AN ANALYSIS OF THE LAW ON BANK SECRECY AND ITS CONSEQUENCES ON ITS SISTER LAWS*

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I. INTRODUCTION: THE CONTROVERSY OF PRIVACY

There seems to be a steadfast concern for privacy, most notably, in the Philippine legislature, especially with regard to the financial positions of particular individuals. As this paper will eventually show, there is an erratic implementation of policy concerns whenever such concerns impinge or come in conflict with an individual's legally protected right to financial privacy. Authorities seem to be confused when balancing the policies sought to be implemented by the various laws promulgated,[1] if, when practiced and given life, they decrease the protection of the secrecy of bank deposits.

Perhaps, however, it is unfair to criticize this seeming paranoia of members of the Philippine legislature, in particular, as their apparent devotion to privacy is also shared by other countries. In fact, a journal article discussing the right to privacy in the United States criticized that:

> Although we often view privacy as a cornerstone of personal freedom, legal recognition of a right to privacy in the United States is uneven and demonstrates a willingness to subordinate privacy interests to other policy interests. For example, *there is no express "right to privacy" set forth in the [U.S.] Constitution.* Nevertheless, in the 1965 landmark case *Griswold vs. Connecticut*, the U.S. Supreme Court struck down a Connecticut law banning birth control, basing its decision on *a zone of privacy created by several constitutional rights.*[2] (emphasis supplied)

The case of *Griswold* [3] was controversial at the time of its promulgation due to several factors, not least of which were issues that dealt with the liberal activism, as well as

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[1] Such as Rep. Act No. 6770 or the Ombudsman Act of 1987.

[2] Rachel Howell & Oliver Ireland, *The Fear Factor: Privacy, Fear, and the Changing Hegemony of the American People and the Right to Privacy*, 29 N.C. J. INT'L L. & COM. REG. 671, 671-672 (2004) (internal citations omitted).

[3] Griswold v. Connecticut, 381 U.S. 479 (1965).

feminist ideals, being propounded at the time with respect to women's rights to contraceptives and control over her own person. The *Griswold* case dealt with a Connecticut law which banned the use of contraceptives within the state. In that case, the U.S. Supreme Court struck down such law pursuant to the right to privacy, even when as of such time, there was no express right guaranteeing the individual such a right. Writing for the Court, Justice William O. Douglas opined: "[S]pecific guarantees in the Bill of rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy."[4]

Critics continue to say that,

> Griswold has been cited since its issuance as one of the foundations of an individual's "right to privacy." Yet, Justice Potter Stewart, in his Griswold dissent, stated 'with all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court.' As surely as the Supreme Court Justices could not agree on a right to privacy at such a critical time, the debate continues as to where and when the right to privacy exists or is muted by competing interest.[5]

The past five years of Philippine history have been indelibly marked by great controversies generated by the success, or failure, of the inquiries undertaken by authorized investigating bodies into the closely-guarded bank accounts of prominent public figures (and their pseudonyms) such as Ex-President Joseph Ejercito Estrada, Jose Pidal, Jose Arroyo, and last (but certainly not with the least hidden wealth) General Garcia. The decision to inquire into the bank accounts of public officers involves a complex assessment by the decision-making body of a web of laws, opinions, jurisprudence, public interest, as well as the social impact and legal ramifications the consequences that their decision may provoke. This is a long and crooked road the authorities have had to traverse for, although the basic law seems clear and categorical on paper, when applied to individual cases, it reveals several gray areas attributable to opinions and decisions of the Department of Justice ("DOJ") and the Supreme Court, which have created a muddle of exceptions, qualifications and specifications that investigating bodies have struggled to wade through.

The Constitution and its two delegates, the Legislature and the Judiciary, have seen fit to bestow upon such investigating bodies the ultimate discretion of weighing the public interest against the safeguarded right to privacy of bank accounts of every individual, and determining which holds sway over the other with no other guide but the amalgam of these general rules drowned in exceptions and road blocks. This paper seeks to delineate the very parameters of such discretion by outlining what the basic law on Bank Secrecy, Republic Act No. 1405, expressly provides, its rationale, and its subsequent amendments and the rationale for such. It also tries to trace the decisions of the Supreme Court and the opinions of the DOJ as well as the effects of such decisions and opinions on related laws. The intention of this paper is to shed light on the issue of

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[4] *Id.* at 484 (internal citation omitted).

[5] R. Howell & O. Ireland, *op. cit. supra* note 2 at 672 (internal citations omitted).

whether or not the hodge-podge approach that gave birth to the entirety of the Laws on Bank Secrecy today has ultimately caused some crucial aspects of the legal mechanism to be self-defeating.

II. HISTORICAL BACKGROUND: FINDING THE PATH TO RECOVERY

The year 1955 bore the brunt of the economic effects of the Second World War. Filipinos were predominantly engaged in agriculture as they primarily occupied the greater rural areas of the country. The greater population was unschooled. Few received any incentives from the government. Most Filipinos had low incomes and retained only a modicum of savings.

In the same year, Senator Cea introduced Senate Bill No. 351 entitled, "An Act Prohibiting Disclosure of or Inquiry into, Deposits with any Banking Institution and Providing Penalty Therefor." In the bill's explanatory note, the senator discussed the reason for such an act:

> The Philippines is looking for capital to finance its economic program. Reliable estimates show that between two hundred and five hundred million is not in circulation and is in hiding. If this amount is released for financing our industries and other economic activities, our worry about capital will be lessened, if not resolved completely.
>
> It has been observed that a great number of people are reluctant to deposit their money in banking institutions and prefer to keep them in their safes or private safety boxes at home for the simple reason that they are afraid that bank deposits are subject to disclosure, scrutiny or inquiry by any person or government official. This attitude of the people is harmful to the economy because money hoarded is frozen and does not contribute to any productive enterprise.

According to the senator, the proposed bill was patterned after the bank secrecy law in Switzerland and was recommended by the Governor of the Central Bank and the Secretary of Finance. One of its purposes was to utilize the private capital present in the country as an alternative or a supplement to foreign capital. Thus it was found necessary to protect bank deposits in order to encourage the public to circulate their hidden funds.[6]

The proposed law prohibited two things. First, it made unlawful the unauthorized examination of all money deposits of whatever nature with banks or banking institutions. Second, it forbade an official or an employee of a bank or banking institution to disclose any information concerning the deposits to any person.

The bill allowed the examination and disclosure of money deposits in only three instances: (1) when done by an authorized personnel from the Central Bank

[6] Record of the Senate, 3rd Cong., 2nd Sess., May 19, 1955, Vol. II, No. 80, 1625.

provided such disclosure of the information relating to bank deposits would be made only to members of the Monetary Board and the executive officers and the Board of Directors of the said banking institutions; (2) when done, the depositor gives his written permission to inquire into his bank deposits; and, (3) when a competent court orders such an inquiry. When Senator Cea was interpolated by Senator Peralta, it was clear that only in these three instances could an inquiry be made concerning bank deposits. Thus, Congressional Committees could not examine bank deposits.

> Senator PERALTA: How about a Congressional Committee, is it also forbidden to examine bank accounts?
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> Senator CEA: there is a provision in the bill that bank deposits may be inquired into and inspected either by written consent of the depositor or by order of a competent court.
>
> Senator PERALTA: So, a Congressional Committee cannot.
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> Senator CEA: Apparently that is not included.
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> Senator PERALTA: Will the gentleman object if a Congressional Committee be included as one of those who may examine bank deposits?
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> Senator CEA: I belong to the Legislative Branch of the Government, Mr. President, and I want to defend the prerogatives of the Congress, but I fear that if we insert such a proviso, we shall defeat the fundamental purpose of the bill.
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> Senator PERALTA: Why? Are these bank depositors afraid of the Congressional Committee?
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> Senator CEA: No, they are not afraid, but they want protection and only when a court decides that public interest demand inspection of these deposits, must they be inquired into and inspected.
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> Senator PERALTA: yes, but protection from what? The bank inspectors?
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> Senator CEA: From fishing expeditions, from harassment.
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> Senator PERALTA: from fishing expeditions?
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> Senator CEA: I favor the spirit that has compelled the gentleman to ask that question but I feel, I repeat, that if we insert that exception in the bill, we would defeat the fundamental purpose of this legislation.[7]

The deliberations, however, showed a tendency among the legislators towards considering bank deposits of public officials as exempt from the secrecy provisions of the bill.

> Senator PERALTA: Will the gentleman object if an amendment is inserted here that the bank accounts of government officials may be inspected?

[7] *Id.* at 1625-1626.

> Senator CEA: I would have no objections to that, Your Honor. But must we subject the bank deposits of public officials to inspections by anyone?
>
> Senator PERALTA: No, except by those who have the right to examine them now.
>
> Senator CEA: I will have no objection in principle to the proposal of the gentleman because I believe that a public official should open even sometimes his private life to public scrutiny. I will have no objection to explore that point mentioned by the gentleman from Tarlac....
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> Senator PERALTA: Well, in that case, Mr. President, I will just prepare my amendment which will exempt public officials from the privilege of having their bank deposits being declared sacred from the eyes of the investigating officials.[8]

The Senate was bill passed on the third reading on May 19, 1955. A conference committee was established along with members of the House of Representatives to reconcile the Senate bill with its House counterpart. The conference committee added another exception to the law and further qualified the power of inquiry of the court. Finally, the conference committee report was converted into Republic Act No. 1405 and was signed by the President on September 9, 1955.

III. THE PRESENT LAW

> Sec. 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.[9]

Today, the relevant purpose for the continued effectivity of Republic Act No. 1405 remains, i.e. to encourage people to deposit their money in banks and to discourage private hoarding so that the banks may lend out the money and assist in the economic development of the country. The law seeks to achieve these two purposes by two means: first, by generally prohibiting the examination and inquiry *or* the looking into all deposits of whatever nature with banks or banking institutions in the Philippines, including investments in bonds issued by the Government or its political subdivisions and instrumentalities by any person *or* any government official *or* any bureau *or* any office; and, second, by prohibiting the disclosure by any official of any banking institution *or* any employee of any banking institution to any unauthorized person of any information concerning the subject deposit.

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[8] *Id.* at 1626.

[9] Rep. Act No. 1405 (1955), as amended.

Inquiry can still be made if the depositor gives his written permission, or if the court orders such an examination. However, the right of the court was limited to cases of bribery or dereliction of duty of public officials. Bank deposits could, however, be examined in cases where the money deposited or invested is the subject matter of the investigation. Examination of the bank deposits can also be done in cases of impeachment of public officials. This presupposes that an order from the impeachment court should be first given before any inquiry can be made.

The absolute confidentiality of bank deposits was first challenged in the case of *Tatalon Barrio Council v. Chief Accountant of the Bank of Philippine Islands.*[10] Pursuant to a criminal complaint for violation of Republic Act No. 3019, or Anti-Graft and Corrupt Practices Act of 1960, filed by the council, the investigating fiscal required the treasurer of the Bank of the Philippine Islands to produce the bank records of the accused. The bank official refused to comply with the *subpoena* invoking R.A. 1405. The council then applied for a writ of *mandamus* to compel the production of the records of the accounts. The lower court dismissed the case, on motion of the accused. On appeal, the council argued that the fiscal has the duty to determine whether or not a *prima facie* case exists against the accused. The Supreme Court found this position untenable. Although the Rules of Court allow the court, where the action is pending, to order any party to appear before it and permit the inspection of any information, not privileged, which may constitute material evidence to the case pending, the Court held that the information the council was seeking is classified as privileged by section 2 of R.A. 1405. Furthermore, the Court found that it was apparent that the case does not fall under the four exceptions provided for in the law. The Court also stated:

> The motivation for the enactment of Republic Act No. 1405 is to encourage people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country....
>
> Certainly, the case of petitioners does not fall under any of the exceptions enumerated in the above-quoted provision to warrant the disclosure by the bank representative of the books of account of the respondents involved in the criminal action filed before the city fiscal.[11]

An important thing should be taken note of in this case. As a rule, the fiscal cannot, *motu proprio*, order the examination of bank deposits at the stage of preliminary investigation. The public prosecutor can order the inspection only in the instances that will be discussed below.

Other laws provide for exceptions to R.A. 1405. Act 3936 (1932)[12] allows the examination of bank deposits in cases of unclaimed balances. Presidential Decree No.

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[10] 117 Phil. 189 (1963).

[11] *Id.* at 192.

[12] Entitled, "AN ACT REQUIRING BANKS, TRUST COMPANIES, SAVINGS AND MORTGAGE BANKS, MUTUAL BUILDING AND LOAN ASSOCIATIONS, AND BANKING INSTITUTIONS OF EVERY KIND TO TRANSFER UNCLAIMED BALANCES HELD BY THEM TO THE INSULAR

1158 (1977), more popularly known as the National Internal Revenue Code, gives the Commissioner of Internal Revenue the power to probe into money deposits on two occasions. First, the Commissioner is authorized to inquire into the bank deposits of a decedent to determine his gross estate.[13] Second, any bank deposit of a taxpayer is subject to examination when the said taxpayer has filed an application for compromise of his tax liability by reason of the his inability to pay his tax liability.[14] In the latter case, the taxpayer has to waive in writing the privilege granted by R.A. 1405. This waiver will constitute the Commissioner's authority to examine the accounts. If the taxpayer chooses not to accomplish a waiver, his application for compromise shall not be considered.

Section 8 of the Anti-Graft and Corrupt Practices Act[15] also allows the court to examine bank accounts in cases of unexplained wealth. Said section provides:

> Sec. 8. *Prima facie evidence of an dismissal due to unexplained wealth* —If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal.... *Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of his dependents... shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.* (emphasis supplied)

This provision of law was challenged in 1965 in the case for *Philippine National Bank v. Gancayco*.[16] Special prosecutors of the DOJ were investigating a former administrator of the Agricultural Credit and Cooperative Administration for unexplained wealth. They required the Philippine National Bank ("PNB") to produce the bank records of the administrator. The bank declined, saying that, if they did so, they would be liable under the penal provision of the R.A. 1405.[17] The prosecutors cited section 8 of the Anti-Graft and Corrupt Practices Act and demanded the production of the records under the threat of contempt. Because of the threat of prosecution, plaintiffs filed an action for declaratory judgment. The trial court sustained the power of the prosecutors to compel the disclosure of the bank accounts of Jimenez. The trial court reasoned that the prosecution of cases of ill-gotten wealth would be hampered and frustrated if R.A. 3019 did not give them this power. The Supreme Court upheld the ruling of the trial court. The court realized that the two laws were repugnant to each other and that no reconciliation would be possible. R.A. 1405 declares the absolute confidentiality of the bank deposits, while the Anti-Graft and Corrupt Practices Act mandates that the said deposits shall be taken into consideration, notwithstanding any provision of law to the

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TREASURY, AND FOR OTHER PURPOSES."

[13] Pres. Decree No. 1158 (1977), sec. 6, par. (F), sub-par (1).

[14] Pres. Decree No. 1158 (1977), sec. 6, par. (F), sub-par. (2).

[15] Rep. Act. No. 3019 (1960).

[16] Philippine National Bank v. Gancayco, G.R. No. 18343, September 39, 1965.

[17] Sec. 5. Any violation of this law will subject the offender upon conviction, to an imprisonment of not more than five years or a fine of not more than twenty thousand pesos or both, in the discretion of the court.

contrary. The only conclusion possible is that section 8 of R.A. 3019 intended to amend section of R.A. 1405 as an exception to the rule against disclosure of bank deposits. The Court said:

> It is said that if the new law is inconsistent with or repugnant to the old law, the presumption against the intent to repeal by implication is overthrown because the inconsistency or repugnancy reveals an intent to repeal the existing law. And whether a statute, either in its entirety or in part, has been repealed by implication, is ultimately a matter of legislative intent.[18]

The Court added that looking over the four exceptions that the law provides for, cases of unexplained wealth are similar to cases of bribery or dereliction of duty, and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policies of both laws are no different from one another. A person who enters public office does so with full knowledge that his life, so far as relevant to his duty is open to public scrutiny.[19]

Impliedly, the Supreme Court ruled that prosecutors have the power to examine bank deposits, without any need of a court order. When the Supreme Court affirmed the trial court in the dispositive portion, it affirmed the ruling of the trial court that prosecutors have the power to examine bank accounts of persons suspected of having amassed ill-gotten wealth. Thus, section 8 of the Anti-Graft and Corrupt Practices Act gives investigators the mandate to take bank deposits in consideration in determining whether or not the case involves ill-gotten wealth. The requirement for a court order does not seem to be necessary in cases of ill-gotten wealth as it is in cases of bribery or dereliction of duty.

The application of section 8 as an exception to the confidentiality of bank deposits was again challenged in 1988 in *Banco Filipino Savings and Mortgage Bank v. Purisima*.[20] There, the Bureau of Internal Revenue accused a special agent of the Bureau of Customs before the *Tanodbayan* of having acquired property manifestly out of proportion to his salary and other lawful income in violation of the Anti-Graft and Corrupt Practices Act. In the preliminary investigation, the *Tanodbayan* issued a *subpoena duces tecum* to the plaintiff bank ordering the latter to furnish the former with the bank records of the accused, his wife, their children and a certain Escuyos. The special agent moved to quash the *subopoena* but this was denied by the *Tanodbayan*. The plaintiff bank filed an action for declaratory relied with the trial court. The lower court denied the preliminary order and the restraining order prayed for. In their petition for *certiorari* with the Supreme Court, the bank theorized that the failure of the court to grant the preliminary remedies amounted to a transgression of the bank secrecy statute. It furthered argued that the *subpoenae* in question were in the nature of "fishing expeditions" or "general warrants" since they authorize indiscriminate inquiry into bank

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[18] Philippine National Bank v. Gancayco, *supra*, citing CRAWFORD, THE CONSTRUCTION OF STATUTES 309-310 & Iloilo Palay and Corn Planters Ass'n v. Feliciano, G.R. No. 24022, March 3, 1965.

[19] Philippine National Bank v. Gancayco, *supra*.

[20] Banco Filipino Savings and Mortgage Bank v. Purisima, G.R. No. 56429, May 28, 1988.

records. It alleged that it is unconstitutionally impermissible to allow inquiry under section 8 of records of private individuals and public officials not charged under the Anti-Graft and Corrupt Practices Act.

In rejecting these claims, the Supreme Court reiterated its ruling in *PNB*, in construing section 8 of Anti-Graft and Corrupt Practices Act as an additional exception to the R.A. 1405. The court ruled that the inquiry into illegally acquired property extends to cases where such property is being held by or is recorded in the name of other persons. This proposition is made clear by Anti-Graft and Corrupt Practices Act, which categorically states, that the term, "legitimately acquired property of a public officer or employee" does not include "property unlawfully acquired by the [public officer or employee], but its ownership is concealed by its being recorded in the name of, or held by, respondent's spouse, ascendants, descendants, relatives, or any other person."[21] Realizing that the purpose of both laws will be circumvented if the arguments of the bank were to be sustained, the Court added:

> To sustain the petitioner's theory, and restrict the inquiry only to property held by or in the name of the government official or employee, or his spouse and unmarried children is unwarranted in the light of the provisions of the statutes in question, and would make available to persons in government who illegally acquire property an easy and fool-proof means of evading investigation and prosecution. All they would have to do would be to simply place the property in the possession or name of persons other than their spouse and unmarried children. This is an absurdity that we will not ascribe to the lawmakers.[22]

As an *obiter*, the Court also added that, "The power of the *Tanodbayan* to issue the *subpoena ad testificandum* and the *subpoena duces tecum* does not admit of doubt."[23] (Note that this principle can also apply to prosecutors who have the power issue the *subpoenae*.) This reaffirms the principle found in *PNB* that no court order is necessary when the officers conducting the preliminary investigation for a violation of R.A. 3019 seek to inquire into the money accounts of bank depositors. Corollary to this, no court case need be filed or pending when the officers conduct the inquiry.

Mellon Bank v. Magsino[24] extended the rule regarding inquiry as to accounts held in the name of other persons. In this case, a wrong transfer by the plaintiff bank credited the amount of one million dollars to the account of a certain Javier, instead of the intended one thousand dollars. Javier opened other accounts and dispersed the money into to them. She used the money to buy properties in the Philippines and abroad, as well as to buy stocks locally. Mellon Bank filed a civil complaint for the return of money. At the trial, employees of Veterans Bank were called to the stand to testify as to the ownership, records, and transactions of the accounts of Javier and of the persons to whom the money was transferred. These pieces of evidence were objected

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[21] Rep. Act No. 3019 (1960), sec. 1, par (6), sub-par. (1).
[22] Banco Filipino Savings and Mortgage Bank v. Purisima, *supra*.
[23] *Ibid.*, citing Pres. Decree No. 1630 (1981), sec. 10.
[24] Mellon Bank v. Magsino, G.R. No. 71479, October 18, 1990.

to on the ground of confidentiality of the questioned accounts. The trial court allowed the testimonies.

The Supreme Court, affirming the act of the lower court, held that R.A. 1405 "allows the disclosure of bank deposits in cases where the money deposited is the subject matter of litigation."[25] Since the case filed by the bank was "aimed at recovering the amount converted by Javier to her own benefit, an inquiry into the whereabouts of illegally acquired amounts necessarily extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition."[26]

It should be noted that the Supreme Court allowed the examination of accounts of persons to whom the illegally acquired amounts were transferred to. The main difference in this ruling and that of *Banco Filipino* is that the Court extended the inquiry to civil cases. Thus, it would seem that in case of a civil action, the participation of the court would be required before any examination can be made.

The question of whether or not a bank deposit can be garnished was presented in the case of *China Banking Corporation* v. *Ortega*.[27] Here, Acaban filed a civil case for the collection of a sum of money against Bautista Logging. The court declared a judgment in default against the defendants. Acaban then sought the garnishment of the defendant's bank account with the China Bank Corporation. The court issued a notice of garnishment, and the bank resisted on the ground that the garnishment would entail the disclosure of whether or not there is actually a deposit owned by the defendant in the bank, and that the bank would then be liable under the penal sanctions of R.A. 1405.

The Supreme Court found the argument of the bank untenable. The lower court did not order an examination or an inquiry of the deposit of the defendant. It merely required the bank to inform the court whether or not the defendant had a deposit in the bank for only the purposes of garnishment, so that the bank would hold the same intact and not allow further withdrawal until further order. Thus, there is no real inquiry into the bank deposit. If the existence of the bank deposit is disclosed, the disclosure is purely incidental to the execution process. Looking at the deliberations of the conference committee, the court held that it was not the intention of the lawmakers to place bank deposits beyond the reach of execution to satisfy a final judgment:

> Mr. MARCOS: Now, for purposes of the record, I should like the Chairman of the Committee on Ways and Means to clarify this further. Suppose an individual has a tax case. he is being held liable by the Bureau of Internal Revenue for, say, P1,000.00 worth of tax liability, and because of this the deposit of this individual is attached by the Bureau of Internal Revenue.

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[25] *Ibid.*, citing Philippine National Bank v. Gancayco, *supra.*

[26] *Ibid.*, referring to Banco Filipino Savings and Mortgage Bank v. Purisima, *supra.*

[27] 151 Phil. 451 (1973).

> Mr. RAMOS: The attachment will only apply after the court has pronounced sentence declaring the liability of such person. But where the primary aim is to determine whether he has a bank deposit in order to bring about a proper assessment by the Bureau of Internal Revenue, such inquiry is not authorized by the proposed law....
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> Mr. MARCOS: So I come to my original question. Therefore, preliminary garnishment or attachment of the deposit is not allowed.
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> Mr. RAMOS: No, without judicial authorization....
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> Mr. MACAPGAL: But let us suppose that in an ordinary civil action for the recovery of a sum of money the plaintiff wishes to attach the properties of the defendant to insure the satisfaction of the judgment. Once the judgment is rendered, does the gentleman mean that the plaintiff cannot attach the bank deposit of the defendant?
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> Mr. RAMOS: That was the question raised by the gentleman from Pangasinan to which I replied that outside the very purpose of this law it could be reached by attachment.
>
> Mr. MACAPAGAL: Therefore, in such ordinary civil cases it can be attached?
>
> Mr. RAMOS: That is so.[28]

The Supreme Court ended by saying, "It is hard to conceive that it was ever within the intention of Congress to enable debtors to evade payment of their just debts even if ordered by the courts, through the expedient of converting their assets into cash and depositing the same in the bank."[29]

IV. RELATED BODIES OF LAWS

A. THE ANTI-MONEY LAUNDERING COUNCIL: A MERE FORMALITY?

The problem of money laundering is no small issue. Governments all over the world have fought against transnational money laundering for years. "Transnational money laundering arises where either the national jurisdiction in which illegal proceeds are laundered differs from the jurisdiction in which the underlying predicate criminal offence took place, or where financial transactions facilitating the laundering span multiple national jurisdictions."[30] It is noted that at least forty nations, all of which employ some form of a bank secrecy statute, are considered as "banking havens" by these organized syndicates.[31] "Launderers find haven state banks attractive because haven states' secrecy statutes offer the prospect that a launderer's transnational records

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[28] *Id.* at 454-456, quoting II Congressional Record, House of Representatives, No. 12, 3839-3840, July 27, 1956.

[29] *Id.* at 456-457.

[30] W. Clifton Holmes, *Strengthening Available Evidence-Gathering Tools in the Fight Against Transnational Money Laundering*. 24 Nw. J. Int'l & Bus. 199, 200 (2003).

[31] *Id.* at 201.

will be shielded from the prying eyes of any government investigator who should come inquiring after such records."[32] The International Monetary Fund estimates that about $1 trillion dollars is illegally laundered each year, mostly committed by these organized money syndicates.[33]

On a smaller scale, but for precisely the same reasons, the Philippine Legislature enacted the Anti-Money Laundering Act ("AMLA").[34] The Senate deliberation on the AMLA reveal that in spite of the international commitment entered into by the Philippines to adopt all measures that would counter money laundering, the Philippine government had still failed to mobilize lasting and effective anti-money laundering measures.[35] In fact, the Senate warned that continued failure to adopt effective anti-money laundering measures would incur unnecessary inspection of all our foreign exchange trades; stricter surveillance on our international transactions; adverse advisories warning international banks to be wary of our banking institutions; and, lastly, foreign banks may ultimately require our domestic banks to continually waive bank secrecy before dealing with them.[36] Therefore, the AMLA was enacted to honor its international commitment and to curtail transnational money laundering.

Despite these laudable premises, the act was met with reservations:

> SENATOR ARROYO: Mr. President, I would like to commend the sponsor, Sen. Ramon B. Magsaysay Jr., for this bill. I appreciate his problem and the difficulty he encounters principally because I think that the government agency concerned with this — and that is the Bangko Sentral ng Pilipinas — has not been candid and frank with Senator Magsaysay and his committee. In short, there are certain information that has either been withheld from him or not necessarily misinterpreted but misstated.
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> Mr. President, I am particularly worried about Section 11 of the bill which encompasses lines 20 to 31 inclusive on page 4 which would read, if allowed, to be as follows:
>
> > "Section 11. Authority to Inquire into Bank Deposits."
> >
> > I will read it now the way it is proposed to be read.
> >
> > "Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC [Anti-Money Laundering Council] AND THE BSP [Bangko Sentral ng Pilipinas] may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution when it has been established that there is probable cause that the deposits or investments are related to AN

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[32] *Id.* at 201.

[33] *Id.* at 200.

[34] Rep. Act No. 9160 (2001).

[35] Sponsorship Speech of Senator Magsaysay, Record of the Senate, 12th Cong., 1st Session, September 24, 2001, Vol. 1, No. 23, 794.

[36] *Ibid.*

> UNLAWFUL ACTIVITY AS DEFINED IN SECTION 3 HEREOF OR a money laundering offense UNDER SECTION 4 HEREOF."
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> Mr. President, we ask: Why should we do this? And the Bangko Sentral says: "That is done in other jurisdiction.
>
> Mr. President, I took pains precisely to find out whether what the Bangko Sentral is saying is true that in the United States and other countries, it is true that the regulatory authority can simply waive and ask for a particular deposit and that it must be revealed. That is not correct. I think the Bangko Sentral has misled Senator Magsaysay in this context.[37]

Even Senator Angara expressed amazement that the Anti-Money Laundering Council may look into the bank accounts of individuals, without need of court order, at certain instances. Senator Angara exclaimed that this was not revolutionary at all. "I think it is frightening."[38]

Because of this hesitation by the Legislature (in fact, the *Marquez v. Desierto* decision influenced and helped decrease the powers and duties on the inquiry power of the Anti-Money Laundering Council,), we find an AMLA that has been criticized for being seriously deficient in granting ample authority to the Anti-Money Laundering Council ("AMLC") to investigate and freeze suspicious bank deposits. According to authorities, under the present set-up, the AMLC is only allowed to freeze deposit accounts not exceeding 15 days. To extend such a freeze order[39] or inquire into particular bank deposits or investments,[40] a court order is required. The law also provides for an automatic dissolution of the freeze order in cases of the failure of the AMLC, within 72 hours, to dispose of a depositor's explanation as to why the freeze order should be lifted.[41]

Because of such impositions (i.e. requiring a court order and supplying an automatic dissolution provision), opposition thereto may be timely raised before the court. The effect is a delaying of the inquiry at its most crucial stage and giving the perpetrator more than enough time to close and erase the subject accounts and transfer the funds to a different bank.[42] Commercial transactions have evolved, increasing in efficiency and convenience, that all this only takes the work of an instant. "Time is of the essence when it comes to such investigations given the relative ease in transferring and moving wealth across banking institutions."[43]

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[37] Record of the Senate, 12th Cong., 1st Session, September 27, 2001.

[38] *Ibid.*

[39] Rep. Act No. 9160 (2001), sec. 10.

[40] Rep. Act No. 9160 (2001), sec. 11.

[41] Rep. Act No. 9160 (2001), sec. 10.

[42] Darwin DJ. Mariano, Cristina Regina N. Bonoan & Gladys France J. Palarca, *Statutory and Jurisprudential Barriers to the Recovery of Ill-gotten Wealth*, 76 Phil. L. J. 428, 442 (2002).

[43] *Ibid.*

Taking these insights into account, it is worthwhile to note Senator Ople's concerns during the Senate hearing conducted on September 27, 2001, pursuant to the passing of the AMLA. Senator Ople says:

> SENATOR OPLE: Now, Mr. President, the prospect of the Congress passing an anti-money laundering bill has created some urgent concerns on the part of a very substantial number of our citizens. To what extent will this bill strip bank depositors of the protection of their privacy under Republic Act No. 1405, which has been a source of strength for our banking system?
>
> Since the Central Bank Act of 1949, there has been a profound change in the way most of our people handle their money. There was a time when it was taken for granted that if one had some surplus cash, he kept this under his pillow or put it in bamboo tubes for his security. But over a period of three decades, there has been a profound cultural change, and many of our people have learned to put their money in banks, thus helping capital formation for economic development. It is possible that this source of strength in our banking system may be depleted if we have to do away with bank secrecy under Republic Act No. 1405.

Again, the question must be posed: Haven't we taken the issue of privacy far enough?

B. SOME COMMENTS ON THE FOREIGN CURRENCY DEPOSIT ACT

The Foreign Currency Deposit Act (FCDA), Republic Act No. 6426 (1972), as amended, is entitled as An Act Instituting a Foreign Currency Deposit System in the Philippines, and for other purposes. It was approved in April 4, 1972. The purpose for the creation of such a law is to increase the international reserves of the country.

The FCDA provides that,

> Any person, natural or juridical, may deposit foreign currencies which are acceptable as part of the international reserve with such Philippine Banks in good standing, as may upon application be designated by the Central Bank for the purpose. However, foreign currencies which are required by the Central Bank to be surrendered in accordance with the provisions of RA 7653 may not be deposited.[44]

The importance of the FCDA is that it confers unique privileges that may only be enjoyed by foreign currency deposits. Firstly, it bestows absolute confidentiality upon foreign currency deposits, whether public or private, or judicial, administrative, or legislative, except upon the written permission of the depositor.[45] Secondly, authorized banks may adopt a numbered account system for recording and servicing said deposits in order to preserve the anonymity of the depositors.[46] The FCDA also allows authorized banks to pay any rate of interest. Also, all foreign currency deposits made

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[44] Rep. Act No. 6426 (1972), sec. 2.
[45] Rep. Act No. 6426 (1972), sec. 8.
[46] Rep. Act No. 6426 (1972), sec. 3.

under the FCDA, as amended, as well as foreign currency deposits authorized under Presidential Decree No. 1034 (1976),[47] including interest and all other income or earnings of such deposits, are hereby exempted from any and all taxes whatsoever. This is irrespective of whether these deposits are made by residents or non-residents so long as: (1) the deposits are eligible or allowed under the said laws and, (2) in the case of non-residents, irrespective of whether or not they are engaged in trade or business in the Philippines.[48]

Foreign currency deposits are exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency, or any administrative body whatsoever.[49]

The FCDA also anticipates the event that in case a new enactment or regulation is issued decreasing the rights granted under the law, such new enactment or regulation shall not apply to foreign currency deposits already made or existing at the time of issuance of such new enactment or regulation.[50]

The FCDA also provides that there shall be no restriction on the withdrawal by the depositor of his deposit or on the transferability of the same abroad except those arising from the contract between the depositor and the bank.

With regard to the issue of secrecy, foreign currency deposits enjoy special privileges not available to local currency deposits:

	CURRENCY DEPOSITS	
	Local	Foreign
CONFIDENTIALITY	Subject to about thirteen exceptions	Only one exception, i.e. when the inspection is evidenced by a written permission from the depositor
COURT ORDER OR PROCESS	Can be subject to garnishment.	exempt from garnishment, attachment, or any other process or order of any court, administrative or legislative body, or government agency

The unique privileges bestowed by the FCDA have been criticized by authorities to the end that particular privileges have negative effects, particularly as they pose very effective barriers to the speedy and efficient recovery of ill-gotten wealth. Specifically, the provisions that prevent the foregoing are the following: the grant of absolute confidentiality; the use of numbered accounts which protect the anonymity of bank account deposit holders; and lastly, the exemption from court order or process, the reasons for which are self-explanatory.

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[47] Entitled, "AUTHORIZING THE ESTABLISHMENT OF AN OFFSHORE BANKING SYSTEM IN THE PHILIPPINES."

[48] Rep. Act No. 6426 (1972), sec. 3, as amended by Pres. Decree No. 1246 (1977).

[49] Rep. Act No. 6426 (1972), sec. 3, as amended by Pres. Decree No. 1246 (1977).

[50] Rep. Act No. 6426 (1972), sec. 12-A, as inserted by Pres. Decree No. 1246 (1977).

In fact, it is observed that a jurisdiction which allows foreigners tax savings is frequently turned into a tax haven by tax evaders. It is analyzed that,

> [Tax saving] can take place in three ways. Activity can take place in the haven; activity can be assigned to the haven for fiscal purposes, regardless of reality; or the haven can mask reality through secrecy. Tax havens may therefore produce goods and services, they may shift claims among jurisdictions, or they may hide claims.[51]

What experts note is that, "Secrecy havens specialize in allowing personal income tax evasion by reinvesting funds that have been provided without the knowledge of authorities at home."[52]

It is further noted that what was previously intended to be used as a mechanism to increase the international reserves of the country has been perverted into a tool for covering and disguising ill-gotten wealth, or property which is otherwise unlawfully acquired.[53] This criticism that the FCDA Act is being used as a "convenient means of masking ill-gotten wealth" in some instances, is given an ironic twist in the leading case of *Intengan v. Court of Appeals*.[54]

In this case, Citibank filed a complaint against two of its officers, a certain Dante Santos, Treasurer of the Global Consumer Group, and Marilou Genuino, Assistant Vice-President of the former as well as the Account Officer of Citibank. The higher management of Citibank decided to conduct an investigation of the foregoing named officers of the Bank. In the course of such private investigation, it was discovered that the two officers under investigation employed a money-making scheme as a means of diverting the money of certain clients of the Bank. It was determined that the clients of the Citibank who maintained deposits in foreign currency, and who came in contact with Santos and Genuino by virtue of the positions they occupied in Citibank were helped by or were caused to divert their deposits/money/money placements with Citibank to family corporations of their own, namely, Torrance and Global, for subsequent investment in securities, shares of stocks, and debt papers in other corporations, thereby enabling them to gain profit through unlawful means.

Thus, after reviewing the results of the conducted investigation, Citibank filed a complaint against Santos and Genuino for violation of section 31 (providing for the liability of directors, trustees or officers) in relation to section 144 of the Corporation Code (providing for penalties in cases of violations of the Corporation Code. Section 31 provides that:

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[51] Robert T. Kudrle & Lorraine Eden, *The Campaign against Tax Havens: Will it Last? Will it Work?*, 9 STAN. J.L. BUS. & FIN. 37, 40 (2003).

[52] *Id.* at 41.

[53] D. Mariano, C. Bonoan & G. Palarca, *op. cit supra* note 43 at 442.

[54] 427 Phil. 293 (2002).

> Sec. 31. *Liability of Directors, Trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> When the director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

As evidence for the complaint to be filed, the investigating officer annexed bank records allegedly to establish the deception practiced by Santos and Genuino. However, some of these documents pertained to the dollar deposits of Petitioners Carmen Intengan, Rosario Neri, and Rita Brawner. Asserting that their protected rights to privacy had been violated, the petitioners filed suit against the higher management of Citibank, alleging that the disclosure of their bank records was unwarranted and illegal for the reason that it was in blatant violation of the Law on Secrecy of Bank Deposits. Petitioners alleged that private respondents illegally made disclosures of petitioners' confidential bank records for their selfish ends in prosecuting their complaint — a complaint that in no way involved the petitioners.

The Supreme Court denied the suit by the petitioners, based on one incontrovertible fact: The deposit accounts involved in this case are U.S. dollar accounts; consequently, the applicable law is not the Law on Secrecy of Bank deposits, but the FCDA.[55]

In this case, the Supreme Court ruled that under the FCDA, there is only a single exception to the secrecy of foreign currency deposits, that is "disclosure is only allowed upon written permission of the depositor."[56] The Court held that the proper case against private respondents should have been brought under the FCDA. If that were the case, the Supreme Court said that,

> Private respondents Lim and Reyes admitted that they had disclosed details of petitioners' dollar deposits *without the latter's written permission.* It does not matter if that such disclosure was necessary to establish Citibank's case against Dante L. Santos and Marilou Genuino. Lim's act of disclosing details of petitioners' bank records regarding their foreign currency deposits, with the authority of Reyes (higher management of Citibank, Vice-President), would appear to belong to that species of criminal acts punishable by special laws, called *malum prohibitum.*"[57] (underscoring supplied)

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[55] *Id.* at 304.
[56] *Id.* at 305.
[57] *Id.* at 305.

The Supreme Court also noted that, although this case could have been dismissed without prejudice to the filing of a new case — under the proper grounds this time — against private respondents, here, the right of action of petitioners had already prescribed.[58] Thus they may no longer file suit against private respondents for the same committed acts.

This single exception rule enunciated by the Court in the above-mentioned case is further qualified in *Salvacion v. Central Bank of the Philippines*,[59] which stands out by virtue of its unique circumstances, as well as the radical decision rendered by the Supreme Court. On February 4, 1989, an American foreigner named Greg Bartelli was able to convince a twelve-year old girl, Karen Salvacion to come with him to his apartment. Subsequently thereafter, Greg Bartelli succeeded in detaining the girl in his apartment for four days and raping her. Greg Bartelli was arrested by police officials for committing four counts of rape and serious detention against Karen Salvacion. Taken from him were several dollar checks and a dollar account from China Banking Corp. He was, however, able to escape from prison. A civil case was filed against him awarding Salvacion moral, exemplary and attorney's fees which amounted to almost a million pesos.

Salvacion and her attorneys tried to claim the damages from Bartelli though the dollar deposit Bartelli held but China Banking Corporation refused to surrender the money to Salvacion stating that section 11 of Central Bank Circular No. 960 exempts foreign currency deposits from garnishments, attachments, or any other order or process of any court, government agency, legislative body or any administrative body whatsoever.

In this case, the Supreme Court did not afford the transient the protection of the FCDA. It ruled that to hold otherwise would be to render futile the favorable judgment the Court awarded to the family of the girl which they fully deserved. In denying the application of the law to the case, the Court reasoned in its opening statement that:

> In our predisposition to discover the "original intent" of a statute, courts become the unfeeling pillars of the *status quo*. Little do we realize that statutes or even constitutions are bundles of compromises thrown our way by their framers. Unless we exercise vigilance, the statute may already be out of tune and irrelevant to our day.[60]

The Supreme Court explained that the application of the law is premised upon whether or not such application would result in the promulgation of justice. This case coined the term "legal tyranny" which refers to the evil situation which would result when the law is strictly complied with, pursuant to the rule *dura lex sed lex*. In closing, the Supreme Court cried:

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[58] *Id.* at 306-307.
[59] 343 Phil. 539 (1997).
[60] *Id.* at 542.

> Call it what it may — but is there no conflict of legal policy here? Dollar against Peso? Upholding the final and executory judgment of the lower court against the Central Bank Circular protecting the foreign depositor? Shielding or protecting the dollar deposit of a transient alien depositor against injustice to a national and a victim of a crime? The situation calls for fairness against legal tyranny. We definitely cannot have both ways and rest in the belief that we have served the ends of justice.[61]

C. DIS-EMPOWERING THE OMBUDSMAN?

On June 27, 2001, the landmark case of *Marquez v. Desierto*[62] was decided by the Supreme Court. In this case, the petitioner Lourdes T. Marquez, the branch mananger of the Julio Vargas branch of the Union Bank of the Philippines, received an Order from then Ombudsman Aniano A. Desierto sometime to produce several bank documents for the purposes of conducting an *in camera* inspection . The *in camera* inspection to be conducted was relative to several bank accounts maintained in the said branch by a certain Amado Lagdameo, which the Ombudsman Desierto was investigating in connection case pending before his office.

In that order, the Ombudsman quite correctly cited the legal basis giving his office the authority to issue orders to compel the issuance of certain bank documents relative to bank accounts of depositors to banks; such order being directed to proper bank personnel:

> It is worth mentioning that the power of the Ombudsman to investigate and to require the production and inspection of records and documents is sanctioned by the 1987 Philippine Constitution, Republic Act No. 6770 (An Act Creating the Office of the Ombudsman) and under existing jurisprudence on the matter. It must be noted that R.A. 6770, especially Section 15 thereof, provides, among others, the following powers, functions, and duties of the Ombudsman, to wit:...
>
> (8) Administer oaths, issue subpoena and subpoena duces tecum and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
>
> (9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein.
>
> *Clearly, the specific provision of R.A. 6770, a later legislation, modifies the law on Secrecy of Bank Deposits (Republic Act No. 1405) and places the Office of the Ombudsman in the same footing as the courts of law in this regard.*[63] (emphasis supplied)

From the records of the Office of the Ombudsman, it was alleged that a certain Mr. George Trivinio purchased about fifty-one Manager's Checks worth the total amount of 272.1 million pesos at Trader's Royal Bank, United Nations Avenue branch,

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[61] *Id.* at 560.
[62] 412 Phil. 387 (2001).
[63] *Id.* at 391.

on May 2, 1995 and May 3, 1995, respectively. Out of the subject fifty-one Manager's Checks, eleven of such Manager's Checks subject of the in camera inspection with the Office of the Ombudsman was deposited in the Union Bank of the Philippines and credited under the name of the above-mentioned Trivinio.

In pursuance of the inspection, the Fact Finding Intelligence Bureau panel met with the petitioner Lourdes T. Marquez, and the Union Bank of the Philippines' counsel, Atty. Fe B. Macalino, such conference being for the purpose of allowing petitioner Marquez and her counsel Atty. Macalino to be apprised of the relevant facts of the ongoing inspection, as well as to be shown proof of the high probability of the fraud being committed by the depositor, specifically, the checks furnished by Trader's Royal Bank.

After being satisfied that the checks were indeed genuine, the bank's counsel, Atty. Macalino thereafter advised petitioner Marquez to comply with the order of the Ombudsman Desierto, such order being within his jurisdiction to issue, as clearly and explicitly stated and provided for in Republic Act No. 6770, and that such inspection was being properly conducted and based on sufficient proof and basis of the high probability of the crime being committed. Being so advised, petitioner Marquez agreed to the conducting of the in camera inspection which was thereafter set on June 3, 1998.

Subsequently however, the petitioner Marquez suddenly made motions to prevaricate from fulfilling the obligations imposed by the issued order. She suddenly gave excuses on the day after the date set for the hearing (June 3, 1998) for being unable to comply with such order: Firstly, that despite allegedly diligent efforts and account numbers provided for by the Office of the Ombudsman, the Union Bank of the Philippines, Julio Vargas branch, was unable to identify such numbered accounts "since the subject checks are issued to order or bearer. Presumably, this is to imply that their failure to identify such account is attributable to the "anonymous" character of such check being a negotiable instrument issued "to bearer" or "to order." Secondly, that notwithstanding the numbered account heading the checks, the bank's personnel had surmised that such numbered accounts had long been dormant, and therefore could not be retrieved by the new account number system generated and currently being used by the Union Bank system.

The Ombudsman Desierto readily saw through such excuses and answered that the so-called request of the petitioner Marquez was of a highly suspicious nature, and required her to show cause why the Office of the Ombudsman may not hold her in Indirect Contempt, such penalty being given to the Ombudsman by the Republic Act No. 6770 (date), "An Act Creating the Office of the Ombudsman." Ombudsman Desierto explained that such actuations being done by the petitioner could be nothing other an unjustified and the persistent refusal to comply with the subject order which was intended merely to delay the investigation being conducted in this case, such actuations constituting disobedience of or resistance to a lawful order issued by the Office of the Ombudsman.

Ombudsman Desierto justified his position by explaining:

> [F]irstly, it must be emphasized that Union Bank, Julia Vargas Branch was the depositary bank of the subject Trader's Royal Bank Manager's Checks (MCs), as shown at its dorsal portion and as cleared by the Philippine Clearing House, not the International Corporate Bank.
>
> Notwithstanding the fact that the checks were payable to cash or bearer, nonetheless, the name of the depositor(s) could easily be identified since the account numbers xxx where said checks were deposited are identified in the order.
>
> Even assuming that the accounts xxx were already classified as "dormant accounts," the bank is still required to preserve to records pertaining to the accounts within a certain period of time as required by existing banking rules and regulations.
>
> And finally, the *in camera* inspection was already extended twice from May 13, 1998 to June 3, 1998, thereby giving the bank enough time within which to sufficiently comply with the order."[64] (underscoring supplied)

Reacting to the citation for Indirect Contempt, Petitioner Marquez, together with the Union Bank of the Philippines, filed with the Regional Trial Court a petition for declaratory relief, prohibition and injunction, on the ground that the subject matter of the in camera investigation being conducted at Union Bank's premises is outside of his jurisdiction, notwithstanding the provisions of the Ombudsman Act. Ombudsman Desierto filed a motion to dismiss the suit on the ground that conducting such an inspection is clearly within his authority, by virtue of the powers and duties conferred upon his office by virtue of the Ombudsman Act, and therefore the Regional Trail Court is without jurisdiction to try the case. Ultimately, the petition was set before the Supreme Court to try the issue of whether or not Marquez may be cited for indirect contempt for her failure to comply with the Ombudsman's order; or if in fact such order of the Ombudsman to conduct the in camera inspection at the premises of the Union Bank and to compel petitioner Marquez to submit certain documents relative to the deposit accounts of a client is allowed as an exception to the law on secrecy of bank deposits.

The Supreme Court held for petitioner Marquez and stated that an order of the Ombudsman to produce for in camera inspection certain documents relative to deposit accounts with the Union Bank of the Philippines that is based merely on a pending investigation with the Office of the Ombudsman against an Amadeo Lagdameo (for violation of the Joint Venture Agreement between the Public Estates Authority and AMARI) falls short of the requirements of the exceptions allowed by the Bank Secrecy Law.[65] The Supreme Court cites as authority its previous ruling in *Union Bank of the Philippines v. Court of Appeals*[66] wherein it was held that:

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[64] *Id.* at 392-393.
[65] *Id.* at 397-398.
[66] 378 Phil. 1177 (1999).

> Sec. 2 of the Law on Secrecy of Bank Deposits, as amended, declares bank deposits to be "absolutely confidential" except:
>
> (1) In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity;
>
> (2) In an examination made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank:
>
> (3) Upon written permission of the depositor;
>
> (4) In cases of impeachment;
>
> (5) Upon order of competent court in cases of bribery or dereliction of duty of public officials; or
>
> (6) In cases where the money deposited or invested is the subject matter of the legislation.[67]

The Supreme Court in this case stated that

> [B]efore an in camera inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.[68]

The Supreme Court explained that since there was as yet no pending case before a court of competent authority trying the case of Arturo Lagdameo, and what exists is only a pending investigation with the Office of the Ombudsman, in effect what the Ombudsman Desierto are mere "fishing expeditions" in order to gather enough evidence to create a case substantial enough to prosecute before courts.[69]

In closing, the Supreme Court went into a discussion on the zones of privacy that must be respected by even the wielders of Police Power of the State. The Supreme Court reasoned that there exist zones of privacy that are recognized and protected in our laws. The Supreme Court notes that such recognition springs from the Civil Code which provides that "every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons."[70] The Supreme Court continued to explain that whenever these zones of privacy are violated, impinged or trespassed into,

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[67] *Id.* at 1178-1179.
[68] Marquez v. Desierto, 412 Phil. 387, 397 (2001).
[69] *Id.* at 398.
[70] *Id.* at 398, citing CIVIL CODE, art. 26.

the law punishes such violations as torts that are actionable by the injured party, and even entitles the latter to damages.

The Supreme Court continues to justify itself thus,

> [The law holds] a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act, and the Intellectual Property Code.[71]

The foregoing discussion of the Supreme Court is reminiscent of the discussion of the United States Supreme Court in the case of *Griswold v. Connecticut* earlier discussed in this paper. A discussion on zones of privacy that must be respected and protected by the law, and providing for *similar instances* wherein an individual right involving privacy is upheld, and by applying it to this case *by analogy* can hardly be substantial enough to strip the Ombudsman of his clearly and expressly constituted powers and duties as conferred by the Legislature.

In section 2 of the Ombudsman Act, it is declared that it is the policy of the Ombudsman Act that the "State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." This provision stems from Constitutional grounds, specifically that of article XI providing for the Accountability of Public Officers: "Sec. 1: Public Office is a Public Trust. Public Officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." This provision is particularly expressive of the core essence of government as enunciated by Justice Malcolm in the case of *Cornejo v. Gabriel*,[72] in saying that

> The basic idea of government in the Philippines is that of a representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of law and holds the office as a trust for the people whom he represents.[73]

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[71] *Id.* at 398-399, citing Ople v. Torres, 354 Phil. 948, 973-974 (1998).
[72] 41 Phil. 188 (1920).
[73] *Id.* at 194.

In fact, even Joaquin G. Bernas, S.J., explains that the investigatory powers of the Ombudsman is very broad, especially as he notes that it has even been further expanded under the Ombudsman Act of 1989.[74] He cites for example that the Ombudsman may investigate "any illegal act or omission of any public official," even if the offence committed by the officer is not related to the service of his powers and duties.[75] "Even the claim of confidentiality will not prevent the Ombudsman from demanding the production of documents needed for the investigation."[76] He cites the case of *Almonte v. Vasquez*[77] where it was held that the protection and right to confidentiality "does not rest on the need to protect military, diplomatic, or other national security secrets but on general public interest in preserving confidentiality, the courts have declined to find in the Constitution an absolute privilege, even for the President."[78] The case continues to rule that where the subject matter to be investigated involve subjects truly confidential, then such inspection may be done in camera.

The decision in *Marquez v. Desierto* has been widely criticized for not only disregarding the express provisions of the Ombudsman Act, but also for failing to take into consideration the fact that the consequence of rendering such a decision would cripple and render ineffective the very purposes for which the Ombudsman Act was created:

> By requiring that there must be a pending case first before such inquiry can take place, the Court effectively clipped the investigatory authority of the Ombudsman and contradicted the constitutional and legislative intent in creating the office. *Without such a power, it becomes extremely difficult for the Ombudsman to obtain financial records belonging to public officials that may serve as evidence of their wrongdoing.*"[79] (emphasis supplied)

During the senate hearings conducted upon the bills[80] regarding creation of the Office of the Ombudsman, Senator Angara, in his sponsorship speech, emphasized that in the seventies, when the 1971 Constitutional Convention was ongoing, twenty-seven resolutions sought the creation of the Office of the Ombudsman. Senator Angara explained all these resolutions invoked the State's duty to create a system where the least of its citizens (the poor) would have a venue for immediate relief for their petty grievances and problems. He described that what the Philippine had instead was

> ...a system characterized by the supremacy of the powerful and the wealthy, respect for the dignity and personality of the elite, the ruling feudal master and super abundance of opportunity for the oppression of the weak, the poor, and the unconnected.

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[74] JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 1000 (1996 ed., 2002).

[75] *Ibid.*, citing Deloso v. Domingo, G.R. No. 90591, November 21, 1990.

[76] *Ibid.*

[77] 314 Phil. 150 (1995).

[78] *Id* at 170-171.

[79] D. Mariano, C. Bonoan & G. Palarca, *op. cit supra* note 43 at 444.

[80] In particular, this was with respect to Senate Bill 543, which was a consolidation of Senate Bills 394 and 299.

> Present reliefs from the protection of the citizen rights are expensive, cumbersome, circuitious, and usually available only to the rich and powerful.
>
> Government is plagued with graft and corruption, callous indifference and gross inefficiency, political meddling, immorality, compartmentalization of justice and bankruptcy in national and local leadership. The helpless disillusioned citizen may not bear anymore. Already, he has raised his voice in protest and defiance. Because this voice has not reached an official ear, he registers his voice in the streets. Disillusion turns into antagonism and antagonism turns into bitterness towards the government.
>
> The people's faith in our institution now hangs by a slim thread and is being stretched to the breaking point. This in fine is the collective plaint of the 27 resolutions submitted to this convention and referred to the committee seeking the establishment of a constitutional caucus with two definitive objectives, namely, (1) the promotion of higher efficiency and justice in the administration of the laws; (2) the protection of the constitutional rights of the citizens to petition the government for redress of grievances."[81]

Senator Angara continued to say that what the Bill sought to implement and create was an Ombudsman who is not a "mere passive protector" but an "active guardian of the people with the necessary muscle and appropriate clout." Senator Angara enumerates the three important roles of the Ombudsman: (1) first, that the Office of the Ombudsman sees to the complaints of citizens against official misconduct or inefficiency in an expeditious and inexpensive manner; (2) second, represents the citizens for redress of grievances against government agencies; and (3) lastly, the Ombudsman is also considered to be the official critic of the government.[82]

Senator Angara emphasized in his sponsorship speech that in no instance should the Office of the Ombudsman be rendered a "toothless tiger" considering the enormity of the powers and duties conferred upon him by the Constitution, the Legislature, as well as the public trust. He continued to exhort imperative nature of passing the bill by pointing out that the offices created in the past have been mere watchdogs, with no clout whatsoever to ensure the protection of the citizenry.

During the Senate hearings, the case of *Zaldivar v. Sandiganbayan*[83] was even introduced to emphasize that it was the clearly the intention of the Legislature to place the Office of the Special Prosecutor as subordinate to the Office of the Ombudsman. In fact, the bill that was subsequently passed into the Ombudsman Act clearly "places upon the Office of the Ombudsman the authority to investigate and prosecute public officials and employees through the *Office of the Special Prosecutor, which is now under the control and supervision of the Ombudsman.*"[84] (emphasis supplied)

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[81] Record of the Senate, June 8, 1988.
[82] *Ibid.*
[83] G.R. Nos. 79690-707, October 7, 1988.
[84] Record of the Senate, June 8, 1988.

The decision rendered in *Marquez vs Desierto* is further criticized in that "the risk of double jeopardy attaching is increased by the filing of a criminal information based on investigation without supporting bank accounts or records."[85] It was discussed in the Senate hearing that this was a necessity, considering the usual complaint that investigations take too long such that the subject matter of the litigation is invariably rendered moot. Thus, this provision was included in order to accord to the citizenry immediate relief.

In *Marquez*, the Supreme Court seemed to side-step the real issue that was put to the fore: Whether or not, the Ombudsman Act, being of later and more current legislation (1989) constitutes as an exception to the earlier promulgated Law on the Secrecy of Bank Deposits. It is proposed that based on the transcripts earlier quoted from, and studied, it is the clear intention of the Legislature to indeed constitute the investigatory power of the Ombudsman as an added exception to the Law on Secrecy of Bank Deposits. To hold otherwise would be to render senseless all the stated intentions that the senators put into record as the policies for conferring upon the Office of the Ombudsman such powers and duties.

V. SOME CRITICISMS ON THE RELEVANCY OF THE BANK SECRECY LAW TO TODAY'S ECONOMY AND POLITICS

The current Bank Secrecy Law considers all deposits of whatever nature with banks or banking institutions in the Philippines as absolutely confidential in nature."[86] This rule is not iron-clad. It has about fourteen exceptions to its application. Critics still believe that the legislative rationale to encourage people to deposit their money in banking institutions though laudable is still a privilege that is ultimately dangerous and unnecessary in that the confidentiality guaranteed to bank deposits acts as an effective road-block to the recovery of ill-gotten wealth and is a convenient tool for hiding and masking the latter.

In fact, it is even observed that terrorist and organized crime operations, in order to achieve their nefarious ends need to be financed at the global or international scale. Therefore, institutions, most notably banks that are able to cite bank secrecy laws, intentionally or unintentionally, inevitably create safe havens "for the transfer and hiding of the illicit funds and profits of organized crime and organized terrorists."[87] In fact, the foregoing groups especially target jurisdictions with less-than-vigilant police power, in order that the gathering of funds may be distributed to its terrorist units all over the world more easily.

These critics continue to say that,

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[85] D. Mariano, C. Bonoan & G. Palarca, *op. cit supra* note 43 at 444.

[86] Rep. Act No. 1405 (1955), sec. 2.

[87] Fletcher N. Baldwin, Jr., *The Rule of Law, Terrorism, and Countermeasures Including the USA Patriot Act of 2001*, 16 FLA. J. INT'L L. 43, 54 (2004).

> Overly secretive banking laws also constitute effective barriers to the investigation and recovery of ill-gotten wealth. The grant of confidentiality privileges to bank deposits serve both as an incentive to corrupt public officers and a hindrance to the effective investigation of wrong-doing. Watered down legislation intended to combat money laundering, as earlier pointed out, may even allow launderers to escape liability.[88]

Economists who have analyzed the effects of the Bank Secrecy Law to Philippine economy have noted that the severe protection accorded to the identity of the account holders has improved the desirability of bank deposits immensely. Authorities on the subject have noted that individuals and firms particularly desire the secrecy on their bank accounts since the law has made it inherent in the nature of bank accounts to accord privacy and confidentiality to its holders. They have also noted that the elite desire this privilege as well as the privacy and confidentiality benefit is also a great protection against the various threats of kidnapping, robbery, and extortion of ransom money, making them less exposed to the infliction of the latter. Finally, the law protects depositors' accounts from the scrutiny of the Bureau of Internal Revenue. According to section 2, without a court order, bank accounts cannot be used as evidence against tax evaders. The penalties (the cost) in section 5 of the Bank Secrecy Law also deter outside intrusion.

However, critics continue to say that, despite the above-mentioned successes of the Bank Secrecy Law, it still fails to achieve its acknowledged objective to stimulate savings. Economist Franz David Lim explains that "The Bank Secrecy Law triggers problems of information asymmetry — moral hazard and adverse selection. Information asymmetry paralyzes the function of an otherwise perfect credit market."[89] According to the author, there apparently exist efficient and non-efficient capital markets.[90] Efficient capital markets can only exist when certain crucial factors are present, one of the more important of which is what is known as the "availability of perfect information."[91] He explains that if information is unavailable, rare, or even expensive, and thus excluding a large number of people from the possibility of acquiring it, then decisions are made that are less beneficial to the economy. This is called *Information Asymmetry*, a phenomenon that causes a severe influence on banking transactions since people will generally not take risks without being made comfortable about the situation that they will be entering into by being given a complete information base about the latter.[92]

Information Asymmetry occurs in two ways: Moral Hazard and Adverse Selection. When imperfect information is imparted to the investor concerning the

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[88] D. Mariano, *et al.*, *op. cit supra* note 43 at 459.

[89] *I* Franz David Ong Lim, *Note: Bank Secrecy Law: A Historical and Economic Analysis*, 77 PHIL. L. J. 210, 220 (2002).

[90] *Id.* at 216-217.

[91] *Id.* at 216.

[92] *Id.* at 216-217.

actions that the latter may possibly undertake, moral hazard occurs.[93] A good example according to the author is the case in banking transactions wherein the depositor does not know where or how the money he deposits is used or invested in.[94] On the other hand, adverse selection occurs when incomplete or imperfect information with regard to the object of the transaction, i.e., goods or services involved in an obligation, is imparted to the investor.[95] An example the author uses in banking transactions is that banks cannot perfectly distinguish between promising and non-promising borrowers. Thus, banks may end up lending money to non-promising borrowers.[96]

The author continues to say that these two problems occur most often in developing countries, because the legal system in developing countries is less developed and often difficult to enforce.[97] Also, technology in developing countries is less advanced as opposed to its counterpart in the more developed countries.[98] Thus, "information verification" in developing countries is often incredibly expensive.[99]

The problem with the phenomena above-mentioned is that it only worsens as time progresses, especially in the Philippine setting, where there is notable difficulty in the enforcement of the law. According to the author, the trouble of information asymmetry necessitates intensive government intervention.[100] He continues to say that "The government, through the enforcement of contracts and the mandatory disclosure of certain information, safeguards the people from fraudulent information."[101] He enumerates such government intervention as specifically "taxes, subsidy, and regulation."[102]

These safeguards ensure the lawful flow of market forces and the protection of unwary investors. As it is, Lim is firm in his condemnation of the situation created by the Bank Secrecy Law: "The bankers are the greatest gainers of the Bank Secrecy Law. Abetted by the *porous legal system*, they can, [as many of them did] plunder the depositor's hard-earned money."[103] (emphasis supplied) The author emphasizes that the Bank Secrecy law makes the successful enforcement of the law against errant bankers difficult, and in most cases, well-nigh impossible.[104] He notes that it is inherent in the nature of the Bank Secrecy Law to favor the banker, who more often than not, is the party who can afford to hire more competent counsel.[105] He points out several important areas that the law fails to provide for, specifically protection to depositors vis-à-vis the banker,

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[93] *Id.* at 217.
[94] *Id.* at 217.
[95] *Id.* at 217.
[96] *Id.* at 217.
[97] *Id.* at 217.
[98] *Id.* at 217.
[99] *Id.* at 217.
[100] *Id.* at 217.
[101] *Id.* at 217.
[102] *Id.* at 217.
[103] *Id.* at 223.
[104] *Id.* at 223.
[105] *Id.* at 223.

and more importantly, compensation to victims of bank plunder.[106] Thus, he concludes that the depositors stand to lose should they invest in banks, considering that they will be taking risks with their hard-earned money virtually blind with respect to information and unprotected with respect to the safeguards provided by law.

It is true that "prohibiting the examination of bank accounts protects the depositor's privacy," however, it seems that the harmful effect it apparently gives, i.e., the *hampering of prudential regulation*, outweighs the need for the former as the privacy accorded to the depositor is also the very same shield that is used by perpetrators to achieve their own criminal ends.[107] Not only that, it is also pointed out that the present Bank Secrecy law allows supervision over banks to be ineffective, leading them to make risky investments in turn.[108] Such risky investments are ultimately the cause of bank insolvency.

Although it is conceded that, in case of bank insolvency, the Philippine government will step-in by bailing out these insolvent banks ("to avoid hyperinflation, capital flight, and destabilizing exchange rate supervision") such assistance given by the government also produces the harmful result of giving banks the confidence to continue taking risky investments, knowing that the government, and especially the Central Bank, will not allow bank failure on a massive scale.[109] As can be seen from this illustration, it is shown that it is ultimately the taxpayers who bear the brunt of the cost caused by erring banks who are willing to take such risky investments, as well as the latter's rehabilitation.

As an example, the author illustrates that:

> In the context of bank secrecy, rehabilitation might aggravate the problem of moral hazard. During the 1983-1984 financial crises, for instance, the Central Bank extended one billion pesos worth of emergency assistance to Banco Filipino. Banco Filipino, in turn, siphoned millions of pesos of emergency rehabilitation funds. After its closure in 1984, the Central Bank sued Banco Filipino for fraud and mismanagement. The Bank Secrecy Law, however, prevented the prosecutors from gathering incriminating evidence against it. Ultimately, lack of evidence contributed to Banco Filipino's courtroom victory in 1991. Thus, in extreme cases, the law can perpetuate a *series* of moral hazard problems.[110]

Not only does the Bank Secrecy law have the undesirable effect of encouraging faulty and risky investments, it also makes the recognition and discovery of DOSRI (Directors, Officers, and Related Interests) loans extremely problematical. The granting of loans to the directors, officers, and other related interests of banks, in and by itself, is not harmful. However, such practice should be discouraged as in most DOSRI loans,

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[106] *Id.* at 224.

[107] *Id.* at 220.

[108] *Id.* at 220.

[109] *Id.* at 220.

[110] *Id.* at 220, citing PAUL HUTCHCROFT, BOOTY CAPITALISM: THE POLITICS OF BANKING IN THE PHILIPPINES 71 (1998).

the ceilings of the loans are far higher than is customary, the interest rates lower, and the period extended to the DOSRI is usually far longer.[111]

Thus, in the Philippine setting where prudential and effective legislation and enforcement of the laws is still in question, economists and financial analysts discourage the practice, especially as mentioned earlier, since the law makes bank supervision difficult, banks may not even make a cautious and sensible assessment of the risk involved in granting such loans. Not only that, it is also pointed out that in the Philippine setting, there seems to be quite an occurrence of interlocking directorates, making it even more possible for moral hazard to occur, considering that interlocking directorates expands the possible areas where the depositor's money may get to tremendously, while leaving the depositor completely in the dark.[112]

There is also adverse selection that is created in the Philippine banking system. The Bank Secrecy Law is desirable to most savers as the privilege of confidentiality and privacy give them a false sense of security and confidence. The law itself makes it possible to keep these depositors unaware of the fact that their bank may be gambling their hard earned money on considerable risky ventures. By choosing to keep their money in banks, uninformed of the fact that their bank may be taking risks with their money, therefore making it safer for the depositor to have just kept his money under his bed, he thus makes an adverse selection.

Economic analysts also mention the fact that there seems to be a hidden contingent transaction cost not obvious to the unwary depositor when he decides to put his money in a bank. As mentioned earlier, since the Bank Secrecy law participates in the failure of the State from being able to "successfully prosecute errant banks," it is the depositors themselves who take up the initiative, as well as the cost, of suing the bank themselves.[113] While taxpayers shoulder the cost of failed prosecutions against the bank that was undertaken by the State.

Failed prosecutions against banks that are initiated by the State are caused mainly by the fact that the Bank Secrecy Law also makes it incredibly difficult for the authorities to conduct criminal investigations on banks. Although it is conceded that the law has made it possible, as it has provided for several exceptions, which are further added to and clarified by the Supreme Court, such avenues take up too much time, and authorities have in fact alluded that not only are such avenues time-consuming, such are more to the point time-wasting.

Authorities cite as an example the fact that bank examination requires the Monetary Board's approval; however, such approval is only obtained when the evidence adduced proving the commission of fraud is strong. The gathering and ascertainment

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[111] *Id.* at 221.
[112] *Id.* at 221.
[113] *Id.* at 221.

of such evidence, they note, is not only expensive, but takes up an enormous amount of time as well.[114]

Expenditures incurred are made even more expensive by the Bank Secrecy Law. Documents regarding banking transactions as well as audit reports gathered prior to the issuance of a court order sanctioning the investigation may not be used as evidence, pursuant to constitutional precepts, specifically the exclusionary rule, bank supervisors must therefore rely on other sources, sadly more often than not, what may only be availed of by then is indirect evidence, such as finding witnesses to the transaction involved. Finding "shreds" of evidence to corroborate such evidence is not only very difficult, but adds substantially to the cost as well. There will also be situations wherein the witnesses would need protection. Protection for witnesses curtails a whole gamut of expenses, from a safehouse, to food, relocation, clothes, identity changes, not to mention security.[115]

Lim relates an interesting story regarding the Republic Bank to show how the Bank Secrecy Law allows banks to misrepresent their financial situation by superficially increasing the statement of their assets and tremendously understating their liabilities, and the commission of such misrepresentation does not necessarily constitute fraud. He writes,

> The Republic Bank was founded on 1953. In a span of eight years, it stood as the eleventh largest bank in the Philippines. In 1961, the government legalized the deposit of public funds in private banks. Because the Republic Bank's owner, Pablo Roman, enjoyed close ties with the Macapagal Administration, public funds flowed into its vaults. By 1963, it held a quarter of public fund deposited in commercial banks. Not surprisingly, its ranking jumped from eleventh to the third largest bank by 1963.
>
> Such meteoric rise, of course, attracted depositors. Depositors, because of the Bank Secrecy Law, were not aware that bulk of the funds had come from the public sector. Neither did they know such deposits were made by political connections, not by sound financial analyses. Thus, the politically propped-up growth led the public to make an adverse selection, mistaken as to the actual financial strength of the bank."[116]

The author also made mention of another interesting fact: The Republic Bank failed because of the massive loans that it extended to its DOSRI.[117]

Mr. Lim sums up the notable shortcomings of the Bank Secrecy Law by explaining that, "[It]failed to take information asymmetry, both moral hazard and adverse selection, into account."[118] He notes that it is true that the lawmakers already

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[114] *Id.* at 222.
[115] *Id.* at 222.
[116] *Id.* at 222.
[117] *Id.* at 222.
[118] *Id.* at 222.

started with a crutch from the very beginning in that they had a very limited background with regard to theoretical and empirical models to consult with and to be led from, considering that theories on information asymmetry, for example, only came out in the seventies (quite some time from when the first laws on Bank Secrecy was passed).[119] He goes on to say that

> Interestingly, the House and the Senate bills as well as the congressional deliberations clearly showed that policymakers were not aware of the necessity of prudential regulations and of the problems of information asymmetry. For instance, in the debate about the Bank Secrecy Law, nobody mentioned the need to maintain prudential regulation. Also, section 4 renders the Bank Secrecy Law superior to all regulations, regardless of their content. None of them ever foresaw the negative consequences, both economic and legal, of such law.[120]

At this juncture, one may very well be horrified at the wide span of areas that our lawmakers seem to have left uncovered, unconsidered, and unprotected.

Lastly, it is noted that politicians have been invoking various development theories as justification for heavy government intervention, citing the Rosenstein-Rodan model which calls for greater coordination among industries, as well as the Hirschman model, which calls for greater government investments in infrastructure.[121] These models are being heavily criticized for being applied to the Philippine setting, as it is pointed out that these models fail to take into account the particular country's working, and non-working institutions.[122]

It is explained that the policies behind these models take as a premise the presence of various institutions that should be functioning effectively, more or less. In the case of the Philippines, it is explained that the Bank Secrecy Law, as it is presently structured, "needs an efficient legal system that can *speedily* solve cases of fraud and mismanagement."[123] Without such a system, the law will merely create an impasse, wherein nothing will be resolved, thus prosecutions would inevitably end at a deadlock.

Thus, being essential to the effective implementation of the Bank Secrecy Law, the otherwise "dysfunctional" legal system in the Philippines, in turn, leads prosecution under the Bank Secrecy Law to a dead stop.[124]

CONCLUSION

As can be derived from the foregoing, no web seems more intricate than that woven by the Law on Secrecy of Bank Deposits when it is linked with its sister laws. However, as shown, the present set up of Philippine Bank Secrecy Laws needs to be

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[119] *Id.* at 222.
[120] *Id.* at 223.
[121] *Id.* at 223.
[122] *Id.* at 223.
[123] *Id.* at 223.
[124] *Id.* at 223.

further looked into in order to correct its effects of rendering powerless of the sister laws of the Secrecy of Bank Deposits, like the Ombudsman Act, The Anti-Money Laundering Act, and the Foreign Currency Deposit Act.

If not even for the self-defeating enactment of laws by the legislature, the Bank Secrecy law should be amended in order to regulate or immediately counter its being used as a means to launder money, or to be used as a means of masking ill-gotten wealth, or even tax evasion.

Other countries experiencing the same difficulties are currently adopting counter-measures against the continued perpetration of such crimes. In fact, it is seen that some Latin American Nations have begun to mobilize certain measures against transnational money laundering and the indirect and unintended financing of terrorist groups by legislating laws that directly hold financial institutions directly accountable and responsible if found to be engaged in laundering profits gained from the above mentioned activities.

Generally, such laws require that banking institutions must heretofore identify those customers that make large deposits, as well as "discontinue accounts with parties using obvious fictitious names, prohibit the payment by tellers of checks issued to third parties a specified amount, report to the Central Bank personal data on account-holders where cash over a certain amount is deposited monthly or annually, and to report suspicious transactions."[125]

Perhaps some of the above measures may be further studied and considered in its feasibility of being applied to the Philippine setting, and on specifically what terms.[126]

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[125] Luz Estella Nagle, *The Challenges of Fighting Global Organized Crime in Latin America*, 26 FORDHAM INT'L L.J. 1649, 1700 (2003).

[126] There are already some issuances trying to implement some of the measures mentioned, for example, the use of obviously fictitious names is already prohibited.