With Due Respect

Postscript on dollar deposits and SALNs

By Artemio V. Panganiban
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Acting on the motion of PSBank, the Supreme Court dismissed the bank’s petition to stop the Senate from opening the dollar deposits of then Chief Justice Renato C. Corona on the ground that the case had become moot and academic. The impeachment trial has long been terminated and the Court’s adjudication of this case is no longer relevant or material to the impeachment proceedings.

Legality of dollar accounts. As a general rule, the judiciary does not decide questions that are academic, or have become academic. It adjudicates only justiciable issues that directly affect the rights and duties of the parties. Since the impeachment trial had already been decided, the opening of the accounts would no longer affect the rights and duties of the parties, the prosecutors and the impeachment court.

However, as a postscript, I promised to answer some questions from readers, especially government employees. The basic query is whether it is legal to open and keep dollar and other foreign currency accounts in the Philippines. The answer is “Yes, most definitely.” Dollar deposits became controversial in the impeachment trial, but the issue there was not their legality.

Rather, the issue was whether public officials should disclose their foreign currency accounts in their statement of assets, liabilities and net worth (SALNs). And my answer is also “Yes.” If public officials were not required to disclose their dollar accounts in their SALNs, then our antigraft laws could easily be circumvented.

All they need to do is to ask moneychangers to convert their ill-gotten Philippine pesos to any foreign currency, which could then be deposited in banks.

Exceptions to bank secrecy. Even if the Court allowed the opening of the subject dollar accounts, the decision would have constituted only a very narrow exception to the rule upholding the secrecy of bank deposits and would apply only to the very few impeachable public officials (President, Vice President, Supreme Court justices, Ombudsman, and members of constitutional commissions, like the Commission on Elections and Commission on Audit), not to private citizens whose right to bank secrecy remains sacred.

Again as exceptions, many countries have relaxed the secrecy of bank deposits. Eristwhile banking havens like Switzerland have liberalized their secrecy laws and confiscated the loot of dictators and despots. To fight corruption, terrorism and drug cartels, banks are required to report transactions involving at least $10,000 (or its equivalent in pesos) to antimoney-laundering councils in various countries.

Money laundering takes place when cash obtained through illegal activities, like corruption, bribery, terrorism or drug trade, is “cleaned” or “laundered” by being deposited in banks, and then “layered”—i.e., used to acquire legitimate assets like real estate, motor vehicles or jewelry, or to bet in casino gambling, and then redeposited as winnings.

Money laundering is defined and penalized as a crime in most countries. Both the banks and their clients are monitored. Recently, banking giant HSBC was reported by The Associated Press to have agreed to pay a whopping $1.9 billion (yes, billion) “to settle a money laundering probe” by United States authorities.

Money laundering will be a major topic at the conference of the Global Organization of Parliamentarians Against Corruption (Gopac) to be held in Manila on Jan. 31-Feb. 2, 2013. More on the Gopac in another column.

SALN disclosure. The honorable members of the House of Representatives speedily and overwhelmingly approved the Corona impeachment complaint based on, among other grounds, the alleged deficiencies of the former magistrate’s SALNs. Yet up to now, they have not been forthright in releasing their own SALNs.

They set up many excuses, like forming a committee to prepare the guidelines for the release, only to refer the draft guidelines to another group to review them. Having been so zealous in prosecuting Corona, they should really set the example in disclosing their correct and truthful SALNs.

As it is now, the release is dependent on the discretion of each member of the House, many of whom simply refuse to do so on the flimsy ground that their political enemies may use the information to malign them.

Under the Constitution (Art. XI, Sec. 17), all public officials “shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of [their] assets, liabilities, and net worth.” Furthermore, under the Code of Conduct Law (RA 6713), they have an “obligation to accomplish and submit” and “the public has the right to know” their SALNs.

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Congratulations to Justice Marvic M.V.F. Leonen for his recent appointment as the 172nd member of the Supreme Court since it was founded 111 years ago. He caught public acclaim for his deft handling of the peace negotiations with the Moro Islamic Liberation Front. But his real passion—in which he excels even more—is teaching and practicing law, and using it to champion human rights, environmental activism and indigenous people’s
advocacies.

On Dec. 29, he will turn 50 and will thus serve for over 20 years in the high court. He earned his basic economics (magna cum laude) and law degrees from the University of the Philippines and his master’s degree in law from Columbia University. He served as law dean, general counsel and vice president for legal affairs of UP. Media-savvy, he has provided running commentaries for both the ABS-CBN and GMA7 networks.

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