

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

RE: REQUEST FOR COPY OF 2008
STATEMENT OF ASSETS,
LIABILITIES AND NETWORTH
(SALN) AND PERSONAL DATA
SHEET OR CURRICULUM VITAE OF
THE JUSTICES OF THE SUPREME
COURT.

A.M. No. 09-8-6-SC

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MEMORANDUM

The Philippine Center for Investigative Journalism (PCIJ), by counsel, respectfully states that:

Prefatory Statement

1. The Philippine Center for Investigative Journalism (PCIJ) is an independent, non-profit media agency duly organized and existing under Philippine law that specializes in investigative reporting.

2. In a letter dated 30 July 2009, the PCIJ through its Research Director Rowena Paraan, requested copies of the 2008 Statement of Assets, Liabilities and Net Worth (SALN) and Personal Data Sheets (PDS) of the Justices of the Supreme Court. On information, said request has been referred by the Supreme Court *en banc* to a special committee chaired by Associate Justice Minita Chico-Nazario to review the policy on SALN and PDS, and to recommend appropriate action on the said request.

3. In relation to this, the PCIJ respectfully submits this memorandum on the legal and policy arguments in support of PCIJ's request for disclosure of or access to the SALNs. The study is divided into four (4) sections, namely:

- I. The duty to disclose Statements of Assets, Liabilities and Net Worth under Section 17 Article XI & Section 28 Article II of the 1987 Constitution in relation to Section 8 of Republic Act 6713.
- II. The duty to allow access to Statements of Assets, Liabilities and Net Worth under Section 7 Article III of the 1987 Constitution.
- III. The principle of independence of the judiciary does not bar disclosure of or access to Statements of Assets, Liabilities and Net Worth.
- IV. The presumption in favor of disclosure of or access to Statements of Assets, Liabilities and Net Worth.

4. In terms of methodology, the relevant legal provisions have been interpreted in light of:

- Their plain meaning.
- The Records of the Constitutional Commission.
- The Records of the Senate.
- The decisions of the Supreme Court.
- *Duplantier v United States of America*.
- The practice of the United States Federal Supreme Court.

The duty to disclose Statements of Assets, Liabilities and Net Worth under Section 28 Article II and Section 17 Article XI of the 1987 Constitution in relation to Section 8 of Republic Act 6713.

5. Article II (Declaration of Principles and State Policies) of the 1987 Constitution states:

SECTION 28. Subject to reasonable conditions prescribed *by law*, the State adopts and implements a policy of *full public disclosure* of all its *transactions involving public interest*.

6. In turn, Article XI (Accountability of Public Officers) of the 1987 Constitution provides:

SECTION 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a *declaration under oath of his assets, liabilities, and net worth*. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, *the Supreme Court*, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be *disclosed to the public* in the manner provided *by law*.

7. Based on the Records of the Constitutional Commission, the intent behind Section 28 is to establish a *concrete ethical principle* in government with the people's *right to know* as the *centerpiece*. To quote:

MR. OPLE: . . . In the United States, President Aquino has made much of the point that the government should be open and accessible to the public. This amendment is by way of providing an umbrella statement in the Declaration of Principles for all these safeguards for an open and honest government distributed all over the draft Constitution. It establishes a *concrete, ethical principle* for the conduct of public affairs in a genuinely open democracy, with the people's *right to know* as the *centerpiece*.¹

¹ Records of the Constitutional Commission, V. 5 p. 24, 24 September 1986.

8. Unlike Section 17, Section 28 does not expressly require the highest officials of the land to disclose their SALNs. Nevertheless, the Records of the Constitutional Commission show that the Framers understood the “transactions involving public interest” referred to in Section 28 to also encompass SALNs. To quote:

MR. OPLE: This is a mandate on the State to be accountable by following a policy of full public disclosure. For example, information concerning loans contracted by the government ought to be made available. *Public officials should follow this policy by submitting their statements of assets and liabilities and making them available for public scrutiny, not merely storing them in the archives, which is what happens most of the time.* It means that when one is a Member of Congress the head of his own law office, who sponsors a bill which can aggrandize his own clients, ought to say so or at least forbear the opportunity to sponsor this bill himself. Therefore, this establishes a kind of ethical principle for public officials as well so that this can be a great deterrent to conflicts of interest in government, Mr. Presiding Officer.²

9. Both Sections 28 and 17 sought to establish a *new form of* accountability in government by requiring the highest officials of the land to set the example and take the lead by disclosing their SALNs, something not heretofore required under previous laws or constitutions. To quote:

MR. OPLE: . . . In this proposed amendment, Commissioner Bennagen and I are not requiring every employee of the government to disclose his net worth to the public. There is no multiplier effect when a common employee of the government is required to disclose his net worth, and maybe other than himself and his immediate neighbors in the office, no one will really care. But in our proposed amendment, we would like to introduce a *new form of accountability*. In a society, it is understood that we have to *lead by example and those who have this burden more than the others are the holders of the greatest power.* Therefore, this provision is specific with respect to the President, the Vice-President, members of the Cabinet, Members of the Congress, the heads and directors of government-owned or controlled corporations, and flag officers of the Armed Forces of the Philippines. The obligations of the rest can be left to the law and, in fact, there are already laws to that effect. *But there is no law so far and no explicit constitutional mandate that requires the highest officials of the land to disclose their net worth to the public.* In the case of the United States, comparable officers are required by law to so disclose their assets and liabilities to the public. Here in the Philippines, it is a matter of voluntary act, and when we put that on a voluntary basis, the results are uneven because some disclose and the others do not. I think throughout this

² *Ibid.*

Constitution, we are trying to build a policy of candor and full disclosure and accountability, and this provision supports that goal for the entire Constitution, although at present it has to be located in the Article on Accountability of Public Officers.³

10. The underlying purpose of this new form of accountability is multi-fold. First, it aims to deter conflicts of interest. To quote:

MR. OPLE: This is a mandate on the State to be accountable by following a policy of full public disclosure. For example, information concerning loans contracted by the government ought to be made available. Public officials should follow this policy by submitting their statements of assets and liabilities and making them available for public scrutiny, not merely storing them in the archives, which is what happens most of the time. It means that when one is a Member of Congress the head of his own law office, who sponsors a bill which can aggrandize his own clients, ought to say so or at least forbear the opportunity to sponsor this bill himself. Therefore, this establishes a kind of ethical *principle* for public officials as well so that *this can be a great deterrent to conflicts of interest in government*, Mr. Presiding Officer.⁴

FR. BERNAS: Mr. Presiding Officer, may I just have one simple question? And it is precisely in connection with Section 6 of the Bill of Rights. It would seem to me that the precise same policy that is sought to be enunciated in the amendment is already embodied in Section 6.

MR. OPLE: This is a wider scope, I believe, Mr. Presiding Officer, because one of the objectives it wishes to serve is the development of a higher level of ethical practice in the government. So that it is addressed to the public's right to know, but at the same time *it would put all public officers within the compass of a duty to disclose their own conflict of interest when this arises or to make available information, such as statements of assets and liabilities and net worth, as a matter of obligation under this provision*. But I think my coauthor, Commissioner Rama, would like to supplement that answer.⁵

Second, it seeks to prevent *graft and corruption*. To quote:

MR. DAVIDE: If the idea really is to impress upon the public officer or employee the particular duty of disclosing his assets and liabilities upon the assumption to office, then that should apply to all, not just to the public officer but to

³ Records of the Constitutional Commission, V. 2 p. 321, 28 July 28 1986.

⁴ *Supra*, note 1.

⁵ *Ibid.*

all employees because *graft and corruption* can be committed not only by those in the upper bracket in public service but even by those in the lower bracket. As a matter of fact, Madam President, insofar as *graft and corruption* is concerned, we cannot distinguish a separate hierarchy for those in the upper bracket and for those in the lower bracket. Both of them are equally liable to disclose their assets and liabilities. And besides, when a public officer discloses his assets and liabilities, we know already what his net worth is. So there is no need for a disclosure of net worth because it can easily be determined from the statement of assets and liabilities.

MR. OPLE: Madam President, I prefer to leave the case of the generality of employees of the government to law, while we treat the highest public officers in terms of a constitutional accountability to disclose to the public not merely to submit to the civil service or to the head of the ministry; in practice this really means archiving all of these statements of assets and liabilities. *In the case of the higher echelons of the government, just like in the United States and in other countries, the obligation to disclose to the public means that there is no choice; they do not send these to the archives.*⁶

Lastly, it endeavors to allow the public to determine whether the highest officials of the land are *living within their means*. To quote:

And the last item, Madam President, if I may, concerns the matter suggested by the Honorable Tadeo which is *modest living*. Since we are allowing, in this report, that even citizens can file a complaint, *we should give the citizens or even the government a basis to determine whether or not a person is living beyond his means. I do not know if there is a provision in other articles on this matter.* If there is none, maybe we should suggest that at least these impeachable officers should present or file or submit their statement of assets and liabilities upon assumption of office so that we would be guided. Although my personal view is that even if a person has P50 million, it would not justify him to use Rolls Royce, considering the economic conditions of our people today.⁷

11. The requirement of disclosure under Section 28 is qualified by the phrase “subject to reasonable conditions prescribed by law”. On the other hand, the requirement of disclosure under Section 17 is qualified by the phrase “in the manner provided by law. The questions that immediately come to mind because of these qualifying phrases are these. First, are Sections 28 and 17 self-executing, meaning to say that even in the absence of a law, the highest officials of the land have a duty to disclose their SALNs, without prejudice to Congress’ power to subsequently regulate the conditions and manner of such disclosure? Second, assuming that Sections 28 and 17 are not self-executing but require an implementing law, is RA 6713 an implementing law?

⁶ *Supra*, note 3.

⁷ Records of the Constitutional Commission, V. 2 p. 287, 26 July 1986.

12. Taking the second question first, an analysis of the provisions of RA 6713 clearly indicates that it is an implementing law. Section 8-A requires public officials and employees (including Justices of the Supreme Court) to file their SALNs. Thus:

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

- (1) Constitutional and national elective officials, with the national office of the Ombudsman;
- (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; *Justices, with the Clerk of Court of the Supreme Court*; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
- (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
- (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
- (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

13. Furthermore, Section 8-C requires that the SALNs be available to any person for *inspection* at reasonable hours, and for *copying* or *reproduction* after payment for the costs of reproduction and mailing. Thus:

Accessibility of documents. — (1) Any and all statements filed under this Act, shall be made *available for inspection at reasonable hours*.

(2) Such statements shall be made available for *copying* or *reproduction* after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

14. While Section 8-C of RA 6713 speaks of *inspection, copying* or *reproduction* of SALNs, *Sections 28 and 17* of the Constitution speak of

disclosure of SALNs. The crux, therefore, is whether *inspection, copying or reproduction* of SALNs is a form of *disclosure* of SALNs. If so, then RA 6713 is a law that implements Sections 28 and 17 of the Constitution.

15. The Records of the Constitutional Commission show that the duty to disclose SALNs is deemed satisfied if they are made *available for public scrutiny* and not merely storing them in the archives. To quote:

MR. OPLE: This is a mandate on the State to be accountable by following a policy of full public disclosure. For example, information concerning loans contracted by the government ought to be made available. Public officials should follow this policy by submitting their statements of assets and liabilities and *making them available for public scrutiny, not merely storing them in the archives*, which is what happens most of the time. It means that when one is a Member of Congress the head of his own law office, who sponsors a bill which can aggrandize his own clients, ought to say so or at least forbear the opportunity to sponsor this bill himself. Therefore, this establishes a kind of ethical principle for public officials as well so that this can be a great deterrent to conflicts of interest in government, Mr. Presiding Officer.⁸

16. Based on their plain and ordinary meanings, when SALNs are made available for inspection, copying or reproduction to any person, then they are necessarily being made available for public scrutiny. Since the latter is equivalent to disclosure based on the Records of the Constitutional Commission, then the inspection, copying or reproduction of SALNs is necessarily a form of disclosure.

17. Similarly, *Webster's Third New International Dictionary of the English Language Unabridged* defines *disclosure* as follows:

1: an act or instance of disclosing: *the act or an instance of opening up to view*, knowledge or comprehension 2: something that is disclosed

18. Based on their plain and ordinary meanings, when SALNs are made available for inspection, copying or reproduction to any person, then they are necessarily an act or instance of opening them up to view. Since the latter is equivalent to disclosure based on *Webster's*, then the inspection, copying or reproduction of SALNs is again necessarily a form of disclosure.

19. Furthermore, the text of RA 6713 itself considers the act of making SALNs available for inspection, copying or reproduction to any person as a form of disclosure. For instance:

SECTION 8. Statements and *Disclosure*. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and *the public has the right to know, their assets, liabilities, net worth and financial and*

⁸ *Supra*, note 1.

business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

20. Finally, the Record of Senate shows that RA 6713 was enacted in light of the pertinent provisions of the Constitution, to include Sections 28 and 17. For example, to quote the sponsorship speech of Senator Saguisag:

In keeping with our commitment earlier mentioned, pursuant to *Article XI of the 1987 Constitution*, the State must establish a body of rules or ethical standards to govern public behavior and performance which will help ensure that public officers are accountable at all times, serving the people with the highest degree of responsibility, integrity, competence, dedication, loyalty, efficiency, openness, and *delicadeza*. . . The consolidated bill promotes the objective of public accountability at a time when the current expressions are openness, candor, transparency and, yes, *glasnost*. It carries out the relevant constitutional intent.⁹

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*On transparency, in compliance with the Constitutional mandate and in furtherance of prior statutory requirements on the point, such as those found in the Anti-Graft and Corrupt Practices Act, we have made detailed requirements of disclosure on assets, liabilities, net worth, financial and business interests.*¹⁰

Another example is the interpellation of Senator Laurel. To quote:

Senator Laurel. From a reading of the bill, which is a consolidation of Senate Bill Nos. 3 and 104, I understand from Section 2 of said bill that its main purpose which is an Act Establishing Ethical Standards for all public officers and providing penalties thereof is to promote a high standard of ethics in public service. *And this declaration or statement of policy is being made or has been made, in the light of the pertinent provisions in the Constitution.* And I would like to refer to them as the following:

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And then follows again *Section 28*, which provides:

*. . . the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.*¹¹

21. Going back to the first question, we submit that Sections 28 and 17 are in fact self-executing, such that even in the absence of RA

⁹ Record of the Senate, Vol. 1 No. 55, p. 1512.

¹⁰ *Ibid*, at 1513.

¹¹ *Ibid*, at 1514.

6713, the highest officials of the land are duty-bound to disclose their SALNs without prejudice to Congress' power to subsequently regulate the conditions and manner of such disclosure. The discussion of the Framers on the self-executory nature of Section 28 is ambiguous at best. To quote:

MR. DAVIDE: I would like to get some clarifications on this. Mr. Presiding Officer, *did I get the Gentleman correctly as having said that this is not a self-executing provision? It would require a legislation by Congress to implement?*

MR. OPLE: *Yes. Originally, it was going to be self-executing, but I accepted an amendment from Commissioner Regalado, so that the safeguards on national interest are modified by the clause "as may be provided by law."*

MR. DAVIDE: *But as worded, does it not mean that this will immediately take effect and Congress may provide for reasonable safeguards on the sole ground of national interest?*

MR. OPLE: Yes. I think so, Mr. Presiding Officer. I said earlier that it should immediately influence the climate of the conduct of public affairs but, of course, Congress here may no longer pass a law revoking it, or if this is approved, revoking this principle, which is inconsistent with this policy.

22. Neither does *Chavez v National Housing Authority*¹² categorically settle the matter for while the Supreme Court stated that even twenty (20) years after the birth of the 1987 Constitution, there is still no "enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions", it also stated that in the absence of said law, "it would suffice that government agencies post on their bulletin boards the documents incorporating the information on the steps and negotiations that produced the agreements and the agreements themselves, and if finances permit, to upload said information on their respective websites for easy access by interested parties." Accordingly, Section 28 could easily be interpreted to be self-executing because in the absence of a law, the government must still disclose transactions involving public interest using *reasonable means* such as the ones outlined by the Court.

23. However, it is pertinent to recall that we are not only dealing here with Section 28 but Section 17 as well. While Section 28 deals with transactions involving public interest that, as previously discussed, includes SALNs, Section 17 is particularly devoted to SALNs and the disclosure thereof. This indicates that the Framers considered the disclosure of SALNs by the highest officials of the land so important that they had to place it in a separate section when, under normal circumstances, the general duty to disclose under Section 28 would have sufficed. The probable reason is that, in the words of the Framers, they sought "to introduce a *new form of accountability*. In a society, it is

¹² G.R. No. 164527, 15 August 2007.

understood that we have to lead by example and those who have this burden more than the others are the holders of the greatest power.”

24. Thus, it is sufficiently evident that the disclosure of SALNs forms an integral part of the constitutional design in order to give the people an additional mechanism by which it can check its agents in the three (3) great branches of government. Hence, it would be highly incongruous with the level of importance accorded to such disclosure to treat the constitutional provisions relating thereto as not self-executing, such that Congress, by mere inaction, could prevent its implementation. It would be more consistent with such importance to interpret Sections 28 and 17 as requiring the highest officials of the land to disclose their SALNs through reasonable means, subject to the power of Congress to subsequently regulate the conditions and manner of disclosure.

The duty to allow access to Statements of Assets, Liabilities and Net Worth under Section 7 Article III of the 1987 Constitution.

25. While there is a duty to disclose SALNs under Sections 28 and Section 17 in relation to Republic Act 6713, there is also a duty to allow the public access thereto based on Article III of the 1987 Constitution. To quote:

SECTION 7. *The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law.*

26. In *Legaspi v Civil Service Commission*¹³, the Supreme Court described Section 7 as *self-executing*. Thus:

These constitutional provisions are *self-executing*. They supply the rules by means of which the right to information may be enjoyed (Cooley, *A Treatise on the Constitutional Limitations* 167 [1927]) by guaranteeing the right and mandating the duty to afford access to sources of information. Hence, the fundamental right therein recognized *may be asserted by the people upon the ratification of the constitution without need for any ancillary act of the Legislature*. (Id. at, p.165) What may be provided for by the Legislature are reasonable conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest (Constitution, Art. 11, Sec. 28). *However, it cannot be overemphasized that whatever limitation may be prescribed by the Legislature, the right and the duty under Art. III, Sec. 7*

¹³ G.R. No. 72119, 29 May 1987.

have become operative and enforceable by virtue of the adoption of the New Charter.

27. Given its self-executing nature, the next question is whether the SALNs of the highest officials of the land are covered by Section 7. In *Chavez v National Housing Authority*, the Supreme Court held that the right to information under Section 7 is broader than the right to information under Section 28 such that the information that must be disclosed under Section 28 is necessarily included in those which the public must be allowed access to under Section 7. To quote:

Thus, the duty to disclose information should be differentiated from the duty to permit access to information. There is no need to demand from the government agency disclosure of information as this is mandatory under the Constitution; failing that, legal remedies are available. On the other hand, the interested party must first request or even demand that he be allowed access to documents and papers in the particular agency. A request or demand is required; otherwise, the government office or agency will not know of the desire of the interested party to gain access to such papers and what papers are needed. The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency.

28. As discussed, SALNs are among these information that are covered by Section 28. This is borne out by the Records of the Constitutional Commission in the discussion thereof. To quote:

MR. OPLE: This is a mandate on the State to be accountable by following a policy of full public disclosure. For example, information concerning loans contracted by the government ought to be made available. *Public officials should follow this policy by submitting their statements of assets and liabilities and making them available for public scrutiny, not merely storing them in the archives, which is what happens most of the time.* It means that when one is a Member of Congress the head of his own law office, who sponsors a bill which can aggrandize his own clients, ought to say so or at least forbear the opportunity to sponsor this bill himself. Therefore, this establishes a kind of ethical principle for public officials as well so that this can be a great deterrent to conflicts of interest in government, Mr. Presiding Officer.

29. Since SALNs are covered by Section 28 which in turn is covered by Section 7, then SALNs are necessarily covered by Section 7. Hence, on the basis of Section 7, the highest officials of the land must allow the public access to their SALNs, subject to such limitations as may be provided by law.

30. This conclusion finds further support in *Legaspi v Civil Service Commission* wherein the Supreme Court interpreted the information under Section 7 to encompass both information of *public concern* and those of *public interest*. Thus:

In determining whether or not a particular information is of public concern there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.

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But the constitutional guarantee to information on matters of public concern is not absolute. It does not open every door to any and all information. Under the Constitution, access to official records, papers, etc., are "subject to limitations as may be provided by law" (Art. 111, Sec. 7, second sentence). The law may therefore exempt certain types of information from public scrutiny, such as those affecting national security (Journal No. 90, September 23, 1986, p. 10; and Journal No. 91, September 24, 1986, p. 32, 1986 Constitutional Commission). It follows that, in every case, the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., (a) *being of public concern or one that involves public interest*, and, (b) not being exempted by law from the operation of the constitutional guarantee. The threshold question is, therefore, *whether or not the information sought is of public interest or public concern*.

31. Since Section 28 treats SALNs as a transaction involving "public interest", then, they are necessarily covered by Section 7. Thus, the highest officials of the land must allow the public access to their SALNs, subject to such limitations as may be provided by law.

The principle of independence of the judiciary does not bar disclosure of or access to Statements of Assets, Liabilities and Net Worth of Justices.

32. Whether or not members of the judiciary may be compelled to disclose their SALNs is a difficult policy choice requiring a delicate balancing of competing interests. In *Duplantier v United States of America*¹⁴, an action challenging the Ethics in Government Act of 1978, the United States Court of Appeals 5th Circuit discussed many, if not all, the competing interests involved. To quote:

¹⁴ 606 F.2d 654.

Plaintiffs contended that the requirement that personal financial reports be filed by judges for public disclosure under the Act intrudes upon the *independent, decisional freedom* of United States judges and thereby violates the constitutional *principle of separation of powers*. They further argue that the Act unconstitutionally interferes with *judicial independence* by subjecting federal judges to familial disquiet, political pressure, and increased threats of physical or economic harm at the hands of criminals and disgruntled litigants.

*667 Plaintiffs' objections to the reporting provisions required by the Act have substantial merit and are deserving of the most careful consideration. The presence of armed guards and sophisticated electronic weapons detection equipment in United States courthouses is mute testimony to the personal danger with which federal judges are confronted. It likewise takes no vivid stretch of the imagination to believe that widespread public knowledge of their personal finances may subject federal judges to possible pressure or importuning by family members, public and political interest groups, and others. Some of these dangers confront federal judges even today regardless of the impact of the Act. [FN26]

FN26. Because the residence, telephone number, and salary of federal judges are generally matters of public record, members of the judiciary are already exposed to significant risks both personal and financial.

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There are compelling public interests behind the adoption (of the disclosure rules). The first is to *assure the impartiality and honesty* of the state judiciary. The second is to *instill confidence in the public in the integrity and neutrality of their judges*. The third is to *inform the public of economic interests of the judges which might present a conflict of interest*. Taken together, these paramount public interests are enough to subordinate the assumed right of a public official to be free from compulsory economic disclosure. In *re Kading*, 70 Wis.2d 508, 235 N.W.2d 409, 417-18 (1975). Congress, in passing the Act, sought to further many of the same interests noted by the Wisconsin court. The fact that federal judges are appointed rather than elected does not put those interests beyond the constitutional pale.

33. Some of the *Duplantier* considerations were also touched upon in the Supreme Court *en banc* resolution dated 2 May 1989¹⁵ establishing its policy for the release of SALNs of members of the judiciary. Thus:

However, the Court also noted that similar requests may be made upon the justices and judges of the Court of Appeals,

¹⁵ Re: Request of Jose Alejandrino.

Sandiganbayan, Court of Tax Appeals, Regional Trial Courts, Shari'a Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts under circumstances which may *endanger, diminish or destroy their independence and objectivity in the performance of their judicial functions or expose them to revenge for adverse decisions, kidnapping, extortion, blackmail, or other untoward consequences*. As such, it resolved to lay down the following guidelines on requests for SALs of justices, judges, and court personnel:

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(2) *The independence of the Judiciary is constitutionally as important as the right to information which is subject to the limitations provided by law*. Under specific circumstances, the need for the fair and just adjudication of litigations may require a court to be wary of deceptive requests for information which shall otherwise be freely available. Where the request is directly or indirectly traced to a litigant, lawyer, or interested party in a case pending before the court, or where the court is reasonably certain that a disputed matter will come before it under circumstances from which it may, also reasonably, be assumed that the request is not made in good faith and for a legitimate purpose, but to fish for information and, with the implicit threat of its disclosure, to influence a decision or to warn the court of the unpleasant consequences of an adverse judgment, the request may be denied.

34. *Duplantier* acknowledged that “though it is apparent that compliance with the Act's financial disclosure provisions may increase certain risks and dangers to federal judges, and to that extent might intrude upon the constitutionally assigned function of the judiciary, it is necessary to determine ‘whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.’”

35. In the end, the court in *Duplantier*, while agreeing that the requirements under the law “undoubtedly chip away at judicial independence”, upheld it nevertheless. To quote:

Balancing the rights of the judiciary against the governmental interests furthered by the Act is a difficult and to some extent an inexact task. In holding that, in this instance, Congress has not overstepped the boundaries of constitutionality in passing the Ethics in Government Act, we do not wish to demean the weighty arguments advanced by the plaintiffs. We are reminded of Mr. Justice Holmes' statement in *Hudson Water Co. v. McCarter*, 209 U.S. 349, 355, 28 S.Ct. 529, 52 L.Ed. 828 (1908), recently quoted with approval by Mr. Justice Rehnquist in *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 99 S.Ct. 383, 390, 58 L.Ed.2d 292 (1978):

All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. . . . The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side.

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It is evident that there is a growing public demand for accountability and integrity of public officials and the Act is designed to carry out that purpose. There are only about 850 federal judges, but it is clear that they occupy an expanding role in today's society. In the appropriate weighing of the competing interests, it is significant that 23 states have enacted similar laws, and financial disclosure for judges in those states is now routine. In balancing judicial accountability with judicial independence, we are unable to hold that the Act's objectives so clearly intrude upon the judicial functions that they are unconstitutional. Balancing conflicting interests is therefore not an abdication of our authority but is a resort to a widely accepted judicial process of reasoning. *If the Act's provisions serve the purpose of maintaining the public's confidence in the federal judiciary, they will have served us well, despite the fact that we know such requirements undoubtedly chip away at judicial independence.* Judges have a right to be concerned with any diminution of their freedom to act.

36. In the Philippines, this difficult policy choice has been made by the People themselves and is embodied in the Constitution. Article XI expressly states:

SECTION 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a *declaration under oath of his assets, liabilities, and net worth*. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, *the Supreme Court*, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration *shall be disclosed to the public* in the manner provided by law.

37. Therefore, the highest officials of the land, including the Justices of the Supreme Court, have a constitutional duty to disclose and afford access to their SALNs even if, in the language of *Duplantier*, such disclosure would “undoubtedly chip away at judicial independence”.

The presumption in favor of disclosure of or access to SALNs.

38. In *Legaspi v Civil Service Commission*, the Supreme Court held that when it comes to the right of the people to information on matters of public concern, the presumption is in favor of access by the public because to hold otherwise “will serve to dilute the constitutional right” since “the government is in an advantageous position to marshal[l] and interpret arguments against release.” To quote:

a. This question is first addressed to the government agency having custody of the desired information. However, as already discussed, this does not give the agency concerned any discretion to grant or deny access. *In case of denial of access, the government agency has the burden of showing that the information requested is not of public concern, or, if it is of public concern, that the same has been exempted by law from the operation of the guarantee. To hold otherwise will serve to dilute the constitutional right.* As aptly observed, “. . . the government is in an advantageous position to marshal and interpret arguments against release . . .” (87 Harvard Law Review 1511 [1974]).

39. In line with this presumption, the Court further held that the duty to disclose the information of public concern and to afford access to public records cannot be discretionary on the part of government agencies. To quote:

Thus, while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion.

40. If, in the case of information of public concern, the presumption is already in favor of the public and against the government, then more so should that presumption lie with respect to the duty by the highest officials of the land to disclose their SALNs. This is because the disclosure of this information was considered of such importance that, of the information in possession of the government consisting of records, documents, papers, official acts, transactions, decisions and research data, SALNs was singled out and placed in a separate section – Section 17, when under normal circumstances, the general duty to disclose under Section 28 would have sufficed.

41. However, the manner in which the Supreme Court has historically dealt with requests for SALNs of members of the judiciary has not always been consistent with this presumption. There are two resolutions which express the Court’s policy with respect to said requests. The first is the *en banc* resolution dated 2 May 1989 which requires the requester to state the purpose of the request and outlined the conditions under which requests would be denied. To quote:

(1) All requests for copies of statements of assets and liabilities shall be filed with the Clerk of Court of the Supreme Court, in the case of any Justice; or with the Court Administrator, in the case of any Judge, and *shall state the purpose of the request.*

(2) The independence of the Judiciary is constitutionally as important as the right to information which is subject to the limitations provided by law. Under specific circumstances, the need for the fair and just adjudication of litigations may require a court to be wary of deceptive requests for information which shall otherwise be freely available. *Where the request is directly or indirectly traced to a litigant, lawyer, or interested party in a case pending before the court, or where the court is reasonably certain that a disputed matter will come before it under circumstances from which it may, also reasonably, be assumed that the request is not made in good faith and for a legitimate purpose, but to fish for information and, with the implicit threat of its disclosure, to influence a decision or to warn the court of the unpleasant consequences of an adverse judgment, the request may be denied.*

(3) *Where a decision has just been rendered by a court against the person making the request and the request for information appears to be a "fishing expedition" intended to harass or get back at the Judge, the request may be denied.*

(4) *In the few areas where there is extortion by rebel elements or where the nature of their work exposes judges to assaults against their personal safety, the request shall not only be denied but should be immediately reported to the military.*

(5) The reason for the denial shall be given in all cases.

42. The second and more restrictive is A.M. No. 92-9-851 - RTC¹⁶ wherein the Court authorized the Court Administrator "to act on requests for copies of the assets and liabilities, as well as other papers and documents on file with the 201 Personnel Records of lower court judges and personnel, only upon a court subpoena duly signed by the Presiding Judge, in a pending criminal case against a judge or personnel, and in the case of the Ombudsman, upon the appropriate request personally signed by the Ombudsman, provided that in all instances the request shall conform to the guidelines issued by the Court in the above-mentioned resolution dated May 2, 1989 regarding Jose M. Alejandrino and such document or paper is relevant and material to the case being tried by the Court or under investigation by the Ombudsman."

43. The manner in which these resolutions have been interpreted and applied may be discerned from the way a previous request of PCIJ has been dealt with, as recounted below:

¹⁶ Re: Request for Certified True Copies of the Sworn Statements of Assets, Liabilities, and Net Worth, 22 September 1992.

- On 6 June 2006, PCIJ Reporter Avigail Olarte sent a letter addressed to Supreme Court Clerk of Court Atty. Ma. Luisa Villarama requesting for copies of the SALNs of Justices of the Supreme Court. She cited the purpose therefore, which was that “the data will be used for the PCIJ’s website on Philippine politics and governance.” A copy of the said letter is attached as **Annex “A”**.
- On the same day, she received a response from Atty. Ismael Khan, Jr., then Assistant Court Administrator and Chief of the Public Information Office, enclosing a Media Backgrounder embodying guidelines governing the procedures for the release of the SALs. A copy of the said letter is attached as **Annex “B”**.
- On 2 August, Vinia Datinguino also of PCIJ sent Atty. Khan another letter seeking clarification on whether the request has been denied, and if so, to state the reason for the denial. If, on the other hand, it has not been denied, to kindly inform her of what is lacking in the request. A copy of this clarificatory letter is attached as **Annex “C”**.
- On 7 August, Atty. Khan responded, stating that PCIJ has to “fully comply with the guidelines”; and that the Court finds that the reason stated was “insufficient and hence would like to be apprised of the specific purpose or purposes for which the SALs of the SC Justices will be used.” A copy of this letter is attached as **Annex “D”**.
- On 9 August 2006, Datinguino responded providing a more detailed explanation about PCIJ’s information website, to quote: “i-site.ph is PCIJ’s website on Philippine politics and governance. It is the PCIJ’s contribution to varied efforts from a multiple of sectors seeking accountability and transparency in government. The site is a repository of data that the PCIJ culls from various public documents, including officials’ biodata, statements of election contributions and expenses, Congressional record, official audit reports, official budget documents from the Department of Budget and Management, and statements of assets and liabilities. We have data on officials occupying positions in all branches of government: the Executive, Legislative, and Judiciary”. A copy of this letter is attached as **Annex “E”**.
- The last letter was not officially responded to by Atty. Khan.

44. As can be gleaned from the wording of the two resolutions and the manner in which they have been interpreted and applied, whenever there is a request for SALNs of members of the judiciary, it is the burden of the requester to establish the legitimacy of the purpose of his request. This burden results from the requirement that the requester state the purpose of the request coupled with the wide latitude of discretion of the Court or its functionaries to pass upon the legitimacy of said purpose, as can be seen in PCIJ’s experience. The effect is to nullify the presumption in favor of disclosure to or access by the public. Add to this the fact that, based on publicly available information, no one has, as of yet, successfully requested from the Court the SALNs of Justices of the

Supreme Court since the Constitution and RA 6713 took effect in 1987 and 1989 respectively, such that one might even be led to believe that, when it comes to said SALNs, the presumption is actually *against* disclosure or access.

45. As an observation, the requirement that the requester state the purpose of the request is not a practical one since a requester can simply invent an ostensibly legitimate purpose which, realistically speaking, cannot be debunked without an evidentiary hearing. Additionally, the wide latitude of discretion of the Court or its functionaries to pass upon the legitimacy of the purpose is exactly the reason why there is a presumption in favor of disclosure or access because, as held in *Legaspi*, to hold otherwise “will serve to dilute the constitutional right” since “the government is in an advantageous position to marshal[l] and interpret arguments against release.”

46. In comparison, in the United States, financial disclosure reports of Justices and judges are routinely made available by request. Private organizations are also allowed to post such reports on their website. One such organization is Judicial Watch, Inc., which makes available to the public a searchable archive of financial disclosure reports for all Supreme Court justices and appellate court and district court judges.¹⁷ Attached as **Annex “F”** hereof, for example, is the financial disclosure report of US Chief Justice John G. Roberts, Jr. for the year 2007 downloaded from the said website.¹⁸

47. Moreover, in the United States, the requester is not required to state the purpose of the request, it being sufficient that he states that *he is cognizant of the prohibitions* on the obtaining and use of the financial disclosure. To quote Section 105(b)(2) of the Ethics in Government Act of 1978:

Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) *that such person is aware of the prohibitions on the obtaining or use of the report.*

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

48. This, we believe, represents a more practical and Constitutionally compatible approach than requiring requesters to state their purpose and reserving to the Court or its functionaries a wide

¹⁷ <http://www.judicialwatch.org/judicial-financial-disclosure>.

¹⁸ At http://www.judicialwatch.org/jfd/Roberts_Jr_John_G/2007.pdf.

latitude of discretion to determine the legitimacy of said purpose. If it be established later on that the SALNs were obtained and/or used in violation of law, the applicable penalties can then be imposed on the requester, as is the practice in the United States.

Conclusion

49. One of the Framers of the Constitution, Blas Ople, during the deliberations on the SALN, stated that “in a society, it is understood that we have to lead by example and those who have this burden more than the others are the holders of the greatest power.” Like him, we submit that the Supreme Court has not only a legal but also a moral duty to lead by example, to set the bar high and be that shining beacon to illuminate the path for the other branches of government to follow.

Prayer

WHEREFORE, premises considered, it is respectfully prayed that:

1. The request for copies of the 2008 SALNs of Justices and judges be granted;
2. The Honorable Supreme Court actively disclose, without need of request, the SALNs of its Justices through reasonable means;
3. The PCIJ be allowed to participate in further proceedings regarding this matter; and
4. The foregoing Memorandum be made part of the records of the matter.

Respectfully submitted.

Quezon City for Manila, 23 October 2009.

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