
>
> (a) X x x;
>
> (b) X x x;
>
> (c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or-controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power,"

Formerly there was such an exemption enjoyed by the National Power Corporation under its Charter but said exemption was withdrawn by the Local Government Code of 1991 (R.A. 7160), though still invoked by Petitioner-Appellant in this Appeal to project a "broad and all-encompassing exemption" for itself.

There is no dispute about this: NPC is covered by the above provision of R.A. 7160. If therefore, NPC uses the Pagbilao Power Plant actually, directly and exclusively, then it is exempted from payment of the real property tax.

The National Power Corporation therefore, provided arguments and allegations, citing authorities, to prove that it has the actual, direct and exclusive use of the Pagbilao Power Plant. Significant thereto, is its reference to the case of "Mactan Cebu International Airport vs. Marcos (261 SCRA 684), and the Build-Operate-and-Transfer (BOT) law, R.A. 6957 as amended by R.A. 7718.

According to Petitioner-Appellant:

> 1. In the case of Mactan Cebu International Airport Authority vs. Marcos, et al., the Supreme Court held that the x x x exemption is based on the actual, direct and exclusive use to which the property is devoted. This so-called "usage exemption" looks beyond the ownership of the property and disregards the nature or identity of the user. All that is required is that the property is used actually, directly and exclusively for the supply and distribution of water and/or generation and transmission of electric power.
>
> 2. The phrase "actual, direct and exclusive" in Section 234(c) of the LGC, x x x does not qualify the nature of the use of the subject machinery and equipment by the GOCC but the nature of its use for the purpose of power generation and transmission. Thus to qualify for exemption, it suffices that a particular real property be actually, directly and exclusively used for the purpose of power generation and transmission. Real property actually, directly and exclusively used for power generation and transmission is exempt from real property tax, even if said real property is not being actually, directly and

> exclusively used by GOCC since Section 234(c) of the LGC does not impose such requirement.
>
> Even assuming that Section 234(c) requires the user of the real properties to be NPC, being the GOCC, it is nowhere required that such use by NPC be direct and exclusive. It follows that NPC may therefore be the direct or indirect user of the Real Properties.
>
> 3. There is basis in fact that the Real Properties, while declared in the name of SEQI (Southern Energy Quezon, Inc.), are exclusively, actually and directly used in the generation of electricity by NPC, a GOCC.

The "usage exemption" referred to by Petitioner-Appellant, in the Mactan Cebu International Airport Authority vs. Marcos, et al. (supra), reads:

> "(c) Usage Exemptions. Exempted from real property taxes on the basis of the actual, direct and exclusive use to which they are devoted areL (1) x x x: (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power, x x x".

We take note of words "use" and "devoted" in the foregoing. According to Webster's Third International Dictionary, "use" means "the act or practice of using something: EMPLOYMENT". According to Black's Law Dictionary, Fifth Edition, as quoted Hopkins v. Howard' Ex'x, 266 Ky. 685, 99 S.W. 2d 810, 812: "Use" is "to make use of, to convert one's service, to avail one's self of, to employ". It is also an "act of employing everything, or state of being employed; application, as the use of a pen, or his machines are in use". According to the Supreme Court in Velez vs. Locsin, 55 SCRA 152, "the word 'use' means to employ for the attainment of some purposes or end". "Devoted", on the other hand, according to Webster's Third International Dictionary means "consecrated to a purpose". In other words, while "use" exists in contingence with the user, "devoted" inheres with the purpose for which the thing is made.

Ironically, Petitioner-Appellant defined "use" to mean "devoted", hence it avers: "to qualify for exemption, it suffices that a particular real property be actually, directly and exclusively used for the purpose of power generation and transmission", (supra). Petitioner-Appellant then concludes: "It follows that NPC may therefore be the direct of indirect user of the Real Properties", (supra). This is unfortunate and unacceptable. Definitely, Petitioner-Appellant's thinking does

not run along parallel lines with the Supreme Court's decision on the Mactan International Airport case (supra), and has to be rejected, otherwise as in railroad tracks, a judicial derailment is inevitable.

Anent the BOT law (R.A. 6957 as amended by R.A. 7718), according to Petitioner-Appellant:

> "Pursuant to R.A. No. 6957 and its Implementing Rules and Regulations ('BOT IRR') NPC is constituted as the facility user, notwithstanding the operation of the facility by the project proponent Hopewell Limited SEQI.
>
> Under the BOT IRR, 'Build-operate-and-transfer' (BOT) is defined as –
>
>> "A contractual arrangement whereby the project proponent undertakes the construction, including financing of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years. X x x. (emphasis ours)'
>
> "X x x, the party paying the fees, toll or charges to the project proponent (Hopewell Limited and subsequently SEQI, in this case) is the one considered to be the 'facility user', notwithstanding the operation and maintenance of the facility by the project proponent. In this case, NPC, being the party liable for the payment of 'Energy Fees.' 'Fixed Operating Fees', and 'Infrastructures Fees' to SEQI, is the facility user referred to under the x x x definition."

The definition provided by the ECA between Hopewell and NAPOCOR on the "fees" to which NAPOCOR claims it is liable, and therefore is the "facility user" are as follows:

> "Energy fees" means the fees payable by NAPOCOR to HOPEWELL in respect of energy supplied to NAPOCOR x x x.
>
> "Fixed Operating Fees" means the fees payable by NAPOCOR to HOPEWELL in respect of the recovery of HOPEWELL's fix operating costs incurred in relation to the project x x x.
>
> "Infrastructure Fees" means the fees payable by NAPOCOR to HOPEWELL in respect of the recovery of HOPEWELL's capital costs and debt service incurred in relation to relevant infrastructure x x x.

Again, in order to avail of the realty tax exemption provided under Sec. 234(c) of R.A. 7160, NAPOCOR must have the actual, direct and exclusive use of the Pagbilao Power Plant. When NAPOCOR therefore, pays HOPEWELL the "Energy Fees" in respect of energy supplied to NAPOCOR, does it truly use the Pagbilao Power Plant, so as to employ the same for the attainment of some

purpose or end, as defined by the Supreme Court, supra? Or, for that matter, NAPOCOR's payment to HOPEWELL of the "Fixed Operating Fees"? Or the "Infrastructure Fees"? Where can NAPOCOR get a positive answer to these questions? Nowhere.

The BOT law (R.A. 7718 as amended), provided not for outright take-over, but for eventual transfer to the government agency concerned, at the end of a fixed term (fifty years or less), of the facility affected. This is but just and fair in order to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. Presently therefore, there is no way by which NPC can claim "use" of the Pagbilao Power Plant. The use thereof is definitely with Hopewell: to yield it to NPC is for Hopewell to be left holding the bag.

Anent the ECA providing for NAPOCOR to be responsible for the payment of all taxes, binds only the contracting parties, NAPOCOR and HOPEWELL. Neither the Municipality of Pagbilao nor the Province of Quezon are privy thereto. The exemption provided by law is inherent on NPC and cannot be extended or transferred to Hopewell or Mirant without express legislative grant, merely because NPC agreed to pay Hopewell's realty tax obligation.

Petitioner-Appellant's contention that the real property being assessed against the Pagbilao Power Plant as grossly erroneous and exhorbitant is still based on the assumption that NAPOCOR has the "actual use" of said Power Plant. So that said property should be classified as "Special" and subjected to a 10% assessment level, pursuant to Sec. 218(d) of R.A. 7160 instead of 80% under Sec. 218(e) thereof. Said "actual use" by Petitioner-Appellant of the Pagbilao Power Plant has already been totally addressed. Sec. 218, R.A. reads:

> "(d) On Special Classes: the assessment levels for all lands, buildings, machineries and other improvements;
>
> Actual Use   Assessment Levels

Reference: Book VIII, pp. 321-337

x x x	x x x
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation of electric power.	10%

Petitioner-Appellant, this time, invokes "actual use" as defined under Sec. 199(b) of R.A. 7160 as follows:

> "(b) 'Actual Use' refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof."

Evidently, the foregoing involves a utilizer/user who principally or predominantly utilizes/uses the property in his possession for the purpose thereof. This is no different from the "actual use" derived from Webster, Black and the Supreme Court (supra). Again NPC cannot avail of the 10% assessment level for the Pagbilao Power Plant, simply because it does not have the "actual use" thereof.

In the case of Marina Power Services, Inc. vs. Iniego (181 SCRA 307) the Supreme Court said:

> "When the words and language of documents are clear and plain or readily understandable by an ordinary reader thereof, there is absolutely no room for interpretation or construction anymore (Leveriza vs. Intermediate Appellate Court, 157 SCRA 282)."

"Ut res magis valeat quam pereal", meaning – "the thing may rather have effect than be destroyed" is highlighted by the Supreme Court in JMM Promotions & Management, Inc. vs. NLRC (288 SCRA 134), when it declared:

> "It is a principle of legal hermeneutics that in interpreting a statute (or a set of rules x x x), care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. 'Ut res magis valeat quam pereal'"

In the case at bar, are the arguments hereto pursued by Petitioner-Appellant, in heed of the foregoing? Against the fact there is no argument – an argument against the fact is an argument in ambiguity, hence in futility. The fact is, that the use of the Pagbilao Power Plant has been granted to Hopewell/Mirant by virtue of the BOT law (R.A. 7718, as amended), and provided for under the Energy Conversion Agreement (ECA) between the

National Power Corporation and Hopewell Energy International Limited. This is the hard fact that vests in Hopewell/Mirant the existing ownership, operation, hence, use of the Pagbilao Power Plant.

In view thereof, the Pagbilao Power Plant, being owned, operated and used by Hopewell/Mirant, a none-exempt entity, is subject to the Real Property Tax.

Moreover, it must be noted and emphasized that the petition for tax exemption of the appellant is anchored on the exempting provisions of Section 234(par. C) of the Local Government Code, which states:

Sec. 234. Exemption from Real Property Tax. The following are exempted from payment of the real property tax:

> (a) Real property owned by the Republic x x x
>
> (b) x x x
>
> (c) All machineries and equipment that are actually, directly, and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation **and** transmission of electric power;
>
> (d) x x x

A careful reading of par. (c) Section 234 will point to the fact that the law requires two (2) activities to be engaged in by the Government-Owned-Or-Controlled-Corporation (GOCC) to avail of the exemption. One is the **generation** of electric power, and the other is **transmission** of electric power. It is of public knowledge, and likewise admitted in the pleadings that it is Hopewell (Mirant) who is doing the generation and NAPOCOR, the transmission of electric power. Regardless, therefore of who the actual, direct and exclusive user is, the claim for tax exemption must fail. In short, both generation **and** transmission must be performed by the GOCC to avail of the exempting privilege. It may be added that at present, NAPOCOR is not even engaged in any of the two requirements. It is now the National Transmission Co. (TRANSCO) that is doing the transmission of electric power.

Granting however, for the sake of argument that Transco is a spun off company from NAPOCOR, and there exist an iota of doubt as to the true intent of the legislature in the use of the word “and” in the law, or that the same can be subject to a double interpretation, still petitioner-appellant NAPOCOR is grasping at straws in the wind.

It is elementary in statutory construction that in case of doubt, the same must be resolved liberally in favour of the taxing authority and “strictissimi juris” against the taxpayer claiming exemption. And in case of tax exempting provisions subject to different interpretations, the one upholding the strongest power of the date, “the power to tax as an attribute of sovereignty” is favoured, and the interpretation in derogation of such sovereignty is frowned upon. Truth to tell, there is no need to cite basic principles and a litany of kilometric jurisprudence on the matter, as the language used in the law is clear, plain and unambiguous. It is so simple that even a primary English school teacher and high school students will understand.

WHEREFORE, premises considered, the appeal is hereby dismissed for lack of merit.

SO ORDERED.

However, it must be emphasized and given stress, that while this Board finds for the Respondent-Appellee, a sad and unfortunate footnote in this otherwise important precedent-setting appeal must not be disregarded and left unnoticed by this Board. This refers to the so called “3rd Urgent Motion to Resolve”, filed by the counsel for Respondent-Appellee. In this Motion, Counsel in his apparent desire to expedite the resolution of the appeal, or for some other reasons and/or motives known only to him, by using uncalled for and intemperate language in some of his likewise unethical commentaries, seem to cast aspersions if not doubt in the Board’s integrity and efficiency. This we cannot allow to pass unanswered with close eyes, if only to clear the air and to

remind counsel that such actuation has no place in legal proceedings whether in the regular courts or in the quasi-judicial tribunals.

Counsel minced no words when he declared:

> "7. x x x is now a growing source of wonder not to mention the anxiety of waiting (whatever the verdict may be, as the aggrieved party will rely on the hierarchy of appeals) as to **why** and **what** is taking the Honorable Board's sweet time in arriving to a conclusion. Let me just say by way of an aside."
>
> **"Integrity is a rare commodity in today's material world. In an environment of systematic non-integrity, people in high echelons of government who aspire to live up to high standards of accountability often do not last. When the private and public sectors are closely intertwined, without the right links to the business world the chosen career path is invariably an uncertain undertaking. Conversely, successfully managing a private enterprise is a difficult task without the right political connections. For a number of well-placed and ensconced individuals, especially those given the right to define the discretionary elements in decision making, there is the tendency to be inured to, passive about and even tolerant of the necessary evils of economic development. A Chinese proverb says: "Better a short pain than a long pain." But how many are willing to endure even a short pain, especially when rewards are in sight?"**

Not contented with his legal barrage, counsel further assailed:

> "8. Dispensing justice judiciously, swiftly an inexpensively foster the necessary environment wherein the society at large grew in abhorring practices inimical to their interests and are given the knowledge indispensable to a **clean and trustworthy** society, free from betrayals of those sworn to serve and liberated from the yoke of venalities to the benefit of all."

This is most unfortunate and unfair to say the least. Licentiousness of this nature cannot be left to prevail over truth and facts.

It is a cardinal condition of such criticism of the courts that it shall be bona fide and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander on the other. **Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.** (Tiongco vs. Aguilar, 240 SCRA 589).

Further, the Supreme Court in the case of Maglucot-Aw vs. Maglucot 329 SCRA 78 cited Rule 11.03 of the Professional Responsibility states:

> "A lawyer shall abstain from **scandalous, offensive, or menacing language or behavior before the courts.**"
>
> "Any court when it renders a decision does so as an arm of the justice system and as an institution from the persons that comprise it. Decisions are rendered by the courts and not by the persons and personnel that may participate therein by virtue of their office. It is highly improper and unethical for counsel for petitioners to berate the researcher in his appeal. Counsel for

petitioner should be reminded of the elementary rules of the legal profession regarding respect for the courts by the use of proper language in its pleadings and admonished for his improper references of the CA in his petition."

Manila, Philippines, August 18, 2003.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

VACANT
Member

Reference: Book VIII, pp. 321-337