

PROVISIONS ON PUBLIC DISCLOSURES
IN THE 1987 CONSTITUTION

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The Biblical adage that the truth shall make one free can mean that truth will make a public official free from public suspicion and free from dirty conscience. In a regime of truth, actuations of public officials are made transparent to the people who can enjoy the much-needed assurance that those who administer the public affairs are truly deserving of their trust. For, indeed, a public office is a public trust.

A regime of truth now stated in the Preamble of the Constitution contemplates an open society where citizens have easy and ready access to public records and documents. Administrators of government are truly the servants of the people. They hold their positions because of the express or implied consent of those governed. And, as the 1987 Constitution ordains that our government is democratic and as it is generally accepted that democracy is a government by the people, of the people and for the people, it is, therefore, a truism that a democratic government is the people's government and therefore, the people have the inalienable right to know what the administrators of government are doing. A government official who hides his actuations from the public eye must be doing evil for he who does evil hates the light.

Section 7 of Article III of the Constitution provides that "[t]he right of the people to information in matters of public concern shall be recognized." The same section also provides that "access to official records, and to documents, and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen subject to such limitations as may be provided by law's. And needless to say, such limitations principally pertain to procedural matters like time and space and should not negate the laudable purpose behind the provision. Matters of strictly national security and defense, however, may be withheld unless their disclosure is demanded by the public interest as may be decided by competent authority. Exceptions to the rule on public disclosure must not be so widened as to emasculate the general rule. Section 7 of the Bill of Rights as aforementioned was reproduced with slight modifications from Section 6 of the Bill of Rights of the 1973 Constitution and it was this provision that constituted a basis for mandamus to compel publication of secret decrees, orders and instructions of the deposed President Marcos in the case of Lorenzo Tañada, et al., vs. Tuvera (L-63915, April 24, 1985) where the Supreme Court held that laws of general application, to be binding, must be duly published, an indispensable requirement of due process.

In Section 28, Article II on the Declaration of Principles and State Policies, it is a state policy that "subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest" This short provision is pregnant with highly significant implications based on the words used. Thus, the public disclosure must

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be full, not only partial. A mere summary may not suffice. A part cannot be greater than the whole and a part unrevealed may suppress the soul of the transaction. It is fundamental that the integrity or meaning of a document is ascertained by taking into account all its provisions together. It is, therefore, inevitable that full disclosure may cover examination or inspiration of the documents involved. A mere certification of their existence is obviously inadequate. The conditions for public disclosure must be reasonable, indicating the need for a workable system of examination of pertinent information covering the public transactions. Practically all government transactions involve the public interest because they almost always relate to disbursements of public funds or the enjoyment of concessions or privileges that certainly entail use or receipt of money. These transactions refer to those arising from the exercise of both governmental and proprietary functions of the State. They may be national or international in scope. The term "public interest" covers local, national and international interest that, of course, affects the people or community. It concerns the question of whether a transaction, based on known circumstances and factors, is "on the table" or "under the table", of whether there will be unjust prejudice to the government coffers or unjust enrichment of those who are supposed to practice as well as exhibit integrity in the discharge of public duties. Perhaps, the test is whether in entering into a transaction, the government officials concerned have complied with the moral and constitutional maxim that a public office is a public trust. A semblance of legality would not suffice for every law can have loopholes by which one can easily justify a transaction. There are innumerable instances in our laws where there is a delegation of discretionary authority, and the question is whether that discretion is exercised for the common good.

Under Article VI of the 1987 Constitution on the Legislative Department, it is now required by Section 12 thereof that "(a) 11 Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests". The words "upon assumption of office" refer to June 30 or within a reasonable time thereafter or within such definite time as may be prescribed by the Rules of each House. Delay in the compliance with the constitutional requirement should, as far as the public is concerned, be counted against the erring Member of the legislature. To give full effect to the provision, the initial disclosure must be constantly updated. It is also required by Section 12 of Article VI that the Members of the Congress (Lower and Upper Houses) "shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors," and this notice is required even if it may be claimed by the Member of the House that such potential conflict can be implied from the full disclosure of his financial and business interests on file in the official records of the House concerned.

Just as in the 1973 Constitution, the 1987 Constitution provides that "(t)he records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each Member." And by such publication, the people will know who among the Members of the Congress are extravagant or have abused the allowances, and by equating these expenses with their actual perfor-

mance in Congress, the public may thereby judge whether these expenses have been fully justified. Certainly, there are Members of Congress who are more expensive than they are diligent and dedicated.

The provisions on conducting public inquiries in aid of legislation (Sec. 21, Art. VI), on the question hour (Sec. 22, Id.) and on the requirement that every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof (Sec. 26(1), Id.) may likewise be considered as constitutional provisions that refer to public disclosures. Incidentally, the public has the right to know how discretionary funds are spent. To this end, it is now required in Section 25(6) Article VI that "(d)iscretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law". Even the provisions on the passing upon of Presidential appointments by the Commission on Appointments (Sec. 16, Art. VII) can be logically considered as involving public disclosure of the qualifications of the appointee.

In Article VII of the 1987 Constitution on the Executive Department, a public disclosure on the state of health of the President is now contained in Section 12 thereof. It provides that "(i)n case of serious illness of the President, the public shall be informed of the state of his health. The Members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines shall not be denied access to the President during such illness." The law may likewise provide that other Members of the Cabinet may not also be denied access to the President during such illness." The situation, however, assumes that the President can still communicate and does not suffer from such invalidity as to justify the taking over of the Presidency by the Vice-President or whoever is entitled to succeed in accordance with the Constitutional rules on Presidential succession.

The many provisions on the Judiciary by reason of the latter's function of judicial review may be considered as indirectly involving public disclosures. Suffice it to say that the court may not refuse to decide a political question posed before it (Sec. 16, Art. VIII), that Presidential appointees to the Judiciary shall be nominated by the Judicial and Bar Council (Sec. 9, Id) and that, aside from the traditional constitutional provision that "(n)o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based (Sec. 14(1), Art. VIII), it is now provided in Section 14(2), Art. VIII, that "(n)o petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

The provision on the Commission on Audit on Article IX (D) of the 1987 Constitution are, of course, inherently related to public disclosures. The most important innovation on the Commission on Audit is Section 3 of the said Article IX (D), that "(n)o law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit."

The provisions on Ombudsman as overseer of public functionaries in Article XI on Accountability of Public Officers concern public disclosures of the actuations of public officers. Section 17 of the said Article now provides that "(a) public officer or employee shall, upon assumption of office and as often there-

after as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, Vice-President, Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, officers of the Armed Forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law". Of course, the law may likewise provide and the Constitution does not prohibit that public disclosure be made of declarations of assets, liabilities and net worth of other inferior public officers.

Section 21 of Article XII of the 1987 Constitution answered the public clamor for a constitutional mandate for public disclosure of facts involving foreign loans and private loans guaranteed by the government the details of which had always been kept from the public eye and knowledge. It is now provided in the second sentence of the aforesaid section that "[i]n formation of foreign loans obtained or guaranteed by the Government shall be available to the public." The words of this provision indicate that there is no need for an implementing statute, this section being self-executory in nature.

In a human society where freedom truly reigns, provisions on public disclosure of actuations and transactions involving public interest supported with reasonable and effective implementing mechanisms, when needed, will certainly make democracy viable, vibrant and participatory.

Disputes are often difficult to resolve because protagonists have different versions of events. Even witnesses perceive incidents differently. For what one observes depends upon the keenness of his senses, the duration of his sensory impression and the amount of attention directed to the event. Professor John Maguire aptly notes, "Time is irreversible, events unique, and any reconstruction of the past is at best an approximation." (Maguire, Evidence, 5th Ed. p. 1).

The following example clearly, although extremely, illustrates the point:

Client : I stepped off the curb and
this truck hit me.

Counsel: What color was the traffic light?

Client : I don't remember.

Counsel: Too bad, if it was green in your direction you would have
a good case.

Client : Now I remember. It was green.

(id. p. 229).

The rules of evidence were therefore enacted to logically and systematically screen and test documents and recollections of what had transpired, and minimize errors in the adjudication of disputes. These rules basically admit evidence which is relevant and reliable, and exclude that which has no probative value in order to attain, a reasonably close as possible, the truth.

Evidence then is the means sanctioned by the rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact. (Sec. 1, Rule 128, Rules of Court). It may come in three forms: real evidence, documentary evidence, and testimonial evidence.

Real Evidence

Real Evidence usually takes the form of some material object produced for inspection in order that the Court may draw an inference from its own observation as to the existence, condition or value of the object in question (Keane, *The Modern Law of Evidence*, p. 11). It may consist of articles or persons, who may be physically examined; it may also consist of an ocular inspection of an object, or an experiment. It is evidence of the highest order. It speaks more eloquently than a hundred witnesses (People vs. Demeterio, 124 SCRA, 914) although its admissibility still depends on its propriety and relevancy.

Articles. Subject to the limitations of decency or propriety, all articles which may aid in the elucidation of the facts in issue, and cognizable by the senses of the judge, may be exhibited for inspection by the court. Burglar's tools, weapons, surgical instruments for abortion and other objects connected with a crime may be presented as evidence. The goods purchased may also be offered to prove their quality (5 Moran, *Rules of Court* 1980 ed. p. 75). However, it must be established that these articles were the very ones involved in the crime or tran-

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