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[Adm. Matter Nos. R-278-RTJ & R-309-RTJ. May 30, 1986]

ATTY. ENRICO M. CABRERA, *complainant, vs.* **JUDGE JAMES B. PAJARES, Regional Trial Court, Naga City,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ENJOINED TO CONDUCT THEMSELVES AT ALL TIMES IN SUCH A MANNER AS TO BE BEYOND REPROACH AND SUSPICION.—** An analysis of the evidence and a review of the records fully support the finding that "respondent Judge accepted the money and that he knew it was being given to him by reason of his office." The Court has time and again stressed that members of the judiciary should display not only the highest integrity but must at all times conduct themselves in such manner as to be beyond reproach and suspicion. (*Quiz vs. Castaño*, 107 SCRA 196; *Montemayor vs. Collado*, 107 SCRA 258). The Court had likewise stressed in *De la Paz vs. Inutan* (64 SCRA 540) that "the judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests, x x x. Thus, for the judge to return that regard, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid even the slightest infraction of the law."

2. **CRIMINAL LAW; INDIRECT BRIBERY; PENALTY.—** The Court is constrained to disapprove his recommendation as to the first charge of indirect bribery which is fully supported by the evidence that respondent Judge "be suspended from office for 2 years and 4 months, taking into consideration the penalty prescribed in Art. 211 of the Revised Penal Code." The penalty of 2 years and 4 months imprisonment provided for the criminal offense of indirect bribery may not be equated with the penalty of separation from the judicial service which is the proper applicable administrative penalty by virtue of respondent

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Judge's serious misconduct prejudicial to the judiciary and the public interest.

APPEARANCES OF COUNSEL

Emerito M. Salva for respondent in A.M. R-278-RTJ.

D E C I S I O N

PER CURIAM:

Respondent Judge of the Regional Trial Court, Branch XIX in Naga City, stands charged in these two cases which were jointly investigated by Intermediate Appellate Court Justice Vicente Mendoza, as per the Court's resolution of April 25, 1985. In the first numbered case, he is charged with indirect bribery, arising from the allegation that he received, on January 22, 1985, the sum of P1,000.00 from a party-litigant in a case then pending before his court. In the second numbered case, he is charged with acts unbecoming of a judge, in that he allegedly tried to solicit testimonials from practicing attorneys in his court, attesting to his integrity and competence.

Justice Mendoza, after conducting the investigation and hearing the parties and their witnesses, submitted the following report and findings dated May 2, 1986:

"*The Facts*

"On January 16, 1985, the complainant Enrico Cabrera, gave a sworn statement to the National Bureau of Investigation in Naga City, denouncing the respondent Judge James B. Pajares for having allegedly asked money from him in connection with his case. Cabrera said that in September, 1984 Judge Pajares intimated to him that he needed money. Cabrera said he gave P1,000.00 to the respondent judge because the latter had been unduly strict, preventing him from making statements during the trial of his case.

It appears that the complainant is the defendant in Civil Case No. R-751 which the respondent judge was trying. The case was filed by the complainant's father, Juan Cabrera, and by his half brothers and sisters, for the annulment of the sale made to the complainant of about 28 hectares of land in San Juan, Canaman, Camarines Sur. (See Exhs.

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6 and 7-B) Cabrera said he had been advised by his counsel, Atty. Roberto Verdadero, to accommodate any request for money from the respondent so that he would not be unduly hard on the complainant. In September, 1984, according to the complainant, Judge Pajares intimated to him that he needed money. Following his counsel's advice, Cabrera said he expressed willingness to help the judge financially and, the following day after their meeting, gave him P1,000.00. However according to Cabrera, after two months (i.e., before Christmas of 1984), Judge Pajares again told him that he needed money. Cabrera said the judge saw him in front of the Hall of Justice in Naga City and called him. It was then, according to him, that he decided to denounce the judge to the authorities. Cabrera asked the assistance of the NBI in entrapping Judge Pajares.

The sworn statement of the complainant, which contains the foregoing, is marked as Exhibit N.

On January 17, 1985, Cabrera gave another statement (Exh. O) to the NBI in which he said he was submitting ten P100.00 bills (or P1,000.00) for marking, for use in the entrapment.

The bills were marked with orange fluorescent crayon and dusted with orange fluorescent powder by the NBI. At the same time, NBI Regional Director Epimaco Velasco asked the NBI in Manila to send to Naga City a female agent, between 35 and 40 years old, to take part in the entrapment. (*Rollo* II, p. 23; transcript, pp. 47-49, Aug. 12, 1985)

On January 22, at 8:15 in the morning, the complainant saw Judge Pajares in the latter's chamber in the Hall of Justice. He was accompanied by NBI agent Angelica V. Somera whom he introduced as his wife. After exchanging amenities with the judge, the complainant informed the judge that he had decided not to settle the case and instead proceed with the trial. For this reason, he told judge that he had filed early that morning a motion for the reconsideration of the judge's order in Civil Case No. R-751, appointing a surveyor to delineate a portion of the land in dispute which Cabrera would give to his half brothers and sisters in settlement.

NBI Agent Somera testified that Judge Pajares later asked '*O, ano na ngayon ang atin*,' whereupon, according to her, Cabrera got the envelope containing the marked money from her and handed it to Judge Pajares. Cabrera then rushed out of the chamber on the pretext that he forgot the keys in the car and gave the signal to five waiting

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NBI agents. Somera said that, as soon as they got in, NBI Agent Manuel Tobias asked her where the money was. She pointed to a diary on the table of Judge Pajares, between whose pages the envelope handed to the judge was found inserted. The diary was seized by NBI Agent Artemio Sacaguing. (Exh. A; Transcript, pp. 74-75, 93-94, 98, Aug. 12, 1985, Exhs. B and C).

The envelope contained the marked bills. Upon examination by an NBI Forensic Chemist, Leonor C. Vallado, it was established that the envelope and the ten P100.00 bills were the same envelope and P100 bills previously marked by the NBI. (The ten P100.00 bills are marked Exhibits D-1 to D-10, the envelope in which they were contained as Exhibit D, and the diary, in which the envelope was found inserted, is marked Exhibit J, while the pages between which the envelope was found are marked as Exhibits J-1 and J-2.) Judge Pajares was likewise examined and found positive for orange fluorescent powder on the thumb and index fingers of the left hand. The diary was similarly found positive. (Exhs. K, L, and M; Transcript, pp. 48-49, 118, Aug. 12, 1985)

The Issue

The issue in this case is whether Judge Pajares accepted the envelope containing P1,000.00. There is no question that the envelope was handed to him by Cabrera and that he took it. However, Judge Pajares claims that he took the envelope because he thought the money was intended for the surveyor, who had been appointed to prepare a survey plan of the land in dispute. Judge Pajares says that when he realized it was for the surveyor he threw the envelope back to Cabrera telling him, '*Bakit mo sa akin 'yan ibibigay? Ikaw ang magbigay niyan kay Surveyor Palaypayon.*' (Why will you give it to me? You be the one to give it to Surveyor Palaypayon.') According to the judge, the envelope fell on the open pages of his diary and that is where the NBI agents recovered it. Parenthetically, the surveyor's fee was P2,000.00, and would have been defrayed equally by Cabrera and the plaintiffs in Civil Case No. R-751, with each party giving a down payment of P500.00.

On the other hand, the complainant claims that Judge Pajares took the envelope containing the money and placed it between the pages of the diary as shown in the photographs, Exhs. C-2 and B-2, taken by NBI photographer Diosdado Belen shortly after the NBI agents got inside the chamber.

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Findings

There is reason to believe that the respondent judge accepted the money and that he knew it was being given to him by reason of his office.

First. The evidence shows that after receiving the envelope with the money, the respondent judge did not really try to return it to Cabrera, as he claims he did, but that instead he placed it between the pages of his diary. This is the testimony of NBI Agent Angelica V. Somera. In her affidavit, Somera stated:

> 5. That after receiving the envelope containing the marked money, Judge PAJARES immediately placed or inserted the same between the pages of a brown covered book known as 'BUSINESS DAILY 85' which was on top of his table.

Somera's affidavit (Exh. A), executed on January 22, 1985, shortly after the entrapment of the respondent, was presented as her testimony in chief. In addition, during the investigation of this case, she testified and identified the photographs, marked Exhibits C, C-1, B, and B-1, as those taken during the entrapment of the respondent judge. The photos show the diary with the envelope containing the money placed between its pages. Somera identified the hand shown in the photograph, marked Exhibit B-1, as that of NBI Agent Artemio Sacaguing in the act of seizing the diary. (Transcript, pp. 92-98, Aug. 12, 1985)

For his part, Sacaguing confirmed that the hand in the photograph (Exh. B-1) was his and that he was in the act of picking the diary from the table of Judge Pajares in the photo in question. (*Id.*, pp. 50-51). He testified that, as soon as he and his companions got inside the judge's chamber, Manuel Tobias, the chief agent of the NBI sub-office in Legaspi, asked Somera where the envelope was and, upon being told where it was, ordered him to seize the diary. (Transcript, pp. 51-54, Aug. 12, 1985)

The respondent judge denies this. He said he took the envelope being handed to him 'instinctively,' but realizing it contained money which was intended for the surveyor, he immediately threw it back to Cabrera. According to Judge Pajares, the envelope fell on the open pages of his diary[*] where it was found by the 'balding agent' (Manuel

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[*] He explains that the diary was open because, shortly before the arrival of Cabrera and Somera, he had been making entries in it and had put it aside, with its pages still open, in order to dictate a decision to a stenographer.

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Tobias), who took the diary with the envelope inside, and then put it under his arm. Later, Judge Pajares says, the NBI agent placed the diary on his table and made it appear as though it had always been there, with the envelope containing the money placed between its pages. (Transcript, pp. 175-177, Oct. 22, 1985)

Melquiades Volante, the branch clerk of court of the respondent judge, signed an affidavit on January 29, 1985, corroborating the respondent's claim that the respondent tried to return the envelope containing money to the complainant Enrico Cabrera. However, the following day, January 30, Volante executed another affidavit (Exh. V), repudiating the earlier one. He said he was pressured into signing the first affidavit by the respondent and that the fact is that he left the chamber of the respondent judge as soon as he had shown Cabrera and Somera in and did not see the incident under investigation. Volante denied that he swore to the first affidavit in the presence of Fiscal Salvador Cajot.

No weight may, therefore, be given to the first affidavit of Volante. To be sure, the respondent's claim is also confirmed by the janitor Constancio A. Elquiero. This witness was inside the chamber when the NBI staged its operation. (See Elquiero's affidavit, dated January 29, 1985, marked Exh. 10-A) However, the testimonies of the NBI agents (Somera, Tobias and Sacaguing), as above summarized, deserve greater credence than Elquiero's testimony. These witnesses are law enforcement agents who must be presumed to have acted in the regular performance of their functions. In addition, there are circumstances which militate against the claim of the respondent judge. First, the photographs (Exhs. B, B-1, C and C-1), which show how the diary, with the envelope in it, was found by the NBI agents, were taken within seconds of the arrival of the agents inside the judge's chamber. (Transcript, pp. 102-103, Aug. 12, 1985). In fact the respondent complained that as the NBI agents barged into his office, pictures were taken. (Transcript, pp. 72-73, Oct. 22, 1985). This circumstance rules out the possibility that any of the NBI agents might have seized the diary and later placed the envelope between its pages. Indeed, the photographs (Exhs. C, G and B) appear to be snapshots of the events as they happened, rather than formal pictures.

Second, the plan to entrap the respondent appears to have been cleared with the Executive Judge, Hon. Juan B. Llaguno, before whom the complainant swore to his statement (Exh. N) of January 16, 1985. It is not likely that Judge Llaguno would approve the

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'frame-up' of a colleague. Nor is it likely that NBI Regional Director Epimaco A. Velasco would authorize a 'frame-up' considering that, according to Judge Pajares himself, Velasco is his 'close friend.' (Transcript, p. 196, Oct. 22, 1985)

During the investigation, an attempt was made to show that it was not possible for Sacaguing to have found the envelope between the pages of the diary, because the envelope (Exh. D) was folded in four parts so that if inserted thus, it would leave an opening of about two inches between the pages of the diary. (Transcript, p. 36, Aug. 12, 1985) The argument seems to be that if the envelope was no longer folded when found inside the diary, it must be because, when Judge Pajares flung it at Cabrera, it spread out. The further argument is then made that it was in this condition when an NBI agent took it and placed it between the pages of the diary.

Sacaguing, who seized the envelope, testified that he found it laid flat, not folded, between the pages of the diary. (*Id.*, pp. 54-55) While the evidence indicates that the envelope was folded into four parts when Somera handed it to Cabrera (Id., p. 57; transcript, p. 125, Aug. 26, 1985), it is probable that when it was handed to the respondent judge it was no longer so. The crease marks are not pronounced, indicating that the envelope was folded only lightly, so that when Judge Pajares received it, it probably spread out.

Second.[*] The respondent said he was outraged by the attempt to frame him up, and he protested. (Transcript, pp. 174-175, Oct. 22, 1985) Yet the photographs taken on the occasion of his arrest show him smiling. (See Exhs. B, G and H). Of course, he explained that he was smiling in derision.' (*Id.*, p. 175) and that by nature he is 'jolly' (*Id.*, p. 183). A smile, however, is not a normal reaction to express outrage.

Third.[*] The respondent's claim that he thought the money was the complainant's share of the surveyor's fees is inconsistent with his (the respondent's) admission that the complainant had told him of his decision not to settle the case. The respondent judge himself said that he had appointed Engineer Palaypayon to prepare a survey plan for the purpose of segregating the four hectares which Cabrera would cede to his brothers and sisters in the event of a settlement. As

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[*] These paragraphs should be re-numbered third and fourth respectively since there is already a second paragraph in the preceding page.

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Cabrera had changed his mind and in fact had filed a motion for the reconsideration of the respondent judge's order, there was no reason for the respondent judge to believe that the money was Cabrera's share of the surveyor's fees. The respondent's claim that a survey plan was anyway needed for the 'final disposition of the case' has no basis, because what the plaintiffs are seeking is the annulment of the sale of lands to Cabrera on the theory that the sale was simulated.

Conclusion

The distinction is commonly drawn between *instigation* and *entrapment*. In the former, where officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he otherwise would not commit and has no intention of committing, the accused cannot be held liable. But, in entrapment, where the criminal intent or design to commit the offense charged originates in the mind of the accused and law enforcement officials merely facilitate the commission of the crime, the accused cannot justify his conduct. (See *People v. Vinzol*, (CA) 47 O.G. 294; *Sherman v. United States*, 356 U.S. 369 (1958) As has been said, instigation is a 'rap for unwary innocent,' while entrapment is a 'trap for the unwary criminal.' (*Sherman v. United States, supra*, at 372)

In the case at bar, there is no claim that the complainant and the NBI agents instigated the commission of the crime by the respondent. Rather, the respondent's claim is that he was the victim of a 'frame up', a claim that, as already shown, is without basis. Hence, it is unnecessary to determine whether the indirect bribery was instigated by the law enforcement agents. What took place on January 22, 1985 was an entrapment.

While there is evidence of indirect bribery, however, there is none to support the other charge of acts unbecoming of a judge."

Investigating Justice Mendoza's above statement and analysis of the evidence and a review of the records fully support the finding that "respondent Judge accepted the money and that he knew it was being given to him by reason of his office." The Court has time and again stressed that members of the judiciary should display not only the highest integrity but must at all times conduct themselves in such manner as to be beyond reproach and suspicion. (*Quiz vs. Castaño*, 107 SCRA 196; *Montemayor vs. Collado*, 107 SCRA 258) The Court had

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likewise stressed in *De la Paz vs. Inutan* (64 SCRA 540) that "the judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests, x x x. Thus, for the judge to return that regard, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid even the slightest infraction of the law." (See also *Fonacier-Abaño vs. Ancheta*, 107 SCRA 538).

The Court approves the investigator's recommendation in his report that respondent Judge be acquitted for lack of evidence of the second charge of having committed acts unbecoming of a member of the judiciary.

But the Court is constrained to disapprove his recommendation as to the first charge of indirect bribery which is fully supported by the evidence that respondent Judge "be suspended from office for 2 years and 4 months, taking into consideration the penalty prescribed in Art. 211 of the Revised Penal Code." The penalty of 2 years and 4 months imprisonment provided for the criminal offense of indirect bribery may not be equated with the penalty of separation from the judicial service which is the proper applicable administrative penalty by virtue of respondent Judge's serious misconduct prejudicial to the judiciary and the public interest.

ACCORDINGLY, respondent Judge is hereby dismissed from the service, with forfeiture of all retirement benefits and pay and with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities. The Clerk of Court is hereby ordered to return the ten P100.00 bills (Exhibits D-1 to D-10) to the complainant Atty. Enrico M. Cabrera. This decision is immediately executory.

Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Cruz, and *Paras, JJ.*, concur.

Abad Santos and *Gutierrez, Jr., JJ.*, took no part.