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EN BANC

[A.M. No. CAJ-04-41. September 22, 2004]

ANTONIO K. LITONJUA, *complainant, vs.* **COURT OF APPEALS JUSTICES JUAN Q. ENRIQUEZ, JR. and BERNARDO P. ABESAMIS,** *respondents.*

SYNOPSIS

The Litonjua family who owned the American Realty Corporation (ARC) split into two factions; the Aurelio faction, that included the petitioner herein, and the Eduardo faction, composed of the brother and nephew of the petitioner. The complaint filed against the respondent justices herein stemmed from an action decided by the Regional Trial Court and yet when elevated to the Court of Appeals a compromise agreement was entered into by the Eduardo faction with the Bank of America. Misunderstanding came up when the execution of the decision in the lower court was stopped allegedly due to the intervention of the respondent justices. Complainant filed a complaint against Justice Enriquez for serious misconduct for alleged extortion of about ₱1.5 million pesos from the complainant and gross ignorance of the law for proceeding in connection with the above-cited cases. Also, complainant charged Justice Abesamis for allegedly exerting undue influence over Justice Enriquez for the latter to issue a TRO and injunction in the same cases. Retired Supreme Court Justice Carolina C. Griño-Aquino was assigned to investigate the complaints.

The Investigating Justice found several inconsistencies that gravely affected complainant's credibility. The Court was in full accord with the findings and evaluation of the investigating justice. When weighed against the required standard of establishing the guilt beyond reasonable doubt, the complainant's evidence fell short. Despite the seriousness of the accusations and the attendant publicity, he failed to convince that credence should be given to his complaint. For failure of complainant to substantiate his accusations, the administrative complaints against the respondent justices were all dismissed.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; AS A RULE, EVIDENCE SHOULD BE DERIVED FROM DIRECT KNOWLEDGE; NOT PRESENT IN CASE AT BAR.** — The rule, even in administrative cases, is that to be disciplined for grave misconduct or any grave offense, the evidence against respondents should be competent and be derived from direct knowledge. Respondents are entitled to be judged only after due investigation and after presentation of competent evidence, especially since the charges are highly penal in character. The evidence presented in this case is mainly testimonial, so the resolution of the issue boils down to the credibility of the testimonies of both parties. The complainant has the burden of proof and such proof must at the least be clear, solid and convincing to compel the exercise of disciplinary power over the persons indicted.

2. **POLITICAL LAW; LAW ON PUBLIC OFFICERS; JUDICIAL OFFICERS; GROUNDS FOR REMOVAL SHOULD BE ESTABLISHED BEYOND REASONABLE DOUBT; ABSENCE THEREOF IN CASE AT BAR.** — The ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption or incompetence. The general rules with regard to admissibility of evidence in criminal trials apply. When weighed against such standards, complainant's evidence falls short. Despite the serious nature of the accusations and the attendant publicity, he failed to convince that credence should be given to his complaint. It is good to reiterate that while this Court will never tolerate or condone any act, conduct or omission that would violate the norms of public accountability or diminish the people's faith in the judiciary, neither will it hesitate to reject unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

APPEARANCES OF COUNSEL

Antonio R. Bautista & Partners for complainant.
Roberto A. Abad for *J.* J. Enriquez.
Abesamis Law Office for *J.* B. Abesamis.

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DECISION

AZCUNA, *J.*:

To be resolved in this administrative proceeding is the complaint-affidavit[1] filed by Antonio K. Litonjua against two Court of Appeals (CA) Associate Justices.

CA Justice Juan Q. Enriquez stands charged with (1) serious misconduct for alleged extortion of about ₱1.5 million pesos from the complainant; and (2) gross ignorance of the law, for proceedings in connection with CA-G.R. SP No. 64419[2] and CA-G.R. SP No. 64449,[3] pending before the division to which Justice Enriquez belonged.

CA Justice Bernardo P. Abesamis is also charged with serious misconduct, for allegedly exerting undue influence over Justice Enriquez, for the latter to issue a TRO and injunction in the aforementioned Court of Appeals cases.

THE ANTECEDENTS

The facts are:

American Realty Corporation (ARC) is a family corporation of the Litonjuas.[4]

On February 12, 1993, ARC filed a complaint for damages against Bank of America (BA) with the Regional Trial Court (RTC) of Pasig, Branch 159. The RTC rendered a decision on May 12, 1995 in favor of ARC, ordering BA to pay actual and compensatory damages in the amount of ₱99,000,000 and exemplary damages in the amount of ₱5,000,000.

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[1] *Rollo*, Vol. I, pp. 1-7.

[2] Entitled "*American Realty Corporation v. Honorable Rodolfo Bonifacio, Antonio K. Litonjua and Aurelio K. Litonjua, Jr.*"

[3] Entitled "*Bank of America v. Honorable Rodolfo Bonifacio and American Realty Corporation.*"

[4] With four brothers and a brother-in-law as original stockholders.

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On appeal to the CA, the RTC decision was affirmed *in toto*. A petition for review with this Court[5] resulted in a modification of the judgment, reducing the award of exemplary damages from ₱5,000,000 to ₱50,000. The decision became final on April 3, 2000. Entry of judgment was made thereafter and the case was remanded to the court of origin.

On November 20, 2000, ARC, through Eduardo V. Litonjua, Jr.[6] and Eduardo K. Litonjua, Sr., entered into a "Compromise Agreement"[7] with BA, whereby the amounts awarded in the judgment of this Court were offset against the other claims of BA against ARC. A copy of this compromise agreement was submitted to this Court but not to the RTC. On December 15, 2000, ARC filed a "Satisfaction of Judgment," also with this Court, on the basis of the compromise agreement.

On March 5, 2001, Aurelio K. Litonjua, Jr., together with Antonio K. Litonjua entered their personal appearance before the RTC and filed a Motion for Execution of Judgment.[8] The motion was opposed by BA because the case was between two corporations and not individual persons. Said motion was later withdrawn by Antonio and Aurelio, Jr.

At this point, it can be gleaned that the Litonjua's had split into two factions vying for control of ARC's businesses and property. These two factions are led by Antonio and Aurelio, Jr. on one hand, and their older brother Eduardo, Sr. and nephew Eduardo, Jr., on the other. To avoid confusion in identifying these factions, both of whom claim to be the lawful representatives of the corporation, they shall hereafter be identified as "ARC (Aurelio)"[9] and "ARC (Eduardo)."[10]

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[5] Docketed as G.R. No. 133876.

[6] Who signed the agreement as ARC's president.

[7] *Rollo*, Vol. I, pp. 136-139.

[8] *Rollo*, Vol. I, pp. 140-143.

[9] Aurelio, Jr. now sits as the president of ARC.

[10] Investigator's Report, p. 1.

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On April 24, 2001, ARC (Eduardo) filed a Petition for Prohibition before the CA, contesting the RTC's issuance of the writ of execution. They invoked the compromise agreement entered into between ARC and BA, as well as BA's execution of a satisfaction of judgment. On April 26, 2001, BA likewise filed a Petition for Prohibition before the CA, on the same ground as that of ARC (Eduardo)'s.

Thus, two petitions for prohibition were pending before the CA, namely (1.) *American Realty Corporation*[11] *versus Honorable Rodolfo Bonifacio and Antonio K. Litonjua and Aurelio K. Litonjua, Jr.* (C.A. GR SP No. 64419) and (2.) *Bank of America v. Hon. Rodolfo Bonifacio and American Realty Corporation*[12] (C.A. GR No. 64449). The two cases were consolidated in the Special Eleventh Division of which Justice Juan Q. Enriquez was a member.[13]

On April 24, 2001, a 60-day TRO was issued by the CA, stopping the RTC from executing the judgment. This resolution was penned by respondent Justice Juan Q. Enriquez, Jr., and concurred in by Justices Presbitero J. Velasco and Ruben T. Reyes. Thereafter, on June 25, 2001, a Preliminary Injunction was issued via resolution, concurred in by Justices Presbitero J. Velasco and Bienvenido L. Reyes.

On August 7, 2001, finding no grave abuse of discretion on the part of the lower court, the CA dismissed the Petition for Prohibition and dissolved the writ of Preliminary Injunction.[14] This was contained in a Decision penned by respondent Justice Enriquez, Jr., and concurred in by Justices Presbitero J. Velasco and Ruben T. Reyes.

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[11] ARC (Eduardo).

[12] ARC (Aurelio, Jr.)

[13] Investigator's Report, p. 2.

[14] Holding that the issue of satisfaction of judgment, not having been raised at the RTC level, could not be raised in the Court of Appeals for the first time.

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On October 2, 2001, acting on the motion for reconsideration of BA, the Special Eleventh Division of the CA rendered an Amended Decision, again penned by respondent Justice Enriquez, Jr., and concurred in by Justices Delilah Vidallon-Magtolis and Ruben T. Reyes. The amended decision granted BA's Motion for Reconsideration and set aside its decision dated August 7, 2001. It enjoined the implementation and enforcement of the Writ of Execution issued by the RTC until the validity and efficacy of the compromise agreement shall have been determined.

THE PRESENT ADMINISTRATIVE COMPLAINT

On July 8, 2002, complainant Antonio K. Litonjua filed the instant complaint before this Court against herein respondents, Justices Juan Q. Enriquez, Jr., and Bernardo P. Abesamis. He alleged therein the following offenses purportedly committed in the two cases pending before the Special Eleventh Division of the CA:

1. Grave Misconduct on the part of Justice Enriquez in demanding money from him in order to facilitate the release of the resolution of the case;

2. Grave Misconduct on the part of Justices Enriquez and Abesamis in knowingly frustrating the execution of the Writ of Final Decision despite the Supreme Court's Entry of Judgment, in issuing a Temporary Restraining Order (TRO) and Preliminary Injunction stopping the execution of the judgment in the case before the RTC.

3. Grave Misconduct and Gross Ignorance of the Law due to Justice Enriquez' deliberate refusal to resolve the six pending motions listed in his Affidavit-Complaint for an unreasonable length of time;

4. Acting as a power broker and influence-peddler, and engaging in the practice of case-fixing, on the part of Justice Abesamis.

When Justice Enriquez submitted his Counter-Affidavit, he stated, among other things, that the Amended Decision was not his decision alone, but that of the whole Special Eleventh

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Division composed of Justice Vidallon-Magtolis, Justice Ruben T. Reyes and himself. He mentioned that Justice Reyes made some corrections on his draft and the latter even suggested that it be called Amended Decision.

On the basis of these statements, complainant Litonjua filed a Supplemental Complaint against Justice Reyes for incompetence, gross negligence, grave misconduct and gross ignorance of the law. The supplemental complaint against Justice Reyes was dismissed by this Court for lack of merit, in an *en banc* resolution dated May 5, 2003.

In the same *en banc* resolution, this Court directed Retired Supreme Court Justice Carolina C. Griño-Aquino to investigate the complaint filed by petitioner Antonio K. Litonjua against Justices Enriquez and Abesamis.

The formal investigation commenced on May 28, 2003 and was concluded on March 5, 2004, after submission of the parties' memoranda.

In her report, the Investigating Justice summed up the parties' evidence, as follows:

THE COMPLAINANT'S EVIDENCE

ANTONIO K. LITONJUA testified that he came to know Justice Juan Q. Enriquez, Jr. in 1984 when the latter was an RTC judge in Quezon City. Litonjua had a case in his sala involving a 2.5-hectare commercial property bounded by Katipunan Road and Aurora Boulevard belonging to the Government, and adjoining the property of Freuhauf Electronics, a corporation controlled by him (20-24 tsn, May 28, 2003). The property was leased by the Government to a third person, without notice to Freuhauf and without a public bidding, so Litonjua sued to annul the lease and conduct a public bidding.

When he approached Justice Enriquez regarding the case, the latter allegedly demanded ₱500,000.00 which Litonjua allegedly paid "to expedite a decision" (54 tsn, June 12, 2003) which came out soon after in favor of Freuhauf Electronics (24 tsn, May 28, 2003). He did not mind having to pay half a million pesos for the decision because he owns 16 corporations (43 tsn, June 12, 2003). "₱500,000.00 was affordable." "At that point in time I did not even complain against

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justice Enriquez x x x because it could be a need for his family or his personal use" (58 tsn, June 12, 2003). Moreover, "₱500,000.00 to me is nothing, it is nothing and I was telling you my capacity whether you will believe me (or not) on my capacity, on my financial capacity, that is why I am saying ₱500,000.00 is nothing" (60 tsn, June 12, 2003).

After that transaction, Antonio Litonjua and Justice Enriquez allegedly became close and used to have lunch together near the Quezon City Hall (26 tsn, May 28, 2003). Every December, at Christmas time, he would give the judge a cash gift of ₱20,000 to ₱25,000 because he believed that judges were underpaid; besides, he considered Justice Enriquez as his friend. Since everybody was calling Justice Enriquez by his nickname "Che," Litonjua took to calling him "Che" also (30–33 tsn, May 28, 2003).

In late April 2001, Litonjua received a TRO, issued by Justice Enriquez on April 24, 2001, and followed by a Writ of Preliminary Injunction on June 25, 2001 in CA-G.R. SP No. 64419, "*American Realty Corporation (Eduardo) versus Honorable Rodolfo Bonifacio, Antonio K. Litonjua and Aurelio K. Litonjua*" (41–42 tsn, May 28, 2003). The TRO and Injunction effectively stopped the full implementation of the writ of execution and sale of BA's properties which ARC (Aurelio) had already ceased (15 tsn, June 12, 2003).

According to Litonjua, "sometime in the late part of July 2001, Justice Enriquez telephoned him to come to his office in the Court of Appeals. The TRO and Preliminary Injunction had already been issued in SP No. 64419, when he received the call. Accompanied by his younger brother Aurelio, the president of ARC, Antonio and Aurelio visited Justice Enriquez's CA office the next day (49-54 tsn, May 28, 2001). Justice Enriquez allegedly "apologized for the issuance of the TRO and Injunction" (61 tsn, May 28, 2003). His exact words were: "*Pasensiya ka na Tony dahil hindi ko alam na itong* (*sic*) *ito*, American Realty, *ay sa inyong magkapatid ni Jun, naisyuhan ko ito nang* TRO, *at saka noong ano nang* injunction for the reason that *naipangako ko ito sa* co-Justice *ko, kay* Justice Abesamis" (65-66 tsn, May 28, 2003). Justice Enriquez allegedly added: "*Nang inisyuhan ko ito hindi ko pa nababasa ang* petition, on the same day that it was filed *pinirmahan ko lang ito, itong* TRO *na ito*" (66-67 tsn, May 28, 2003).

He allegedly remarked to Justice Enriquez that "this is a bit unfair because x x x there was already a x x x final decision from the Supreme

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Court disposing this case and there was already an entry of judgment and all the records were returned back to the Regional Trial Court x x x when we received this TRO x x x we were executing and possessing all the properties of Bank of America in Makati x x x" (68-69 tsn, May 28, 2003).

Justice Enriquez allegedly remembered that: "*Mayroon na pala itong* x x x final judgment, *may* entry of judgment *na. Ang pinag-uusapan na lang dito*, if I remember right, is grave abuse. The lower court issued a writ with grave abuse of authority; that is what we were discussing. And he (Justice Enriquez) is convinced that there was no grave abuse because it is ministerial for the Lower Court to issue a TRO (*sic*, writ of execution)" (76-77 tsn, May 28, 2003).

However, Justice Enriquez allegedly confided to Antonio: "*Alam mo mahirap itong kasong ito. x x x Alam mo mahirap ito dahil sa ang kalaban ninyo eh* very influential x x x *dahil banko ito.*" Justice Enriquez allegedly also said: "Alam mo ito malaki ang war chest x x x for judicial expenses. x x x So, *malaki ang* judicial expenses *nito pero kung mayroon* judicial expenses *ito puede natin maiano ang* decision *nito. Ako naman ang ponente dito*" (78–81 tsn, May 28, 2003).

Litonjua understood "that we must come up also with an equivalent or at least even higher war chest or what not for judicial expenses" (82 tsn, May 28, 2003).

But what he allegedly told Justice Enriquez was: "Well, I leave it to you how we can really get the decision, there is merit in the case how we can work it out" (83 tsn, May 28, 2003).

Justice Enriquez allegedly replied that: "It would be slightly more (or) higher than (what) was 'previously in Quezon City'" referring to the Freuhauf case where, as then RTC Judge, he allegedly asked for and was paid ₱500,000, and he rendered a decision annulling the lease in question for lack of a public bidding. Antonio assumed that as Justice Enriquez has risen in the judicial hierarchy, the "cost" of a favor from him must be higher too. So, when Litonjua asked him "how much?" he allegedly answered: "*Kailangan natin dito* maybe x x x *mga* 1.5 million" (830-88 tsn, May 28, 2003).

"*Ang* reaction *ko*," according to Antonio, was — "that is a big fund for this case, but then, considering a protracted litigation as what he was saying *magtatagal ito*, the amount of award of 99 million at 1%, that is 12 million, we are losing one (1) million a month, so *puede na siguro ito*" (88-89 tsn, May 28, 2003).

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Justice Enriquez allegedly told Litonjua that if the amount was okay with him, he (Justice Enriquez) would work on the decision. He advised Antonio to send a down payment (90 tsn, May 28, 2003).

On August 1, 2001, Justice Enriquez allegedly called up Antonio to inform him that the decision was ready and that he should come to the Justice's office in the Court of Appeals. Antonio promptly obeyed the summons, went to the CA at between 9 to 10 A.M., read a draft of the decision and gave Justice Enriquez ₱500,000 in cash inside a brown envelope which Justice Enriquez placed inside a drawer of his desk. The Justice's son, Ivan, was there at the time. He pointed to a person inside the investigation room who was supposed to be Ivan, but he turned out to be someone named Francisco Gerardo Llamas. Antonio admitted that the person was not Ivan (97-108 tsn, May 28, 2003).

The balance of ₱1 million was allegedly delivered by Antonio to Justice Enriquez as follows: "After the decision was issued on x x x the 7th, so, I received the call on August 8 and, x x x I think it was the following day, August 9, that I went there and I gave him One Million x x x in bills, x x x in a brown envelope." Justice Enriquez allegedly placed the money inside a drawer in his desk. Aurelio Litonjua was allegedly present (109-113 tsn, May 28, 2003).

However, acting on the motion for reconsideration filed by BA, the CA promulgated an Amended Decision on October 2, 2001, penned also by Justice Enriquez, setting aside the original decision, and enjoining the implementation of the writ of execution issued by Judge Bonifacio until the validity of the compromise agreement between BA and ARC (Eduardo) shall have been determined. Antonio felt that his company was "betrayed" (84-85 tsn, June 12, 2003). He believed that the Amended Decision had been "bought," and that some very valuable consideration must have been involved — more than what he had been asked to pay for the original decision (91 tsn, June 12, 2003).

On July 1, 2002 or thereabout, after ARC (Aurelio) had filed a motion for reconsideration of the Amended Decision, Justice Enriquez allegedly called up Antonio again and invited him to come to his office. Antonio did not go because he believed Justice Enriquez would merely ask for more money, and he (Antonio) had decided that "enough is enough" (97-99 tsn, June 12, 2003).

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On July 8, 2002, he filed this administrative case against Justice Enriquez and Justice Bernardo Abesamis. The next day, he filed a motion to inhibit Justice Enriquez from further participating in the pending special civil actions in the CA because he had lost his trust and confidence in him (100, 102 tsn, June 12, 2003).

On his charge that Justice Enriquez acted with "indecent haste" in issuing a TRO in Case No. 64419, ("*ARC/Eduardo vs. Judge Bonifacio, Antonio K. Litonjua* and *Aurelio Litonjua*"), Antonio testified that he checked the records of the case and he found out that the Petition for Prohibition and the "Urgent *Ex-Parte* Motion for Special Raffle" (Exh. F) prepared by the counsel of the petitioner ARC/Eduardo, were filed at the same time; that the special raffle was approved by Acting Presiding Justice Cancio Garcia, not by Presiding Justice Ma. Alicia Austria-Martinez; that the records further show that the petition was filed at 1:11 P.M. on April 24, 2001 and the TRO was issued at 4:30 P.M. on the same day, or only 3 hours and 21 minutes after the petition was filed. Antonio wondered "how there could be a raffle, approval, and all the recording, from one building to the other, and at the same time give Justice Enriquez the time to digest the petition x x x." So, he surmised that Justice Enriquez issued the TRO without even reading the petition and that it was Justice Abesamis "who might have maneuvered" the issuance of the TRO (143, 145, 167, 140-143 tsn, May 28, 2003). This part of his testimony concerning Justice Abesamis' suspected participation in the issuance of the TRO, was stricken out upon timely objections interposed by Justice Abesamis himself and Justice Enriquez's counsel, for "lack of basis and for being hearsay." Actually, it was pure conjecture.

On the charge of "indecent delay" by Justice Enriquez in disposing of various motions that ARC (Aurelio) filed subsequent to the promulgation of the Amended Decision on October 2, 2001, Litonjua testified that their Motion for Reconsideration of the Amended Decision was unacted upon for 264 days; their Motion to Resolve, for 216 days; their second Urgent Motion to Resolve, for 141 days; their third Motion to Expunge the Joint Opposition, for 181 days; and their Urgent *Ex-Parte* Motion for Entry of Judgment, for 94 days (158 tsn, May 28, 2003).

On the third charge against Justice Enriquez that he was grossly ignorant of the law, Litonjua testified that by promulgating an Amended Decision, instead of merely issuing a resolution on BA's motion for reconsideration of the original decision, inasmuch as the petitioner ARC (Eduardo) in Case No. 64419 failed to file a motion

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for reconsideration, Justice Enriquez unfairly allowed the latter to benefit from the Amended Decision even if the original decision of August 7, 2001 had already become final with respect to it. That was why he accused Justice Enriquez and Justice Ruben Reyes of gross ignorance of the law (169-172 tsn, May 28, 2003).

ATTY. VICENTE CHUIDIAN, cousin and general counsel for Antonio Litonjua, testified that he has known Justice Enriquez from way back when they were high school classmates at the Ateneo (41, 42, 47 tsn, June 19, 2003). He recalled that Antonio was "very angry" when Justice Enriquez reversed the decision he had written in the prohibition cases in the CA. He (Atty. Chuidian) tried to dissuade Antonio from filing administrative charges against Justice Enriquez. He told Antonio: "*Padre, huwag mo nang gawin iyan dahil mabait na tao iyan,* classmate *ko iyan, disenteng tao iyan, hamo na lang kausapin ko,* maybe I can get the two of you together" (51 tsn, June 19, 2003).

ATTY. ANTONIO BAUTISTA:

Q Did you exert effort to that end?
A Yes, sir.

Q What were these efforts?
A I just went to visit Justice Enriquez and I said I didn't know much about the case; I knew in general what it was all about and I said that Tony is my cousin and Eddie is my cousin so I didn't want to be caught in the middle and he was my friend and I just wanted to avoid any untoward event. I said that if there is some way that you and Tony can understand each other better then perhaps that ought to happen so as to avoid what might be a scandal.

Q And what was the response or reaction of Justice Enriquez to that statement of yours?
A Well, he said he ruled in accordance with his conscience and that he had done nothing wrong and that as far as he was concerned he could withstand any scrutiny and I mentioned to him some certain things that Mr. Litonjua told me and he denied them.

Q What things did you mention to him?
A Well, Mr. Litonjua told me that he had paid money to Justice Enriquez and Justice Enriquez denied this. Mr. Litonjua told me that he was in a syndicate with Justice

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> Abesamis and Justice Enriquez said there is no syndicate. "*Talagang kinausap niya ako diyan*" he said, but he x x x was not in any way influenced. (51–55 tsn, June 19, 2003)

His own unhappy experience with Justice Abesamis was in connection with a case of his (*Uni-Capital vs. Consing*) where he filed a motion to recuse Justice Abesamis allegedly because Justice Abesamis had approached the former designated *ponente*, Justice Reynato Dacudao, on behalf of Uni Capital. Justice Abesamis denied that allegation and presented a certification from the Raffle Committee that Justice Dacudao was never involved in CA GR CV No. 66944 where the decision, penned by Justice Candido Rivera, went against Atty. Chuidian's client (56-66, 84-85 tsn June 19, 2003). It turned out later that it was another Uni Capital case — CA GR SP 4019 (71 tsn, July 3, 2003) where Justice Dacudao had been the designated *ponente*. Atty. Chuidian admittedly made a mistake in identifying the number of the case.

AURELIO LITONJUA, JR., president of ARC, corroborated Antonio's testimony regarding Justice Enriquez's apology for the issuance of the TRO and Preliminary Injunction against them in CA GR SP Nos. 64419 and 64449, which he had allegedly promised to Justice Abesamis. Aurelio was allegedly present when the conversation took place because he accompanied his brother Antonio to the office of Justice Enriquez in the Court of Appeals sometime in the later part of June 2001 (11, 14 tsn, July 22, 2003). In the course of the conversation, Justice Enriquez allegedly "demanded the amount of ₱1.5 million in order that the decision will be resolved soonest" (20 tsn, July 22, 2003). Antonio did not react to Justice Enriquez's demand; he did not bargain; he just agreed.

They went back to the office of Justice Enriquez on August 2, 2001 and delivered the downpayment of ₱500,000.00 to justice Enriquez (23, 27 tsn, July 22, 2003). The money came from Antonio's personal funds, not funds of American realty Corporation (41 tsn, July 22, 2003).

Aurelio also went along when Antonio delivered the balance of ₱1 million in cash to Justice Enriquez on August 11 or 12, 2001 (Exh. 18; 48 tsn, July 22, 2003).

As before, that money came from Antonio, because ARC did not have sufficient funds to cover the judicial expenses of ₱1.5 million. Besides, if that amount were to come out of ARC funds, they would

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have had to ask for the approval of the other officers and directors, namely, their brother-in-law, Simeon Palanca, and their brother Reynaldo K. Litonjua, both of whom were in the U.S. Since he and Antonio composed the "majority of the corporation," each of them being allegedly the owner of 32% of the capital stock (total: 64%), while their brother Eduardo owns only 16% (54, 68 tsn, July 22, 2003), he and Antonio control the corporation.

He admitted that neither in the financial statements of the corporation, nor in its books, does the ₱1.5 million allegedly paid to Justice Enriquez appear as expenses nor as a loan obligation of ARC to Antonio (68-69 tsn, July 22, 2003).

SALVADOR REYES, a practicing lawyer, testified that he came to know Justice Enriquez through a Korean client, a friend of Justice Enriquez, who sought the latter's help in connection with an immigration problem he was encountering at the Bureau of Immigration. Justice Enriquez was approachable. He referred the Korean client to an immigration agent whom he knew. Actually, the problem was resolved without the intervention of the agent whom they could not contact and who did not seem to be willing to help (162-171 tsn, July 28, 2003).

RESPONDENT JUSTICE ENRIQUEZ'S EVIDENCE

JUSTICE JUAN Q. ENRIQUEZ, JR., 61 years old, graduated with a bachelor's degree in Business Administration from the University of the East, major in accounting, and passed the CPA examination in 1964. While working as a cashier at the Senate Electoral Tribunal, he studied law at the Far Eastern University, graduated in 1968 and passed the bar examination the same year. In 1970 he was hired by Chief Justice Roberto Concepcion as an accountant in the Accounting Department of the Supreme Court. In 1971, he was promoted to the position of Chief Accountant of the Supreme Court (11-13 tsn, August 11, 2003).

In 1975, Chief Justice Fred Ruiz Castro appointed him Property Officer for the entire Judiciary. His function was to purchase supplies and equipment for the whole judiciary, from the Supreme Court down to the municipal courts, worth ₱8-P10 million annually. He served in that capacity up to 1977 with nary a charge for wrongdoing in connection with his work (14-15 tsn, August 11, 2003).

In 1977, he was promoted by Chief Justice Ruiz Castro to the position of Budget Officer of the Judiciary, which he occupied up

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to 1980 when Chief Justice Enrique M. Fernando appointed him Deputy Clerk of Court and Administrative Officer of the Supreme Court which he discharged up to 1985 (17 tsn, August 11, 2003).

That same year (1985), he began his judicial service as Metropolitan Trial Court Judge of Manila, Branch 80, appointed by President Ferdinand E. Marcos (18 tsn, August 11, 2003).

In 1987, President Corazon C. Aquino appointed him Regional Trial Court (RTC) Judge of Cabanatuan City (18 tsn, August 11, 2003).

In 1989, he was transferred to the RTC at Binangonan, Rizal where he could be nearer his family which was living in Quezon City (19 tsn, August 11, 2003).

In 1993, he became RTC Judge of Quezon City (20 tsn, August 11, 2003).

In August 2000, he was promoted as an Associate Justice of the Court of Appeals (21 tsn, August 11, 2003).

Never before, in his almost forty (40) years of government service, particularly in the judiciary, has he been charged with corruption in public office (21 tsn, August 11, 2003). A dissatisfied litigant in a suit for a sum of money, accused him of ignorance of the law for not awarding him damages (A.M. No. CA-04-361, *Severo A. Cordero vs. Justice Juan Q. Enriquez, Jr.*) but that charge was dismissed for lack of merit by this Court on February 18, 2004. (21-23 tsn, August 11, 2003).

The bastion of Justice Enriquez's defense to Antonio's charges against him was a consistent denial of every derogatory allegation leveled against him by his accuser.

He denied Antonio's allegation that when he was an RTC Judge in Quezon City in 1984,* (in 1984 Justice Enriquez was still employed in the Supreme Court as Deputy Clerk of Court and Administrative Officer. He became an RTC Judge of Quezon City in 1993) he called Antonio to his chambers and demanded half a million pesos from him "to expedite the decision" in a case filed by Freuhauf Electronics against the Executive Secretary and a certain De los Santos (25 tsn, August 11, 2003). "That is not true. I did not talk to him even during the pendency of the case" (28 tsn, August 11, 2003).

In 1997 he formally met Antonio at the Club Filipino during a convention of the Philippine Judges Association, through Judge Mariano Umali, the president of the association, who introduced

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Antonio to him. Antonio thanked him for the decision he rendered in the Freuhauf Electronic case (30-32 tsn, August 11, 2003).

He denied as "not true" Antonio's allegation that they became friends after the Freuhauf case; that they used to have lunch together two or three times a year; and that during Christmas Antonio would give him a cash gift of ₱20,000-25,000.00. He averred that he did not receive any cash gifts from Antonio (33-34 tsn, August 11, 2003).

He denied that his nickname was "Che." It is "CHI," which is short for "Juanichi," the nickname his mother gave him for he was born during the Japanese occupation and was named after his father, Juan Sr. The suffix "Ichi," which means number one in Japanese, was added to his name by his mother to form his nickname — "Juanichi," or "Chi" for short, not "Che" (34-35 tsn, August 11, 2003). Only his friends, meaning persons he would invite to his birthday party, office party, family party or some such gatherings, call him "Chi." Antonio Litonjua is not his friend. He has not invited him to his parties, nor has Litonjua invited him to his (35-36 tsn, August 11, 2003).

With regard to the petition for prohibition of "*ARC vs. Judge Bonifacio, Antonio Litonjua and Aurelio Litonjua*" (CA GR SP No. 64419), Justice Enriquez testified that the special raffle of that case was approved by Acting PJ Cancio Garcia on April 24, 2001. Justice Ma. Alicia Austria-Martinez had not yet been appointed CA Presiding Justice at that time. Justice Enriquez received the *rollo* of the case at past 2:00 P.M. on the same day (39 tsn, August 11, 2003).

Since a special raffle "requires urgency," he immediately read the petition and examined the annexes to determine whether the Court should issue a TRO as prayed for by the petitioner. He determined that a TRO should issue, so he immediately prepared the resolution and had it typed. Then he signed it and instructed his staff to forward it to the senior member of the 11th Division (Justice Presbiterio Velasco), and the chairman (Justice Ruben Reyes) for their concurrence and signatures (40-42 tsn, August 11, 2003).

Justice Enriquez denied the allegation that after he had issued the TRO, he called up Antonio and asked him to come to his office. "I did not call him to go to my office" (52 tsn, August 11, 2003). "They (Antonio and Aurelio) came to my office after the issuance of the TRO but before the issuance of the preliminary injunction" (*Id.*). "They asked my help regarding that preliminary injunction x x x if I could help them that said preliminary injunction should not be issued by the Court" (53 tsn, August 11, 2003).

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He allegedly told them that he could not discuss the case with them as it would be unfair to their opponents. "I told them not to worry, the Court will resolve the preliminary injunction fairly and if they want to know the status of their cases they should talk to the Division Clerk of Court, and I cannot entertain them personally because it is unfair to their opponents" (58 tsn, August 11, 2003). They understood, they thanked him, and they left.

After the parties had submitted their comments and reply, the 11th Division decided to issue a preliminary injunction on June 25, 2001 (59 tsn, August 11, 2003).

Justice Enriquez disavowed Antonio's account of his and Aurelio's supposed visit to his office after the issuance of the preliminary injunction and of his alleged apology to them because he did not know that ARC belongs to them and that he had promised the TRO and injunction to Justice Abesamis. ("*Pasensiya kana* Tony *dahil hindi ko alam na itong companyang ito,* American Realty, *ay sa inyong magkapatid ni Jun. Na i-issuan ko ito nang* TRO *at saka ng* injunction for the reason that *naipangako ko ito sa* co-Justice *ko, kay* Justice Abesamis" (60 tsn, August 11, 2003). He said: "That is not true x x x they did not come to my office after the issuance of the preliminary injunction. x x x Justice Abesamis did not approach me or talk to me about the case" (61 tsn, August 11, 2003).

He also denied that he issued the TRO without first reading the petition. "That is not true as I have said, I studied that petition and I was the one who drafter (*sic*) the resolution" (65 tsn, August 11, 2003).

He denied having mentioned BA's "war chest for judicial expenses" and that he suggested that Antonio match it in the amount of 1.5 million pesos which Antonio agreed to deliver. "That conversation did not take place. In my judicial career I never asked nor received any money from litigants" he said. (65-66 tsn, August 11, 2003).

He denied that on August 1, 2001 he called up Antonio to come to his office, that Antonio and Aurelio came on August 2, and that he show[ed] them a draft of his decision in the prohibition cases. "That is not true. I never called him. x x x It is also not true (that Antonio and Aurelio came to see him on August 2, 2001) because they went to my office only once, that is after the issuance of the TRO and before the issuance of the preliminary injunction. x x x After April 24, 2001 and before June 25, 2001. I do not know exactly the

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his decision) that is not my practice to show my draft to anybody except to my close staff and to the members of my division, the justices there in my division" (68-69 tsn, August 11, 2003).

He also vehemently denied as "not true" the alleged delivery to him by Antonio on August 2, 2001, of an envelope containing ₱500,000.00 as the supposed downpayment on the price of 1.5 million pesos supposedly demanded by him. "That did not happen" according to Justice Enriquez (69 tsn, August 11, 2003).

He also vehemently denied as "not true" the alleged delivery to him by Antonio on August 2, 2001, of an envelope containing ₱500,000.00 as the supposed downpayment on the price of 1.5 million pesos supposedly demanded by him. "That did not happen" according to Justice Enriquez (69 tsn, August 11, 2003).

Neither did Antonio and Aurelio give him a second envelope containing One Million Pesos in bills on August 9, 2001 (per Antonio; August 11 or 12, 2001 per Aurelio) after the original decision came out dismissing the petition for prohibition. "That is not also true, that did not happen" testified Justice Enriquez (71 tsn, August 11, 2003).

Acting on the motion for reconsideration filed by BA, which was opposed by ARC (Aurelio), the CA set aside the original decision and promulgated an Amended Decision on October 2, 2001 staying the execution until the RTC should have determined who between the two contending sets of stockholders own ARC (72-75 tsn, August 11, 2003).

Justice Enriquez denied Antonio's allegation that he called up Antonio once more to come and see him in the CA, after ARC (Aurelio) had filed a motion for reconsideration of the Amended Decision. He allegedly explained to Antonio that he was under immense pressure to issue the TRO because his wife, Olga Enriquez, was slated for promotion to the Sandiganbayan. Justice Enriquez maintained that "that is not true"; because his "wife has been recommended by the JBC twice for appointment as a Justice but the president did not appoint (her)." "I did not call him or ask him to go to my office." (76-77, 123 tsn, August 11, 2003).

He admitted that his former high school classmate, Atty. Chuidian came to his office requesting him for a possible meeting with Antonio Litonjua in connection with the case, "but I declined his invitation.

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I told him that I already made up my mind and I will not change it whatever happens" (123 tsn, August 11, 2003).

With regard to Atty. Chuidian's statement that Justice Enriquez admitted that he was approached by Justice Abesamis about the case, but that he "was not influenced," Justice Enriquez remarked: "I think they are suspecting that Justice Abesamis talked to me about the case x x x because Atty. Chuidian asked me if Justice Abesamis approached me. I told him he did not and if ever he did I will not give his wishes, I will not give what he wants." He and Justice Abesamis "we were not close. The only time we were together [was] when I was appointed as RTC Judge in Quezon City but for a short time he was promoted as Deputy Court Administrator. When he was the president of the Philippine Judges Association and I was never an officer nor active in the PJA and we are from different schools, different province and in Quezon City, I belong to (a) different faction, the Santiago faction. There were two factions in Quezon City, the Abesamis faction and the Santiago faction. I belong to that other faction that is why we are not close. We only see each other during retirement of a judge in Quezon City or Christmas party" (124-126 tsn, August 11, 2003).

He saw Antonio again at the 2001 judges' convention at the Sheraton Hotel. Litonjua greeted him, but they did not converse because Litonjua was seated at another table with Judge Pine, the president of the PJA (12-17 tsn, August 266, 2003).

After this administrative case had been file (*sic*) by Litonjua against him, Justice Enriquez learned from his son, Ivan, that the latter met Antonio and Aurelio when they came to his office in the Court of Appeals; that they had conversed while waiting for him, and that Ivan and a group of four or five classmates had gone to Litonjua's office to do research for their school project on corporations with which Litonjua had offered to help them. According to Justice Enriquez, if his son had asked for his permission before going to Litonjua's office, he would not have given his permission (45-46 tsn, August 26, 2003).

ATTORNEY MARCIAL M. MAGSINO, a practicing lawyer since 1977, and a member of the law firm of Montesa, Castro and Manikan, testified that the center of his law practice is in Metro Manila but he has also appeared in many other courts around the country such as in Laoag, Ilocos Norte, in Nueva Ecija, Zambales, Cebu, Quezon, Mindoro, and Mindanao. He belongs to the Manila IV Chapter of

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the IBP, known as the Justice Conrado Sanchez Chapter, where he has served in various capacities as a member of the Board, Secretary, Vice-President, President, and lately as its Public Relations Officer. He is the governor of the Vanguard of the Philippine Constitution, the Executive Vice-President of the Philippine Trial Lawyers Association, General Counsel of the Lions' Club International, and a member in good standing of the Philippine Bar Association. He disclosed that in social gatherings and especially in general meetings of the IBP, the talk is usually about fiscals, judges and justices. Fellow practitioners talk of their experiences in different courts and before certain judges, justices or fiscals. He revealed that "during the sting of Justice Enriquez in Manila as a Metropolitan Trial Court Judge x x x I remember also in one of our meetings we evaluated the demeanors and performances of judges in Manila, since our chapter is near the City Hall where the salas of these judges are seated (located), and I remember that one of our talks there is that Judge Enriquez is a straightforward judge, x x x he is not a bias(ed) judge, he performs his duty as judge well. x x x I have not heard of any news affecting his honesty, his honesty and probity. He is noted to be well with his fellow judges" (14-15 tsn, September 11, 2003).

He did not hear much about Justice Enriquez when the latter became an RTC Judge in Cabanatuan because he had few cases in Nueva Ecija — two in Cabanatuan and five (5) in Gapan — and, although it was a common practice of lawyers from Manila to ask about the "standing" of a judge coming from Manila, he had "not heard of any thing adverse to the reputation" of Justice Enriquez (17 tsn, September 11, 2003). He had appeared before Justice Enriquez in the RTC in Quezon City; he lost his case. Nevertheless, his opinion of him was unchanged: "He is straight, honest and a learned judge" (18 tsn, September 11, 2003).

He came to testify for Justice Enriquez because a friend of his informed him that Justice Enriquez has this administrative case against him. Atty. Magsino told his friend "to convey to Justice Enriquez that if I could be of help to him, then do not hesitate to get in touch with me or contact me. And the other day I received a call from his office asking me whether I could testify in his favor. And so I acceded." x x x "My reason is to tell everybody what I know about him, about his honesty, his probity, his reputation as a good judge" (19-20 tsn, September 11, 2003).

ATTORNEY BENJAMIN BERNARDINO, another law practitioner and former president of the Rizal Chapter of the IBP, had expressed his willingness to give evidence on the reputation of Justice Enriquez, but he failed to appear at the investigation due to a prior trial

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engagement. However, both parties stipulated that Attorney Bernardino's testimony would have the same tenor as Attorney Magsino's, both on direct and on cross examination (45 tsn, September 11, 2003).

COMPLAINANT'S REBUTTAL EVIDENCE

RETIRED CA JUSTICE MARIANO UMALI, by way of rebuttal, testified that Justice Enriquez is his friend and that he calls him "Che." Justice Umali already knew Antonio Litonjua when he (Justice Umali) was still an RTC Judge in Pasig City. After his retirement from the Court of Appeals on December 18, 2000, Litonjua began consulting him on some of his major cases (25, 48 tsn, December 4, 2003). As a former PJA president, he has many friends among the judges and justices (27 tsn, December 4, 2003). He knew that Litonjua had a pending ARC case in the Court of Appeals that was assigned to Justice Enriquez. He is familiar with the case, and he supposed that Litonjua was aware that he and Justice Enriquez were friends (31, 34, 37 tsn, December 4, 2003). Antonio asked him to attend the PJA convention at the Century Park Sheraton Hotel in 2001 because Justice Enriquez would be there and Antonio wanted Justice Umali to be present at his meeting with Justice Enriquez (17-21 tsn, December 4, 2003). Justice Umali did not attend the PJA convention. He went to the Sheraton Hotel only "because of the request of Mr. Litonjua" (61 tsn, December 4, 2003).

OTHER EVIDENCE presented were records of the National Bureau of Investigation, the Office of the City Prosecutor of Manila, and bank accounts of Antonio Litonjua and of Justice Enriquez, including those of his wife and children, which the Investigator requested them to produce. The investigator was interested to ascertain the source of the ₱1.5 million in cash that was allegedly paid by Antonio to Justice Enriquez, and how that money was disposed of by the latter. Antonio Litonjua promised to produce at the next hearing his personal income tax return for 2001 as well as those of his 16 corporations, the lease contract for the Mandaluyong Coliseum cockpit, the journal entries in the books of ARC, the profit and loss statement and balance sheets for June to August 2001 of the ALS Management Corporation, Freuhauf Electronics and Paradise Park — corporations which he owns 100%. Justice Enriquez promised to bring his bank passbooks and those of his wife and children.

However, at the next hearing on January 23, 2004, Litonjua brought only some cancelled checks — drawn on the bank accounts of his son Benedict and his brother Aurelio Litonjua, between July 27 and August 7, 2001, and a withdrawal from his personal savings account at the Planters Bank in the amount of ₱250,000.00 on July 24, 2001. The

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following tabulation of the various checks that he allegedly encashed in order to raise the 1.5 million pesos (₱1,471,000.00 plus ₱29,000.00 from petty cash) that he allegedly delivered to Justice Enriquez (Exh. 63) is reproduced below:

x x x x x x x x x

No income tax returns, either in his name or in the name of his corporations, were produced. No records, inventories, financial statements, balance sheets, profit and loss statements, cash books, checkbooks, his own or of his corporations, were brought to the hearing. Instead, he presented a certified entry in the police blotter of the Mandaluyong Police Station purporting to show that his office (address not mentioned) was robbed on April 13, 2003 and that "undetermined amount of imported spare parts of motorcycle and car and firearms was found missing inside the private office of the complainant" (Exh. 64). According to Litonjua, however, books and records of his various corporations that he had promised to produce at the hearing, were lost in the robbery (Exh. 64, pp. 3-17 tsn, January 23, 2004).

Justice Enriquez brought the passbooks of the bank accounts of himself (Annexes 1, 1-A to 1-F of Compliance), his wife Judge Olga Enriquez (annexes 2 and 2-A), their children Juan Jose Enriquez III (Annex 3), Marie Nicole Enriquez (Annexes 4, 4-A to 4-C), and Marie Tanya E. Llamas (Annexes 5, 5-A to 5-B-2) and grandchildren Angela Isabel Llamas (Annex 5-C), Sophia Margarita Llamas (Annex 5-D), and Alessandra Beatrice Llamas (Annex 5-E), pp. 902-1014 Vol. III, Records).

RESPONDENT JUSTICE ABESAMIS' EVIDENCE

Justice Bernardo Abesamis did not present testimonial evidence. He relied on the testimony of Justice Enriquez and the latter's and his own counter-affidavits denying/belying Antonio's allegation that, on behalf of the petitioner ARC (Eduardo), he influenced Justice Enriquez to issue a TRO and Preliminary Injunction stopping the RTC of Pasig from executing the already-satisfied judgment of the Supreme Court in G.R. No. 133876 in favor of ARC. His documentary evidence (Exh. 1-Abesamis up to Exh. 15-Abesamis, with sub-markings) consisted of parts of the records of CA-G.R. SP No. 64019 and CA-G.R. SP No. 64451, cases handled by Atty. Vicente Chuidian in the Court of Appeals, which were offered only to impeach the credibility of the latter as a witness against him.

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After carefully evaluating the evidence on record, and the findings and recommendations of the Investigating Justice, this Court now resolves the issue of whether respondent CA Justices Juan Q. Enriquez, Jr. and Bernardo P. Abesamis are guilty of the serious charges leveled against them by complainant Antonio K. Litonjua.

To start with, the rule, even in administrative cases, is that to be disciplined for grave misconduct or any grave offense, the evidence against respondents should be competent and be derived from direct knowledge. Respondents are entitled to be judged only after due investigation and after presentation of competent evidence, especially since the charges are highly penal in character.[15]

The evidence presented in this case is mainly testimonial, so the resolution of the issue boils down to the credibility of the testimonies of both parties. The complainant has the burden of proof and such proof must at the least be clear, solid and convincing to compel the exercise of disciplinary power over the persons indicted.[16]

The Investigating Justice found several inconsistencies that gravely affected complainant Antonio Litonjua's credibility. Her findings are reproduced below:

After a careful examination of the voluminous evidence presented by both sides, we find the evidence of the complainant on the alleged extortions committed by Justice Juan Enriquez, Jr., as an RTC Judge in Quezon City and as Justice of the Court of Appeals, dubious and deficient in credibility.

Antonio Litonjua's allegation that in 1984, RTC Judge Juan Enriquez extorted ₱500,000.00 from him to facilitate the release of a decision in favor of his corporation, Freuhauf Electronics, was disputed by Justice Enriquez, because firstly, he did not know Litonjua then. In the second place, the alleged extortion could not have transpired in 1984, because Justice Enriquez was not an RTC judge

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[15] *Office of the Court Administrator v. Pascual*, 259 SCRA 604, 612-613 (1996); citing *Raquiza v. Castañeda, Jr.*, 81 SCRA 235, 244 (1978).

[16] *Concerned Citizens of Laoag City v. Bienvenido Arzaga, et al.*, 267 SCRA 176, 182 (1997).

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of Quezon City then. In 1984, he was still working in the Supreme Court as Deputy Clerk of Court and Administrative Officer. The Freuhauf case was decided in 1996. Thirdly, it is out of character for an astute businessman like Litonjua, who claims to own and control some 12 to 16 corporations, to pay ₱.5 million for a judgment that actually did not award anything to his corporation. As pointed out in respondent Enriquez's Memorandum, Freuhauf Electronics did not gain anything from Judge Enriquez's decision which merely annulled the lease to De los Santos, but did not give Freuhauf a chance to lease the strip of land, for the Government decided to use it for a new road instead.

Finally, it is unbelievable that Litonjua, who is a crusader against abusive, unfit and corrupt judges, and who avowedly "consistently advocated the principles of fairness and integrity in our judiciary" (42 tsn, June 5, 2003), after being the supposed victim of a half-a-million-peso scam by Justice Enriquez, would thereafter cozy up to his victimizer, allegedly become his friend, treat him to lunches, and give him ₱20,000 to ₱25,000 cash gifts at Christmastime. We agree with Justice Enriquez's assertion that all of that — the bribe, the gifts, the lunches, the friendship, the familiarity — never happened.

More likely, the tale was contrived by Antonio as a sort of "preface" to his present complaint (filed six [6] years later), accusing Justice Enriquez of again allegedly extorting from him a bribe of ₱1.5 million in August 2001, as the price of a decision dismissing the petitions for prohibition in CA-G.R. SP No. 64419 and CA-G.R. SP No. 64449. Anyone who would believe that the first transaction did happen, would certainly have no difficulty believing that the second did too.

However, as we had pointed out earlier, the only evidence on the alleged ₱1.5 million extortion is Antonio's bare allegation to that effect. Such evidence, in the face of respondent's staunch denial, comes far short of the reglementary requirement of proof beyond reasonable doubt (Rule 115, Sec. 1 par. a). The following circumstances destroy the credibility of the accusation against Justice Enriquez:

(a) Antonio and Aurelio contradicted each other as to the date of their visit to the office of Justice Enriquez in the Court of Appeals, and the dates of payment of the bribe money.

(b) According to Antonio, their first visit to the office of Justice Enriquez, was in response to a phone call from Justice Enriquez in "*the late part of July, 2001.*" But according to Aurelio, it was in "*the later part of June 2001.*" It was

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during that visit that the alleged agreement to pay the sum of ₱1.5 million to Justice Enriquez was perfected.

(c) According to Antonio, their second visit to deliver the partial payment of ₱500,000 to Justice Enriquez, occurred between 9 and 10 A.M. *on August 1, 2001* upon receiving a phone call from Justice Enriquez advising him that the draft of the decision was ready. According to Aurelio, however, their second visit was on *August 2, 2001.*

(d) The balance of P1 million in cash was paid on *August 9, 2001* according to Antonio because he received the call on August 8, advising him that the decision was "issued" on August 7, so he and Aurelio went the next day, August 9, 2001 to give the money to Justice Enriquez. On the other hand, Aurelio testified that he and Antonio delivered the balance of P1 million in cash to Justice Enriquez on *August 11 or 12, 2001.*

Since Antonio and Aurelio could not agree as to when they gave the installments of the ₱1.5 million to Justice Enriquez, our conclusion is that the alleged bribery or extortion did not take place at all. In the case of *Castanos vs. Escano, Jr.,* 251 SCRA 174, 187, this Honorable Court held that "inconsistency between the allegation and proof as to the date and *situs* of the alleged bribery, goes into the credibility of the accusation and the merits of the case." It dismissed the charge of bribery against the respondent Judge "for lack of substantial proof."

Moreover, despite his boast that he could raise ₱500,000, even ₱1 million cash, "in any day" (39 tsn, December 10, 2003), and that, to him, "₱500,000 is nothing,,". Antonio failed to convincingly show that he had half a million pesos on hand on August 1, 2001 and ₱1 million on the spot on August 9, 2001 — the dates he supposedly made the pay-offs to Justice Enriquez.

In the first place, he admitted that he had no record of the ₱1.5 million "mobilization and judicial expense" in his book, journal, diary or the books of any of his 12 to 16 corporations. At the hearing on December 10, 2003, he was asked by the Investigator to produce his bank books, income tax returns for 1994 and 2001 and those of his corporations, financial statements and relevant records at the next hearing on January 23, 2004. He agreed to do so, but when the time came, he presented ten (10) cancelled checks, three (3) of which were issued by his son Benedict, seven (7) by his brother Aurelio's bank account, and the

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passbook of his savings account at Planter's Bank, showing that he withdrew ₱250,000 on July 24, 2001.

Instead of the books and records of his corporations, he presented a certified entry in the police blotter of the Mandaluyong Police purporting to show that those papers and records were stolen by robbers from his office on April 13, 2003. But, if it was true that his corporate records were stolen in that robbery, why did he promise to bring them to the hearing on January 23, 2004? Why were they not included in the list of articles missing certified by the Mandaluyong Police? If the records were stolen by robbers in April yet, why did he not inform the Investigator that they were already "lost"? Evidently, the "loss" of the corporate records was an afterthought. Their suppression proves that if they were produced, their contents would have given the lie to Antonio's vaunted financial capability to pay a ₱1.5 million bribe to Justice Enriquez.

Antonio testified that he raised the bribe money "partly from a memorial park which is ALS management, I got it partly from Fruehauf, partly from my personal account and also from my operations in my coliseum where there is always a cash flow. So it is a co-mingled account." (26 tsn, December 10, 2003). This claim was belied by the cancelled checks which he bought as proof of how he raised the ₱1.5 million. The checks, issued by Benedict and Aurelio, belied Antonio's allegation that he obtained the bribe money from the ALS Management and Development Corporation, Freuhauf, and the Mandaluyong Coliseum cockpit.

An examination of Exhibit 16, reveals that the total sum of ₱934,000 was raised by Antonio on July 24 to 27, 2001, by pooling the sum of ₱250,000 which he withdrew from his savings account and the proceeds of three (3) checks issued by Benedict from his IE Bank account. Since the initial payment of ₱500,000 to Justice Enriquez would not be due until his draft of the decision was finished, and it was allegedly finished on August 1, 2001, there was no sense in withdrawing all that cash of ₱934, 000 as early as July 24 to July 27, 2001. That money must have been used for some other purpose — not to bribe Justice Enriquez. For if that was part of the bribe money, Antonio would, and should, not have withdrawn and encashed it prematurely. He should have *kept* it in his savings account, to be withdrawn only in the exact amounts and on the exact dates of the scheduled pay-offs to Justice Enriquez. Then there would have been a "paper trail" or a "money trail" to prove his alleged bribe payments. But, he did not do that. Neither did he report the criminal transaction to the police or the NBI so that the

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extortionist could be entrapped. Instead, he agreed to pay the bribe, which made him a *particeps criminis* or accomplice in the crime. It was only when Justice Enriquez allegedly reneged on their agreement by amending the decision which he had penned, that Antonio exposed the alleged bribery almost a year later.

Justice Enriquez presented the passbooks of the bank accounts of himself, his wife, Judge Olga Enriquez, his three children, Juan Jose Enriquez III, Marie Nicole, and Marie Tanya, and the latter's three children, Angela Isabel, Sophia Margarita, and Alessandra Beatrice, all surnamed Llamas. Their balances, if any, for August, 2001 and thereabout, do not come to anywhere near ₱1.5 million, even if they were to be added up together.

There may be other ways and places for hiding ill-gotten wealth, but, inasmuch as we are satisfied that the alleged extortion or bribery was not committed, there is no further need to search for its fruits.

As this Honorable Court remarked in *Castaños vs. Escano, Jr.*, (251 SCRA 174, 191 [1995]) in dismissing the charge of extortion against the respondent judge:

"In order that the allegation of a charge of this nature (extortion) may not be considered a fairy tale, evidence other than the doubtful and questionable verbal testimony of a lone witness should be adduced. Entrapment should have been pursued. Evidence of a seasonable report to police authorities should have been presented. Record of where the bribe money came from, its specific denominations and the manner respondent accepted and disposed of it should have been clearly shown."

Antonio's silence and inaction for a year after the alleged extortion was committed, weakens the credibility of his complaint against Justice Enriquez. His laches in denouncing and reporting it to the authorities makes suspect his motive in filing it. Greed, as pointed out by BA's lawyer, Atty. Lavadia, is the compelling force behind his viciousness toward Justice Enriquez who penned the original, as well as the amended decision that foiled Antonio's bid to grab a share of the ₱99 million judgment won by ARC (Eduardo) from BA, which he covets.

The records show that Litonjua is no stranger to trouble. He has accused and been accused of various crimes ranging from grave threats, oral defamation, slander, serious illegal detention, maltreatment, slight physical injuries, coercion, malicious mischief and violations of the SSS law, the Building Code, and some city ordinances (Annexes 16, 16-A, 16-A-1, 16-D, 16-D-1 to 16-D-30 of Enriquez's Comment). He

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has filed petitions for disbarment of lawyers, including ARC's counsel, Atty. William *Veto*, and especially the lawyers of the adverse party in his lawsuits, *e.g.*, Attys. Antonio V. Agcaoili and John T. Lavadia, counsel for BA in the prohibition cases, Atty. Francis Joseph Ampil, collaborating counsel for BA, and Atty. Melanio Elvis Balayan, who replaced Atty. William *Veto* as counsel for ARC (Eduardo). (Annexes 14, 14-A, 14-B, 14-C, Enriquez Comment). He has attempted to bully judges, namely, RTC Judge Renato A. Fuentes of Davao City and RTC Judge Alex Quiros of Pasig City, by harassing them with charges of bias, grave abuse of discretion, gross ignorance of the law, and conduct unbecoming which were later dismissed for lack of merit (Annexes 15, 15-A, 15-B and 15-C of Enriquez Comment). While this case against Justices Enriquez and Abesamis may not have been filed to bully or intimidate them, it is clearly intended to harass them and destroy their reputations to avenge his disappointment and frustration in being stopped from laying hands on the ₱99 million judgment for damages in favor of ARC (Eduardo) which, by his computation, would by now have grown to more than ₱200 million, inclusive of interests.

However, the good character of Justice Enriquez and his unblemished record of service in the judiciary as cashier and budget officer of the Supreme Court, and later, as a judge rising from the ranks until he reached the appellate court, with no taint of corruption or misconduct until now, are an ample rebuttal to Antonio's charges against him. We should listen to the tributes, awards, resolutions and certificates of recognition and appreciation that Justice Enriquez has received from various civic and professional organizations over the years (Annexes 13-A to 13-S of J. Enriquez Comment) rather than to Antonio's unsubstantiated and ill-motivated charges.

Litonjua's own witness, Atty. Vicente Chuidian, a former classmate of Justice Enriquez, testified that he tried to dissuade Litonjua from filing this administrative case against Justice Enriquez — the first ever in his 37 years of service in the judiciary — "*dahil mabait na tao iyan,* classmate *ko iyan, disenteng tao iyan* x x x" (He is a good man, he was my classmate, he is a decent person.) (51 tsn, June 19, 2003). His testimony refutes Litonjua's allegation that Justice Enriquez is "abusive, unfit and corrupt," a "misfit in our judicial system."

Inasmuch as the only evidence on the charge of extortion against Justice Enriquez were the inconsistent and contradictory testimonies of Antonio and Aurelio, the charge should be dismissed for failure of proof beyond reasonable doubt. "Rules even in an administrative

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case, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge." (*Daracan vs. Natividad*, 341 SCRA 161 [2000]).

Justice Enriquez may not be held administratively answerable for the erroneous original decision in the prohibition cases which the Special 11th Division, through Justice Enriquez also, rectified in its Amended Decision. A judge is not precluded from reexamining an order or decision that he has written. It is his prerogative, and duty, to correct errors which he may discover, either *motu proprio,* or upon a timely motion for reconsideration by the aggrieved party. While it may be embarrassing for a judge to make a mistake; it would be far worse — it would be an unforgivable act of injustice — if he knowingly perpetuates the error by not correcting it seasonably. But, as was held by [the Supreme] Court *in State Prosecutors vs. Muro*, 251 SCRA 111, "a judge cannot be subjected to liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous, so long as he acts in good faith." He who alleges bad faith, fraud, malice has the burden of proving it. That burden was not discharged by the complainant in this case.

Even less viable is the charge of Antonio Litonjua against Justice Bernardo Abesamis, denouncing him as a "power broker, a case fixer, and influence peddler." Antonio's allegation that Justice Abesamis "might have maneuvered" the issuance of the TRO because it was allegedly issued "with indecent haste," is pure speculation and conjecture. "The Supreme Court cannot give credence to charges against a judge based on mere suspicion or speculation." *Daracan v. Natividad*, 341 SCRA 161 (2000). Justice Abesamis did not have to dignify the hearsay and ambiguous testimony of Atty. Vicente Chuidian (which was timely stricken off) that "Justice Abesamis has a bad reputation among my lawyers," for this Honorable Court has ruled that hearsay evidence, whether objected to or not, has no probative value (*People v. Valero*, 112 SCRA 661 [1982]; *People v. Nebreja*, 203 SCRA 45 [1991]; *People v. Damaso*, 212 SCRA 547 [1992]; *Baguio v. Court of Appeals*, 226 SCRA 336 [1993]; *People v. Cabintoy*, 247 SCRA 442 [1995]; *People v. Parungao*, G.R. No. 125812, Nov. 28, 1996).

Antonio's allegation that Justice Enriquez told him that he had promised the TRO to Justice Abesamis who was allegedly brokering for a well-known bank — BA — which has a huge "war chest" for judicial expenses, was categorically denied by both Justice Enriquez in his Comment and Counter-Affidavit, and by Justice Abesamis in his Comment.

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Who should we believe? Not Litonjua for he overlooked a crucial detail: — that the TRO was issued on the same day that the petition for prohibition of ARC (Eduardo) in CA-G.R. SP No. 64419 was filed — April 24, 2001. Bank of America was not a party to that case. Therefore, it is not believable that Justice Abesamis would intervene at that point, because BA had not yet entered the case. At that juncture, it would have been officious and premature for Justice Abesamis to intervene. BA filed its own petition for prohibition two (2) days later — on April 26, 2001. Justice Abesamis could not have had a hand in the issuance of the TRO by Justice Enriquez two days earlier, on April 24, 2001.

In violation of Section 11, Rule 140 of the Rules of Court which provides that "proceedings against Judges shall be private and confidential," soon after Litonjua filed his complaint against Justice Enriquez and Abesamis, it was given wide publicity in various newspapers with national circulation in the country, such as "The Philippine Daily Inquirer," "Today," and "Metro Today" (Annexes 12-A to 12-F, Comment of Justice Enriquez, pp. 194-201, Records). To cap his demolition job on the two justices of the Court of Appeals, Antonio even appeared in the television talk show of Ces Drilon who interviewed him about his complaint.

Due to the seriousness of the accusations against the respondent Justices, this Court has undertaken a thorough review of the entire record and carefully perused the transcript of stenographic notes. However, this Court has found nothing that would support any finding contrary to those of the Investigating Justice.

The ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption or incompetence. The general rules with regard to admissibility of evidence in criminal trials apply.[17]

When weighed against such standards, complainant's evidence falls short. Despite the serious nature of the accusations and the attendant publicity, he failed to convince that credence should be given to his complaint.

This Court is in full accord with the findings and evaluation of the Investigating Justice. As in the case of factual findings of the trial court, this Court accords great weight and respect to the evaluation of Justice Griño-Aquino, a well-respected retired

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member of this Court, and her assessment and appreciation of the evidence are quite competent and convincing.[18]

It is good to reiterate that while this Court will never tolerate or condone any act, conduct or omission that would violate the norms of public accountability or diminish the people's faith in the judiciary, neither will it hesitate to reject unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.[19]

WHEREFORE, for failure of complainant to substantiate the same, the administrative complaint for gross misconduct and gross ignorance of the law against Court of Appeals Associate Justice Juan Q. Enriquez, and the administrative complaint for gross misconduct against Court of Appeals Associate Justice Bernardo Abesamis, are hereby *DISMISSED.*

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Tinga, JJ.,* concur.

Panganiban, J., took no part. Former partner in law firm representing one of the parties.

Chico-Nazario, J., on leave.

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[17] *Office of the Court Administrator v. Pascual*, see fn. 15, at 617.

[18] *In Re: Derogatory News Items Charging CA Associate Justice Demetrio Demetria with Interference on Behalf of a Suspected Drug Queen*, 372 SCRA 628, 632-633 (2001).

[19] *Ang v. Asis*, 373 SCRA 91, 99 (2002).