

MA. GRACIA M. PULIDO TAN
Guest of Honor and Speaker

Philippine Constitution Association (PHILCONSA)
Monthly Membership Meeting

18 October 2011
Turf Room, Manila Polo Club
McKinley Road, Forbes Park, Makati City

What am I to say to such a distinguished audience of the nation's leading businessmen and civil society movers, the best and most experienced lawyers – constitutional law experts at that – some of whom may even be representing clients at the Commission on Audit?

Let me first say that there must be some grand design of my presence here today, on exactly my sixth month in office, and about two weeks from my confirmation. Now, I have the benefit of some hindsight and talking of firsthand experience in one of the country's most high profile agencies, if the almost daily media page we get is any indication.

On the other hand, you may be too saturated with these already. So unless you will ask about them later, permit me instead to speak to you of our great need for your help in carrying out the mandate of our office.

As you very well know, the Constitution has vested on the Commission on Audit the duty to examine, audit and settle all accounts pertaining to the revenue and receipts, and expenditures or uses of funds and property, of government, or any of its subdivisions, agencies or instrumentalities, including government-owned or -controlled corporations and non-government entities receiving subsidy or equity from government.

No law can be passed, says the Constitution, exempting any entity of the government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the COA.

In pursuit of its mandate, the COA has the "exclusive authority" to "define the scope of its audit and examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties." (EEIUU)

It is this “exclusive authority” that has made COA a boon to some, a bane to many others. It has accorded to COA the distinction of holding the magic key to legitimizing expenditures of public money and government transactions. It has instilled fear in some, engendering prudence in the management of fiscal resources. *Baka ma-COA, mahigpit ang COA*, are often heard laments.

For some others, our “exclusive authority” is a pain in the neck, and they respond by unlocking amazing creativity in structuring transactions and disbursements, in the hope that our auditors will not understand. We are lowly paid employees, after all, and are no match to the sophistication and expertise of highly paid transaction lawyers and other advisers.

Some others do not simply care. *Malapit na ang birthday ni Mr. Public Official at kailangang may tatlong araw na selebrasyon*, complete with the inauguration of some project, never mind if the people actually need it or not. *Bahala na si Batman kung mahuli*. Or better still: *Bahala na si Auditor umayos ng records, alam na niya kung ano’ng dapat gawin*.

Of course, there are those who are motivated by no more than the best intentions for the public good. *Bakit na-co-COA pa rin?* What is this, an abuse of authority, a politically-motivated witch hunt?

Ladies and gentlemen, friends, *compañeras and compañeros*, let me set the record straight. The COA is essentially a law enforcement agency. It did not make the procurement act. It did not make the anti-graft and corrupt practices act. It did not pass the code of ethical conduct for public officials and employees. It does not enact the general appropriations act. It does not legislate. Nor does not it lay down policy other than that which guides it in the discharge of its functions.

Having so defined the scope of its audit, the COA then conducts its audit following international auditing standards and other protocols laid down by the Board of Audit Standards. The techniques and method it so employs are also well established by the profession of auditors. There are no secret tactics here, much more insidious ones.

The COA also applies in its audit the accounting and auditing rules it promulgates pursuant to its exclusive authority. That the COA only promulgates rules on accounting and auditing must be emphasized. These are procedural rules, at best, that aim to implement the substantive laws governing sources, appropriations, disbursements and utilization and protection of public funds and properties. Again, these are no secret to everyone who must know them, including lawyers who handle COA cases.

The objective of every audit is to determine whether government revenues have been duly and seasonably collected in the proper amounts; whether disbursements have been made in accordance with all legal requirements; whether government property

have been properly managed and preserved; and whether the citizenry have been given the best value for their money. The only objective standards we have in making these determinations are the applicable and relevant statutory law, implementing rules and regulations of concerned agencies, and jurisprudence.

The bottom line, my *compañeras* and *compañeros*, ladies and gentlemen, is that in the performance of its duties, the COA is governed by the rule of law and no other. Or, at least, it should be.

And this is where I, in behalf of the COA, seek your help in three special ways:

First, help us ensure that indeed, our accounting and auditing rules are internally consistent and in conformity with law. These are, after all, administrative rules in this sense. One of our projects is to codify all these rules for better guidance and compliance of all concerned. In the process, we shall review them for consistency and legal conformity, and amend, revise, supplement and augment as may be necessary or desirable to enable us to more effectively and efficiently carry out our mandate. We would appreciate it very much if you could assist us, *gratis et amore* for country, because as you can imagine, this will require some considerable logistics which our budget alone cannot fill.

Second, please help us also in reviewing our charter, Presidential Decree No. 1445, with the end in view of making it more responsive to the needs of the times. That our Charter is a Presidential Decree should tell you its vintage and how far it has lagged behind developments and current trends in the fiscal arena and public administration. We have been told of initiatives in the House of Representatives which we, of course, much appreciate. Nonetheless, revision of laws is always a herculean task that requires the eagle eyes of lawyers, the wisdom of the ages, and a positive remembrance of lessons learned.

Third, and most importantly, we appeal for your cooperation in ensuring that our processes run their course with dispatch.

When in the course of its audit, the COA finds government expenditures to be EEIUU, our auditor issues a notice of disallowance. When it finds a case of under-appraisal, under-assessment or under-collection, it issues a notice of charge. These notices are appealable to the cluster or regional director concerned.

If the director affirms the auditor, the aggrieved party can elevate the matter to the Adjudication and Settlement Board (ASB) where the amount involved is less than one million pesos; or, if over, to the Commission Proper, which is composed of the Chairperson and the two Commissioners. An adverse decision of the ASB may also be appealed to the Commission Proper. On the other hand, a favorable decision of the auditor is automatically reviewed by the CP.

The decision of the Commission Proper may be brought on certiorari to the Supreme Court.

At the director level, the concerned auditor is given 15 days within which to file an answer and submit the entire records of the case. The appellant is also allowed to file a reply within 15 days from receipt of answer. Similar 15-15 day periods are provided at the ASB level. If these periods were strictly followed, the appeal should be resolved in less than a year. In reality, however, this is not always the case, if the many cases pending with the Commission Proper are an indication.

Most of these cases involve notices of disallowances issued many years ago. I am horrified everytime i come across such a case, more so when I know the appellants to have long retired, or even dead. *Sabi ko, kahit pa i-affirm natin ang disallowance, paano at kanino tayo sisingil?* Aggregate amounts involved are billions! Yet, *karamihan dito ay mga paulit-ulit na scenarios, at paulit-ulit na ring pinagpasiyahan ng Supreme Court. Sa madaling sabi, karamihan dito ay, sa aking paningin, mga frivolous or pro forma appeals.*

Not only that. Appellants have been wont to ask for time and more time to submit position papers, memoranda, further evidence, etc. – in other words, the classic delaying tactics.

Lawyers are, of course, an integral part of most adversarial processes. *Ang pakiusap ko, please help us make our appellants understand the basis of our decisions. If, in your assessment, tama naman, puwede bang huwag ng i-encourage na mag-appeal, and instead, help them to just comply?* I know this is very difficult to ask of fellow lawyers – perhaps even out of line – because as we are wont to say, it is only the Supreme Court that has the final say. Everything else before then is a matter of legal position, interpretation, or opinion.

I am reminded of the late Justice Cecilia Muñoz-Palma, who said in a speech on Law Day before the Integrated Bar of the Philippines many, many years ago:

“I suppose we can easily pledge allegiance to the rule of law by paying to the usual tributes to an abstract principle far removed from the reality of present conditions. But this is precisely the heart of the paradox. If we should indulge in cheap clichés and worn platitudes in a crisis-laden time such as this, we would, in the words of a patriot, ‘betray the emptiness of our claim and the bankruptcy of our faith.’”

Of course, she was referring to Martial Law then. But what she said then is still true today. There is a crisis of love for country, a continuing disregard of duly enacted laws and regulations, a penchant for making the public coffers a source of personal spending, and a stubborn determination to pursue a case to the end of the line.

Horace Sterns, a revered justice of the Supreme Court of Pennsylvania, perhaps said it best in one of the fictitious letters to a fictitious son (a new lawyer just starting to practice):

“Never try to win a case that you know ought not to be won. Since justice is your goal, let your methods of attaining it be worthy of such an objective. Do not regard a trial, as so many lawyers and nearly all laymen do, as a game of wily tricks and cunning stratagems. There is such a thing as being too smart in the law. There are many smart lawyers who ought to utilize their smartness in some other occupation. The law is not to be pursued merely for victories and triumphs, but for deserved victories and triumphs. ...Even apart from more laudable motivations, honesty here, as always elsewhere, is the best policy with which to achieve success.”

Let me close with this quip from Robert Frost: “a jury consists of twelve persons chosen to decide who has the better lawyer.” For as long as I am at the helm of the Commission on Audit, this will never be the norm.