

JOSEPH VICTOR G. EJERCITO, PETITIONER, VS. SANDIGANBAYAN (SPECIAL DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NOS. 157294-95. November 30, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition for certiorari under Rule 65 assails the Sandiganbayan Resolutions dated February 7 and 12, 2003 denying petitioner Joseph Victor G. Ejercito's Motions to Quash Subpoenas Duces Tecum/Ad Testificandum, and Resolution dated March 11, 2003 denying his Motion for Reconsideration of the first two resolutions.

The three resolutions were issued in Criminal Case No. 26558, "People of the Philippines v. Joseph Ejercito Estrada, et al.," for plunder, defined and penalized in R.A. 7080, "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER."

In above-stated case of People v. Estrada, et al., the Special Prosecution Panel[1] filed on January 20, 2003 before the Sandiganbayan a Request for Issuance of Subpoena Duces Tecum for the issuance of a subpoena directing the President of Export and Industry Bank (EIB, formerly Urban Bank) or his/her authorized representative to produce the following documents during the hearings scheduled on January 22 and 27, 2003:

I. For Trust Account No. 858;

- Account Opening Documents;

- Trading Order No. 020385 dated January 29, 1999;

- Confirmation Advice TA 858;

- Original/Microfilm copies, including the dorsal side, of the following:

- Bank of Commerce MC # 0256254 in the amount of P2,000,000.00;

- Urban bank Corp. MC # 34181 dated November 8, 1999 in the amount of P10,875,749.43;

- Urban Bank MC # 34182 dated November 8, 1999 in the amount of P42,716,554.22;

- Urban Bank Corp. MC # 37661 dated November 23, 1999 in the amount of P54,161,496.52;

- Trust Agreement dated January 1999:

Trustee: Joseph Victor C. Ejercito

Nominee: URBAN BANK-TRUST DEPARTMENT

Special Private Account No. (SPAN) 858; and

- Ledger of the SPAN # 858.

II. For Savings Account No. 0116-17345-9

SPAN No. 858

- Signature Cards; and
- Statement of Account/Ledger

III. Urban Bank Manager's Check and their corresponding Urban Bank Manager's Check Application Forms, as follows:

- MC # 039975 dated January 18, 2000 in the amount of P70,000,000.00;
- MC # 039976 dated January 18, 2000 in the amount of P2,000,000.00;
- MC # 039977 dated January 18, 2000 in the amount of P2,000,000.00;
- MC # 039978 dated January 18, 2000 in the amount of P1,000,000.00;

The Special Prosecution Panel also filed on January 20, 2003, a Request for Issuance of Subpoena Duces Tecum/Ad Testificandum directed to the authorized representative of Equitable-PCI Bank to produce statements of account pertaining to certain accounts in the name of "Jose Velarde" and to testify thereon.

The Sandiganbayan granted both requests by Resolution of January 21, 2003 and subpoenas were accordingly issued.

The Special Prosecution Panel filed still another Request for Issuance of Subpoena Duces Tecum/Ad Testificandum dated January 23, 2003 for the President of EIB or his/her authorized representative to produce the same documents subject of the Subpoena Duces Tecum dated January 21, 2003 and to testify thereon on the hearings scheduled on January 27 and 29, 2003 and subsequent dates until completion of the testimony. The request was likewise granted by the Sandiganbayan. A Subpoena Duces Tecum/Ad Testificandum was accordingly issued on January 24, 2003.

Petitioner, claiming to have learned from the media that the Special Prosecution Panel had requested for the issuance of subpoenas for the examination of bank accounts belonging to him, attended the hearing of the case on January 27, 2003 and filed before the Sandiganbayan a letter of even date expressing his concerns as follows, quoted verbatim:

Your Honors:

It is with much respect that I write this court relative to the concern of subpoenaing the undersigned's bank account which I have learned through the media.

I am sure the prosecution is aware of our banking secrecy laws everyone supposed to observe. But, instead of prosecuting those who may have breached such laws, it seems it is even going to use supposed evidence which I have reason to believe could only have been illegally obtained.

The prosecution was not content with a general request. It even lists and identifies specific documents meaning someone else in the bank illegally released confidential information.

If this can be done to me, it can happen to anyone. Not that anything can still shock our family. Nor that I have anything to hide. Your Honors.

But, I am not a lawyer and need time to consult one on a situation that affects every bank depositor in the country and should interest the bank itself, the Bangko Sentral ng Pilipinas, and maybe the Ombudsman himself, who may want to investigate, not exploit, the serious breach that can only harm the economy, a

consequence that may have been overlooked. There appears to have been deplorable connivance.

x x x x

I hope and pray, Your Honors, that I will be given time to retain the services of a lawyer to help me protect my rights and those of every banking depositor. But the one I have in mind is out of the country right now.

May I, therefore, ask your Honors, that in the meantime, the issuance of the subpoena be held in abeyance for at least ten (10) days to enable me to take appropriate legal steps in connection with the prosecution's request for the issuance of subpoena concerning my accounts. (Emphasis supplied)

From the present petition, it is gathered that the "accounts" referred to by petitioner in his above-quoted letter are Trust Account No. 858 and Savings Account No. 0116-17345-9.[2]

In open court, the Special Division of the Sandiganbayan, through Associate Justice Edilberto Sandoval, advised petitioner that his remedy was to file a motion to quash, for which he was given up to 12:00 noon the following day, January 28, 2003.

Petitioner, unassisted by counsel, thus filed on January 28, 2003 a Motion to Quash Subpoena Duces Tecum/Ad Testificandum praying that the subpoenas previously issued to the President of the EIB dated January 21 and January 24, 2003 be quashed.[3]

In his Motion to Quash, petitioner claimed that his bank accounts are covered by R.A. No. 1405 (The Secrecy of Bank Deposits Law) and do not fall under any of the exceptions stated therein. He further claimed that the specific identification of documents in the questioned subpoenas, including details on dates and amounts, could only have been made possible by an earlier illegal disclosure thereof by the EIB and the Philippine Deposit Insurance Corporation (PDIC) in its capacity as receiver of the then Urban Bank.

The disclosure being illegal, petitioner concluded, the prosecution in the case may not be allowed to make use of the information.

Before the Motion to Quash was resolved by the Sandiganbayan, the prosecution filed another Request for the Issuance of Subpoena Duces Tecum/Ad Testificandum dated January 31, 2003, again to direct the President of the EIB to produce, on the hearings scheduled on February 3 and 5, 2003, the same documents subject of the January 21 and 24, 2003 subpoenas with the exception of the Bank of Commerce MC #0256254 in the amount of P2,000,000 as Bank of Commerce MC #0256256 in the amount of P200,000,000 was instead requested. Moreover, the request covered the following additional documents:

IV. For Savings Account No. 1701-00646-1:

1. Account Opening Forms;
2. Specimen Signature Card/s; and
3. Statements of Account.

The prosecution also filed a Request for the Issuance of Subpoena Duces Tecum/Ad Testificandum bearing the same date, January 31, 2003, directed to Aurora C. Baldoz, Vice President-CR-II of the PDIC for her to produce the following documents on the scheduled hearings on February 3 and 5, 2003:

- Letter of authority dated November 23, 1999 re: SPAN [Special Private Account Number] 858;
- Letter of authority dated January 29, 2000 re: SPAN 858;
- Letter of authority dated April 24, 2000 re: SPAN 858;
- Urban Bank check no. 052092 dated April 24, 2000 for the amount of P36, 572, 315.43;

- Urban Bank check no. 052093 dated April 24, 2000 for the amount of P107,191,780.85; and
- Signature Card Savings Account No. 0116-17345-9. (Underscoring supplied)

The subpoenas prayed for in both requests were issued by the Sandiganbayan on January 31, 2003.

On February 7, 2003, petitioner, this time assisted by counsel, filed an Urgent Motion to Quash Subpoenae Duces Tecum/Ad Testificandum praying that the subpoena dated January 31, 2003 directed to Aurora Baldoz be quashed for the same reasons which he cited in the Motion to Quash[4] he had earlier filed.

On the same day, February 7, 2003, the Sandiganbayan issued a Resolution denying petitioner's Motion to Quash Subpoenae Duces Tecum/Ad Testificandum dated January 28, 2003.

Subsequently or on February 12, 2003, the Sandiganbayan issued a Resolution denying petitioner's Urgent Motion to Quash Subpoena Duces Tecum/Ad Testificandum dated February 7, 2003.

Petitioner's Motion for Reconsideration dated February 24, 2003 seeking a reconsideration of the Resolutions of February 7 and 12, 2003 having been denied by Resolution of March 11, 2003, petitioner filed the present petition.

Raised as issues are:

- Whether petitioner's Trust Account No. 858 is covered by the term "deposit" as used in R.A. 1405;
- Whether petitioner's Trust Account No. 858 and Savings Account No. 0116-17345-9 are excepted from the protection of R.A. 1405; and
- Whether the "extremely-detailed" information contained in the Special Prosecution Panel's requests for subpoena was obtained through a prior illegal disclosure of petitioner's bank accounts, in violation of the "fruit of the poisonous tree" doctrine.

Respondent People posits that Trust Account No. 858[5] may be inquired into, not merely because it falls under the exceptions to the coverage of R.A. 1405, but because it is not even contemplated therein. For, to respondent People, the law applies only to "deposits" which strictly means the money delivered to the bank by which a creditor-debtor relationship is created between the depositor and the bank.

The contention that trust accounts are not covered by the term "deposits," as used in R.A. 1405, by the mere fact that they do not entail a creditor-debtor relationship between the trustor and the bank, does not lie. An examination of the law shows that the term "deposits" used therein is to be understood broadly and not limited only to accounts which give rise to a creditor-debtor relationship between the depositor and the bank.

The policy behind the law is laid down in Section 1:

SECTION 1. It is hereby declared to be the policy of the Government to give encouragement to the 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. (Underscoring supplied)

If the money deposited under an account may be used by banks for authorized loans to third persons, then such account, regardless of whether it creates a creditor-debtor relationship between the depositor and the bank, falls under the category of accounts which the law precisely seeks to protect for the purpose of boosting the economic development of the country.

Trust Account No. 858 is, without doubt, one such account. The Trust Agreement between petitioner and Urban

Bank provides that the trust account covers "deposit, placement or investment of funds" by Urban Bank for and in behalf of petitioner.[6] The money deposited under Trust Account No. 858, was, therefore, intended not merely to remain with the bank but to be invested by it elsewhere. To hold that this type of account is not protected by R.A. 1405 would encourage private hoarding of funds that could otherwise be invested by banks in other ventures, contrary to the policy behind the law.

Section 2 of the same law in fact even more clearly shows that the term "deposits" was intended to be understood broadly:

SECTION 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. (Emphasis and underscoring supplied)

The phrase "of whatever nature" proscribes any restrictive interpretation of "deposits." Moreover, it is clear from the immediately quoted provision that, generally, the law applies not only to money which is deposited but also to those which are invested. This further shows that the law was not intended to apply only to "deposits" in the strict sense of the word. Otherwise, there would have been no need to add the phrase "or invested."

Clearly, therefore, R.A. 1405 is broad enough to cover Trust Account No. 858.

The protection afforded by the law is, however, not absolute, there being recognized exceptions thereto, as above-quoted Section 2 provides. In the present case, two exceptions apply, to wit: (1) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials, and (2) the money deposited or invested is the subject matter of the litigation.

Petitioner contends that since plunder is neither bribery nor dereliction of duty, his accounts are not excepted from the protection of R.A. 1405. *Philippine National Bank v. Gancayco*[7] holds otherwise:

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 policy as to one cannot be different from the policy as to the other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.

Undoubtedly, cases for plunder involve unexplained wealth. Section 2 of R.A. No. 7080 states so.

SECTION 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof, in the aggregate amount or total value of at least Seventy-five million pesos (P75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State. (Emphasis and underscoring supplied)

An examination of the "overt or criminal acts as described in Section 1(d)" of R.A. No. 7080 would make the similarity between plunder and bribery even more pronounced since bribery is essentially included among these criminal acts. Thus Section 1(d) states:

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and or business associates by any combination or series of the following means or similar schemes.

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines. (Emphasis supplied)

Indeed, all the above-enumerated overt acts are similar to bribery such that, in each case, it may be said that "no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential." [8]

The crime of bribery and the overt acts constitutive of plunder are crimes committed by public officers, and in either case the noble idea that "a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny" applies with equal force.

Plunder being thus analogous to bribery, the exception to R.A. 1405 applicable in cases of bribery must also apply to cases of plunder.

Respecting petitioner's claim that the money in his bank accounts is not the "subject matter of the litigation," the meaning of the phrase "subject matter of the litigation" as used in R.A. 1405 is explained in *Union Bank of the Philippines v. Court of Appeals*, [9] thus:

Petitioner contends that the Court of Appeals confuses the "cause of action" with the "subject of the action". In *Yusingco v. Ong Hing Lian*, petitioner points out, this Court distinguished the two concepts.

x x x "The cause of action is the legal wrong threatened or committed, while the object of the action is to prevent or redress the wrong by obtaining some legal relief; but the subject of the action is neither of these since it is not the wrong or the relief demanded, the subject of the action is the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property or the contract and its subject matter, or the thing in dispute."

The argument is well-taken. We note with approval the difference between the 'subject of the action' from the 'cause of action.' We also find petitioner's definition of the phrase 'subject matter of the action' is consistent with the term 'subject matter of the litigation', as the latter is used in the Bank Deposits Secrecy Act.

In *Mellon Bank, N.A. v. Magsino*, where the petitioner bank inadvertently caused the transfer of the amount of US\$1,000,000.00 instead of only US\$1,000.00, the Court sanctioned the examination of the bank accounts where part of the money was subsequently caused to be deposited:

'x x x Section 2 of [Republic Act No. 1405] allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. Inasmuch as Civil Case No. 26899 is aimed at recovering the amount converted by the Javiers for their own benefit, necessarily, an inquiry into the whereabouts of the illegally acquired amount extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition.'

Clearly, *Mellon Bank* involved a case where the money deposited was the subject matter of the litigation since the money deposited was the very thing in dispute. x x x" (Emphasis and underscoring supplied)

The plunder case now pending with the Sandiganbayan necessarily involves an inquiry into the whereabouts of the amount purportedly acquired illegally by former President Joseph Estrada.

In light then of this Court's pronouncement in *Union Bank*, the subject matter of the litigation cannot be limited to bank accounts under the name of President Estrada alone, but must include those accounts to which the money purportedly acquired illegally or a portion thereof was alleged to have been transferred. Trust Account No. 858 and Savings Account No. 0116-17345-9 in the name of petitioner fall under this description and must thus be part of the subject matter of the litigation.

In a further attempt to show that the subpoenas issued by the Sandiganbayan are invalid and may not be enforced, petitioner contends, as earlier stated, that the information found therein, given their "extremely detailed" character, could only have been obtained by the Special Prosecution Panel through an illegal disclosure by the bank officials concerned. Petitioner thus claims that, following the "fruit of the poisonous tree" doctrine, the subpoenas must be quashed.

Petitioner further contends that even if, as claimed by respondent People, the "extremely-detailed" information was obtained by the Ombudsman from the bank officials concerned during a previous investigation of the charges against President Estrada, such inquiry into his bank accounts would itself be illegal.

Petitioner relies on *Marquez v. Desierto*[10] where the Court held:

We rule that before 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. (Underscoring supplied)

As no plunder case against then President Estrada had yet been filed before a court of competent jurisdiction at the time the Ombudsman conducted an investigation, petitioner concludes that the information about his bank accounts were acquired illegally, hence, it may not be lawfully used to facilitate a subsequent inquiry into the same bank accounts.

Petitioner's attempt to make the exclusionary rule applicable to the instant case fails. R.A. 1405, it bears noting, nowhere provides that an unlawful examination of bank accounts shall render the evidence obtained therefrom inadmissible in evidence. Section 5 of R.A. 1405 only states that "[a]ny 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."

The case of *U.S. v. Frazin*,^[11] involving the Right to Financial Privacy Act of 1978 (RFPA) of the United States, is instructive.

Because the statute, when properly construed, excludes a suppression remedy, it would not be appropriate for us to provide one in the exercise of our supervisory powers over the administration of justice. Where Congress has both established a right and provided exclusive remedies for its violation, we would "encroach upon the prerogatives" of Congress were we to authorize a remedy not provided for by statute. *United States v. Chanen*, 549 F.2d 1306, 1313 (9th Cir.), cert. denied, 434 U.S. 825, 98 S.Ct. 72, 54 L.Ed.2d 83 (1977).

The same principle was reiterated in *U.S. v. Thompson*:^[12]

x x x When Congress specifically designates a remedy for one of its acts, courts generally presume that it engaged in the necessary balancing of interests in determining what the appropriate penalty should be. See *Michaelian*, 803 F.2d at 1049 (citing cases); *Frazin*, 780 F.2d at 1466. Absent a specific reference to an exclusionary rule, it is not appropriate for the courts to read such a provision into the act.

Even assuming *arguendo*, however, that the exclusionary rule applies in principle to cases involving R.A. 1405, the Court finds no reason to apply the same in this particular case.

Clearly, the "fruit of the poisonous tree" doctrine^[13] presupposes a violation of law. If there was no violation of R.A. 1405 in the instant case, then there would be no "poisonous tree" to begin with, and, thus, no reason to apply the doctrine.

How the Ombudsman conducted his inquiry into the bank accounts of petitioner is recounted by respondent People of the Philippines, viz:

x x x [A]s early as February 8, 2001, long before the issuance of the *Marquez* ruling, the Office of the Ombudsman, acting under the powers granted to it by the Constitution and R.A. No. 6770, and acting on information obtained from various sources, including impeachment (of then Pres. Joseph Estrada) related reports, articles and investigative journals, issued a Subpoena Duces Tecum addressed to Urban Bank. (Attachment "1-b") It should be noted that the description of the documents sought to be produced at that time included that of numbered accounts 727, 737, 747, 757, 777 and 858 and included such names as Jose Velarde, Joseph E. Estrada, Laarni Enriquez, Guia Gomez, Joy Melendrez, Peachy Osorio, Rowena Lopez, Kevin or Kelvin Garcia. The subpoena did not single out account 858.

x x x x

Thus, on February 13, 2001, PDIC, as receiver of Urban Bank, issued a certification as to the availability of bank documents relating to A/C 858 and T/A 858 and the non-availability of bank records as to the other accounts named in the subpoena. (Attachments "2", "2-1" and "2-b")

Based on the certification issued by PDIC, the Office of the Ombudsman on February 16, 2001 again issued a Subpoena Duces Tecum directed to Ms. Corazon dela Paz, as Interim Receiver, directing the production of documents pertinent to account A/C 858 and T/C 858. (Attachment "3")

In compliance with the said subpoena dated February 16, 2001, Ms. Dela Paz, as interim receiver, furnished the Office of the Ombudsman certified copies of documents under cover letter dated February 21, 2001:

- Transaction registers dated 7-02-99, 8-16-99, 9-17-99, 10-18-99, 11-22-99, 1-07-00, 04-03-00 and 04-24-00;
- Report of Unregularized TAFs & TDs for UR COIN A & B Placements of Various Branches as of February 29, 2000 and as of December 16, 1999; and

- Trading Orders Nos. A No. 78102 and A No. 078125.

Trading Order A No. 07125 is filed in two copies – a white copy which showed "set up" information; and a yellow copy which showed "reversal" information. Both copies have been reproduced and are enclosed with this letter.

We are continuing our search for other records and documents pertinent to your request and we will forward to you on Friday, 23 February 2001, such additional records and documents as we might find until then. (Attachment "4")

The Office of the Ombudsman then requested for the manger's checks, detailed in the Subpoena Duces Tecum dated March 7, 2001. (Attachment "5")

PDIC again complied with the said Subpoena Duces Tecum dated March 7, 2001 and provided copies of the manager's checks thus requested under cover letter dated March 16, 2001. (Attachment "6")^[14] (Emphasis in the original)

The Sandiganbayan credited the foregoing account of respondent People.^[15] The Court finds no reason to disturb this finding of fact by the Sandiganbayan.

The Marquez ruling notwithstanding, the above-described examination by the Ombudsman of petitioner's bank accounts, conducted before a case was filed with a court of competent jurisdiction, was lawful.

For the Ombudsman issued the subpoenas bearing on the bank accounts of petitioner about four months before Marquez was promulgated on June 27, 2001.

While judicial interpretations of statutes, such as that made in Marquez with respect to R.A. No. 6770 or the Ombudsman Act of 1989, are deemed part of the statute as of the date it was originally passed, the rule is not absolute.

Columbia Pictures, Inc. v. Court of Appeals^[16] teaches:

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. (Emphasis and underscoring supplied)

When this Court construed the Ombudsman Act of 1989, in light of the Secrecy of Bank Deposits Law in Marquez, that "before an in camera inspection may be allowed there must be a pending case before a court of competent jurisdiction", it was, in fact, reversing an earlier doctrine found in Banco Filipino Savings and Mortgage Bank v. Purisima^[17].

Banco Filipino involved subpoenas duces tecum issued by the Office of the Ombudsman, then known as the Tanodbayan,^[18] in the course of its preliminary investigation of a charge of violation of the Anti-Graft and Corrupt Practices Act.

While the main issue in Banco Filipino was whether R.A. 1405 precluded the Tanodbayan's issuance of subpoena duces tecum of bank records in the name of persons other than the one who was charged, this Court, citing P.D. 1630,^[19] Section 10, the relevant part of which states:

(d) He may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence the Tanodbayan deems relevant to a matter under his inquiry,

held that "The power of the Tanodbayan to issue subpoenae ad testificandum and subpoenae duces tecum at the time in question is not disputed, and at any rate does not admit of doubt." [20]

As the subpoenas subject of Banco Filipino were issued during a preliminary investigation, in effect this Court upheld the power of the Tandobayan under P.D. 1630 to issue subpoenas duces tecum for bank documents prior to the filing of a case before a court of competent jurisdiction.

Marquez, on the other hand, practically reversed this ruling in Banco Filipino despite the fact that the subpoena power of the Ombudsman under R.A. 6770 was essentially the same as that under P.D. 1630. Thus Section 15 of R.A. 6770 empowers the Office of the Ombudsman to

(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;

A comparison of this provision with its counterpart in Sec. 10(d) of P.D. 1630 clearly shows that it is only more explicit in stating that the power of the Ombudsman includes the power to examine and have access to bank accounts and records which power was recognized with respect to the Tanodbayan through Banco Filipino.

The Marquez ruling that there must be a pending case in order for the Ombudsman to validly inspect bank records in camera thus reversed a prevailing doctrine. [21] Hence, it may not be retroactively applied.

The Ombudsman's inquiry into the subject bank accounts prior to the filing of any case before a court of competent jurisdiction was therefore valid at the time it was conducted.

Likewise, the Marquez ruling that "the account holder must be notified to be present during the inspection" may not be applied retroactively to the inquiry of the Ombudsman subject of this case. This ruling is not a judicial interpretation either of R.A. 6770 or R.A. 1405, but a "judge-made" law which, as *People v. Luvendino* [22] instructs, can only be given prospective application:

x x x The doctrine that an uncounselled waiver of the right to counsel is not to be given legal effect was initially a judge-made one and was first announced on 26 April 1983 in *Morales v. Enrile* and reiterated on 20 March 1985 in *People v. Galit*. x x x

While the Morales-Galit doctrine eventually became part of Section 12(1) of the 1987 Constitution, that doctrine affords no comfort to appellant Luvendino for the requirements and restrictions outlined in Morales and Galit have no retroactive effect and do not reach waivers made prior to 26 April 1983 the date of promulgation of Morales. (Emphasis supplied)

In fine, the subpoenas issued by the Ombudsman in this case were legal, hence, invocation of the "fruit of the poisonous tree" doctrine is misplaced.

At all events, even if the challenged subpoenas are quashed, the Ombudsman is not barred from requiring the production of the same documents based solely on information obtained by it from sources independent of its previous inquiry.

In particular, the Ombudsman, even before its inquiry, had already possessed information giving him grounds to believe that (1) there are bank accounts bearing the number "858," (2) that such accounts are in the custody of Urban Bank, and (3) that the same are linked with the bank accounts of former President Joseph Estrada who was then under investigation for plunder.

Only with such prior independent information could it have been possible for the Ombudsman to issue the February 8, 2001 subpoena duces tecum addressed to the President and/or Chief Executive Officer of Urban Bank, which described the documents subject thereof as follows:

(a) bank records and all documents relative thereto pertaining to all bank accounts (Savings, Current, Time Deposit, Trust, Foreign Currency Deposits, etc...) under the account names of Jose Velarde, Joseph E. Estrada, Laarni Enriquez, Guia Gomez, Joy Melendrez, Peach Osorio, Rowena Lopez, Kevin or Kelvin Garcia, 727, 737, 747, 757, 777 and 858. (Emphasis and underscoring supplied)

The information on the existence of Bank Accounts bearing number "858" was, according to respondent People of the Philippines, obtained from various sources including the proceedings during the impeachment of President Estrada, related reports, articles and investigative journals.[23] In the absence of proof to the contrary, this explanation proffered by respondent must be upheld. To presume that the information was obtained in violation of R.A. 1405 would infringe the presumption of regularity in the performance of official functions.

Thus, with the filing of the plunder case against former President Estrada before the Sandiganbayan, the Ombudsman, using the above independent information, may now proceed to conduct the same investigation it earlier conducted, through which it can eventually obtain the same information previously disclosed to it by the PDIC, for it is an inescapable fact that the bank records of petitioner are no longer protected by R.A. 1405 for the reasons already explained above.

Since conducting such an inquiry would, however, only result in the disclosure of the same documents to the Ombudsman, this Court, in avoidance of what would be a time-wasteful and circuitous way of administering justice,[24] upholds the challenged subpoenas.

Respecting petitioner's claim that the Sandiganbayan violated his right to due process as he was neither notified of the requests for the issuance of the subpoenas nor of the grant thereof, suffice it to state that the defects were cured when petitioner ventilated his arguments against the issuance thereof through his earlier quoted letter addressed to the Sandiganbayan and when he filed his motions to quash before the Sandiganbayan.

IN SUM, the Court finds that the Sandiganbayan did not commit grave abuse of discretion in issuing the challenged subpoenas for documents pertaining to petitioner's Trust Account No. 858 and Savings Account No. 0116-17345-9 for the following reasons:

1. These accounts are no longer protected by the Secrecy of Bank Deposits Law, there being two exceptions to the said law applicable in this case, namely: (1) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials, and (2) the money deposited or invested is the subject matter of the litigation. Exception (1) applies since the plunder case pending against former President Estrada is analogous to bribery or dereliction of duty, while exception (2) applies because the money deposited in petitioner's bank accounts is said to form part of the subject matter of the same plunder case.
2. The "fruit of the poisonous tree" principle, which states that once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible, does not apply in this case. In the first place, R.A. 1405 does not provide for the application of this rule. Moreover, there is no basis for applying the same in this case since the primary source for the detailed information regarding petitioner's bank accounts — the investigation previously conducted by the Ombudsman — was lawful.
3. At all events, even if the subpoenas issued by the Sandiganbayan were quashed, the Ombudsman may conduct on its own the same inquiry into the subject bank accounts that it earlier conducted last February-March 2001, there being a plunder case already pending against former President Estrada. To quash the challenged subpoenas would, therefore, be pointless since the Ombudsman may obtain the same documents by another route. Upholding the subpoenas avoids an unnecessary delay in the administration of justice.

WHEREFORE, the petition is DISMISSED. The Sandiganbayan Resolutions dated February 7 and 12, 2003 and March 11, 2003 are upheld.

The Sandiganbayan is hereby directed, consistent with this Court's ruling in *Marquez v. Desierto*, to notify petitioner as to the date the subject bank documents shall be presented in court by the persons subpoenaed.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Austria-Martinez, Corona, Tinga, and Velasco, Jr., JJ., concur.

Ynares-Santiago, Sandoval-Gutierrez, and Garcia, JJ., join the dissenting opinion.

Carpio, J., No part - prior inhibition.

Callejo, Sr., J., Pls. see my concurring opinion.

Azcuna, J., I take no part - my former law office acted as counsel for a party.

Chico-Nazario, J., No part.

[1] Composed of the Ombudsman, the Special Prosecutor, Deputy Special Prosecutor, Assistant Ombudsman, Special Prosecution Officer III, and Special Prosecution Officer II, (Rollo, pp. 492-493).

[2] "Petitioner is the owner of Trust Account No. 858 which was originally opened at Urban Bank but which is now maintained at Export and Industry Bank, which is the purchaser and owner now of the former Urban Bank and Urbancorp Investment, Inc. Petitioner is also the owner of Savings Account No. 0116-17345-9 which was originally opened at Urban Bank but which is now maintained at Export and Industry Bank, which is the purchaser and owner of the former Urban Bank and Urbancorp Investment, Inc. x x x" (Petition, pp. 3-4, rollo, pp. 10-11)

[3] The first paragraph of the motion identifies the subpoenas sought to be quashed as those allegedly issued on January 24, 2003 directed to the representative/s of the Urban Bank (now EIB) and to Ms. Aurora C. Baldoz, Vice-President-CR-II of the Philippine Deposit Insurance Corporation. However, the second motion to quash later filed by petitioner with the assistance of counsel stated that the subpoenas subject of the previous motion to quash were those issued on January 21, 2003, addressed to the President of the EIB and to the President of Equitable-PCI Bank, or their representatives.

Despite the apparent conflict, it may be inferred that the first motion to quash covered the subpoenas directed to the President of the EIB dated January 21, 2003 and January 24, 2003, the January 24 subpoena being a mere reiteration of the January 21 subpoena.

As there is nothing in the records before this Court which show that a subpoena dated January 24, 2003 was ever issued to Ms. Baldoz, the Court will consider petitioner's first Motion to Quash as concerned only with the subpoenas directed to the President of the EIB.

The statement in the second motion to quash that the first motion covered the January 21 subpoenas issued to the President of EIB and to the President of Equitable-PCI Bank may only be an error arising from the fact that a subpoena to each of these officers were granted by the Sandiganbayan through the same Resolution dated January 21, 2003. The petitioner could not have been referring to the subpoena directed to the President of Equitable-PCI Bank since the subject thereof were the Jose Velarde accounts which he has never claimed to be his, even in the present petition.

[4] Rollo, p. 171

[5] Respondent People of the Philippines argue on the premise that Trust Account No. 858 covers Savings

Account No. 0116-17345-9.

[6] Rollo, p. 708.

[7] 122 Phil. 503, 508 (1965).

[8] Philippine National Bank v. Gancayco, *supra* at note 7.

[9] 378 Phil. 1177, 1182-1183 (1999).

[10] 412 Phil. 387, 397 (2001).

[11] 780 F.2d 1461 (1986).

[12] 936 F.2d 1249 (1991).

[13] "According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible." [People v. Alicando, 321 Phil. 656, 690 (1995)].

[14] Rollo, pp. 439- 442.

[15] "As clarified by the prosecution, the documents listed in the request were obtained in February 2001, pursuant to the power conferred on the Ombudsman under Section 15(8) of R.A. 6770, long before the Supreme Court promulgated the Marquez v. Desierto case." (Sandiganbayan Resolution dated February 7, 2003, rollo, p. 72)

[16] G.R. No. 110318, August 28, 1996, 261 SCRA 144, 168.

[17] G.R. No. L-56429. May 28, 1988, 161 SCRA 576.

[18] Section 2 of P.D. 1630 entitled "FURTHER REVISING PRESIDENTIAL DECREE NO. 1487, AS REVISED BY PRESIDENTIAL DECREE NO. 1607, CREATING THE OFFICE OF THE TANODBAYAN" states: "An independent Office of the Ombudsman, to be called the Office of the Tanodbayan, is hereby created. The Chief of said Office of the Tanodbayan shall be called the Tanodbayan who shall have two (2) deputies for Luzon, one for the Visayas and one for Mindanao." (Underscoring supplied)

[19] Vide note 18.

[20] *Supra* at 582.

[21] Vide RAFAEL A. MORALES, THE PHILIPPINE GENERAL BANKING LAW (ANNOTATED), 2[nd] ed. (2004), page 145: "It used to be believed too that the Secrecy of Bank Deposits Law did not apply to the Ombudsman, on account of his authority, under Section 15(8) of the Ombudsman Act of 1989 (Republic Act No. 6770), to 'examine and have access to bank accounts and records.' However, the Supreme Court in Marquez vs. Hon. Aniano A. Desierto, et al., G.R. No. 135882, June 27, 2001, restricted the Ombudsman's power x x x." (Underscoring supplied)

[22] G.R. No. 69971, July 3, 1992, 211 SCRA 36, 49-50, reiterated in Filoteo v. Sandiganbayan, 331 Phil. 531, 573 (1996).

[23] Rollo, p. 439.

[24] Amunategue Vda. de Gentugao v. Court of Appeals (G.R. No. L-30340. June 30, 1976, 71 SCRA 565, 574); vide Ortigas and Co. Ltd. Partnership v. Velasco (G.R. No. 109645, July 25, 1994, 234 SCRA 455, 501).

DISSENTING OPINION

SANDOVAL-GUTIERREZ, J.:

I regret I cannot give my assent to the ponencia of Madame Justice Conchita Carpio Morales. To my mind, no member of a democratic society can honestly argue that there is nothing wrong in an examination of a bank account to the complete ignorance of its holder. This is the kind of conduct referred to in *Rochin v. California*,^[1] as one that "shocks the conscience," "one that is bound to offend hardened sensibilities." This abusive conduct must be stricken if we are to maintain decency, fair play, and fairness in our judicial system. Nothing can destroy a government more quickly than its failure to observe its own laws, its disregard of the character of its own existence. The government should not demean but protect the Bill of Rights, because the highest function of authority is to exalt liberty. Here, petitioner Joseph Victor G. Ejercito's right to privacy has been violated. I cannot, in my conscience, tolerate such violation.

Zones of privacy are recognized and protected by our laws.^[2] Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard this Court accord to these zones arises not only from the conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized men,"^[3] but also from our adherence to the Universal Declaration of Human Rights which mandates that "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks."^[4] For easy reference, a narration of the factual and legal antecedents is imperative.

This petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeks to annul and set aside Sandiganbayan (a) Resolutions, dated February 7^[5] and February 12, 2003,^[6] denying Joseph Victor G. Ejercito's two succeeding motions to quash three (3) subpoenas duces tecum/ad testificandum; and (b) Resolution dated March 11, 2003^[7] denying his motion for reconsideration all issued in Criminal Case No. 26558 for plunder against former President Joseph Ejercito Estrada, et al.

Joseph Victor G. Ejercito (petitioner herein) is the holder of two (2) bank accounts with the Urban Bank and Urbancorp Investment, Inc., now Export and Industry Bank (EIB); one is Trust Account No. 858 and the other is Savings Account No. 0116-17345-9.

On January 26, 2003, petitioner learned from the media that the Special Prosecution Panel in Criminal Case No. 26558,^[8] entitled "People vs. Joseph Ejercito Estrada, et al." for plunder, pending before the Sandiganbayan (respondent herein), had requested the said court to issue subpoenas duces tecum/ad testificandum to the EIB for the production and examination of his two (2) bank accounts.

Alarmed, petitioner attended the hearing of the plunder case set the next day and submitted to respondent Sandiganbayan a letter expressing his deep concern on his bank accounts being the subject of a "subpoena duces tecum/ad testificandum." He also requested that he be given time to retain the services of a lawyer, thus:

"Your Honors:

It is with much respect that I write this court relative to the concern of subpoenaing the undersigned's bank account which I have learned through the media.

I am sure the prosecution is aware of our banking secrecy laws everyone supposed to observe. But, instead of prosecuting those who may have breached such laws, it seems it is even going to use supposed evidence which I have reason to believe could only have been illegally obtained.

The prosecution was not content with a general request. It even lists and identifies specific documents meaning someone else in the bank illegally released confidential information.

If this can be done to me, it can happen to anyone. Not that anything can still shock our family. Nor that I have anything to hide. Your Honors.

But, I am not a lawyer and need time to consult one on a situation that affects every bank depositor in the country and should interest the bank itself, the Bangko Sentral ng Pilipinas, and maybe the Ombudsman himself, who may want to investigate, not exploit, the serious breach that can only harm the economy, a consequence that may have been overlooked. There appears to have been deplorable connivance.

x x x x x

I hope and pray, Your Honors, that I will be given time to retain the services of a lawyer to help me protect my rights and those of every banking depositor. But the one I have in mind is out of the country right now.

May I, therefore, ask your Honors, that in the meantime, the issuance of the subpoena be held in abeyance for at least ten (10) days to enable me to take appropriate legal steps in connection with the prosecution's request for the issuance of subpoena concerning my accounts." [9] (Emphasis supplied)

To petitioner's surprise, respondent Sandiganbayan advised him "to file a motion to quash" not later than 12:00 noon of January 28, 2003, or the following day. It dawned upon petitioner that respondent court had already issued a "subpoena duces tecum/ad testificandum."

Upon verification of the records, petitioner found that the Special Prosecution Panel had filed with respondent Sandiganbayan two (2) requests for the issuance of subpoenae duces tecum/ad testificandum, one dated January 20[10] and the other January 23,[11] 2003 for the EIB President or his authorized representative to appear and testify on certain dates and to bring the original or certified true copies of the following documents:

I. For Trust Account No. 858:

- Account Opening Documents;
- Trading Order No. 020385, dated January 29, 1999;
- Confirmation Advice TA 858;
- Original/Microfilm copies, including the dorsal side of the following:
 - a) Bank of Commerce MC#0256254 in the amount of P2,000,000.00;
 - b) Urban Bank Corp. MC# 34181 dated November 8, 1999 in the amount of P10,875,749.43;
 - c) Urban Bank MC# 34182 dated November 8, 1999 in the amount of P42,716,554.22;
 - d) Urban Bank Corp. MC#37661 dated November 23, 1999 in the amount of P54,161,496.52;
- Trust Agreement dated January 1999;

Trustee: Joseph Victor G. Ejercito

Nominee: URBAN BANK-TRUST DEPARTMENT

Special Private Account No. (SPAN) 858; and

- Ledger of the Span #858

II. For Savings Account No. 0116-17345-9 SPAN # 858

- Signature Cards; and

- Statement of Account/Ledger

III. Urban Bank Manager's Checks and their corresponding Urban Bank Manager's Checks Application Form, as follows:

- MC # 039975 dated January 18, 2000 in the amount of P70,000,000.00;
- MC # 039976 dated January 18, 2000 in the amount of P2,000,000.00;
- MC # 039977 dated January 18, 2000 in the amount of P2,000,000.00; and
- MC# 039978 dated January 18, 2000 in the amount of P1,000,000.00;

Petitioner also came to know that respondent court had granted both requests[12] and issued the corresponding subpoenas duces tecum/ad testificandum dated January 21[13] and 24,[14] 2003.

Immediately, or on January 29, 2003, petitioner filed a motion to quash the two (2) subpoenas.[15]

Meanwhile, on January 31, 2003, the Special Prosecution Panel filed another request for the issuance of a subpoena duces tecum/ad testificandum pertaining to the same documents.[16] On the same day, respondent Sandiganbayan granted the request and issued the corresponding subpoena. Again, petitioner filed a motion to quash.[17]

In both motions to quash, petitioner bewailed the "extremely-detailed" information contained in the Special Prosecution Panel's requests, alleging that a prior illegal disclosure of his bank accounts took place.

During the exchange of pleadings, petitioner learned that there was indeed a prior disclosure of his bank accounts. In fact, as early as February 8, 2001, the Office of the Ombudsman had issued a subpoena duces tecum addressed to the "President or Chief Executive Officer of Urban Bank" requiring him to produce "bank records and all documents relative thereto pertaining to all bank accounts (Savings, Current, Time Deposit, Trust, Foreign Currency Deposits, etc...) under the account names of Jose Velarde, Joseph E. Estrada, Laarni Enriquez, Guia Gomez, Joy Melendrez, Peachy Osorio, Rowena Lopez, Kevin or Kelvin Garcia, 727, 737, 747, 757 and 858." [18]

On February 13, 2001, the Philippine Deposit Insurance Corporation (PDIC), as receiver of Urban Bank, responded to the subpoena and certified the availability of bank documents relating to "T/A 858 and A/C 858" and the non-availability of bank records as to the other accounts, thus:

We certify that from the gathering and research we have conducted to date into the records of the closed Urban Bank under the custody and control of the Philippine Deposit Insurance Corporation (PDIC), as Receiver of said bank, the documents enumerated in the attached list refer to "A/C 858" and "T/A 858."

We further certify that Accounts "A/C 858" and "T/A 858" do not appear in the Registry of Deposits of Urban Bank and therefore said accounts are not part of the deposit liabilities of said bank.[19]

Based on the foregoing certification, the Office of the Ombudsman again issued a subpoena duces tecum dated February 16, 2001 directing the production of documents pertinent to accounts "T/C 858 and A/C 858." [20] In compliance, the PDIC furnished the Office of the Ombudsman certified copies of the following documents:

- Transaction registers dated 7-02-99, 8-16-99, 9-17-99, 10-18-99, 11-22-99, 1-07-00, 01-17-00, 04-03-00 and 04-24-00;
- Report of Unregularized TAF & DTS For UR COIN A & B Placements of Various Branches as of February 29, 2000 and as of December 16, 1999; and

- Trading Orders Nos. A No. 78102 and A No. 078125.

Trading Order A No. 07125 is filed in two copies — a white copy which showed "set up" information; and a yellow copy which showed "reversal" information. Both copies have been reproduced and are enclosed with this letter.[21]

The Office of the Ombudsman, in another subpoena duces tecum[22] dated March 7, 2001, directed the production of Manager's/Cashier's Checks in the following amounts:

- P10,875,749.43 dated November 8, 1999
- P 2,000,000.00 dated January 18, 2000
- P 2,000,000.00 dated January 18, 2000
- P 1,000,000.00 dated January 18, 2000
- P70,000,000.00 dated January 18, 2000[23]

The PDIC complied with the said subpoena. On the basis of the foregoing documents released by the PDIC to the Office of the Ombudsman, the Special Prosecution Panel filed with respondent Sandiganbayan its own requests for the issuance of subpoenae duces tecum/ad testificandum. On February 7, 2003, respondent Sandiganbayan denied petitioner's motion to quash subpoenae duces tecum/ad testificandum dated January 21 and 24, 2003.[24] Thus:

"At the threshold, we state that we are not in accord with the stand of the prosecution that a trust account is not included in the term "deposit of whatever nature." A "bank deposit" is defined as a contractual relationship ensuing from the delivery, by one known as the depositor of money, funds or even things into the possession of the bank, which receives the same upon the agreement to pay, repay or return, upon the order or demand of the depositor, the money, funds, or equivalent amount. This agreement on the part of the bank is usually a tacit one and implied, and it may include an implied promise to pay interest upon the deposit, depending upon the nature of the deposit and the account into which it is placed (10 Am Jur 2d Banks 337, cited in page 121, Ballentine's Law Dictionary, Third Edition). x x x The Court is inclined to adopt the broader or expanded definition of the word "deposit" in R.A. 1405 as to encompass trust accounts consistently with the state policy declared in Section 1 thereof which is "to give encouragement to the people to deposit their money in banking institution 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." In fact, the law itself adverts to "deposit of whatever nature."

x x x x x

The Bank Secrecy Laws which prohibit the disclosure of or inquiry into deposits with any banking institution provides for exceptions as follows:

x x x x x

- Upon order of a competent court in cases of (a) bribery or dereliction of duty or (b) where the money deposited or invested is the subject matter of litigation;

x x x x x

We now agree with the prosecution that the issuance of the subpoena to Export and Industry bank (formerly Urban Bank) and PDIC falls under the exception. The questioned subpoena was issued by this Court in relation to the instant cases against former President Joseph Estrada for Plunder and Illegal Use of Alias. The case for plunder which involves betrayal of public trust, undeniably, is analogous to the cases enumerated by law for the

exception to apply. As expressed by the Supreme Court in the cases of Philippine National Bank v. Gancayco (ibid) and Philippine National Bank v. Dionisio (9 SCRA 10), "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 policy as to one cannot be different as to the other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny." x x x

x x x x x

Further, movant's claim that the subpoena must be quashed in view of the apparent conspiracy between the prosecution panel, officials of Export and Industry Bank, and Ms. Aurora Baldoz of the Philippine Deposit Insurance Corporation as revealed by the fact that the prosecution panel knows the documents which are supposedly very internal to the bank and its clients, deserves scant consideration. Aside from it being not recognized as one of the grounds to quash the subpoena, the mere fact that the request for subpoena specified the documents which are to be brought to court, cannot, by itself proved that there was conspiracy on the part of the prosecution, the officials of Export and Industry Bank as well as of the officials of the PDIC to violate the bank secrecy law. As clarified by the prosecution, the documents listed in the request were obtained in February, 2001, pursuant to the power conferred on the Ombudsman under Section 15 (8) of R.A. 6770, long before the Supreme Court promulgated the Marquez v. Desierto case. Conspicuously, since the investigation was conducted in February, 2001, these cases are already pending, hence, the Marquez ruling will not likewise apply. Besides, as already discussed, we declare that this case falls under the exception of the aforecited law, hence, the premise on which this argument proceeds, does not any more exist.

x x x x x

x x x The allegation that movant's constitutional right to due process was violated by the failure of the prosecution to give notice to him and accused Estrada is devoid of merit. In the case of Adorio v. Bersamin (273 SCRA 217), the Supreme Court ruled that:

'Contrary to petitioner's allegations, there was nothing irregular in the issuance of the subpoenas duces tecum. Requests by a party for the issuance of subpoenas do not require notice to other parties to the action. No violation of due process results by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court.'

On February 12, 2003, respondent Sandiganbayan likewise denied petitioner's motion to quash subpoena duces tecum/ad testificandum dated January 31, 2003.

Petitioner filed a motion for reconsideration but was denied in the Resolution dated March 11, 2003.

Hence, the present petition for certiorari anchored on the following arguments:

- (1) Whether the inquiry by subpoenae into the bank accounts of petitioner falls under the exceptions provided for by R.A. No. 1405; and
- (2) Whether petitioner should have been notified by respondent court, by furnishing him copies of the subpoenae, that his bank accounts are subject of the litigation therein.

Petitioner maintains that the inquiry into his bank accounts does not fall under the exceptions provided by Republic Act No. 1405 (Secrecy of Bank Deposits Act), i.e., "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 litigation." He stresses that plunder is neither bribery nor dereliction of duty and that his bank accounts are not the "subject matter"[25] of the plunder case. In this regard, he contends that the rulings of this Court in Philippine

National Bank v. Gancayco[26] and Banco Filipino Savings and Mortgage Bank v. Purisima[27] are not applicable to the instant case. Finally, he insists that the "extremely-detailed" information in the Special Prosecution Panel's requests for subpoenae duces tecum/ad testificandum shows prior illegal disclosure of his bank accounts, in violation of his constitutional right to due process and privacy.

On the other hand, respondent People contends that petitioner's bank deposits are actually proceeds of a "trust account," hence, subject of inquiry under R.A. No. 1405.

I find the petition impressed with merit.

The case at bar brings to fore R.A. No. 1405 or the Secrecy of Bank Deposits Act. A glimpse at its history provides an adequate backdrop for our ensuing discussion.

On September 9, 1955, the Philippine Legislature enacted R.A. No. 1405. Its rationale is to discourage private hoarding and encourage people to deposit money in banks to be utilized in authorized loans. It happened that after World War II, capital and credit facilities for agricultural and industrial development in the country were lacking. Rehabilitation of the banking system became a major government thrust. However, private hoarding of money was rampant because people feared government inquiry into their bank deposits and bond investments for tax collection purposes. Thus, even if the members of Congress at that time recognized the possible danger of R.A. No. 1405, such as providing a climate conducive to tax evasion, still, they passed the law with the belief that the benefits accruing to the economy with the influx of deposits and bond investments would counterbalance immeasurably the losses of the Government from such tax evasion.[28] Section 2, the core of R.A. No. 1405, then reads:

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.

In 1981, Former President Ferdinand E. Marcos issued Presidential Decree (P.D.) No. 1792 to provide for additional exceptions to the "absolutely confidential nature" of bank deposits. These additional exceptions are: (1) when the examination is made in the course of a special or general examination of a bank; or (2) when the examination is made by an independent auditor hired by the bank to conduct its regular audit. Section 2 of R.A. No. 1405, as amended, thus reads:

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, when the examination is made in the course of a special or general examination of a bank and 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, or when the examination is 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, or upon written permission of the depositor, or in case 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 litigation. (Emphasis supplied)

The foregoing amendment was premised on the realization that the old provision adversely limited the examining authority of the Central Bank. Allegedly, such limitation was contrary to the effective supervision of banks and endangered the safety of deposits.

However, in 1992, P.D. No. 1792 was expressly repealed by Republic Act (R.A.) No. 7653, otherwise known as the New Central Bank Act.[29] Aside from encouraging domestic savings, R.A. No. 7653 sought to uphold the right of citizens to privacy. Also, the then members of Congress were of the consensus that relaxed disclosure rules are not conducive to healthy competition among banks and other financial institutions.[30] Thus, we go back to the original provision of Section 2 of R.A. No. 1405 allowing deposits to be "examined, inquired or looked into" under the following exceptions: (1) upon written permission of the depositor; (2) in cases of impeachment; (3) upon order of a competent court in cases of bribery or dereliction of duty of public officials; or (4) in cases where the money deposited or invested is the subject matter of the litigation.[31]

I shall now resolve both issues.

Inquiry Falls Under the Exceptions
to the Confidentiality Rule and, therefore,
may be Inquired into by Respondent Sandiganbayan.

Petitioner contends that plunder is neither bribery nor dereliction of duty, hence, the inquiry on his bank accounts cannot be considered an exception under R.A. No. 1405.

The argument is utterly without merit.

In the 1965 *Philippine National Bank v. Gancayco*[32] case, this Court held for the first time that the exception "upon order of a competent court in cases of bribery or dereliction of duty of public officials" is not exclusive, and that analogous cases may be considered as falling within the same exception. There, "cases of unexplained wealth" were considered analogous to "cases of bribery or dereliction of duty." The Court's instructive pronouncement is quoted hereunder:

"With regard to the claim that disclosure would be contrary to the policy making bank deposits confidential, it is enough to point out that while section 2 of Republic Act 1405 declares bank deposits to be "absolutely confidential," it nevertheless allows such disclosure in the following instances: (1) Upon written permission of the depositor; (2) In cases of impeachment; (3) Upon order of a competent court in cases of bribery or dereliction of duty of public officials; (4) In cases where the money deposited is the subject matter of the litigation. 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 policy as to one cannot be different from the policy as to the other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.

Twenty-three (23) years thereafter, in 1988, the Court echoed the same principle in the *Banco Filipino Savings and Mortgage Bank v. Purisima*.^[33] Incidentally, both cases involve Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.

Today, this Court is faced with this important query — is plunder analogous to bribery, dereliction of duty or cases of unexplained wealth? I need not indulge in a lengthy disquisition to show that plunder belongs to the same genre of cases. Under Republic Act No. 7080, An Act Penalizing the Crime of Plunder, this crime is committed by a public officer who, by himself or in connivance with others, amasses, accumulates or acquires ill-gotten wealth, the aggregate amount or total value of which is at least Fifty Million Pesos (P50,000,000.00), through a combination or series of overt or criminal acts. The essence of plunder lies in the phrase "combination or series of

overt or criminal acts." Bribery and violations of R.A. No. 3019 are only some of the criminal acts that comprise the more serious crime of plunder. In other words, these are some of the predicate crimes of plunder.[34] All the criminal acts are enumerated hereunder:

- (1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- (2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks, or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
- (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivision, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;
- (4) By obtaining, receiving or accepting directly, or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- (5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular person or special interests; or
- (6) By taking undue advantage of official position, authority, relationship, connection, or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

A reading of the provisions of the Revised Penal Code concerning bribery[35] and dereliction of duty,[36] as well as corrupt practices under R.A. 3019, readily shows the striking resemblance between them and the predicate crimes of plunder. Paragraph 2 actually constitutes indirect bribery while paragraphs 4 and 5 constitute corrupt practices under R.A. No. 3019.[37] Logically, if the criminal acts that make up the crime of plunder are categorized as exceptions to the confidentiality rule, with more reason that the more serious crime of plunder should be considered as falling within the same exception. All involve dishonesty and lack of integrity in public service. There is no reason why plunder should be treated differently.

Petitioner now avers that this Court's rulings in *Philippine National Bank* and *Banco Filipino* do not apply to the present case because the subpoenae duces tecum/ad testificandum in said cases were issued prior to the amendment of Section 8, R.A. No. 3019. He stresses that under the old provision, the properties that may be considered, when a public official's acquisition of properties through legitimate means cannot be satisfactory shown, are only those of his "spouse and unmarried children." [38] However, under the new provision, the phrase "spouse and unmarried children" was changed to "spouse and dependents." [39] Thus, he contends that while he is a "son" of the accused in the plunder case, he is not his "dependent." [40] Petitioner's argument lacks merit.

The amendment of Section 8 could not have the effect of limiting the government's inquiry only to the properties of the "spouse and dependents" of a public official. This is in light of this Court's broad pronouncement in *Banco Filipino* that the inquiry extends to "any other persons," and that "restricting 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" and "an absurdity that we cannot ascribe to our lawmakers." Thus:

The inquiry into legally acquired property — or property NOT "legitimately acquired" — extends to cases where such property is concealed by being held by or recorded in the name of other persons. This proposition is made clear by R.A. No. 3019[41] which quite categorically states that the term, legitimately acquired property of a public office or employee shall not include x x x property unlawfully acquired by the respondent, 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 persons.

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.

Undoubtedly, the policy enunciated is to prevent a public official from evading prosecution or investigation by allowing government inquiry even to properties in the name of his "spouse, ascendants, descendants, relatives or any other persons." The Court's pronouncement renders insignificant the personal circumstance of the public official's child, i.e. whether he is a dependent or independent, married or unmarried. This is entirely logical. Section 8 itself starts with the statement: "If in accord 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." Likewise, Republic Act No. 1379,[42] excludes the following properties from the definition of "other legitimately acquired property:"

"1. Property unlawfully acquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by, the respondent's spouse, ascendants, descendants, relatives or any other person.

3. Property unlawfully acquired by the respondent, but transferred by him to another person or persons on or after the effectivity of this Act."

How can the government establish the nexus between a public official and his property in the name of other persons if this Court will limit the inquiry only to his "spouse and dependents"? Indeed, there is truth in respondent People's statement that "the extension of inquiry into property held by, or in the name of another persons other than the public official, is sustained by a recognized legislative and public policy adhered to by the courts."

Accordingly, the fact that petitioner is not an accused in the plunder case does not insulate his bank accounts from inquiry. Such inquiry is justified by the fact that the Special Prosecution Panel is establishing a nexus between his bank accounts and their alleged owner, Former President Estrada, an accused in the plunder case. Furthermore, as pointed out by respondent Sandiganbayan, there is nothing in the exception "upon order or a competent court in cases of bribery or dereliction of duty of public officials" "which would suggest that in order for the exception to apply, the owner of the deposit or of the account must be an accused in the case where the information relative to the account is sought to be adduced."

Petitioner also contends that the money deposited in his bank accounts cannot be considered the "subject matter" of the plunder case.

I am not persuaded.

The "subject matter of litigation" as used in R.A. No. 1405 is expounded in *Union Bank of the Philippines v. Court of Appeals*,[43] where the Court held:

"Union Bank is now before this Court insisting that the money deposited in Account No. 0111-01854-8 is the subject matter of the litigation. Petitioner cites the case of *Mathay vs. Consolidated Bank and Trust Company*, where we defined "subject matter" of the action," thus: 'By the phrase 'subject matter of the action' is meant 'the physical facts, the things real or personal, the money, lands, chattels, and the like, in relation to which the suit

is prosecuted, and not the delict or wrong committed by the defendant.'

Petitioner contends that the Court of Appeals confuses the 'cause of action' with the 'subject of the action.' In *Yusingco v. Ong Hing Lian*, petitioner points out, this Court distinguished the two concepts.

x x x "The cause of action is the legal wrong threatened or committed, while the object of the action is to prevent or redress the wrong by obtaining some legal relief; but the subject of the action is neither of these since it is not the wrong or the relief demanded, the subject of the action is the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute."

The argument is well-taken. We note with approval the difference between the 'subject of the action' from the 'cause of action.' We also find petitioner's definition of the phrase 'subject matter of the action' is consistent with the term 'subject matter of the litigation,' as the latter is used in the Bank Deposits Secrecy Act.

In *Mellon Bank, N.A. v. Magsino*, where the petitioner bank inadvertently caused the transfer of the amount of US\$1,000,000.00 instead of only US\$1,000.00, the Court sanctioned the examination of the bank accounts where part of the money was subsequently caused to be deposited:

'x x x Section 2 of [Republic Act No. 1405] allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. Inasmuch as Civil Case No. 26899 is aimed at recovering the amount converted by the Javiers for their own benefit, necessarily, an inquiry into the whereabouts of the illegally acquired amount extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition.'

Clearly, *Mellon Bank* involved a case where the money deposited was the subject matter of the litigation since the money so deposited was the very thing in dispute."

There is no denying that the subject matter of a plunder case is the ill-gotten wealth accumulated, amassed or acquired by a public officer either by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, the aggregate or total value of which is at least P50,000,000.00.[44] Since the money deposited in petitioner's bank accounts is being proven to be a portion of former President Estrada's ill-gotten wealth, it follows that it is the "thing or matter with respect to which the crime of plunder has arisen." Without the ill-gotten wealth, there can be no plunder. Correspondingly, R.A. No. 7080 penalizing plunder mandates that courts shall declare any and all ill-gotten wealth forfeited in favor of the State.[45] Government recovery of the ill-gotten wealth being a consequence of plunder, necessarily an inquiry into the whereabouts of the ill-gotten wealth extends to properties being held or recorded in the name of persons other than the one responsible for the crime of plunder.

"Extremely-Detailed" Information contained
in the Special Prosecution Panel's Requests for
Subpoena Duces Tecum/Ad Testificandum - Violative of
Petitioner's Right to Due Process and Privacy

Petitioner also asserts that the "extremely-detailed" information in the Special Prosecution Panel's requests shows prior illegal disclosure of his bank accounts.

I agree.

In *Grisworld v. Connecticut*,[46] the United States Supreme Court announced for the first time that the right to privacy is an independent constitutional right; and that: "Specific guarantees in the Bill of Rights have penumbras, formed by emanation from those guarantees that help give them life and substance. Various guarantees create

zones of privacy." Our Bill of Rights, enshrined in Article III of the Constitution, provides at least two guarantees that explicitly create zones of privacy. They highlight a person's "right to be let alone" or the "right to determine what, how much, to whom and when information about himself shall be disclosed." [47] Section 2 guarantees "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose." Section 3 renders inviolable the "privacy of communication and correspondence" and further cautions that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

These zones of privacy are also recognized and protected in our laws, [48] such as civil and criminal laws. Article 26 of the Civil Code mandates that "every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts acts such as "prying into the privacy of another's residence; and meddling with or disturbing the private life or family relations of another." Article 32 states that "any public officer or employee, or any private individual, who directly obstructs, defeats, violates or in any manner impedes or impairs x x x the right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures; x x x the privacy of communication and correspondence" shall be liable for damages. On the other hand, Article 209, [49] Articles 290-292, [50] and Articles 280-281 [51] of the Revised Penal Code treat as crimes (a) revelation of secrets by an attorney-at-law or solicitor, (b) discovery and revelation of industrial secrets, and (c) trespass to dwelling, respectively.

Aside from the foregoing, invasion of privacy is considered an offense in special laws such as the Anti-Wiretapping Law, [52] the Intellectual Property Code of the Philippines [53] and, of course, R.A. No. 1405, the Secrecy of Bank Deposits Act.

The myriad of laws enumerated only show that there are certain areas in a person's life which even if accessible to the public, may be constitutionally and legally protected as "private."

Now, in evaluating a claim for violation of the right to privacy, a court must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion. [54] Applying these to the case at bar, the important inquiries are: first, did petitioner exhibit a reasonable expectation of privacy over his bank accounts?; and second, did the government violate such expectation?

The answers to both are in the affirmative.

It cannot be gainsaid that the customer of a bank expects that the documents which he transmits to the bank in the course of his business operations, will remain private, and that such an expectation is reasonable. [55] Financial transactions can reveal much about a person's affairs, activities, beliefs, habits and associations. Indeed, the totality of bank records provides a virtual current biography. [56] Checks, for instance, in a sense, define a person. By examining them, the agents get to know his doctors, lawyers, creditors, political allies, social connections, religious affiliations, educational interests, the papers and magazines he reads, and so on ad infinitum. [57] In other words, one's bank account mirrors not only his finances, but also his debts, his way of life, his family and his civic commitment. Such reality places a customer's bank account within the "expectations of privacy" category. In the Philippines, the expectation is heightened by the enactment of R.A. No. 1405 which mandates that all deposits of whatever nature are considered as of an "absolutely confidential nature" and "may not be examined, inquired or looked into by any person" except under the instances therein.

Admittedly, a bank customer knowingly and voluntarily divulges his financial affairs with the bank, but such is immaterial. The fact that one has disclosed private papers to the bank within the context of confidential customer-bank relationship, does not mean that one has waived all right to the privacy of the papers. Like the user

of the pay phone in *Katz v. United States*,^[58] who, having paid the toll, was entitled to "assume that the words he utters into the mouthpiece will not be broadcast to the world," so the customer of a bank, having written or deposited a check, has a reasonable expectation that his check will be examined for bank purposes only. Practically speaking, a customer's disclosure of his financial affairs is not entirely volitional, since it is impossible to participate in the economic life of contemporary society without maintaining a bank account.^[59] Consequently, the customer's reasonable expectation is that, absent customary legal process, the matter he reveals to the bank will be utilized by the bank only for internal banking purposes.^[60] In the instant case, while admittedly, respondent Sandiganbayan's inquiry into petitioner's bank accounts falls under the two exceptions mentioned in R.A. No. 1405,^[61] however, this Court observes that the manner of inquiry violates petitioner's rights to due process and privacy. At this juncture, it is worthy to note that petitioner's bank accounts were inquired into twice, first was through subpoenae duces tecum issued by the Office of the Ombudsman and second was through subpoenae duces tecum/ad testificandum issued by respondent Sandiganbayan. Under both instances, petitioner was completely unaware of the issuances of such subpoenae.

Petitioner persistently bewailed before respondent Sandiganbayan the prior disclosure of his bank accounts pursuant to the subpoenae issued by the Office of the Ombudsman absent any pending case in court and personal notice to him. He sought the quashal of respondent Sandiganbayan's subpoenae duces tecum/ad testificandum on the ground that the Special Prosecution Panel's requests for the issuance of the said subpoenae were based on information illegally acquired by the Office of the Ombudsman.

I am swayed with the merit of petitioner's grievance.

In *Marquez v. Desierto*,^[62] Ombudsman Aniano A. Desierto ordered petitioner Lourdes Marquez, a Branch Manager of Union Bank, to produce for purposes of an in camera inspection certain bank documents relative to a case pending before the Office of the Ombudsman. Ombudsman Desierto cited the Constitution and Section 15 (8) of R.A. No. 6770 as bases of his authority. Petitioner Marquez initially refused but, after having been threatened with a contempt proceeding, she filed a petition for declaratory relief seeking a clarification of the issue "whether the Order of the Ombudsman to have an in camera inspection of the questioned account is allowed as an exception to the law on secrecy of bank deposits." The Court's ruling is enlightening, thus:

"An examination of the secrecy of bank deposits law (R.A. No. 1405) would reveal the following exceptions:

- Where the depositor consents in writing;
- Impeachment case;
- By court order in bribery or dereliction of duty cases against public officials.
- Deposit is subject of litigation.
- Sec. 8, R.A. No. 3019, in cases of unexplained wealth as held in the case of *PNB v. Gancayco*.

The order of the Ombudsman to produce for in camera inspection the subject accounts with the Union Bank of the Philippines, Julia Vargas Branch, is based on a pending investigation at the Office of the Ombudsman against Amado Lagdameo, et al. for violation of R.A. No. 3019, Sec. 3 (e) and (g) relative to the Joint Venture Agreement between the Public Estates Authority and AMARI.

We rule that before 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."

In *Union Bank of the Philippines v. Court of Appeals*, we held that 'Section 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 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 a 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 litigation.'

In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the Office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, at al., with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection."

Thus, as held by the Court, before an in camera inspection of bank documents maybe allowed, there must be a pending case before a court of competent jurisdiction. The Information for plunder against Former President Estrada was filed with respondent Sandiganbayan on April 4, 2001. On the other hand, the Ombudsman issued the subpoenae duces tecum on February 8, 16, and March 7, 2001. Clearly, there was yet no pending litigation before any court when such subpoenae were issued. Following the Court's ruling in *Marquez*, what the Office of the Ombudsman would wish to do was to "fish for evidence" in order to formally charge former President Estrada before respondent Sandiganbayan.

At this point, it should be emphasized that the authority of the Ombudsman "to examine and have access to bank accounts and records" must be read in conjunction with Section 2 of R.A. No. 1405 providing that deposits of whatever nature shall be considered confidential except in several instances already mentioned. This is because bank deposits belong to a protected zone where government intrusion could infringe legitimate expectation of privacy. An opposite course is unwarranted.

In *United States v. United States District Court*,^[63] the US Supreme Court held that the potential for abuse is particularly acute where the legislative scheme permits access to information without invocation of the judicial process. In such instances, the important responsibility for balancing societal and individual interests is left to unreviewed executive discretion, rather than the scrutiny of a neutral magistrate. In *Katz v. United States*,^[64] the same Court ruled that, "[t]he prosecutors' duty and responsibility is to enforce the laws, to investigate and to prosecute. Those charged with the investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy." Between the government and the citizen, there must be a neutral entity that should balance the former's claim of authority vis-à-vis the latter's assertion of rights.

By the natural scheme of things, the Office of the Ombudsman can hardly be characterized as detached, disinterested and neutral. Its mandate is to investigate and prosecute any act or omission of any public officer or employee, office or agency that appears to be illegal, unjust, improper or inefficient.^[65] In carrying out such

mandate, it is expected to act with vigor and aggressiveness. But to permit such office to have access to bank records without any judicial control as to relevancy or other traditional requirements of due process and to allow the evidence to be used in any subsequent prosecution, opens the door to a vast and unlimited range of very real abuses of police power.[66] True, there are administrative summonses for documents[67] recognized in other jurisdictions, but there is a requirement that their enforcement receives a judicial scrutiny and a judicial order.[68] In this regard, I am appalled by the "whole sale" subpoena duces tecum issued by the Ombudsman directing the "President or Chief Executive Officer of Urban Bank" to produce "bank records and all documents relative thereto pertaining to all bank accounts (Savings, Current, Time Deposit, Trust, Foreign Currency Deposits, etc...) under the account names of Jose Velarde, Joseph E. Estrada, Laarni Enriquez, Guia Gomez, Joy Melendrez, Peachy Osorio, Rowena Lopez, Kevin or Kelvin Garcia, 727, 737, 747, 757 and 858." Indubitably, such blanket subpoena provides occasions for "fishing expedition."

Above everything else, however, what strikes us most is the patent unfairness of the process. First in the Bill of Rights is the mandate that no person shall be deprived of his life, liberty or property without due process of law. Courts have held that the right of personal privacy is one aspect of the "liberty" protected by the Due Process Clause.[69] Basic due process demands that the Office of the Ombudsman furnish petitioner a copy of the subpoenae duces tecum it issued. In *Marquez v. Desierto*,[70] this Court held: "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." Such notice is not too much to ask for, after all, an account holder bears the risk not only of losing his privacy but, also, his property.[71] Of course, not to mention the procedural impasse that is encountered by such account holder who cannot contest the propriety of the issuance of a subpoena.

In this case, petitioner was completely unaware of the issuance of subpoenae duces tecum, hence, he never had the opportunity to challenge them. As a matter of fact, almost two years had passed before he learned of such issuance and the resulting disclosure. Indeed, the ugly truth here is that neither the Office of the Ombudsman nor the PDIC notified petitioner of the impending and actual disclosure of his bank accounts. Such absence of notice is a fatal constitutional defect that inheres in a process that omits provision for notice to the bank customer of an invasion of his protected right.[72] Now, let us take a glimpse at the proceedings before respondent Sandiganbayan.

The proceedings before respondent Sandiganbayan also leave much to be desired. Neither respondent Sandiganbayan nor the Special Prosecution Panel nor PDIC furnished petitioner copies of the subpoenae duces tecum/ad testificandum or of the requests for their issuance. It bears reiterating that it was only through the media that petitioner learned about such requests. Definitely, something is inherently wrong in a public proceeding that allows a holder of bank account, subject of litigation, to be completely uninformed. Also not to be overlooked is the respondent Sandiganbayan's oral directive to petitioner to file his motion to quash not later than 12:00 noon of January 28, 2003. This notwithstanding the fact that it was only the day before, or on January 27, 2003, that petitioner learned about the requests and that he was yet to procure the services of a counsel. Every civilized state adheres to the principle that when a person's life and liberty are jeopardized by government action, it behooves a democratic government to see to it that this jeopardy is fair, reasonable and according to time-honored tradition. The importance of this principle is eloquently underscored by one observer who said: "The quality of a civilization is largely determined by the fairness of its criminal trials." [73]

Respondent Sandiganbayan cannot justify its omission by relying on *Adorio v. Bersamin*,[74] which held that: "Requests by a party for the issuance of subpoenas do not require notice to other parties to the action. No violation of due process results by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court." Suffice it to say that petitioner was not a

party to the plunder case, hence, he could not have the opportunity to examine the witnesses and the documents subpoenaed.

True, bank accounts at times harbor criminal plans. But this is not a reason to declare an open season for inquiry. Customers have a constitutionally justifiable expectation of privacy in the documentary details of the financial transactions reflected in their bank accounts. That wall of privacy, however, is not impregnable. Our Constitution, as well as our laws, provides procedures whereby the confidentiality of one's financial affairs may be disclosed. In other words, access to bank records is controlled by adequate legal process. Here, the subpoenae issued by respondent Sandiganbayan, tainted as they are by the vices that afflict the proceedings before the Office of the Ombudsman, cannot be considered to have been issued pursuant to such adequate legal process. Petitioner, therefore, has reason to feel aggrieved.

Section 4, Rule 21 of the 1997 Rules of Civil Procedure, as amended, provides that the court may quash a subpoenae duces tecum upon motion if it is "unreasonable and oppressive."^[75] Here, the three (3) subpoenae duces tecum/ad testificandum issued by respondent Sandiganbayan are "unreasonable and oppressive" for the reasons earlier mentioned. I thus find respondent Sandiganbayan to have committed grave abuse of discretion in issuing them.

One last word. The violation of petitioner's right to privacy could have been obviated had respondent court complied with its duty to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. The motto should always be *obsta principiis*.^[76] IN VIEW OF THE FOREGOING, I vote to GRANT the Petition. The assailed Resolutions dated February 7, February 12 and March 11, 2003 issued by respondent Sandiganbayan in Criminal Case No. 26558, "People of the Philippines v. Former President Joseph Ejercito Estrada, et al." being tainted with grave abuse of discretion, should be SET ASIDE. The subpoenae duces tecum/ad testificandum dated January 21, 24 and 31, 2003, should be QUASHED for being unreasonable and oppressive.

[1] 342 U.S. 165 (1952), p. 172.

[2] *Marquez v. Desierto*, G.R. No. 135882, June 27, 2001, 359 SCRA 772.

[3] See *Morfe v. Mutuc* No. L-20387, January 31, 1968, 22 SCRA 424.

[4] Article 12 of the Universal Declaration of Human Rights. See also Article 17 (1) and (2) of the International Covenant on Civil and Political Rights.

[5] Annex "A" of the Petition, Rollo, p. 64.

[6] Annex "B" of the Petition, id., p. 74. [7] Annex "C" of the Petition, id., p. 76.

[8] It appears that petitioner's subpoenaed bank accounts were also presented and testified to by prosecution witnesses in Criminal Case No. 26565 for illegal use of alias against Former President Estrada. [9] Annex "D" of the Petition, Rollo, p. 81.

[10] Annex "E" of the Petition, id., pp. 82-84. For the hearing dated January 22 and 27, 2003.

[11] Annex "F" of the Petition, id., pp. 86-88. For the hearing dated January 27 and 29, 2003. [12] See Resolution dated January 21, 2003, Annex "G" of the Petition, id., p. 90.

[13] Attachment "9" of the Comment, id., p. 489. [14] Attachment "11" of the Comment, id., p. 494. [15] Annex "H" of the Petition, id., pp. 91-96. Petitioner's motion to quash erroneously stated that the subpoenae duces

tecum/ad testificandum were issued both on January 24, 2003.

[16] Annex "I" of the Petition, id., pp. 97-99.

[17] Annex "O" of the Petition, id. pp.170-174.

[18] Attachment "2" of the Comment, id., p. 469.[19] Attachment "2-a" of the Comment, id., p. 470.[20] Attachment "3" of the Comment, id., p. 477.

[21] Attachment "4" of the Comment, id., p. 478.

[22] Attachment "5" of the Comment, id., p. 480.[23] See Attachment "6" of the Comment, id., p. 481.[24] Annex "H" of the Petition, at 91-96. Petitioner's motion to quash erroneously stated that the subpoenae duces tecum/ad testificandum were both issued on January 24, 2003.[25]By the phrase "subject matter of the action" is meant the physical facts, the thing real or personal, the money, lands, chattels, and the like, in relation to which the suit is presented, and not the delict or wrong committed by the defendant." *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 134699, December 23, 1999, 321 SCRA 563, citing *Mathay v. Consolidated Bank and Trust Co.*, 58 SCRA 559 (1974).[26] No. L-18343, September 30, 1965, 15 SCRA 91.

[27] No. L- 56429, May 28, 1988, 161 SCRA 576.

[28]Viray 1998.[29]Section 135.

[30] Suratos and Sale, Jr. 1994.[31] Additional exceptions are provided in other laws, such as:

(a) Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, where bank deposits of a public official's "spouse and unmarried children" maybe "taken into consideration" (Section 8) See also *Philippine National Bank v. Gancayco*, supra. and *Banco Filipino Savings and Mortgage Bank v. Purisima*, supra;

(b) Republic Act No. 6770, the Ombudsman Act of 1990, where the Ombudsman is authorized to "examine and have access to bank accounts and records" of government officers and employees (Section 15 (8); and

(c) Republic Act No. 9160, the Anti-Money Laundering Law of 2001, where the Anti-Money Laundering Council is allowed to examine deposit or investment with any banking institution or non-bank financial institution upon order of any competent court, when it has been established that there is probable cause that the deposits or investments are in any way related to a money laundering offense (Section 11).[32] Supra.

[33] Supra.

[34] Senator Paterno. I envision that this bill or this kind of plunder would cover a discovered interconnection of certain acts, particularly, violations of Anti-Graft and Corrupt Practices Act when, after the different acts are looked at, a scheme of conspiracy can be detected, such scheme or conspiracy consummated by the different criminal acts or violations of Anti-Graft and Corrupt Practices Act, such that the scheme or conspiracy becomes a sin, as a large scheme to defraud the public or rob the public treasury. It is parang robo and banda. It is considered as that. And, the bill seeks to define or says that P100 million is that level ay which ay talagang sobra na dapat nang parusahan ng husto. Would it be a correct interpretation or assessment of the intent of the bill?

Senator Tanada. Yes, Mr. President. The fact that under existing law, there can be only one offense charged in the information, that makes it very cumbersome and difficult to go after these grafters if we would not come out with this bill. That is what is happening now; because of that rule that there can be only one offense charged per information, then we are having difficulty in charging all the public officials who would seem to have committed these corrupt practices. With this bill, we could come out with just one information, and that would cover all the series of criminal acts that may have been committed by him. (Record of the Senate, June 5, 1989, Vol. IV, No.

140, p. 1315) See also Record of the Senate, June 6, 1989, Vol. IV, No. 141, p. 1399.

[35]Article 211. Indirect bribery. — The penalties of prision correccional in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.[36]The following crimes fall under the heading "Dereliction of Duty":

Article 204. Knowingly rendering unjust judgment. — Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision shall be punished by prision mayor and perpetual absolute disqualification.

Article 205. Judgment rendered through negligence. — Any judge who, by reason of inexcusable negligence or ignorance, shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by arresto mayor and temporary special disqualification.

Article 206. Unjust interlocutory order. — Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of arresto mayor in its minimum period and suspension; but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.

Article 207. Malicious delay in the administration of justice. — The penalty of prision correccional in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice.

Article 209. Betrayal of trust by an attorney or solicitor. — Revelation of secrets. — In addition to the proper administrative action, the penalty of prision correccional in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any attorney-at-law or solicitor (procurador judicial) who, by any malicious breach of professional duty or of inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.

The same penalty shall be imposed upon an attorney-at-law or solicitor (procurador judicial) who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.

[37] See Separate Concurring Opinion by Justice Panganiban in *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394.

[38] Sec. 8. 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 this salary and to his other lawful income, that fact shall be a ground for dismissal and removal. Properties in the name of the spouse and unmarried children of such public official maybe taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

[39] Section 8. Prima facie evidence and dismissal due to unexplained wealth. — If in accord 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. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits

in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public officials when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances herein above mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed. (As amended by BP. Blg. 195, March 16, 1982.)[40] A dependent is defined as "one who derives his or her main support from another; means relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power, or aid of someone else." (Black's Law Dictionary, 5[th] Edition. 1979).[41] This should be Republic Act No. 1379.[42] Otherwise known as "An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceeding Therefor." [43] G.R. No. 134699, December 23, 1999, 321 SCRA 563.[44] Section 2 of R.A. No. 7080.

[45] Id.[46] 381 U.S. 479 (1965). See also Puno, Legislative Investigations and the Right to Privacy, 2005.[47] Constitutional and Legal Systems of ASEAN Countries, Sison, Academy of ASEAN Law and Jurisprudence, 1990, at 221, citing I.R. Cortes, The Constitutional Foundations of Privacy, 7 (1970).

[48] *Marquez v. Desierto*, supra.[49] Article 209. Betrayal of trust by an attorney or solicitor. — Revelation of secrets. — In addition to the proper administrative action, the penalty of prision correccional in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any attorney-at-law or solicitor (procurador judicial) who, by any malicious breach of professional duty or of inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.

The same penalty shall be imposed upon an attorney-at-law or solicitor (procurador judicial) who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.[50] Article 290. Discovering secrets through seizure of correspondence. — The penalty of prision correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon any private individual who in order to discover secrets of another, shall seize his papers or letters and reveal the contents thereof. x x x.

Article 291. Revealing secrets with abuse of office. — The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any manager, employee, or servant who, in such capacity, shall learn the secrets of his principal or master and shall reveal such secrets.

Article 292. Revelation of industrial secrets. — The penalty of prision correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon the person in charge, employee or workman of any manufacturing or industrial establishment who, to the prejudice of the owner thereof, shall reveal the secrets of the industry of the latter.[51] Article 280. Qualified trespass to dwelling. — Any private person who shall enter the dwelling of another against the latter's will shall be punished by arresto mayor and a fine not exceeding 1,000 pesos. x x x.

Article 281. Other forms of trespass. — The penalty of arresto menor or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who shall enter the closed premises or the fenced estate of another, while either of them are uninhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.[52] Republic Act No. 4200, An Act to Prohibit and Penalize Wire Tapping

and other Related Violations of the Privacy of Communications, and for other Purposes.

[53] Republic Act No. 8293, "An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for other Purposes." January 1, 1998.

[54] *Burrows v. Superior Court of San Bernardino County*, 13 Cal. 3d 238, 529 P.2d 590 (1974). See *Katz v. United States* (1967), 389 U.S. 347, 350-352, 88 S. Ct. 507, 19 L. Ed. 2d 576; *People v. Krivda* (1971) 5 Cal. 3d 357, 364, 96 Cal. Rptr. 62, 486 P.2d 1262; 8 Cal. 3d 623-624, 105 Cal. Rptr. 521, 504 P.2d 457. [55] *Burrows v. Superior Court of San Bernardino County*, supra.

[56] *United States v. Miller*, 425 U.S. 435 (1976). See dissenting opinion of Justice Brennan, [57] *California Bankers Ass'n v. Shultz*, 416 U.S. 1, 85 (1974), See dissenting opinion of Justice Douglas.

[58] Supra.

[59] *Burrows v. Superior Court of San Bernardino County*, supra. [60] Supra.

[61] 1) Upon order of a competent court in cases of bribery or dereliction of duty of public officials;

2) In cases where the money deposited or invested is the subject matter of the litigation. [62] Supra.

[63] 407 U.S. 297, 316-317, 92 S. Ct. 2125, 32 L. Ed. 2d 752, (416 U.S., pp. 78-79, 94 S.Ct. at 1526). [64] 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507. [65] Section 15 of R.A. No. 6770. [66] See *Burrows v. Superior Court of San Bernardino County*, supra.

[67] Cf. *Camara v. Municipal Court*, 387 U.S. District Court, 407 U.S. 297, 313-318 cited in the Dissenting Opinion of Justice Douglas in *California Bankers Ass'n v. Shultz* [68] *United States v. United States District Court*, supra.

[69] 16B Am Jur 2d § 604, citing *Washington v. Gluckberg*, 117 S.Ct. 2258, 138 L. Ed. 2d 772 (U.S. 1997), for concurring opinion, see, 117 S. Ct. 2302 (U.S. 1997); *Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S.Ct. 2010, 52 L. Ed. 2d 675, 2 Media L. Rep. (BNA) 1935 (1977); *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L. Ed. 2d 147 (1973), for concurring opinion, see, 410 U.S. 179, 93 S.Ct. 755, 35 L. Ed. 2d 147 (1973) and for dissenting opinion, see, 410 U.S. 179, 93 S. Ct. 762, 35 L. Ed. 2d 147 (1973) and reh'g denied, 410 U.S. 959, 93 S.Ct. 1409, 35 L. Ed. 2d 694 (1973); *Vanderlinden v. State of Kan.*, 874 F Supp. 1210 (D. Kan 1995), judgment aff'd, 103 F.3d 940 (10th Cir. 1996).

[70] Supra.

[71] The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by Sec. 12, R.A. No. 7659). [72] See *Marquez v. Desierto*, G.R. No. 135882, June 27, 2001, 359 SCRA 773, stating that "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." [73] *Eugene v. Rostow*, Introduction to *Edward Bennet Williams, One's Man's Freedom* (New York, N.Y.: Atheneum, 1962) p. ix.

[74] Supra. [75] A subpoena duces tecum can be invalid for variety of reasons, as when it is unduly burdensome, violates the right against self-incrimination, or calls for privileged documents. 81 Am Jur § 25 citing *United States v. Roberts* (CA2 NY) 852 F2d 671, cert den 488 US 993, 102 L ed 2d 583, 109 S Ct 556. [76] *Boyd v. United States*, 116 U.S. 616 (1886).

CONCURRING OPINION

CALLEJO, SR., J.

I concur in the encompassing ponencia of our esteemed colleague Mme. Justice Conchita Carpio-Morales, however, I find it imperative to submit my concurring opinion and elucidate on the basis thereof.

The basic factual and procedural antecedents of the case are restated as follows:

In connection with Criminal Cases Nos. 26558 (Plunder) and 26565 (Illegal Use of Alias) filed against former President Joseph Ejercito Estrada, and upon the written requests of the Special Prosecution Panel, the Sandiganbayan issued the subpoenae duces tecum/ad testificandum dated January 21 and 24, 2003 addressed to the respective Presidents of the Export and Industry Bank (EIB, formerly Urban Bank and Urbancorp Investment, Inc.) and Equitable-PCIBank. The subpoenas directed the said officers, or their authorized representatives, to appear before the Sandiganbayan and bring with them documents, among others, pertaining to Trust Account No. 858 (with Urban Bank) and Savings Account No. 0116-17345-9 (also with Urban Bank), both in the name of petitioner Joseph Victor (JV) G. Ejercito.

The written requests of the Special Prosecution Panel enumerated the following documents to be subpoenaed as follows:

I. For Trust Account No. 858:

- Account Opening Documents;
- Trading Order No. 020385, dated January 29, 1999;
- Confirmation Advice TA 858;
- Original/Microfilm copies, including the dorsal side of the following:
 - a) Bank of Commerce MC#0256254 in the amount of P2,000,000;
 - b) Urban Bank Corp. MC#34181 dated November 8, 1999 in the amount of P10,875,749.43;
 - c) Urban Bank MC#34182 dated November 8, 1999 in the amount of P42,716,554.22;
 - d) Urban Bank MC#37661 dated November 23, 1999 in the amount of P54,161,496.52;
- Trust Agreement dated January 1999
Trustee: Joseph Victor C. Ejercito
Nominee: URBAN BANK-TRUST DEPARTMENT
Special Private Account No. (SPAN) 858; and
- Ledger of the Span #858

II. For Savings Account No. 0116-17345-9
SPAN #858

- signature cards; and
- statement of account/ledger

III Urban Bank Manager's Check and their corresponding Urban Bank's
Check Application Form as follows:

- MC#039975 dated January 18, 2000 in the amount of P70,000,000.00;
- MC#039976 dated January 18, 2000 in the amount of P2,000,000.00;
- MC#039977 dated January 18, 2000 in the amount of P2,000,000.00; and
- MC#039978 dated January 18, 2000 in the amount of P1,000,000.00.

Claiming to have learned about the subpoenae duces tecum/ad testificandum only through news reports, petitioner JV Ejercito filed motions to quash them alleging that (a) they violated the bank secrecy laws (Republic Act No. 1405[1] as amended by Presidential Decree No. 1792 and Republic Act 8791); (b) his case is not one of the recognized exceptions enumerated in the said laws as he is not an accused in the plunder and illegal use of alias cases; (c) there appears to be a conspiracy between the bank officials and the prosecution to violate the bank secrecy laws as the requests for the subpoenas contained particulars which could have been known only if the bank had released in advance the information containing the details of his bank accounts; (d) under Republic Act No. 3019[2] inquiry by subpoena into bank deposits can only be had if it was established that: (1) the accused public official has been found to have acquired during his incumbency an amount of property manifestly out of proportion to his salary; (2) the ownership of the property unlawfully acquired is concealed by recording the same in the name of friends or relatives; and (3) the acquisition through legitimate means of the money so deposited cannot be satisfactorily shown.

Former President Estrada for himself likewise moved for the quashal of the subpoenas on the same grounds relied upon by petitioner JV Ejercito and, additionally, that the documents sought were not relevant to the amended information against him.

Acting thereon, the Sandiganbayan issued the assailed Resolution dated February 7, 2003, denying the motions to quash the subpoenas holding that its issuance of the same properly falls under one of the exceptions to the bank secrecy laws, particularly the clause in Section 2 of Republic Act (RA) 1405 thus: "upon order of a competent court in cases of bribery or dereliction of duty of public officials." The Sandiganbayan reasoned that the crime of plunder was analogous to the said cases. It opined that the fact that petitioner JV Ejercito was not an accused in the plunder cases was of no moment because RA 3019 allows the inquiry into the bank deposits not only of the accused public official but also those of his spouse and children. Further, whether or not the amount of deposits was manifestly out of proportion to the income need not be proved first before inquiry could be had on the bank deposits, rather such inquiry could be used in proving the case.

The Sandiganbayan also held that petitioner JV Ejercito's reliance on *Marquez v. Desierto*[3] was misplaced. In *Marquez*, the Court disallowed the in camera inspection of accounts in connection with a case pending before the Ombudsman. In the present case, however, the Sandiganbayan held that there was precisely a pending case before it, a competent court within the meaning of the exception to the bank secrecy laws. The Sandiganbayan also pointed out that there was nothing irregular in the issuance of the subpoenas because it was not required that the other party be notified of such requests. No violation of due process resulted by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court.

A similar motion was filed by petitioner JV Ejercito involving the subpoenae duces tecum/ad testificandum issued to the representative of the Urban Bank and Mrs. Aurora Baldoz of the Philippine Deposit Insurance Commission (PDIC). The said motion was denied by Sandiganbayan in the assailed Resolution dated February 12, 2003. The motions for reconsideration were denied in the assailed Resolution dated March 11, 2003.

Petitioner JV Ejercito now comes to the Court assailing the Sandiganbayan's resolutions denying his motions to

quash the subpoenae duces tecum/ad testificandum.

As the petitioner himself submits, the following are the issues for the Court's resolution:

WHETHER OR NOT RESPONDENT COURT ACTED IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THE SUBPOENA ON PETITIONER'S BANK ACCOUNTS FALLS UNDER THE EXCEPTIONS PROVIDED UNDER R.A. NO. 1405

WHETHER OR NOT RESPONDENT COURT ACTED IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THE CASES OF PNB VS. GANCAYCO AND BANCO FILIPINO VS. PURISIMA ARE APPLICABLE TO THE INSTANT CASE

WHETHER OR NOT RESPONDENT COURT ACTED IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THE MARQUEZ VS. DESIERTO CASE IS NOT APPLICABLE TO THE INSTANT CASE.[4]

The petitioner does not deny his ownership of Trust Account No. 858 and Savings Account No. 0116-17345-9. In fact, he expressly admits the same and even explains that these were originally opened at Urban Bank but are now maintained at Export and Industry Bank.[5]

The petitioner argues that his accounts do not fall under any of the exceptions enumerated under Section 2 of RA 1405. The said provision reads:

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, when the examination is made in the course of a special or general examination of a bank and 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, or when the examination is 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, or upon written permission of the depositor, or in case 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 litigation. (As amended by PD No. 1792)

Based on this provision, it has been declared that bank deposits are absolutely confidential except in the following instances:

- (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 a 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 litigation.[6]

The petitioner points out that one of the exceptions mentioned is "upon order of a competent court in cases of bribery or dereliction of duty of public officials." Since the cases filed against his father, former President Estrada, are not for these crimes but for plunder and illegal use of alias, then the said exception does not allegedly apply. Further, his accounts do not fall under exception (6) as they are not allegedly "subject matter of litigation."

This argument of the petitioner is not persuasive. Former President Estrada is being charged with plunder as defined and penalized under Section 2 of RA 7080,[7] to wit:

Definition of the Crime of Plunder, Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interest and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by Sec. 12, RA 7659).

Section 1(d) of the same law defines "ill-gotten wealth" as "any asset, property, business enterprise or material possession of any person within the purview of Section 2 thereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates, and/or business associates by any combination or series of the following means or similar schemes:

- Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
- By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
- By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities, or government-owned or controlled corporations and their subsidiaries;
- By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- By establishing agricultural, industrial or commercial monopolies or other combination and/or implementation of decrees and others intended to benefit particular persons or special interests; or
- By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

It can be readily gleaned that the gravamen of plunder is the amassing, accumulating or acquiring of ill-gotten wealth by a public officer, his family or close associates. In *Philippine National Bank v. Gancayco*,[8] the Court explained that "cases of unexplained wealth are similar to cases of bribery or dereliction of public duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the policy as to the other. This policy expresses the notion that a public office is a public trust and any person enters upon its discharge does so with full knowledge that his life, so far as relevant to his duty, is open to public scrutiny." [9]

A plain reading of the definition of plunder and the manner by which it may be committed as provided in RA 7080 reveals that its policy also rests upon the fundamental tenet that "public office is a public trust." [10] There is thus no cogent reason to treat plunder any different from the cases of bribery or dereliction of public duty for purposes of RA 1405.

The petitioner next contends that *Gancayco and Banco Filipino Savings v. Purisima*, [11] insofar as they expounded Section 8 of RA 3019 are not applicable to his case. He reasons that in these cases, when the subpoenas subject thereof were issued, the text of Section 8 of RA 3019 provided that: "x x x Properties in the name of the spouse and unmarried children of such public official may be taken into consideration x x x. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary notwithstanding."

On the other hand, Section 8 of RA 3019, as presently worded upon its amendment by Batas Pambansa Blg. 195 on March 16, 1986, reads:

SEC. 8. Prima facie evidence of and 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. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

The petitioner theorizes that prior to the amendment, the following may be taken into consideration in the enforcement of Section 8 of RA 3019:

- c) properties in the name of the spouse and unmarried children of the public official; and
- d) bank deposits (without any qualification by law). [12]

After its amendment on March 16, 1982, the following may allegedly be taken into consideration in the enforcement of Section 8 of RA 3019:

- c) properties in the name of the spouse and dependents of the public official; and
- d) bank deposits in the name of the public official, his spouse or any of their dependents. [13]

According to the petitioner, although he is the son of former President Estrada, he is absolutely not his dependent. Petitioner avers that he is in his own right a legitimate businessman having investments in several entities when he opened the subject accounts in Urban Bank, now Export and Industry Bank. Further, he is also the Municipal Mayor of San Juan, Manila. He thus urges the Court against applying the rulings in *Gancayco* and *Banco Filipino* in the light of the amendment of Section 8 of RA 3019.

The petitioner's contention is equally unpersuasive. It should be recalled that the petitioner in *Banco Filipino* posited that the inquiry into illegally acquired property should be restricted to property held by or in the name of

the government official or employee or his spouses and unmarried children. The Court rejected this argument as it pronounced that:

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 acquired 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.[14]

At this point, it is well to mention that based on the evidence presented by the prosecution before the Sandiganbayan, hundreds of millions of pesos flowed from the petitioner's Trust Account No. 858 to the alleged Jose Velarde account purportedly maintained by former President Estrada at Equitable PCIBank. In fact, one manager's check, marked as Exhibit "L" for the prosecution, in the amount of P107,191,780.85 was drawn from, and funded by the said trust account of petitioner JV Ejercito.

Considering the mind-boggling sums of money that flowed out of the petitioner's Trust Account No. 858 and its nexus to former President Estrada's alleged Jose Velarde account, it is logical for the prosecution to pursue the theory that the money in the said trust account forms part of the unexplained wealth of the latter. As such, the money in the accounts of the petitioner may be properly considered as "subject matter" of the plunder cases falling under number (6) of the enumerated exceptions to the absolute confidentiality of bank deposits.

Viewed in this context, the petitioner's assertion that since he is no longer a dependent of his father, then the rulings in *Gancayco* and *Banco Filipino* are not applicable to his case is, to say the least, quite lame. In fact, to sustain his theory would, as the Court stated in *Banco Filipino*, "make available to persons in government who illegally acquired 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." [15]

The petitioner bewails the "extremely-detailed" information contained in the Special Prosecution Panel's requests for the subpoenae duces tecum/ad testificandum. The information upon which the requests were based was allegedly illegally and improperly obtained.

The petitioner opines that there had been prior disclosure by the bank and its personnel of data and information relative to his trust and savings accounts considering the very detailed information contained in the request for the subpoenas, to wit:

- a) Trading Order No. 020385 dated January 29, 1999;
- b) Confirmation Advice TA 858;
- c) Trust Agreement dated January 1999;
- d) Special Private Account No. (SPAN) 858;
- e) Savings Account No. 0116-17345-9;
- f) Letter of authority dated November 23, 1999 re: SPAN 858;
- g) Letter of authority dated January 29, 2000 re: SPAN 858;
- h) Letter of authority dated April 24, 2000 re: SPAN 858;
- i) Urban Bank check no. 052092 dated April 24, 2000 for the amount of P36,572,315.43;
- j) Urban Bank check no. 052093 dated April 24, 2000 the amount of P107,191,780.85.

According to the petitioner, the bank officials and personnel are criminally liable for releasing, without his knowledge, consent and authorization, information relative to his accounts to the prosecution. Further, since the information used to support the requests for the subpoenas was not secured by court order, such information was

illegally acquired and the requests for subpoenas containing the said illegally acquired information are already a direct violation of RA 1405. Consequently, such illegally acquired information cannot be used in any proceeding. He invokes the constitutional provision on the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and purpose and that any evidence obtained in violation thereof shall be inadmissible in evidence.[16]

The petitioner cites the following pronouncement of the Court in *Marquez*:

Zones of privacy are recognized and protected in our laws. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also 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 communication. 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.[17]

A review of the incidents related to the present case will show why the petitioner's reliance on *Marquez* is misplaced. In the said case, the Office of the Ombudsman issued a subpoena addressed to *Marquez*, a bank officer of Union Bank, directing her to bring several bank documents for in camera inspection in connection with an investigation being conducted by the Office of the Ombudsman.

Marquez refused to comply with the said directive and sought recourse to the Court by filing a petition and raising therein the issue of whether the order of the Office of the Ombudsman to have an in camera inspection of the questioned account was allowed as an exception to the law on secrecy of bank deposits.

According to the Court, notwithstanding Section 15(8) [18] of RA 6770 (The Ombudsman Act), "before 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." [19]

Marquez was promulgated by the Court on June 27, 2001. However, as early as February 8, 2001 or before the promulgation of *Marquez*, the Office of the Ombudsman, relying on Section 15(8) of RA 6770 and on the basis of information obtained during the impeachment proceedings of former President Estrada, issued a subpoena addressed to Urban Bank. The documents sought under the subpoena pertained to numbered accounts 727, 737, 747, 757 and 858 allegedly in the names of Jose Velarde, Joseph E. Estrada, Laarni Enriquez, Guia Gomez, Joy Melendrez, Peachy Osorio, Rowena Lopez, Kevin or Kelvin Garcia.

In compliance with the said subpoena, the PDIC, as then receiver of Urban Bank, issued a certification on February 13, 2001, as to the availability of bank documents relating to A/C 858 and T/A 858 and the non-availability of bank records as to the other accounts named in the subpoena. Based on the PDIC certification, the Office of the Ombudsman issued on February 16, 2001 another subpoena directing the production of documents pertinent to accounts A/C 858 and T/C 858. The PDIC again complied and furnished the Office of the Ombudsman on February 21, 2001 certified copies of the following documents:

- Transaction registers dated 7-02-99, 8-16-99, 9-17-99, 10-18-99, 11-22-99, 1-07-00, 01-17-00, 04-03-00 and 04-24-00;
- Report of Unregularized TAFs & DTs For UR COIN A & B Placements of Various Branches as of February 29, 2000 and as of December 16, 1999; and

- Trading Orders Nos. A No. 78102 and A No. 078125.

Trading Order A No. 07125 is filed in two copies – a white copy which showed "set up" information; and a yellow copy which showed "reversal" information. Both copies have been reproduced and are enclosed with this letter.

We are continuing our search for other records and documents pertinent to your request and we will forward to you on Friday, 23 February 2001, such additional records and documents as we might find until then. (Attachment "4")^[20]

Upon the request of the Office of the Ombudsman, the PDIC furnished the said office copies of the manager's checks. With respect to the other documents described by petitioner JV Ejercito as "extremely-detailed," the Special Prosecution Panel explains how they came to know about these documents in this manner:

What is more, Attachment "2-a," the compliance letter from the PDIC, specifically mentioned, as among the documents transmitted thereby, a LIST (Attachment "2-B") pertaining to the documents available in connection with Account No. 858, which list and documents (listed therein) were furnished the Office of the Ombudsman:

In compliance with the Subpoena Duces Tecum dated February 8, 2001 issued by the Office of the Ombudsman, transmitted are:

- Certification on available bank documents relating to A/C 858 and T/A 858 contained in a list attached thereto xxx (emphasis supplied)

There is a list, therefore, apart from the documents themselves (furnished the Office of the Ombudsman) to which said list is attached, from which details can be lifted. Thus, as to Trading Order No. 020385 dated January 29, 1999, it must be noted that it is the second item in the list (Attachment "2-b" hereof) under document no. A-2. It is also among the documents furnished by the PDIC.

As to Confirmation Advice TA 858, it must be noted that this is a specific but not detailed document being sought in the subpoena regarding Account No. 858, in general. For those familiar with banking practice, such is an expected document of course, or one issued in the course of placements since it has been previously established that Account No. 858 is a Trust Account. A confirmation advice, therefore, is a reasonable and expected document to be found in trust accounts to evidence participation in specific amounts. A sample of said confirmation advice, in the amount of P200 Million, and which is among the documents officially furnished the Office of the Ombudsman during the investigation leading to the charge for plunder against former President Joseph Estrada, et al., is attached as Attachment "36."

Further, the list (Attachment "2-b" hereof) enumerates a number of confirmation advices sufficient for the plaintiff to ask for the same in the instant subpoena. However, as earlier explained, even in the absence of such a list, any person could reasonably expect such a document in Trust Account No. 858 to evidence participation.

As to the Trust Agreement dated January 1999, since the account had been established as a Trust Account, it is reasonable to presume and expect that there is such a Trust Agreement on or about January 1999, coinciding with the date of the Trading Order, existing in the records.

Surely, this needs no stretch of imagination to reckon that such a document should exist in a trust account.

As to Special Private Account No. (SPAN) 858, SPAN 858 is yet another detail derived from a study of the documents and list furnished by the PDIC to the Office of the Ombudsman. For example, document no. C-2 in the list would yield a Trading Order No. 046352 for P40 Million with the customer being identified as SPAN 858.

As to Savings Account No. 0116-17345-9, again, among the documents furnished by the receiver of Urban Bank

to the Office of the Ombudsman pursuant to its constitutional powers is a copy of the Specimen Signature Card for SPAN 858, opened on March 9, 1999 under Account No. 0116-17345-9. It must be emphasized that Account No. 0116-17345-9 is an entry in the said document.

As to the Letter of Authority dated November 23, 1999 re: SPAN 858, it is document no. E-3 in the list.

It must be emphasized that this letter of authority dated November 23, 1999 authorized the release of more than P100 Million worth of manager's checks, where the ultimate recipient, for its deposit to the Jose Velarde account was, Baby Ortaliza. It must be recalled that prosecution witnesses Teresa Barcelona and Glyzelyn H. Bejec testified that it was Ortaliza who deposited the manager's checks subject of the letter of authority dated November 23, 1999 to the Jose Velarde account via Equitable PCIBank Greenhills Branch.

It must be recalled that plaintiff has presented voluminous evidence to establish beyond any doubt that Lucena "Baby" Ortaliza worked for accused Joseph Estrada in the Office of the Vice President, as testified to by prosecution witness Remedios Aguilar of the Office of the Vice President. The same fact is also shown by Exhibits "Y5," "Z5," "A6" (Ortaliza's appoint papers designating her as Vice-Presidential Staff Officer II signed by then Vice President Jose Estrada), "B6" (Certification of Employment), "C6" (Oath of Office), "D6" (Position Description Form), "E6" (Notice of Salary Adjustment) "F6" (Certification) and "G6" (Personal Data Sheet). Ortaliza also worked for accused Joseph Estrada at the Office of the President as testified to by witness Lita Sison of the Office of the President and as proved by Exhibits "I6" (Master Personnel Records File), "H6" (Registration letter of Ortaliza from the Office of the President), "J6" (Personnel Assessment Form), "K6" (appointment papers designating her as Presidential Staff Officer VI, Internal House, signed by then President Joseph Estrada), "L6" (Oath of Office), "M6" (Certification of Employment), "N6" (Position Description Form), "O6" (Personal Data Sheet) and "P6" (Ortaliza's public service record). The same "Baby" Ortaliza also transacted on behalf of former President Joseph Estrada with respect to his personal bank accounts. Indeed, Baby Ortaliza, as testified to by numerous prosecution witnesses and as shown by the documents they identified, is also the same person who transacted with Equitable PCIBank in connection with the Jose Velarde account and with Citibank in connection with the conjugal bank account of former President Joseph Estrada and Sen. Luisa Ejercito wherein the P8 Million check of Gov. Luis "Chavit" Singson was deposited. In addition to the foregoing and the testimonies of Clarissa Ocampo and Manuel Curato of Equitable PCIBank, the documents relating to Trust Account No. 858, thus, constitute further proof that accused Joseph Estrada is Jose Velarde.

Indeed, the surfacing of the name Baby Ortaliza in this Account No. 858 and her participation herein, coupled with the previous evidence presented as to who she worked for, all the more make Trust Account No. 858 not only relevant and material, but also the very subject matter of litigation in the instant case. Indeed, her participation herein more than establishes a pattern of behavior, a custom, a *modus operandi* among accused Joseph Estrada, herself and the other co-accused in appearing for, representing, accused Joseph Estrada and transacting with respect to his bank accounts.

As to Letter of Authority dated January 17, 2000 re SPAN 858, it is document no. E-4 in the list.

As to Letter of Authority dated April 24, 2000 re: SPAN 858, it is document no. E-5 in the list.

As to Urban Bank Check No. 052093 dated April 24, 2000 in the amount of P36,572,315.43 and Urban Bank Check No. 052093 dated April 24, 2000 in the amount of P107,191,780.85, the foregoing details were culled from the contents of the letter of authority dated April 24, 2000. Indeed, said letter of authority authorizes the issuance of manager's checks in accordance with the details therein provided:

1) AMOUNT

DATE

PAYEE

MC #

:PHP107,191,780.85

:APRIL 24, 2000

:CASH

:052093

2) AMOUNT

DATE

PAYEE

MC#

:PHP36,572,315.43

:APRIL 24, 2000

:CASH

:052092

It must be emphasized that the foregoing details were adopted in seeking for the production of the two (2) Urban Bank manager's checks.[21]

As shown by the Special Prosecution Panel, some of the details about the accounts of petitioner JV Ejercito were obtained from various sources gathered during the impeachment proceedings against former President Estrada. The various sources included reports, articles and investigative journals, which are legitimate sources.

The other details were gathered upon compliance by the PDIC and/or Urban Bank with the subpoenas issued by the Office of the Ombudsman prior to the promulgation by the Court of Marquez. The Office of the Ombudsman, in issuing the subpoenas relied on Section 15(8) of RA 6770 giving it the power "to 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."

The Marquez ruling, it bears reiterating, came after the subpoenas were issued by the Office of the Ombudsman and the PDIC and Urban Bank had already complied therewith by furnishing it the necessary information. The said information cannot thus be considered "illegal" because Marquez, which applied and interpreted the power of the Office of the Ombudsman under Section 15(8) of RA 6770, cannot be given retroactive application. In *Filoteo, Jr. v. Sandiganbayan*, [22] the Court emphasized that "judge-made" laws are to be applied prospectively:

The prospective application of "judge-made" laws was underscored in *Co v. Court of Appeals* where the Court ruled thru Chief Justice Andres R. Narvasa that in accordance with Article 8 of the Civil Code which provides that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines," and Article 4 of the same Code which states that "(l)aws shall have no retroactive effect unless the contrary is provided," the principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws, are nevertheless evidence of what the law means.[23]

Contrary to the petitioner's contention, therefore, the "extremely-detailed" information of the Office of the Ombudsman on which it based its requests for subpoenae duces tecum/ad testificandum can hardly be characterized as "illegal." In any case, even if Marquez were to be given retroactive application, still, the crux of the Court's ruling in the said case has no application to the present case. In Marquez, the Court disallowed the Ombudsman from conducting an in camera inspection of the bank account because "there was no pending case in

court which would warrant the opening of the bank account for inspection."

On the other hand, it is indubitable that in the present case, the plunder and illegal use of alias cases against former President Estrada are pending before the Sandiganbayan and, unlike in Marquez, the Special Prosecution Panel has asked leave of court in accordance with RA 1405 for the production of the said documents. Consequently, the subpoenae duces tecum/ad testificandum issued by the Sandiganbayan are allowable exceptions to the bank secrecy laws as they properly fall under the following categories in Section 2 thereof:

(5) Upon order of a 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 litigation.[24]

Finally, the petitioner has sought to suppress the "extremely-detailed" information that the Special Prosecution Panel has requested. He invokes his constitutional right against unreasonable search and seizures and that any evidence obtained in violation thereof shall be inadmissible in evidence. In her concurring and dissenting opinion, Mme. Justice Angelina Sandoval-Gutierrez agrees with petitioner JV Ejercito as she supports his plea to quash the subpoenae duces tecum/ad testificandum issued by the Sandiganbayan characterizing them as "unreasonable and oppressive" for being based on information allegedly obtained in violation of his constitutional right to privacy.

To my mind, the application of the exclusionary rule or the "fruit of the poisonous tree" doctrine is not warranted in the present case not only because, as discussed earlier, there is no "illegally obtained evidence" to speak of but also because nowhere is it stated in RA 1405, and even in Marquez, that a violation thereof warrants application of the exclusionary rule. Section 5 of RA 1405 provides that "[a]ny 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."

Interestingly, the United States has the Bank Secrecy Act (BSA).[25] However, unlike RA 1405, the US BSA was precisely enacted by the US Congress as a means of providing federal law investigators with an effective tool to fight criminal financial activity:

The conclusion reached by Congress in the early hearings was summarized by Robert Morgenthau, U.S. Attorney, Southern District of New York, "Secret numbered foreign bank accounts have become an ever increasing widespread and versatile tool for the evasion of our laws and regulations and for the commission of crimes by American citizens and for hiding the fruits of crimes already committed.

This wave of criminal activity is fostered by the failure of fairly complete criminal investigations to ripen into prosecutions because there has been no disclosure of the real parties in interest; investigators cannot point to any particular individual. Even if identity is revealed, the evidence remains inadmissible hearsay. Most modern secrecy law prohibits the banker from coming forth with the disclosure. Thus, the prosecution lacks the competent and qualified business representative who could state evidence of account information as a business records exception to the hearsay rule.

In response to the public outcry over this reported criminal activity and as a means of providing federal law investigators with an effective investigative tool, Congress enacted the Bank Secrecy Act (BSA).[26]

The important feature of the BSA is its regulatory structure that is designed to be used as an investigative tool in the fight against white collar crime, and its passage is a broad delegation of commerce power to the Treasury Department. Title I thereof authorizes the Secretary of the Treasury Department to require financial institutions to record vast amounts of information on financial transactions. Title II provides a regulatory access to information via required reporting by the financial institutions and expressly authorized governmental interagency exchange of the accessed information.[27]

In *California Bankers Association v. Schulz*,^[28] the US Supreme Court held that the BSA is a constitutionally valid and proper regulatory device. In *United States v. Miller*,^[29] the US Supreme Court reaffirmed its stance by holding that government access to a customer account records is not an unreasonable search and seizure even if realized through defective legal process and without customer notification.

Miller was convicted of operating an illegal still, functioning as a distiller without having posted bond, and committing tax evasion. The convictions were based on evidence subpoenaed pursuant to the BSA. Miller moved to suppress the bank records on the grounds that they were obtained by means of a defective subpoena duces tecum which resulted in a seizure violative of the fourth amendment.

The US Supreme Court held that Miller had no "protectable" fourth amendment interest in the subpoenaed documents. Justice Powell, speaking for the US Supreme Court, reasoned that the subpoenaed documents were not Millers "private papers" and that he could assert neither ownership nor possession. Rather, these were the business records of the bank.

The said Court also debunked Miller's claim that he had a legitimate "expectation of privacy" concerning the contents of the bank documents, e.g., checks and deposit slips:

Even if we direct our attention to the original checks and deposit slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate "expectation of privacy" in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The lack of any legitimate expectation of privacy concerning the information kept in bank records was assumed by Congress in enacting the Bank Secrecy Act, the express purpose of which is to require records to be maintained because they "have a high degree of usefulness in criminal tax, and regulatory investigations and proceedings."

The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. The Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.^[30]

Because the customer had no "protectable" fourth amendment rights, according to the US Supreme Court, the case was controlled by the general rule that a subpoena issued to a third party, for that party's records, does not violate the rights of the third party's client.

Largely in response to *Miller* and *California Bankers*, the US Congress enacted the Right to Financial Privacy Act of 1978 (RFPA).^[31] It enumerates the legal processes available for federal agency access to customer's account information. Access is conditioned upon one of the following procedures: customer authorization,^[32] administrative subpoena or summons,^[33] search warrant,^[34] judicial subpoena,^[35] grand jury subpoena,^[36] or formal written agency request.^[37]

Case law provides, however, that a violation of the procedures set forth in RFPA does not warrant exclusion of the evidence obtained because courts should not imply a suppression remedy unless the statute expressly refers to the exclusionary rule. The RFPA states that civil penalties are the only authorized remedy for its violation.^[38] In *United States v. Frazin*,^[39] for example, Frazin and Miller were charged with mail and wire fraud. During its investigation, banks furnished the Federal Bureau of Investigation (FBI) information about the account of Frazin without his knowledge or consent and without warrant. Frazin sought to suppress the bank records and other information obtained in violation of RFPA. The United States Court of Appeals, Ninth Circuit, held against Frazin

ratiocinating that had Congress intended to authorize a suppression remedy, it surely would have included it among the remedies it expressly authorized. The said US appellate court likewise refused to suppress the financial evidence pursuant to its supervisory powers over the administration of justice. It opined that "because the statute, when properly construed, excludes a suppression remedy, it would not be appropriate for us to provide one in the exercise of our supervisory powers over the administration of justice. Where Congress has both established a right and provided exclusive remedies for its violation, we would encroach upon the prerogatives of Congress where we to authorize a remedy not provided for by the statute."

The said ruling in *Frazin* was reiterated by the US Court of Appeals, Second Circuit, in *United States v. Daccarett*,^[40] a civil forfeiture proceeding instituted by the United States Government against monies of Cali cartel, a Colombian conglomerate headed by Jose Santacruz-Londono, which allegedly imported 3000 kilograms of cocaine a month into the US. The cartel allegedly used bank accounts throughout the US, Europe, Central and South America to store and move its narcotic proceeds. Funds were moved through various international banks by means of electronic fund transfers for ultimate deposit into Colombian bank accounts.

Several associates of Santacruz-Londono were arrested in Luxembourg. Anticipating that the arrests would trigger an effort by the cartel to move its monies to Colombia, the Luxembourg law enforcement authorities requested the assistance of several countries to freeze monies related to the cartel. The US Drug Enforcement Agency (DEA) instructed intermediary banks in New York to attach "all funds" on deposit in the names of entities and individuals connected with Santacruz-Londono. The DEA also subpoenaed from the intermediary banks financial records of related accounts.

The entities and individuals who claimed to be the beneficiaries of the seized funds argued, among others, that their fourth amendment rights against unreasonable searches and seizures were violated when the government gained access to their financial records from the intermediary banks without a warrant. They contended that evidence obtained from the subpoenas should have been suppressed at trial. The US appellate court, in rejecting this argument, cited *Frazin* and succinctly held that "because the RFPA states that civil penalties are the only authorized remedy for its violation, it would be inappropriate for the courts to imply a suppression remedy as well."

Also in *United States v. Thompson*,^[41] the US Court of Appeals, Eleventh Circuit, made the following disquisition:

x x x [T]he defendant would have to show that Congress had provided such a remedy for a violation of the statute, either specifically or by inference. Clearly Congress intended to place limits on the Government's ability to monitor the private activities of individuals when it passed this statute. Congress did not, however, suggest that any information obtained in violation of the statute's provisions should be excluded. Instead the statute only provides for fines and possible imprisonment for knowing violations. When Congress specifically designates a remedy for one of its acts, courts generally presume that it engaged in the necessary balancing of interests in determining what the appropriate penalty should be. Absent a specific reference to the exclusionary rule, it is not appropriate for the courts to read such a provision into the act.^[42]

Under prevailing jurisprudence in the United States therefore, violations of the RFPA do not warrant the application of the exclusionary rule with respect to the evidence obtained.

Nonetheless, in the present case, there is no violation of RA 1405 precisely because petitioner JV Ejercito's case properly falls under the recognized exceptions to the rule on confidentiality of bank deposits. Further, the Special Prosecution Panel has properly requested the Sandiganbayan for the issuance of the subpoenae duces tecum/ad testificandum for the production of documents relating to the bank accounts of petitioner JV Ejercito in connection with the plunder and illegal use of alias cases against former President Estrada. The Sandiganbayan, in

issuing the assailed resolutions, clearly committed no grave abuse of discretion.

ACCORDINGLY, I vote to DISMISS the petition.

[1] The Secrecy of Bank Deposits Act.

[2] The Anti-Graft and Corrupt Practices Act.

[3] 412 Phil. 387 (2001).

[4] Memorandum of the petitioner, p. 17.

[5] Id. at 3.

[6] Union Bank of the Philippines v. Court of Appeals, 378 Phil. 1177 (1999).

[7] An Act Defining and Penalizing the Crime of Plunder.

[8] 122 Phil. 503 (1965).

[9] Id. at 96.

[10] Section 1, Article XI of the 1987 Constitution.

[11] L-56429, May 28, 1988, 161 SCRA 576.

[12] Supra note 4, at 44-45.

[13] Id.

[14] Supra note 11, at 582.

[15] Id.

[16] Sections 2 and 3, Article III of the Constitution read;

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons and things to be seized.

SEC. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[17] Supra note 3, at 398-399.

[18] Section 15 (8) of RA 6770 reads:

SEC. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(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;

[19] Supra note 3, at 397.

[20] Memorandum of respondent People, pp. 63-64.

[21] Memorandum of respondent People, pp. 66-72.

[22] 331 Phil. 531 (1996).

[23] Id. at 573-574. Citations omitted.

[24] Supra note 6.

[25] 12 U.S.C. §§ 1730d, 1829b, 1951-1959 (1982); 31 U.S.C. §§ 5311-5322 (1982), as amended by 31 U.S.C.A. §§ 5316 (a), 5317(c), 5323 (West Supp. 1985).

[26] Eldridge, The Bank Secrecy Act; Privacy, Comity, and the Politics of Contraband, 11 N.C.J Int'l L. & Com. Reg. 667 (Summer, 1986).

[27] Id. at 672.

[28] 416 US 21 (1974).

[29] 425 US 435 (1976).

[30] Id. at 442-443.

[31] 12 U.S.C. §§ 3401-3422.

[32] Id. § 3404.

[33] Id. § 3405.

[34] Id. § 3406.

[35] Id. § 3407.

[36] Id. § 3420.

[37] Id. § 3408.

[38] 12 U.S.C. § 3417(d).

[39] 780 F.2d 1461 (1986).

[40] 6 F.3d 37 (1993).

[41] 936 F.2d 1249 (1991).

[42] Id. at 1251.

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