

**TEODORO R. REGALA, EDGARDO J. ANGARA, AVELINO V. CRUZ,
JOSEC. CONCEPCION, ROGELIO A. VINLUAN, VICTOR P. LAZATIN,
AND EDUARDO U. ESCUETA, PETITIONERS, VS. THE HONORABLE
SANDIGANB...**

G.R. No. 105938. September 20, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

These cases touch the very cornerstone of every State's judicial system, upon which the workings of the contentious and adversarial system in the Philippine legal process are based - the sanctity of fiduciary duty in the client-lawyer relationship. The fiduciary duty of a counsel and advocate is also what makes the law profession a unique position of trust and confidence, which distinguishes it from any other calling. In this instance, we have no recourse but to uphold and strengthen the mantle of protection accorded to the confidentiality that proceeds from the performance of the lawyer's duty to his client.

The facts of the case are undisputed.

The matters raised herein are an offshoot of the institution of the Complaint on July 31, 1987 before the Sandiganbayan by the Republic of the Philippines, through the Presidential Commission on Good Government against Eduardo M. Cojuangco, Jr., as one of the principal defendants, for the recovery of alleged ill-gotten wealth, which includes shares of stocks in the named corporations in PCGG Case No. 33 (Civil Case No. 0033), entitled "Republic of the Philippines versus Eduardo Cojuangco, et al." [1]

Among the defendants named in the case are herein petitioners Teodoro Regala, Edgardo J. Angara, Avelino V. Cruz, Jose C. Concepcion, Rogelio A. Vinluan, Victor P. Lazatin, Eduardo U. Escueta and Paraja G. Hayudini, and herein private respondent Raul S. Roco, who all were then partners of the law firm Angara, Abello, Concepcion, Regala and Cruz Law Offices (hereinafter referred to as the ACCRA Law Firm). ACCRA Law Firm performed legal services for its clients, which included, among others, the organization and acquisition of business associations and/or organizations, with the correlative and incidental services where its members acted as incorporators, or simply, as stockholders. More specifically, in the performance of these services, the members of the law firm delivered to its client documents which substantiate the client's equity holdings, i.e., stock certificates endorsed in blank representing the shares registered in the client's name, and a blank deed of trust or assignment covering said shares. In the course of their dealings with their clients, the members of the law firm acquire information relative to the assets of clients as well as their personal and business circumstances. As members of the ACCRA Law Firm, petitioners and private respondent Raul Roco admit that they assisted in the organization and acquisition of the companies included in Civil Case No. 0033, and in keeping with the office practice, ACCRA lawyers acted as nominees-stockholders of the said corporations involved in sequestration proceedings. [2]

On August 20, 1991, respondent Presidential Commission on Good Government (hereinafter referred to as

respondent PCGG) filed a "Motion to Admit Third Amended Complaint" and "Third Amended Complaint" which excluded private respondent Raul S. Roco from the complaint in PCGG Case No. 33 as party-defendant.[3] Respondent PCGG based its exclusion of private respondent Roco as party-defendant on his undertaking that he will reveal the identity of the principal/s for whom he acted as nominee/stockholder in the companies involved in PCGG Case No. 33.[4]

Petitioners were included in the Third Amended Complaint on the strength of the following allegations:

14. Defendants Eduardo Cojuangco, Jr., Edgardo J. Angara, Jose C. Concepcion, Teodoro Regala, Avelino V. Cruz, Rogelio A. Vinluan, Eduardo U. Escueta, Paraja G. Hayudini and Raul Roco of the Angara Concepcion Cruz Regala and Abello law offices (ACCRA) plotted, devised, schemed, conspired and confederated with each other in setting up, through the use of the coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, COCOLIFE, COCOMARK, CIC, and more than twenty other coconut levy funded corporations, including the acquisition of San Miguel Corporation shares and its institutionalization through presidential directives of the coconut monopoly. Through insidious means and machinations, ACCRA, being the wholly-owned investment arm, ACCRA Investments Corporation, became the holder of approximately fifteen million shares representing roughly 3.3% of the total outstanding capital stock of UCPB as of 31 March 1987. This ranks ACCRA Investments Corporation number 44 among the top 100 biggest stockholders of UCPB which has approximately 1,400,000 shareholders. On the other hand, corporate books show the name Edgardo J. Angara as holding approximately 3,744 shares as of February, 1984.[5]

In their answer to the Expanded Amended Complaint, petitioners ACCRA lawyers alleged that:

4.4. Defendants-ACCRA lawyers' participation in the acts with which their co-defendants are charged, was in furtherance of legitimate lawyering.

4.4.1. In the course of rendering professional and legal services to clients, defendants-ACCRA lawyers, Jose C. Concepcion, Teodoro D. Regala, Rogelio A. Vinluan and Eduardo U. Escueta, became holders of shares of stock in the corporations listed under their respective names in Annex 'A' of the expanded Amended Complaint as incorporating or acquiring stockholders only and, as such, they do not claim any proprietary interest in the said shares of stock.

4.5. Defendant ACCRA-lawyer Avelino V. Cruz was one of the incorporators in 1976 of Mermaid Marketing Corporation, which was organized for legitimate business purposes not related to the allegations of the expanded Amended Complaint. However, he has long ago transferred any material interest therein and therefore denies that the 'shares' appearing in his name in Annex 'A' of the expanded Amended Complaint are his assets.[6]

Petitioner Paraja Hayudini, who had separated from ACCRA law firm, filed a separate answer denying the allegations in the complaint implicating him in the alleged ill-gotten wealth.[7]

Petitioners ACCRA lawyers subsequently filed their "COMMENT AND/OR OPPOSITION" dated October 8, 1991 with Counter-Motion that respondent PCGG similarly grant the same treatment to them (exclusion as parties-defendants) as accorded private respondent Roco.[8] The Counter-Motion for dropping petitioners from the complaint was duly set for hearing on October 18, 1991 in accordance with the requirements of Rule 15 of the Rules of Court.

In its "Comment," respondent PCGG set the following conditions precedent for the exclusion of petitioners, namely: (a) the disclosure of the identity of its clients; (b) submission of documents substantiating the lawyer-client relationship; and (c) the submission of the deeds of assignments petitioners executed in favor of its clients covering their respective shareholdings.[9]

Consequently, respondent PCGG presented supposed proof to substantiate compliance by private respondent Roco of the conditions precedent to warrant the latter's exclusion as party-defendant in PCGG Case No. 33, to wit: (a) Letter to respondent PCGG of the counsel of respondent Roco dated May 24, 1989 reiterating a previous request for reinvestigation by the PCGG in PCGG Case No. 33; (b) Affidavit dated March 8, 1989 executed by private respondent Roco as Attachment to the letter aforesaid in (a); and (c) Letter of the Roco, Bunag, and Kapunan Law Offices dated September 21, 1988 to the respondent PCGG in behalf of private respondent Roco originally requesting the reinvestigation and/or re-examination of the evidence of the PCGG against Roco in its Complaint in PCGG Case No. 33.[10]

It is noteworthy that during said proceedings, private respondent Roco did not refute petitioners' contention that he did actually not reveal the identity of the client involved in PCGG Case No. 33, nor had he undertaken to reveal the identity of the client for whom he acted as nominee-stockholder.[11]

On March 18, 1992, respondent Sandiganbayan promulgated the Resolution, herein questioned, denying the exclusion of petitioners in PCGG Case No. 33, for their refusal to comply with the conditions required by respondent PCGG. It held:

x x x.

ACCRA lawyers may take the heroic stance of not revealing the identity of the client for whom they have acted, i.e. their principal, and that will be their choice. But until they do identify their clients, considerations of whether or not the privilege claimed by the ACCRA lawyers exists cannot even begin to be debated. The ACCRA lawyers cannot excuse themselves from the consequences of their acts until they have begun to establish the basis for recognizing the privilege; the existence and identity of the client.

This is what appears to be the cause for which they have been impleaded by the PCGG as defendants herein.

5. The PCGG is satisfied that defendant Roco has demonstrated his agency and that Roco has apparently identified his principal, which revelation could show the lack of cause against him. This in turn has allowed the PCGG to exercise its power both under the rules of Agency and under Section 5 of E.O. No. 14-A in relation to the Supreme Court's ruling in *Republic v. Sandiganbayan* (173 SCRA 72).

The PCGG has apparently offered to the ACCRA lawyers the same conditions availed of by Roco; full disclosure in exchange for exclusion from these proceedings (par. 7, PCGG's COMMENT dated November 4, 1991). The ACCRA lawyers have preferred not to make the disclosures required by the PCGG.

The ACCRA lawyers cannot, therefore, begrudge the PCGG for keeping them as party defendants. In the same vein, they cannot compel the PCGG to be accorded the same treatment accorded to Roco.

Neither can this Court.

WHEREFORE, the Counter Motion dated October 8, 1991 filed by the ACCRA lawyers and joined in by Atty. Paraja G. Hayudini for the same treatment by the PCGG as accorded to Raul S. Roco is DENIED for lack of merit.[12]

ACCRA lawyers moved for a reconsideration of the above resolution but the same was denied by the respondent Sandiganbayan. Hence, the ACCRA lawyers filed the petition for certiorari, docketed as G.R. No. 105938, invoking the following grounds:

I

The Honorable Sandiganbayan gravely abused its discretion in subjecting petitioners ACCRA lawyers who undisputably acted as lawyers in serving as nominee-stockholders, to the strict application of the law of agency.

II

The Honorable Sandiganbayan committed grave abuse of discretion in not considering petitioners ACCRA lawyers and Mr. Roco as similarly situated and, therefore, deserving of equal treatment.

1. There is absolutely no evidence that Mr. Roco had revealed, or had undertaken to reveal, the identities of the client(s) for whom he acted as nominee-stockholder.
2. Even assuming that Mr. Roco had revealed, or had undertaken to reveal, the identities of the client(s), the disclosure does not constitute a substantial distinction as would make the classification reasonable under the equal protection clause.
3. Respondent Sandiganbayan sanctioned favoritism and undue preference in favor of Mr. Roco in violation of the equal protection clause.

III

The Honorable Sandiganbayan committed grave abuse of discretion in not holding that, under the facts of this case, the attorney-client privilege prohibits petitioners ACCRA lawyers from revealing the identity of their client(s) and the other information requested by the PCGG.

1. Under the peculiar facts of this case, the attorney-client privilege includes the identity of the client(s).
2. The factual disclosures required by the PCGG are not limited to the identity of petitioners ACCRA lawyers' alleged client(s) but extend to other privileged matters.

IV

The Honorable Sandiganbayan committed grave abuse of discretion in not requiring that the dropping of party-defendants by the PCGG must be based on reasonable and just grounds and with due consideration to the constitutional right of petitioners ACCRA lawyers to the equal protection of the law.

Petitioner Paraja G. Hayudini, likewise, filed his own motion for reconsideration of the March 18, 1991 resolution which was denied by respondent Sandiganbayan. Thus, he filed a separate petition for certiorari, docketed as G.R. No. 108113, assailing respondent Sandiganbayan's resolution on essentially the same grounds averred by petitioners in G.R. No. 105938.

Petitioners contend that the exclusion of respondent Roco as party-defendant in PCGG Case No. 33 grants him a favorable treatment, on the pretext of his alleged undertaking to divulge the identity of his client, giving him an advantage over them who are in the same footing as partners in the ACCRA law firm. Petitioners further argue that even granting that such an undertaking has been assumed by private respondent Roco, they are prohibited from revealing the identity of their principal under their sworn mandate and fiduciary duty as lawyers to uphold at all times the confidentiality of information obtained during such lawyer-client relationship.

Respondent PCGG, through its counsel, refutes petitioners' contention, alleging that the revelation of the identity of the client is not within the ambit of the lawyer-client confidentiality privilege, nor are the documents it required (deeds of assignment) protected, because they are evidence of nominee status.[13]

In his comment, respondent Roco asseverates that respondent PCGG acted correctly in excluding him as party-defendant because he "(Roco) has not filed an Answer. PCGG had therefore the right to dismiss Civil Case No. 0033 as to Roco `without an order of court by filing a notice of dismissal,'"[14] and he has undertaken to identify his principal.[15]

Petitioners' contentions are impressed with merit.

I

It is quite apparent that petitioners were impleaded by the PCGG as co-defendants to force them to disclose the identity of their clients. Clearly, respondent PCGG is not after petitioners but the “bigger fish” as they say in street parlance. This ploy is quite clear from the PCGG’s willingness to cut a deal with petitioners -- the names of their clients in exchange for exclusion from the complaint. The statement of the Sandiganbayan in its questioned resolution dated March 18, 1992 is explicit:

ACCRA lawyers may take the heroic stance of not revealing the identity of the client for whom they have acted, i.e., their principal, and that will be their choice. But until they do identify their clients, considerations of whether or not the privilege claimed by the ACCRA lawyers exists cannot even begin to be debated. The ACCRA lawyers cannot excuse themselves from the consequences of their acts until they have begun to establish the basis for recognizing the privilege; the existence and identity of the client.

This is what appears to be the cause for which they have been impleaded by the PCGG as defendants herein. (Underscoring ours)

In a closely related case, Civil Case No. 0110 of the Sandiganbayan, Third Division, entitled "Primavera Farms, Inc., et al. vs. Presidential Commission on Good Government" respondent PCGG, through counsel Mario Ongkiko, manifested at the hearing on December 5, 1991 that the PCGG wanted to establish through the ACCRA that their "so called client is Mr. Eduardo Cojuangco"; that "it was Mr. Eduardo Cojuangco who furnished all the monies to those subscription payments in corporations included in Annex "A" of the Third Amended Complaint; that the ACCRA lawyers executed deeds of trust and deeds of assignment, some in the name of particular persons, some in blank.

We quote Atty. Ongkiko:

ATTY. ONGKIKO:

With the permission of this Hon. Court. I propose to establish through these ACCRA lawyers that, one, their so-called client is Mr. Eduardo Cojuangco. Second, it was Mr. Eduardo Cojuangco who furnished all the monies to these subscription payments of these corporations who are now the petitioners in this case. Third, that these lawyers executed deeds of trust, some in the name of a particular person, some in blank. Now, these blank deeds are important to our claim that some of the shares are actually being held by the nominees for the late President Marcos. Fourth, they also executed deeds of assignment and some of these assignments have also blank assignees. Again, this is important to our claim that some of the shares are for Mr. Cojuangco and some are for Mr. Marcos. Fifth, that most of these corporations are really just paper corporations. Why do we say that? One: There are no really fixed sets of officers, no fixed sets of directors at the time of incorporation and even up to 1986, which is the crucial year. And not only that, they have no permits from the municipal authorities in Makati. Next, actually all their addresses now are care of Villareal Law Office. They really have no address on records. These are some of the principal things that we would ask of these nominees stockholders, as they called themselves.[16]

It would seem that petitioners are merely standing in for their clients as defendants in the complaint. Petitioners are being prosecuted solely on the basis of activities and services performed in the course of their duties as lawyers. Quite obviously, petitioners’ inclusion as co-defendants in the complaint is merely being used as leverage to compel them to name their clients and consequently to enable the PCGG to nail these clients. Such being the case, respondent PCGG has no valid cause of action as against petitioners and should exclude them from the Third Amended Complaint.

II

The nature of lawyer-client relationship is premised on the Roman Law concepts of *locatio conductio operarum* (contract of lease of services) where one person lets his services and another hires them without reference to the

object of which the services are to be performed, wherein lawyers' services may be compensated by honorarium or for hire,[17] and mandato (contract of agency) wherein a friend on whom reliance could be placed makes a contract in his name, but gives up all that he gained by the contract to the person who requested him.[18] But the lawyer-client relationship is more than that of the principal-agent and lessor-lessee.

In modern day perception of the lawyer-client relationship, an attorney is more than a mere agent or servant, because he possesses special powers of trust and confidence reposed on him by his client.[19] A lawyer is also as independent as the judge of the court, thus his powers are entirely different from and superior to those of an ordinary agent.[20] Moreover, an attorney also occupies what may be considered as a "quasi-judicial office" since he is in fact an officer of the Court[21] and exercises his judgment in the choice of courses of action to be taken favorable to his client.

Thus, in the creation of lawyer-client relationship, there are rules, ethical conduct and duties that breathe life into it, among those, the fiduciary duty to his client which is of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith,[22] that is required by reason of necessity and public interest[23] based on the hypothesis that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice.[24]

It is also the strict sense of fidelity of a lawyer to his client that distinguishes him from any other professional in society. This conception is entrenched and embodies centuries of established and stable tradition.[25] In *Stockton v. Ford*,[26] the U.S. Supreme Court held:

There are few of the business relations of life involving a higher trust and confidence than that of attorney and client, or generally speaking, one more honorably and faithfully discharged; few more anxiously guarded by the law, or governed by the sterner principles of morality and justice; and it is the duty of the court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it.[27]

In our jurisdiction, this privilege takes off from the old Code of Civil Procedure enacted by the Philippine Commission on August 7, 1901. Section 383 of the Code specifically "forbids counsel, without authority of his client to reveal any communication made by the client to him or his advice given thereon in the course of professional employment." [28] Passed on into various provisions of the Rules of Court, the attorney-client privilege, as currently worded provides:

Sec. 24. Disqualification by reason of privileged communication. - The following persons cannot testify as to matters learned in confidence in the following cases:

x x x

An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity.[29]

Further, Rule 138 of the Rules of Court states:

Sec. 20. It is the duty of an attorney:

(e) to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval.

This duty is explicitly mandated in Canon 17 of the Code of Professional Responsibility which provides that:

Canon 17. A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Canon 15 of the Canons of Professional Ethics also demands a lawyer's fidelity to client:

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public popularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

Considerations favoring confidentiality in lawyer-client relationships are many and serve several constitutional and policy concerns. In the constitutional sphere, the privilege gives flesh to one of the most sacrosanct rights available to the accused, the right to counsel. If a client were made to choose between legal representation without effective communication and disclosure and legal representation with all his secrets revealed then he might be compelled, in some instances, to either opt to stay away from the judicial system or to lose the right to counsel. If the price of disclosure is too high, or if it amounts to self incrimination, then the flow of information would be curtailed thereby rendering the right practically nugatory. The threat this represents against another sacrosanct individual right, the right to be presumed innocent is at once self-evident.

Encouraging full disclosure to a lawyer by one seeking legal services opens the door to a whole spectrum of legal options which would otherwise be circumscribed by limited information engendered by a fear of disclosure. An effective lawyer-client relationship is largely dependent upon the degree of confidence which exists between lawyer and client which in turn requires a situation which encourages a dynamic and fruitful exchange and flow of information. It necessarily follows that in order to attain effective representation, the lawyer must invoke the privilege not as a matter of option but as a matter of duty and professional responsibility.

The question now arises whether or not this duty may be asserted in refusing to disclose the name of petitioners' client(s) in the case at bar. Under the facts and circumstances obtaining in the instant case, the answer must be in the affirmative.

As a matter of public policy, a client's identity should not be shrouded in mystery.[30] Under this premise, the general rule in our jurisdiction as well as in the United States is that a lawyer may not invoke the privilege and refuse to divulge the name or identity of his client.[31]

The reasons advanced for the general rule are well established.

First, the court has a right to know that the client whose privileged information is sought to be protected is flesh and blood.

Second, the privilege begins to exist only after the attorney-client relationship has been established. The attorney-client privilege does not attach until there is a client.

Third, the privilege generally pertains to the subject matter of the relationship.

Finally, due process considerations require that the opposing party should, as a general rule, know his adversary. "A party suing or sued is entitled to know who his opponent is." [32] He cannot be obliged to grope in the dark against unknown forces.[33]

Notwithstanding these considerations, the general rule is however qualified by some important exceptions.

1) Client identity is privileged where a strong probability exists that revealing the client's name would implicate that client in the very activity for which he sought the lawyer's advice.

In *Ex-Parte Enzor*,^[34] a state supreme court reversed a lower court order requiring a lawyer to divulge the name of her client on the ground that the subject matter of the relationship was so closely related to the issue of the client's identity that the privilege actually attached to both. In *Enzor*, the unidentified client, an election official, informed his attorney in confidence that he had been offered a bribe to violate election laws or that he had accepted a bribe to that end. In her testimony, the attorney revealed that she had advised her client to count the votes correctly, but averred that she could not remember whether her client had been, in fact, bribed. The lawyer was cited for contempt for her refusal to reveal his client's identity before a grand jury. Reversing the lower court's contempt orders, the state supreme court held that under the circumstances of the case, and under the exceptions described above, even the name of the client was privileged.

U.S. v. Hodge and Zweig,^[35] involved the same exception, i.e. that client identity is privileged in those instances where a strong probability exists that the disclosure of the client's identity would implicate the client in the very criminal activity for which the lawyer's legal advice was obtained.

The *Hodge* case involved federal grand jury proceedings inquiring into the activities of the "Sandino Gang," a gang involved in the illegal importation of drugs in the United States. The respondents, law partners, represented key witnesses and suspects including the leader of the gang, Joe Sandino.

In connection with a tax investigation in November of 1973, the IRS issued summons to *Hodge* and *Zweig*, requiring them to produce documents and information regarding payment received by Sandino on behalf of any other person, and vice versa. The lawyers refused to divulge the names. The Ninth Circuit of the United States Court of Appeals, upholding non-disclosure under the facts and circumstances of the case, held:

A client's identity and the nature of that client's fee arrangements may be privileged where the person invoking the privilege can show that a strong probability exists that disclosure of such information would implicate that client in the very criminal activity for which legal advice was sought *Baird v. Koerner*, 279 F.2d at 680. While in *Baird* *Owe* enunciated this rule as a matter of California law, the rule also reflects federal law. Appellants contend that the *Baird* exception applies to this case.

The *Baird* exception is entirely consonant with the principal policy behind the attorney-client privilege. "In order to promote freedom of consultation of legal advisors by clients, the apprehension of compelled disclosure from the legal advisors must be removed; hence, the law must prohibit such disclosure except on the client's consent." 8 J. Wigmore, *supra* sec. 2291, at 545. In furtherance of this policy, the client's identity and the nature of his fee arrangements are, in exceptional cases, protected as confidential communications.^[36]

2) Where disclosure would open the client to civil liability, his identity is privileged. For instance, the peculiar facts and circumstances of *Neugass v. Terminal Cab Corporation*,^[37] prompted the New York Supreme Court to allow a lawyer's claim to the effect that he could not reveal the name of his client because this would expose the latter to civil litigation.

In the said case, *Neugass*, the plaintiff, suffered injury when the taxicab she was riding, owned by respondent corporation, collided with a second taxicab, whose owner was unknown. Plaintiff brought action both against defendant corporation and the owner of the second cab, identified in the information only as John Doe. It turned out that when the attorney of defendant corporation appeared on preliminary examination, the fact was somehow revealed that the lawyer came to know the name of the owner of the second cab when a man, a client of the insurance company, prior to the institution of legal action, came to him and reported that he was involved in a car

accident. It was apparent under the circumstances that the man was the owner of the second cab. The state supreme court held that the reports were clearly made to the lawyer in his professional capacity. The court said:

That his employment came about through the fact that the insurance company had hired him to defend its policyholders seems immaterial. The attorney in such cases is clearly the attorney for the policyholder when the policyholder goes to him to report an occurrence contemplating that it would be used in an action or claim against him.[38]

x x x xxx xxx.

All communications made by a client to his counsel, for the purpose of professional advice or assistance, are privileged, whether they relate to a suit pending or contemplated, or to any other matter proper for such advice or aid; x x x And whenever the communication made, relates to a matter so connected with the employment as attorney or counsel as to afford presumption that it was the ground of the address by the client, then it is privileged from disclosure. xxx.

It appears... that the name and address of the owner of the second cab came to the attorney in this case as a confidential communication. His client is not seeking to use the courts, and his address cannot be disclosed on that theory, nor is the present action pending against him as service of the summons on him has not been effected. The objections on which the court reserved decision are sustained.[39]

In the case of *Matter of Shawmut Mining Company*,[40] the lawyer involved was required by a lower court to disclose whether he represented certain clients in a certain transaction. The purpose of the court's request was to determine whether the unnamed persons as interested parties were connected with the purchase of properties involved in the action. The lawyer refused and brought the question to the State Supreme Court. Upholding the lawyer's refusal to divulge the names of his clients the court held:

If it can compel the witness to state, as directed by the order appealed from, that he represented certain persons in the purchase or sale of these mines, it has made progress in establishing by such evidence their version of the litigation. As already suggested, such testimony by the witness would compel him to disclose not only that he was attorney for certain people, but that, as the result of communications made to him in the course of such employment as such attorney, he knew that they were interested in certain transactions. We feel sure that under such conditions no case has ever gone to the length of compelling an attorney, at the instance of a hostile litigant, to disclose not only his retainer, but the nature of the transactions to which it related, when such information could be made the basis of a suit against his client.[41]

3) Where the government's lawyers have no case against an attorney's client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime, the client's name is privileged.

In *Baird vs Korner*,[42] a lawyer was consulted by the accountants and the lawyer of certain undisclosed taxpayers regarding steps to be taken to place the undisclosed taxpayers in a favorable position in case criminal charges were brought against them by the U.S. Internal Revenue Service (IRS).

It appeared that the taxpayers' returns of previous years were probably incorrect and the taxes understated. The clients themselves were unsure about whether or not they violated tax laws and sought advice from Baird on the hypothetical possibility that they had. No investigation was then being undertaken by the IRS of the taxpayers. Subsequently, the attorney of the taxpayers delivered to Baird the sum of \$12,706.85, which had been previously assessed as the tax due, and another amount of money representing his fee for the advice given. Baird then sent a check for \$12,706.85 to the IRS in Baltimore, Maryland, with a note explaining the payment, but without naming his clients. The IRS demanded that Baird identify the lawyers, accountants, and other clients involved. Baird refused on the ground that he did not know their names, and declined to name the attorney and accountants

because this constituted privileged communication. A petition was filed for the enforcement of the IRS summons. For Baird's repeated refusal to name his clients he was found guilty of civil contempt. The Ninth Circuit Court of Appeals held that, a lawyer could not be forced to reveal the names of clients who employed him to pay sums of money to the government voluntarily in settlement of undetermined income taxes, unsued on, and with no government audit or investigation into that client's income tax liability pending. The court emphasized the exception that a client's name is privileged when so much has been revealed concerning the legal services rendered that the disclosure of the client's identity exposes him to possible investigation and sanction by government agencies. The Court held:

The facts of the instant case bring it squarely within that exception to the general rule. Here money was received by the government, paid by persons who thereby admitted they had not paid a sufficient amount in income taxes some one or more years in the past. The names of the clients are useful to the government for but one purpose - to ascertain which taxpayers think they were delinquent, so that it may check the records for that one year or several years. The voluntary nature of the payment indicates a belief by the taxpayers that more taxes or interest or penalties are due than the sum previously paid, if any. It indicates a feeling of guilt for nonpayment of taxes, though whether it is criminal guilt is undisclosed. But it may well be the link that could form the chain of testimony necessary to convict an individual of a federal crime. Certainly the payment and the feeling of guilt are the reasons the attorney here involved was employed - to advise his clients what, under the circumstances, should be done.[43]

Apart from these principal exceptions, there exist other situations which could qualify as exceptions to the general rule.

For example, the content of any client communication to a lawyer lies within the privilege if it is relevant to the subject matter of the legal problem on which the client seeks legal assistance.[44] Moreover, where the nature of the attorney-client relationship has been previously disclosed and it is the identity which is intended to be confidential, the identity of the client has been held to be privileged, since such revelation would otherwise result in disclosure of the entire transaction.[45]

Summarizing these exceptions, information relating to the identity of a client may fall within the ambit of the privilege when the client's name itself has an independent significance, such that disclosure would then reveal client confidences.[46]

The circumstances involving the engagement of lawyers in the case at bench, therefore, clearly reveal that the instant case falls under at least two exceptions to the general rule. First, disclosure of the alleged client's name would lead to establish said client's connection with the very fact in issue of the case, which is privileged information, because the privilege, as stated earlier, protects the subject matter or the substance (without which there would be no attorney-client relationship).

The link between the alleged criminal offense and the legal advice or legal service sought was duly established in the case at bar, by no less than the PCGG itself. The key lies in the three specific conditions laid down by the PCGG which constitutes petitioners' ticket to non-prosecution should they accede thereto:

- (a) the disclosure of the identity of its clients;
- (b) submission of documents substantiating the lawyer-client relationship; and
- (c) the submission of the deeds of assignment petitioners executed in favor of their clients covering their respective shareholdings.

From these conditions, particularly the third, we can readily deduce that the clients indeed consulted the

petitioners, in their capacity as lawyers, regarding the financial and corporate structure, framework and set-up of the corporations in question. In turn, petitioners gave their professional advice in the form of, among others, the aforementioned deeds of assignment covering their clients' shareholdings.

There is no question that the preparation of the aforestated documents was part and parcel of petitioners' legal service to their clients. More important, it constituted an integral part of their duties as lawyers. Petitioners, therefore, have a legitimate fear that identifying their clients would implicate them in the very activity for which legal advice had been sought, i.e., the alleged accumulation of ill-gotten wealth in the aforementioned corporations.

Furthermore, under the third main exception, revelation of the client's name would obviously provide the necessary link for the prosecution to build its case, where none otherwise exists. It is the link, in the words of Baird, "that would inevitably form the chain of testimony necessary to convict the (client) of a... crime." [47]

An important distinction must be made between a case where a client takes on the services of an attorney for illicit purposes, seeking advice about how to go around the law for the purpose of committing illegal activities and a case where a client thinks he might have previously committed something illegal and consults his attorney about it. The first case clearly does not fall within the privilege because the same cannot be invoked for purposes illegal. The second case falls within the exception because whether or not the act for which the advice turns out to be illegal, his name cannot be used or disclosed if the disclosure leads to evidence, not yet in the hands of the prosecution, which might lead to possible action against him.

These cases may be readily distinguished, because the privilege cannot be invoked or used as a shield for an illegal act, as in the first example; while the prosecution may not have a case against the client in the second example and cannot use the attorney-client relationship to build up a case against the latter. The reason for the first rule is that it is not within the professional character of a lawyer to give advice on the commission of a crime. [48] The reason for the second has been stated in the cases above discussed and are founded on the same policy grounds for which the attorney-client privilege, in general, exists.

In *Matter of Shawmut Mining Co.*, supra, the appellate court therein stated that "under such conditions no case has ever yet gone to the length of compelling an attorney, at the instance of a hostile litigant, to disclose not only his retainer, but the nature of the transactions to which it related, when such information could be made the basis of a suit against his client." [49] "Communications made to an attorney in the course of any personal employment, relating to the subject thereof, and which may be supposed to be drawn out in consequence of the relation in which the parties stand to each other, are under the seal of confidence and entitled to protection as privileged communications." [50] Where the communicated information, which clearly falls within the privilege, would suggest possible criminal activity but there would be not much in the information known to the prosecution which would sustain a charge except that revealing the name of the client would open up other privileged information which would substantiate the prosecution's suspicions, then the client's identity is so inextricably linked to the subject matter itself that it falls within the protection. The Baird exception, applicable to the instant case, is consonant with the principal policy behind the privilege, i.e., that for the purpose of promoting freedom of consultation of legal advisors by clients, apprehension of compelled disclosure from attorneys must be eliminated. This exception has likewise been sustained in *In re Grand Jury Proceedings* [51] and *Tillotson v. Boughner*. [52] What these cases unanimously seek to avoid is the exploitation of the general rule in what may amount to a fishing expedition by the prosecution.

There are, after all, alternative sources of information available to the prosecutor which do not depend on utilizing a defendant's counsel as a convenient and readily available source of information in the building of a case against

the latter. Compelling disclosure of the client's name in circumstances such as the one which exists in the case at bench amounts to sanctioning fishing expeditions by lazy prosecutors and litigants which we cannot and will not countenance. When the nature of the transaction would be revealed by disclosure of an attorney's retainer, such retainer is obviously protected by the privilege.[53] It follows that petitioner attorneys in the instant case owe their client(s) a duty and an obligation not to disclose the latter's identity which in turn requires them to invoke the privilege.

In fine, the crux of petitioners' objections ultimately hinges on their expectation that if the prosecution has a case against their clients, the latter's case should be built upon evidence painstakingly gathered by them from their own sources and not from compelled testimony requiring them to reveal the name of their clients, information which unavoidably reveals much about the nature of the transaction which may or may not be illegal. The logical nexus between name and nature of transaction is so intimate in this case that it would be difficult to simply dissociate one from the other. In this sense, the name is as much "communication" as information revealed directly about the transaction in question itself, a communication which is clearly and distinctly privileged. A lawyer cannot reveal such communication without exposing himself to charges of violating a principle which forms the bulwark of the entire attorney-client relationship.

The uberrime fidei relationship between a lawyer and his client therefore imposes a strict liability for negligence on the former. The ethical duties owing to the client, including confidentiality, loyalty, competence, diligence as well as the responsibility to keep clients informed and protect their rights to make decisions have been zealously sustained. In *Milbank, Tweed, Hadley and McCloy v. Boon*,^[54] the US Second District Court rejected the plea of the petitioner law firm that it breached its fiduciary duty to its client by helping the latter's former agent in closing a deal for the agent's benefit only after its client hesitated in proceeding with the transaction, thus causing no harm to its client. The Court instead ruled that breaches of a fiduciary relationship in any context comprise a special breed of cases that often loosen normally stringent requirements of causation and damages, and found in favor of the client.

To the same effect is the ruling in *Searcy, Denney, Scarola, Barnhart, and Shipley P.A. v. Scheller*^[55] requiring strict obligation of lawyers vis-a-vis clients. In this case, a contingent fee lawyer was fired shortly before the end of completion of his work, and sought payment quantum meruit of work done. The court, however, found that the lawyer was fired for cause after he sought to pressure his client into signing a new fee agreement while settlement negotiations were at a critical stage. While the client found a new lawyer during the interregnum, events forced the client to settle for less than what was originally offered. Reiterating the principle of fiduciary duty of lawyers to clients in *Meinhard v. Salmon*^[56] famously attributed to Justice Benjamin Cardozo that "Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior," the US Court found that the lawyer involved was fired for cause, thus deserved no attorney's fees at all.

The utmost zeal given by Courts to the protection of the lawyer-client confidentiality privilege and lawyer's loyalty to his client is evident in the duration of the protection, which exists not only during the relationship, but extends even after the termination of the relationship.^[57]

Such are the unrelenting duties required of lawyers vis-a-vis their clients because the law, which the lawyers are sworn to uphold, in the words of Oliver Wendell Holmes,^[58] "xxx is an exacting goddess, demanding of her votaries in intellectual and moral discipline." The Court, no less, is not prepared to accept respondents' position without denigrating the noble profession that is lawyering, so extolled by Justice Holmes in this wise:

Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life - so share its passions its battles, its despair, its triumphs, both as witness and actor? x x x But that is not all. What a subject is this in which we are

united - this abstraction called the Law, wherein as in a magic mirror, we see reflected, not only in our lives, but the lives of all men that have been. When I think on this majestic theme my eyes dazzle. If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be won with sustained and lonely passion - only to be won by straining all the faculties by which man is likened to God.

We have no choice but to uphold petitioners' right not to reveal the identity of their clients under pain of the breach of fiduciary duty owing to their clients, because the facts of the instant case clearly fall within recognized exceptions to the rule that the client's name is not privileged information.

If we were to sustain respondent PCGG that the lawyer-client confidential privilege under the circumstances obtaining here does not cover the identity of the client, then it would expose the lawyers themselves to possible litigation by their clients in view of the strict fiduciary responsibility imposed on them in the exercise of their duties.

The complaint in Civil Case No. 0033 alleged that the defendants therein, including herein petitioners and Eduardo Cojuangco, Jr. conspired with each other in setting up through the use of coconut levy funds the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM and others and that through insidious means and machinations, ACCRA, using its wholly-owned investment arm, ACCRA Investments Corporation, became the holder of approximately fifteen million shares representing roughly 3.3% of the total capital stock of UCPB as of 31 March 1987. The PCGG wanted to establish through the ACCRA lawyers that Mr. Cojuangco is their client and it was Cojuangco who furnished all the monies to the subscription payment; hence, petitioners acted as dummies, nominees and/or agents by allowing themselves, among others, to be used as instrument in accumulating ill-gotten wealth through government concessions, etc., which acts constitute gross abuse of official position and authority, flagrant breach of public trust, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines.

By compelling petitioners, not only to reveal the identity of their clients, but worse, to submit to the PCGG documents substantiating the client-lawyer relationship, as well as deeds of assignment petitioners executed in favor of its clients covering their respective shareholdings, the PCGG would exact from petitioners a link "that would inevitably form the chain of testimony necessary to convict the (client) of a crime."

III

In response to petitioners' last assignment of error, respondents allege that the private respondent was dropped as party defendant not only because of his admission that he acted merely as a nominee but also because of his undertaking to testify to such facts and circumstances "as the interest of truth may require, which includes... the identity of the principal." [59]

First, as to the bare statement that private respondent merely acted as a lawyer and nominee, a statement made in his out-of-court settlement with the PCGG, it is sufficient to state that petitioners have likewise made the same claim not merely out-of-court but also in their Answer to plaintiff's Expanded Amended Complaint, signed by counsel, claiming that their acts were made in furtherance of "legitimate lawyering." [60] Being "similarly situated" in this regard, public respondents must show that there exist other conditions and circumstances which would warrant their treating the private respondent differently from petitioners in the case at bench in order to evade a violation of the equal protection clause of the Constitution.

To this end, public respondents contend that the primary consideration behind their decision to sustain the PCGG's dropping of private respondent as a defendant was his promise to disclose the identities of the clients in question. However, respondents failed to show - and absolutely nothing exists in the records of the case at bar - that private respondent actually revealed the identity of his client(s) to the PCGG. Since the undertaking happens

to be the leitmotif of the entire arrangement between Mr. Roco and the PCGG, an undertaking which is so material as to have justified PCGG's special treatment exempting the private respondent from prosecution, respondent Sandiganbayan should have required proof of the undertaking more substantial than a "bare assertion" that private respondent did indeed comply with the undertaking. Instead, as manifested by the PCGG, only three documents were submitted for the purpose, two of which were mere requests for re-investigation and one simply disclosed certain clients which petitioners (ACCRA lawyers) were themselves willing to reveal. These were clients to whom both petitioners and private respondent rendered legal services while all of them were partners at ACCRA, and were not the clients which the PCGG wanted disclosed for the alleged questioned transactions.[61]

To justify the dropping of the private respondent from the case or the filing of the suit in the respondent court without him, therefore, the PCGG should conclusively show that Mr. Roco was treated as a species apart from the rest of the ACCRA lawyers on the basis of a classification which made substantial distinctions based on real differences. No such substantial distinctions exist from the records of the case at bench, in violation of the equal protection clause.

The equal protection clause is a guarantee which provides a wall of protection against uneven application of statutes and regulations. In the broader sense, the guarantee operates against uneven application of legal norms so that all persons under similar circumstances would be accorded the same treatment.[62] Those who fall within a particular class ought to be treated alike not only as to privileges granted but also as to the liabilities imposed.

x x x. What is required under this constitutional guarantee is the uniform operation of legal norms so that all persons under similar circumstances would be accorded the same treatment both in the privileges conferred and the liabilities imposed. As was noted in a recent decision: 'Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding the rest.[63]

We find that the condition precedent required by the respondent PCGG of the petitioners for their exclusion as parties-defendants in PCGG Case No. 33 violates the lawyer-client confidentiality privilege. The condition also constitutes a transgression by respondents Sandiganbayan and PCGG of the equal protection clause of the Constitution.[64] It is grossly unfair to exempt one similarly situated litigant from prosecution without allowing the same exemption to the others. Moreover, the PCGG's demand not only touches upon the question of the identity of their clients but also on documents related to the suspected transactions, not only in violation of the attorney-client privilege but also of the constitutional right against self-incrimination. Whichever way one looks at it, this is a fishing expedition, a free ride at the expense of such rights.

An argument is advanced that the invocation by petitioners of the privilege of attorney-client confidentiality at this stage of the proceedings is premature and that they should wait until they are called to testify and examine as witnesses as to matters learned in confidence before they can raise their objections. But petitioners are not mere witnesses. They are co-principals in the case for recovery of alleged ill-gotten wealth. They have made their position clear from the very beginning that they are not willing to testify and they cannot be compelled to testify in view of their constitutional right against self-incrimination and of their fundamental legal right to maintain inviolate the privilege of attorney-client confidentiality.

It is clear then that the case against petitioners should never be allowed to take its full course in the Sandiganbayan. Petitioners should not be made to suffer the effects of further litigation when it is obvious that their inclusion in the complaint arose from a privileged attorney-client relationship and as a means of coercing them to disclose the identities of their clients. To allow the case to continue with respect to them when this Court

could nip the problem in the bud at this early opportunity would be to sanction an unjust situation which we should not here countenance. The case hangs as a real and palpable threat, a proverbial Sword of Damocles over petitioners' heads. It should not be allowed to continue a day longer.

While we are aware of respondent PCGG's legal mandate to recover ill-gotten wealth, we will not sanction acts which violate the equal protection guarantee and the right against self-incrimination and subvert the lawyer-client confidentiality privilege.

WHEREFORE, IN VIEW OF THE FOREGOING, the Resolutions of respondent Sandiganbayan (First Division) promulgated on March 18, 1992 and May 21, 1992 are hereby ANNULLED and SET ASIDE. Respondent Sandiganbayan is further ordered to exclude petitioners Teodoro D. Regala, Edgardo J. Angara, Avelino V. Cruz, Jose C. Concepcion, *Rogelio A. Vinluan, Victor P. Lazatin, Eduardo U. Escueta and Paraja G. Hayuduni as parties-defendants in SB Civil Case No. 0033 entitled "Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.".

SO ORDERED.

Bellosillo, Melo, and Francisco, JJ., concur.

Vitug, J., see separate opinion.

Padilla, Panganiban, and Torres, Jr., JJ., concur in the result.

Davide, Jr. and Puno, JJ., see dissenting opinion.

Narvasa, C.J., and Regalado, J., joins Justice Davide in his dissent.

Romero, J., no part. Related to PCGG Commissioner when Civil Case No. 0033 was filed.

Hermosisima, Jr., J., no part. Participated in Sandiganbayan deliberations thereon.

Mendoza, J., on leave.

[1] Agricultural Consultancy Services, Inc.; Agricultural Investors, Inc.; Anglo Ventures, Inc.; Archipelago Realty Corporation; AP Holdings, Inc.; ARC Investment, Inc.; ASC Investment, Inc.; Autonomous Development Corporation; Balete Ranch, Inc.; Black Stallion Ranch, Inc.; Cagayan de Oro Oil Company, Inc.; Christensen Plantation Company; Cocoa Investors, Inc.; Coconut Investment Company (CIC); Cocofed Marketing Corporation (COCOMARK) Coconut Davao Agricultural Aviation, Inc.; Discovery Realty Corporation; Dream Pastures, Inc.; Echo Ranch, Inc.; ECJ and Sons Agricultural Management, Inc.; Far East Ranch, Inc.; Filsov Shipping Co. Inc.; First Meridian Development, Inc.; First United Transport, Inc.; Granexport Manufacturing Corporation; Habagat Realty Development, Inc.; Hyco Agricultural, Inc.; Iligan Coconut Industries, Inc.; Kalawakan Resorts, Inc.; Kaunlaran Agricultural Corporation; Labayog Air Terminals, Inc.; Landair International Marketing Corporation; Legaspi Oil Co., Inc.; LHL Cattle Corporation; Lucena Oil Factory, Inc.; Meadow Lark Plantation, Inc.; Metroplex Commodities, Inc.; Misty Mountains Agricultural Corporation; Northern Carriers Corporation; Northwest Contract Traders, Inc.; Ocean Side Maritime Enterprises, Inc.; Oro Verde Services; Pastoral Farms, Inc.; PCY Oil manufacturing Corporation; Philippine Coconut Producers Federation, Inc. [(COCOFED) as an entity and in representation of the "so-called more than one million member-coconut farmers"]; Philippine Radio Corporation, Inc.; Philippine Technologies, Inc.; Primavera Farms, Inc.; Punong-Bayan Housing Development Corp.; Pura Electric Co., Inc.; Radio Audience Developers Integrated Organization, Inc.; Radio Pilipino Corporation; Rancho Grande, Inc.; Randy Allied Ventures, Inc.; Reddee Developers, Inc.; Rocksteel Resources, Inc.; Roxas Shares, Inc.; San Esteban Development Corporation; San Miguel Corporation Officers Incorporation; San Pablo Manufacturing Corporation; Southern Luzon Oil Mills, Inc.; Silver Leaf Plantation, Inc.; Soriano Shares, Inc.; Southern Services Traders, Inc.; Southern Star Cattle Corporation; Spade 1 Resorts Corporation; Tagum Agricultural Development Corporation; Tedeum Resources, Inc.; Thilagro Edible Oil Mills Inc.; Toda Holdings Inc.; United Coconut Oil Mills, Inc.; United Coconut Planters

Life Assurance Corporation (COCOLIFE); Unexplored Land Developers, Inc.; Valhalla Properties Inc.; Verdant Plantations, Inc.; Vesta Agricultural Corporation; and Wings Resort Corporation.

[2] Petition in G.R. No. 105938, Rollo, p. 6.

[3] Id., Annex "B," Rollo, p. 45.

[4] Id., Annex "C," Rollo, p. 143.

[5] Id., Annex "A," Rollo, p. 39.

[6] Id., Annex "A," Rollo, p. 39.

[7] Petitioner in G.R. No. 108113, Annexes "E," Rollo, p. 161.

[8] Id., Annex "D," Rollo, p. 145.

[9] Petition in G.R. No. 105938, Annex "E", Rollo, p. 161.

[10] Id., Annexes "G," "H" and "I," Rollo, pp. 191-196.

[11] Id., Rollo, p. 8.

[12] Id., Annex "K," p. 222.

[13] Rollo, p. 303.

[14] Id., at 285.

[15] Id., at 287.

[16] Annex "F," Rollo. pp. 181-182.

[17] Coquia, Jorge, Principles of Roman Law (Manila: Central Law Book Supply, Inc., 1979), p. 116.

[18] Id., at 122.

[19] Kelly v. Judge of Records' Court [Kelly v. Boyne], 239 Mich. 204, 214 NW 316, 53 A.L.R. 273; Rhode Island Bar Association v. Automobile Service Association, 179 A. 139, 100 ALR 226.

[20] Curtis v. Richards, 95 Am St. Rep. 134; also cited in Martin, Ruperto, Legal and Judicial Ethics (Manila, Premium Printing Press, 1988) at p. 90.

[21] Rhode Island Bar Association v. Automobile Service Association, 100 ALR 226; Cooper v. Bell, 153 SW 844; Ingersoll v. Coal Creek Co., 98 SW 173; Armstrong v. 163 NW 179; Re Mosness, 20 Am. Rep. 55.

[22] Re Paschal (Texas v. White) 19 L. Ed. 992; Stockton v. Ford, 11 How. (US) 232; 13 L. Ed. 676; Berman v. Cookley, 137 N.E. 667; 26v ALR 92; Re Dunn 98 NE 914.

[23] Agpalo, Ruben, Legal Ethics (Manila: Rex Book Store, 1992), p. 136.

[24] Hilado v. David, 84 Phil. 569; Hernandez v. Villanueva, 40 Phil. 775.

[25] C. WOLFRAM, MODERN LEGAL ETHICS, 146 (1986).

[26] 52 U. S. (11 How.) 232, 247, 13 L. Ed. 676 (1850).

[27] Ibid.

[28] Act No. 190, sec. 383.

[29] Rules of Court, Rule 130, sec. 24(b).

[30] *People v. Warden of Country Jail*, 270 NYS 362 [1934].

[31] 58 AmJur 2d Witnesses sec. 507, 285.

[32] *Id.*

[33] 5 Wigmore on Evidence, sec. 2313, pp. 607-608. See also, *U.S. v. Flores* 628 F2d 521; *People v. Doe* 371 N.E. 2d 334.

[34] 270 ALA 254 (1960).

[35] 548 F 2d 1347 (9th Cir. 197).

[36] *Id* (citations omitted).

[37] 249 NYS 631 (1931).

[38] *Id.*, at 632.

[39] *Id.*, at 634.

[40] 87 NYS 1059 (1904).

[41] *Id.*

[42] 279 F. 2d 623 (1960).

[43] *Id.*, at 633.

[44] *Supra*, note 20, at 257..

[45] R. ARONSON, PROFESSIONAL RESPONSIBILITY, 203 (1991).

[46] *Hays v. Wood*, 25 Cal.3d 770, 603 P.2d 19, 160 Cal. Rptr. 102 (1979); *Ex parte McDonough*, 180 Cal. 230, 149 P. 566 (1915); *In re Grand Jury Proceedings*, 600 F.2d 215, 218 (9th Cir. 1979); *United States v. Hodge & Zweig*, 548 F. 2d 1347, 1353 (9th Cir. 1977); *In re Michaelson*, 511 F.2d 882, 888 (9th Cir.), cert. denied, 421 U.S. 978, 95 S. Ct. 1979, 44 L. Ed.2d 469 (1975); *Baird v. Koerner*, 279 F. 2d 623, 634-35 (9th Cir. 1960) (applying California law); *United States v. Jeffers*, 532 F.2d 1101, 114 15 (7th Cir. 1976), aff'd in part and vacated in part, 432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d 168 (1977); *In re Grand Jury Proceedings*, 517 F.2d 666, 670 71 (5th Cir. 1975); *Tillotson v. Boughner*, 350 F. 2d, 663, 665-66 (7th Cir. 1965); *NLRB v. Harvey*, 349 F.2d 900, 905 (4th Cir. 1965); *Colton v. United States*, 306 F.2d 633, 637 (2d Cir. 1962), cert. denied, 371 U.S. 951, 83 S.Ct. 505, 9 L. Ed.2d 499 (1963).

[47] *Baird v. Koerner*, *supra*. The general exceptions to the rule of privilege are: "a) Communications for illegal purposes, generally. b) Communications as to crime; and c) Communications as to fraud." 58 AmJur 515-517. In order that a communication between a lawyer and his client may be privileged, it must be for a lawful purpose or in furtherance of a lawful end. The existence of an unlawful purpose prevents the privilege from attaching. This includes contemplated criminal acts or in aid or furtherance thereof. But, "Statements and communications regarding the commission of a crime already committed, made by the party who committed it to an attorney, consulted as such are, of course privileged communications, whether a fee has or has not been paid." *Id.* In such

instances even the name of the client thereby becomes privileged.

[48] 58 AmJur 515-517.

[49] Supra, note 40.

[50] Bacon v. Frisbie, 80 NY 394, 399.

[51] 517 F.2d 66 6, 671 (5th Cir., 1965).

[52] 350 F. 2d. 663 (7th Cir. , 1965).

[53] See, In re Shawmut Mining Co., 87 N.Y.S. 1059 (1904).

[54] US Case No. 491, 93-7418 (1994).

[55] US Case No. 92-2439 (1993).

[56] 249 NY 458 (1920).

[57] Lorenzana Food Corporation v. Daria, 197 SCRA 428.

[58] Lerner, Max, The Mind and Faith of Justice Holmes (New York; Halycon House, Garden City, 1943), p. 28.

[59] Rollo, p. 164.

[60] Id., at 155.

[61] As manifested by the PCGG the following documents constituted the basis for the PCGG's decision to drop private respondent:

"1. A letter to the PCGG dated 24 May 1989 signed by Mr. Augusto Sanchez, as counsel for Mr. Roco reiterating an earlier request for reinvestigation of the case;

2. An affidavit dated 8 March 1989 signed and executed by Mr. Roco which was an enclosure to the letter of 24 May 1989;

3. A letter to the PCGG dated 21 September 1988 by the Roco, Bunag and Kapunan Law offices, which was the original request for reinvestigation and/or reexamination of the evidence in the possession of the PCGG. Rollo, p. 238.

[62] Gumabon v. Director of Prisons 37 SCRA 420 (1971).

[63] Id.

[64] Article III, Section 1 of the Constitution provides:

Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[*] the name of "Rogelio A. Vinluan" is included

DISSENTING OPINION

DAVIDE, JR., J.:

The impressive presentation of the case in the ponencia of Mr. Justice Kapunan makes difficult the espousal of a dissenting view. Nevertheless, I do not hesitate to express that view because I strongly feel that this Court must

confine itself to the key issue in this special civil action for certiorari, viz., whether or not the Sandiganbayan acted with grave abuse of discretion in not excluding the defendants, the petitioners herein, from the Third Amended Complaint in Civil Case No. 0033. That issue, unfortunately, has been simply buried under the avalanche of authorities upholding the sanctity of lawyer-client relationship which appears to me to be prematurely invoked.

From the undisputed facts disclosed by the pleadings and summarized in the ponencia, I cannot find my way clear to a conclusion that the Sandiganbayan committed grave abuse of discretion in not acting favorably on the petitioners' prayer in their Comment to the PCGG's Motion to Admit Third Amended Complaint.

The prerogative to determine who shall be made defendants in a civil case is initially vested in the plaintiff, or the PCGG in this case. The control of the Court comes in only when the issue of "interest" (§2, Rule 3, Rules of Court) as, e.g., whether an indispensable party has not been joined, or whether there is a misjoinder of parties (§7, 8, and 9, Id.), is raised.

In the case below, the PCGG decided to drop or exclude from the complaint original co-defendant Raul Roco because he had allegedly complied with the condition prescribed by the PCGG, viz., undertake that he will reveal the identity of the principals for whom he acted as nominee/stockholder in the companies involved in PCGG Case No. 0033. In short, there was an agreement or compromise settlement between the PCGG and Roco. Accordingly, the PCGG submitted a Third Amended Complaint without Roco as a defendant. No obstacle to such an agreement has been insinuated. If Roco's revelation violated the confidentiality of a lawyer-client relationship, he would be solely answerable therefor to his principals/clients and, probably, to this Court in an appropriate disciplinary action if warranted. There is at all no showing that Civil Case No. 0033 cannot further be proceeded upon or that any judgment therein cannot be binding without Roco remaining as a defendant. Accordingly, the admission of the Third Amended Complaint cannot be validly withheld by the Sandiganbayan.

Are the petitioners, who did not file a formal motion to be excluded but only made the request to that effect as a rider to their Comment to the Motion to Admit Third Amended Complaint, entitled to be excluded from the Third Amended complaint such that denial thereof would constitute grave abuse of discretion on the Sandiganbayan's part? To me, the answer is clearly in the negative.

The petitioners seek to be accorded the same benefit granted to or to be similarly treated as Roco. Reason and logic dictate that they cannot, unless they too would make themselves like Roco. Otherwise stated, they must first voluntarily adopt for themselves the factual milieu created by Roco and must bind themselves to perform certain obligations as Roco. It is precisely for this that in response to the petitioners' comment on the aforementioned Motion to Admit Third Amended Complaint the PCGG manifested that it is willing to accord the petitioners the treatment it gave Roco provided they would do what Roco had done, that is, disclose the identity of their principals/clients and submit documents substantiating their claimed lawyer-client relationship with the said principals/clients, as well as copies of deeds of assignments the petitioners executed, in favor of their principals/clients. The petitioners did not do so because they believed that compliance thereof would breach the sanctity of their fiduciary duty in a lawyer-client relationship.

It, indeed, appears, that Roco has complied with his obligation as a consideration for his exclusion from the Third Amended Complaint. The Sandiganbayan found that

5. The PCGG is satisfied that defendant Roco has demonstrated his agency and that Roco has apparently identified his principal, which revelation could show the lack of action against him. This in turn has allowed the PCGG to exercise its power both under the rules of agency and under Section 5 of E.O. No. 14-1 in relation to the Supreme Court's ruling in *Republic v. Sandiganbayan* (173 SCRA 72).

As a matter of fact, the PCGG presented evidence to substantiate Roco's compliance. The ponencia itself so stated, thus:

x x x respondent PCGG presented evidence to substantiate compliance by private respondent Roco of the conditions precedent to warrant the latter's exclusion as party-defendant in PCGG Case No. 33, to wit: (a) Letter to respondent PCGG of the counsel of respondent Roco dated May 24, 1989 reiterating a previous request for reinvestigation by the PCGG in PCGG Case No. 33; (b) Affidavit dated March 8, 1989 executed by private respondent Roco as Attachment to the letter aforesaid in (a); and (c) Letter of Roco, Bunag, and Kapunan Law Offices dated September 21, 1988 to the respondent in behalf of private respondent Roco originally requesting the reinvestigation and/or re-examination of evidence by the PCGG in Complaint in PCGG Case No. 33. (Id., 5-6).

These are the pieces of evidence upon which the Sandiganbayan founded its conclusion that the PCGG was satisfied with Roco's compliance. The petitioners have not assailed such finding as arbitrary.

The ponencia's observation then that Roco did not refute the petitioners' contention that he did not comply with his obligation to disclose the identity of his principals is entirely irrelevant.

In view of their adamant position, the petitioners did not, therefore, allow themselves to be like Roco. They cannot claim the same treatment, much less compel the PCGG to drop them as defendants, for nothing whatsoever. They have no right to make such a demand for until they shall have complied with the conditions imposed for their exclusion, they cannot be excluded except by way of a motion to dismiss based on the grounds allowed by law (e.g., those enumerated in §1, Rule 16, Rules of Court). The rule of confidentiality under the lawyer-client relationship is not a cause to exclude a party. It is merely a ground for disqualification of a witness (§24, Rule 130, Rules of Court) and may only be invoked at the appropriate time, i.e., when a lawyer is under compulsion to answer as witness, as when, having taken the witness stand, he is questioned as to such confidential communication or advice, or is being otherwise judicially coerced to produce, through subpoenas duces tecum or otherwise, letters or other documents containing the same privileged matter. But none of the lawyers in this case is being required to testify about or otherwise reveal "any [confidential] communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment." What they are being asked to do, in line with their claim that they had done the acts ascribed to them in pursuance of their professional relation to their clients, is to identify the latter to the PCGG and the Court, but this, only if they so choose in order to be dropped from the complaint, such identification being the condition under which the PCGG has expressed willingness to exclude them from the action. The revelation is entirely optional, discretionary, on their part. The attorney-client privilege is not therefor applicable.

Thus, the Sandiganbayan did not commit any abuse of discretion when it denied the petitioners' prayer for their exclusion as party-defendants because they did not want to abide with any of the conditions set by the PCGG. There would have been abuse if the Sandiganbayan granted the prayer because then it would have capriciously, whimsically, arbitrarily, and oppressively imposed its will on the PCGG.

Again, what the petitioners want is their exclusion from the Third Amended Complaint or the dismissal of the case insofar as they are concerned because either they are invested with immunity under the principle of confidentiality in a lawyer-client relationship, or the claims against them in Civil Case No. 0033 are barred by such principle.

Even if we have to accommodate this issue, I still submit that the lawyer-client privilege provides the petitioners no refuge. They are sued as principal defendants in Civil Case No. 0033, a case for the recovery of alleged ill-gotten wealth. Conspiracy is imputed to the petitioners therein. In short, they are, allegedly, conspirators in the commission of the acts complained of for being nominees of certain parties.

Their inclusion as defendants is justified under Section 15, Article XI of the Constitution - which provides that the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel - and E.O. No. 1 of 28 February 1986, E.O. No. 2 of 12 March 1986, E.O. No. 14 of 7 May 1986, and the Rules and Regulations of the PCGG. Furthermore, §2, Rule 110 of the Rules of Court requires that the complaint or information should be "against all persons who appear to be responsible for the offense involved."

Hypothetically admitting the allegations in the complaint in Civil Case No. 0033, I find myself unable to agree with the majority opinion that the petitioners are immune from suit or that they have to be excluded as defendants, or that they cannot be compelled to reveal or disclose the identity of their principals, all because of the sacred lawyer-client privilege.

This privilege is well put in Rule 130 of the Rules of Court, to wit:

§24. Disqualification by reason of privileged communication. - The following persons cannot testify as to matters learned in confidence in the following cases:

xxx xxx xxx

(b) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity.

The majority seeks to expand the scope of the Philippine rule on the lawyer-client privilege by copious citations of American jurisprudence which includes in the privilege the identity of the client under the exceptional situations narrated therein. From the plethora of cases cited, two facts stand out in bold relief. Firstly, the issue of privilege contested therein arose in grand jury proceedings on different States, which are preliminary proceedings before the filing of the case in court, and we are not even told what evidentiary rules apply in the said hearings. In the present case, the privilege is invoked in the court where it was already filed and presently pends, and we have the foregoing specific rules above-quoted. Secondly, and more important, in the cases cited by the majority, the lawyers concerned were merely advocating the cause of their clients but were not indicted for the charges against their said clients. Here, the counsel themselves are co-defendants duly charged in court as co-conspirators in the offenses charged. The cases cited by the majority evidently do not apply to them.

Hence, I wish to repeat and underscore the fact, that the lawyer-client privilege is not a shield for the commission of a crime or against the prosecution of the lawyer therefor. I quote, with emphases supplied, from 81 AMJUR 2d, Witnesses, §393 to 395, pages 356-357:

§393: Effect of unlawful purpose.

The existence of an unlawful purpose prevents the attorney-client privilege from attaching. The attorney-client privilege does not generally exist where the representation is sought to further criminal or fraudulent conduct either past, present, or future. Thus, a confidence received by an attorney in order to advance a criminal or fraudulent purpose is beyond the scope of the privilege.

Observation: The common-law rule that the privilege protecting confidential communications between attorney and client is lost if the relation is abused by a client who seeks legal assistance to perpetrate a crime or fraud has been codified.

§394. Attorney participation.

The attorney-client privilege cannot be used to protect a client in the perpetration of a crime in concert with the

attorney, even where the attorney is not aware of his client's purpose. The reason for the rule is that it is not within the professional character of a lawyer to give advice on the commission of crime. Professional responsibility does not countenance the use of the attorney-client privilege as a subterfuge, and all conspiracies, either active or passive, which are calculated to hinder the administration of justice will vitiate the privilege. In some jurisdictions, however, this exception to the rule of privilege is confined to such intended acts in violation of the law as are mala in se, as distinguished from those which are merely mala prohibita.

§395. Communication in contemplation of crime.

Communications between attorney and client having to do with the client's contemplated criminal acts, or in aid or furtherance thereof, are not covered by the cloak of privilege ordinarily existing in reference to communications between attorney and client. But, the mere charge of illegality, not supported by evidence, will not defeat the privilege; there must be at least prima facie evidence that the illegality has some foundation in fact.

Underhill also states:

There are many other cases to the same effect, for the rule is prostitution of the honorable relation of attorney and client will not be permitted under the guise of privilege, and every communication made to an attorney by a client for a criminal purpose is a conspiracy or attempt at a conspiracy which is not only lawful to divulge, but which the attorney under certain circumstances may be bound to disclose at once in the interest of justice. In accordance with this rule, where a forged will or other false instrument has come into possession of an attorney through the instrumentality of the accused, with the hope and expectation that the attorney would take some action in reference thereto, and the attorney does act, in ignorance of the true character of the instrument, there is no privilege, inasmuch as full confidence has been withheld. The attorney is then compelled to produce a forged writing against the client. The fact that the attorney is not cognizant of the criminal or wrongful purpose, or, knowing it, attempts to dissuade his client, is immaterial. The attorney's ignorance of his client's intentions deprives the information of a professional character as full confidence has been withheld. (H.C. Underhill, *A Treatise on the Law of Criminal Evidence*, vol. 2 Fifth ed. (1956), Sec. 332, pp. 836-837; *italics mine*).

125 AMERICAN LAW REPORTS ANNOTATED, 516-519, summarizes the rationale of the rule excepting communications with respect to contemplated criminal or fraudulent acts, thus:

c. Rationale of rule excepting communications with respect to contemplated criminal or fraudulent act.

Various reasons have been announced as being the foundation for the holdings that communications with respect to contemplated criminal or fraudulent acts are not privileged.

The reason perhaps most frequently advanced is that in such cases there is no professional employment, properly speaking. *Standard F. Ins. Co. v. Smithhart* (1919) 183 Ky 679, 211 SW. 441, 5 ALR 972; *Cummings v. Com.* (1927) 221 Ky 301, 298 SW 943; *Strong v. Abner* (1937) 268 Ky 502, 105 SW(2d) 599; *People v. Van Alstine* (1885) 57 Mich 69, 23 NW 594; *Hamil & Co. v. England* (1892) 50 Mo App 338; *Carney v. United R. Co.* (1920) 205 Mo App 495, 226 SW 308; *Matthews v. Hoagland* (1891) 48 NJ Eq 455, 21 A 1054; *Covency v. Tannahill* (1841) 1 Hill (NY) 33, 37 AM Dec 287; *People ex rel. Vogeistein v. Warden* (1934) 150 Misc 714, 270 NYS 362 (affirmed without opinion in (1934) 242 App Div 611, 271 NYS 1059); *Russell v. Jackson* (1851) 9 Hare 387, 68 Eng Reprint 558; *Charlton v. Coombes* (1863) 4 Giff 372, 66 Eng Reprint 751; *Reg. v. Cox* (1884) LR 14 QB Div (Eng) 153 -CCR; *Re Postlethwaite* (1887) LR 35 Ch Div (Eng) 722.

In *Reg. v. Cox* (1884) LR 14 QB Div (Eng) 153 -CCR, the court said: "In order that the rule may apply, there must be both professional confidence and professional employment, but if the client has a criminal object in view in his communications with his solicitor one of these elements must necessarily be absent. The client must either conspire with his solicitor or deceive him. If his criminal object is avowed, the client does not

consult his adviser professionally, because it cannot be the solicitor's business to further any criminal object. If the client does not avow his object, he reposes no confidence, for the state of facts which is the foundation of the supposed confidence does not exist. The solicitor's advice is obtained by a fraud."

So, in *Standard F. Ins. Co. v. Smithhart* (1919) 183 Ky 679, 211 SW 441, 5 ALR 972, the court said: "The reason of the principle which holds such communications not to be privileged is that it is not within the professional character of a lawyer to give advice upon such subjects, and that it is no part of the profession of an attorney or counselor at law to be advising persons as to how they may commit crimes or frauds, or how they may escape the consequences of contemplated crimes and frauds. If the crime or fraud has already been committed and finished, a client may advise with an attorney in regard to it, and communicate with him freely, and the communications cannot be divulged as evidence without the consent of the client, because it is a part of the business and duty of those engaged in the practice of the profession of law, when employed and relied upon for that purpose, to give advice to those who have made infractions of the laws; and, to enable the attorney to properly advise and to properly represent the client in court or when prosecutions are threatened, it is conducive to the administration of justice that the client shall be free to communicate to his attorney all the facts within his knowledge, and that he may be assured that a communication made by him shall not be used to his prejudice."

The protection which the law affords to communications between attorney and client has reference to those which are legitimately and properly within the scope of a lawful employment, and does not extend to communications made in contemplation of a crime, or perpetration of a fraud. *Strong v. Abner* (1937) 268 Ky 502, 105 SW (2d) 599.

The court in *People v. Van Alstine* (1885) 57 Mich 69, 23 NW 594, in holding not privileged communications to an attorney having for their object the commission of a crime, said: "They then partake of the nature of a conspiracy, or attempted conspiracy, and it is not only lawful to divulge such communications, but under certain circumstances it might become the duty of the attorney to do so. The interests of public justice require that no such shield from merited exposure shall be interposed to protect a person who takes counsel how he can safely commit a crime. The relation of attorney and client cannot exist for the purpose of counsel in concocting crimes."

And in *Coveney v. Tannahill* (1841) 1 Hill (NY) 33, 37 Am Dec 287, the court was of the opinion that there could be no such relation as that of attorney and client, either in the commission of a crime, or in the doing of a wrong by force or fraud to an individual, the privileged relation of attorney and client existing only for lawful and honest purposes.

If the client consults the attorney at law with reference to the perpetration of a crime, and they co-operate in effecting it, there is no privilege, inasmuch as it is no part of the lawyer's duty to aid in crime -- he ceases to be counsel and becomes a criminal. *Matthews v. Hoagland* (1891) 48 NJ Eq 455, 21 A 1054.

The court cannot permit it to be said that the contriving of a fraud forms part of the professional business of an attorney or solicitor. *Charlton v. Coombes* (1863) 4 Giff 372, 66 Eng Reprint 751.

If the client does not frankly and freely reveal his object and intention as well as facts, there is not professional confidence, and therefore no privilege. *Matthews v. Hoagland* (NJ) supra. See to the same effect *Carney v. United R. Co.* (1920) 205 Mo App 495, 226 SW 308.

There is no valid claim of privilege in regard to the production of documents passing between solicitor and client, when the transaction impeached is charged to be based upon fraud, that is the matter to be investigated, and it is thought better that the alleged privilege should suffer than that honestly and fair dealing should appear to be violated with impunity. *Smith v. Hunt* (1901) 1 Ont L Rep 334.

In *Tichborne v. Lushington*, shorthand Notes (Eng) p. 5211 (cited in *Reg. v. Cox* (1884) LR 14 QB Div (Eng)

172 - CCR), the chief justice said: "I believe the law is, and properly is, that if a party consults an attorney, and obtains advice for what afterwards turns out to be the commission of a crime or a fraud, that a party so consulting the attorney has no privilege whatever to close the lips of the attorney from stating the truth. Indeed, if any such privilege should be contended for, or existing, it would work most grievous hardship on an attorney, who, after he had been consulted upon what subsequently appeared to be a manifest crime and fraud, would have his lips closed, and might place him in a very serious position of being suspected to be a party to the fraud, and without his having an opportunity of exculpating himself. . . . There is no privilege in the case which I have suggested of a party consulting another, a professional man, as to what may afterwards turn out to be a crime or fraud, and the best mode of accomplishing it."

In *Garside v. Outram* (1856) 3 Jur NS (Eng) 39, although the question of privilege as to communications between attorney and client was not involved, the question directly involved being the competency of a clerk in a business establishment to testify as to certain information which he acquired while working in the establishment, the court strongly approved of a view as stated *arguendo* for plaintiff, in *Annesley v. Anglesea* (1743) 17 How St Tr (Eng) 1229, as follows: "I shall claim leave to consider whether an attorney may be examined as to any matter which came to his knowledge as an attorney. If he is employed as an attorney in any unlawful or wicked act, his duty to the public obliges him to disclose it; no private obligations can dispense with that universal one which lies on every member of society to discover every design which may be formed, contrary to the laws of society, to destroy the public welfare. For this reason, I apprehend that if a secret which is contrary to the public good, such as a design to commit treason, murder, or perjury, comes to the knowledge of an attorney, even in a cause where he is concerned, the obligation to the public must dispense with the private obligation to the client."

The court in *McMannus v. State* (1858) 2 Head (Tenn) 213, said: "It would be monstrous to hold that if counsel was asked and obtained in reference to a contemplated crime that the lips of the attorney would be sealed, when the facts might become important to the ends of justice in the prosecution of crime. In such a case the relation cannot be taken to exist. Public policy would forbid it."

And the court in *Lanum v. Patterson* (1909) 151 I11 App 36, observed that this rule was not in contravention of sound public policy, but on the contrary, tended to the maintenance of a higher standard of professional ethics by preventing the relation of attorney and client from operating as a cloak for fraud.

Communications of a client to an attorney are not privileged if they were a request for advice as to how to commit a fraud, it being in such a case not only the attorney's privilege, but his duty, to disclose the facts to the court. *Will v. Tornabells & Co.* (1907) 3 Porto Rico Fed Rep 125. The court said: "We say this notwithstanding the comments of opposing counsel as to the indelicacy of his position because of his being now on the opposite side of the issue that arose as a consequence of the communication he testifies about, and is interested in the cause to the extent of a large contingent fee, as he confesses."

The object of prohibiting the disclosure of confidential communications is to protect the client, and not to make the attorney an accomplice or permit him to aid in the commission of a crime. *People vs. Petersen* (1901) 60 App Div 118, NYS 941.

The seal of personal confidence can never be used to cover a transaction which is in itself a crime. *People v. Farmer* (1909) 194 NY 251, 87 NE 457.

As to disclosing the identity of a client, 81 AM JUR 2d, Witnesses, §410 and 411, pages 366-368, states:

§4 10. Name or identity of client.

Disclosure of a client's identity is necessary proof of the existence of the attorney-client relationship and is not privileged information. Thus, the attorney-client privilege is inapplicable even though the information was communicated confidentially to the attorney in his professional capacity and, in some cases, in spite of the fact

that the attorney may have been sworn to secrecy, where an inquiry is directed to an attorney as to the name or identity of his client. This general rule applies in criminal cases, as well as in civil actions. Where an undisclosed client is a party to an action, the opposing party has a right to know with whom he is contending or who the real party in interest is, if not the nominal adversary.

§411. Disclosure of identity of client as breach of confidentiality.

The revelation of the identification of a client is not usually considered privileged, except where so much has been divulged with regard to legal services rendered or the advice sought, that to reveal the client's name would be to disclose the whole relationship and confidential communications. However, even where the subject matter of the attorney-client relationship has already been revealed, the client's name has been deemed privileged.

Where disclosure of the identity of a client might harm the client by being used against him under circumstances where there are no countervailing factors, then the identity is protected by the attorney-client privilege.

In criminal proceedings, a client's name may be privileged if information already obtained by the tribunal, combined with the client's identity, might expose him to criminal prosecution for acts subsequent to, and because of, which he had sought the advice of his attorney.

Although as a general rule, the identity of a defendant in a criminal prosecution is a matter of public record and, thus, not covered by the attorney-client privilege, where the attorney has surrendered to the authorities physical evidence in his possession by way of the attorney-client relationship, the state must prove the connection between the piece of physical evidence and the defendant without in any way relying on the testimony of the client's attorney who initially received the evidence and, thus, the attorney may not be called to the stand and asked to disclose the identity of the client. However, an attorney cannot refuse to reveal the identity of a person who asked him to deliver stolen property to the police department, whether a bona fide attorney-client relationship exists between them, inasmuch as the transaction was not a legal service or done in the attorney's professional capacity.

Distinction: Where an attorney was informed by a male client that his female acquaintance was possibly involved in [a] hit-and-run accident, the identity of the female did not come within scope of attorney-client privilege although the identity of the male client was protected. (*italics supplied*)

WIGMORE explains why the identity of a client is not within the lawyer-client privilege in this matter:

§23 13. Identity of client or purpose of suit.- The identity of the attorney's client or the name of the real party in interest will seldom be a matter communicated in confidence because the procedure of litigation ordinarily presupposes a disclosure of these facts. Furthermore, so far as a client may in fact desire secrecy and may be able to secure action without appearing as a party to the proceedings, it would be improper to sanction such a wish. Every litigant is in justice entitled to know the identity of his opponents. He cannot be obliged to struggle in the dark against unknown forces. He has by anticipation the right, in later proceedings, if desired, to enforce the legal responsibility of those who may have maliciously sued or prosecuted him or fraudulently evaded his claim. He has as much right to ask the attorney "Who fees your fee?" as to ask the witness (966 *supra*). "Who maintains you during this trial?" upon the analogy of the principle already examined (2298 *supra*), the privilege cannot be used to evade a client's responsibility for the use of legal process. And if it is necessary for the purpose to make a plain exception to the rule of confidence, then it must be made. (Wigmore on Evidence, vol. 8, (1961), p. 609; *emphases supplied*).

In 114 ALR, 1322, we also find the following statement:

1. Name or identity.

As is indicated in 28 R.C.L. p. 563, it appears that the rule making communications between attorney and client privileged from disclosure ordinarily does not apply where the inquiry is confined to the fact of the attorney's employment and the name of the person employing him, since the privilege presupposes the relationship of client and attorney, and therefore does not attach to its creation.

At the present stage of the proceedings below, the petitioners have not shown that they are so situated with respect to their principals as to bring them within any of the exceptions established by American jurisprudence. There will be full opportunity for them to establish that fact at the trial where the broader perspectives of the case shall have been presented and can be better appreciated by the court. The insistence for their exclusion from the case is understandable, but the reasons for the hasty resolution desired is naturally suspect.

We do not even have to go beyond our shores for an authority that the lawyer-client privilege cannot be invoked to prevent the disclosure of a client's identity where the lawyer and the client are conspirators in the commission of a crime or a fraud. Under our jurisdiction, lawyers are mandated not to counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system (Rule 1.02, Canon, 1, Code of Professional Responsibility) and to employ only fair and honest means to attain the lawful objectives of his client (Rule 19.01, Canon 19, Id.). And under the Canons of Professional Ethics, a lawyer must steadfastly bear in mind that his great trust is to be performed within and not without the bounds of the law (Canon 15, Id.), that he advances the honor of his profession and the best interest of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law (Canon 32, Id.). These canons strip a lawyer of the lawyer-client privilege whenever he conspires with the client in the commission of a crime or a fraud.

I then vote to DENY, for want of merit, the instant petition.

DISSENTING OPINION

PUNO, J.,:

This is an important petition for certiorari to annul the resolutions of the respondent Sandiganbayan denying petitioners' motion to be excluded from the Complaint for recovery of alleged ill-gotten wealth on the principal ground that as lawyers they cannot be ordered to reveal the identity of their client.

First, we fast forward the facts. The Presidential Commission on Good Government (PCGG) filed Civil Case No. 33 before the Sandiganbayan against Eduardo M. Cojuangco, Jr., for the recovery of alleged ill-gotten wealth. Sued as co-defendants are the petitioners in the cases at bar - lawyers Teodoro Regala, Edgardo J. Angara, Avelino V. Cruz, Jose Concepcion, Rogelio A. Vinluan, Victor P. Lazatin, Eduardo Escueta and Paraja Hayudini. Also included as a co-defendant is lawyer Raul Roco, now a duly elected senator of the Republic. All co-defendants were then partners of the law firm, Angara, Abello, Concepcion, Regala and Cruz Law Offices, better known as the ACCRA Law Firm. The Complaint against Cojuangco, Jr., and the petitioners alleged, inter alia, viz:

"xxx xxx xxx

"The wrongs committed by defendants acting singly or collectively and in unlawful concert with one another, include the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power as more fully described (in the subsequent paragraphs of the complaint), all at the expense and to the grave and irreparable damage of Plaintiff and the Filipino people.

"Defendants Eduardo Cojuangco, Jr., Edgardo J. Angara, Jose C. Concepcion, Teodoro D. Regala, Avelino V. Cruz, Rogelio A. Vinluan, Eduardo U. Escueta, Paraja G. Hayudini and Raul S. Roco of Angara, Concepcion,

Cruz, Regala, and Abello law offices (ACCRA) plotted, devised, schemed, conspired and confederated with each other in setting up, through the use of the coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, COCOLIFE, COCOMARK, CIC and more than twenty other coconut levy funded corporations, including the acquisition of the San Miguel Corporation shares and the institutionalization through presidential directives of the coconut monopoly. Through insidious means and machinations, ACCRA, using its wholly-owned investment arm, ACCRA Investments Corporation, became the holder of approximately fifteen million shares representing roughly 3.3% of the total outstanding capital stock of UCPB as of 31 March 1987. This ranks ACCRA Investments Corporation number 44 among the top 100 biggest stockholders of UCPB which has approximately 1,400,000 shareholders. On the other hand, corporate books show the name Edgardo J. Angara as holding approximately 3,744 shares as of 7 June 1984."

In their Answer, petitioners alleged that the legal services offered and made available by their firm to its clients include: (a) organizing and acquiring business organizations, (b) acting as incorporators or stockholders thereof, and (c) delivering to clients the corresponding documents of their equity holdings (i.e., certificates of stock endorsed in blank or blank deeds of trust or assignment). They claimed that their activities were "in furtherance of legitimate lawyering."

In the course of the proceedings in the Sandiganbayan, the PCGG filed a Motion to Admit Third Amended Complaint and the Third Amended Complaint excluding lawyer Roco as party defendant. Lawyer Roco was excluded on the basis of his promise to reveal the identity of the principals for whom he acted as nominee/stockholder in the companies involved in the case.

The Sandiganbayan ordered petitioners to comment on the motion. In their Comment, petitioners demanded that they be extended the same privilege as their co-defendant Roco. They prayed for their exclusion from the complaint. PCGG agreed but set the following conditions: (1) disclosure of the identity of their client; (2) submission of documents substantiating their lawyer-client relationship; and (3) submission of the deeds of assignment petitioners executed in favor of their client covering their respective shareholdings. The same conditions were imposed on lawyer Roco.

Petitioners refused to comply with the PCGG conditions contending that the attorney-client privilege gives them the right not to reveal the identity of their client. They also alleged that lawyer Roco was excluded though he did not in fact reveal the identity of his clients. On March 18, 1992, the Sandiganbayan denied the exclusion of petitioners in Case No. 33. It held:

"xxx xxx xxx

"ACCRA lawyers may take the heroic stance of not revealing the identity of the client for whom they have acted, i.e., their principal, and that will be their choice. But until they do identify their clients, considerations of whether or not the privilege claimed by the ACCRA lawyers exists cannot even begin to be debated. The ACCRA lawyers cannot excuse themselves from the consequences of their acts until they have begun to establish the basis for recognizing the privilege; the existence and identity of the client.

This is what appears to be the cause for which they have been impleaded by the PCGG as defendants herein.

5. The PCGG is satisfied that defendant Roco has demonstrated his agency and that Roco has apparently identified his principal, which revelation could show the lack of cause against him. This in turn has allowed the PCGG to exercise its power both under the rules of Agency and under Section 5 of E.O. No. 14-A in relation to the Supreme Court's ruling in Republic v. Sandiganbayan (173 SCRA 72).

The PCGG has apparently offered to the ACCRA lawyers the same conditions availed of by Roco; full disclosure in exchange for exclusion from these proceedings (par. 7, PCGG's COMMENT dated November 4,

1991). The ACCRA lawyers have preferred not to make the disclosures required by the PCGG.

The ACCRA lawyers cannot, therefore, begrudge the PCGG for keeping them as party defendants. In the same vein, they cannot compel the PCGG to be accorded the same treatment accorded to Roco.

Neither can this Court.

WHEREFORE, the Counter Motion dated October 8, 1991 filed by the ACCRA lawyers and joined in by Atty. Paraja G. Hayudini for the same treatment by the PCGG as accorded to Raul S. Roco is DENIED for lack of merit."

Sandiganbayan later denied petitioners' motion for reconsideration in its resolutions dated May 21, 1988 and September 3, 1992.

In this petition for certiorari, petitioners contend:

"I

"The Honorable Sandiganbayan gravely abused its discretion in subjecting petitioners ACCRA lawyers who undisputably acted as lawyers in serving as nominee-stockholders, to the strict application of the law agency.

"II

"The Honorable Sandiganbayan committed grave abuse of discretion in not considering petitioners ACCRA lawyers and Mr. Roco as similarly situated and, therefore, deserving of equal treatment.

1. There is absolutely no evidence that Mr. Roco had revealed, or had undertaken to reveal, the identities of the client(s) for whom he acted as nominee-stockholder.

2. Even assuming that Mr. Roco had revealed, or had undertaken to reveal, the identities of the client(s), the disclosures does not constitute a substantial distinction as would make the classification reasonable under the equal protection clause.

3. Respondent Sandiganbayan sanctioned favoritism and undue preference in favor of Mr. Roco in violation of the equal protection clause.

"III

"The Honorable Sandiganbayan committed grave abuse of discretion in not holding that, under the facts of this case, the attorney-client privilege prohibits petitioners ACCRA lawyers from revealing the identity of their client(s) and the other information requested by the PCGG.

1. Under the peculiar facts of this case, the attorney-client privilege includes the identity of the client(s).

2. The factual disclosures required by the PCGG are not limited to the identity of petitioners ACCRA lawyers' alleged client(s) but extend to other privileged matters.

"IV

"The Honorable Sandiganbayan committed grave abuse of discretion in not requiring that the dropping of party-defendants by the PCGG must be based on reasonable and just grounds and with due consideration to the constitutional right of petitioners ACCRA lawyers to the equal protection of the law."

The petition at bar is atypical of the usual case where the hinge issue involves the applicability of attorney-client privilege. It ought to be noted that petitioners were included as defendants in Civil Case No. 33 as conspirators. Together with Mr. Cojuangco, Jr., they are charged with having "x x x conspired and confederated with each other in setting up, through the use of the coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, COCOLIFE, COCOMARK, CICI and more than twenty other coconut levy funded corporations, including the acquisition of San Miguel Corporation shares and

the institutionalization through presidential directives of the coconut monopoly." To stress, petitioners are charged with having conspired in the commission of crimes. The issue of attorney-client privilege arose when PCGG agreed to exclude petitioners from the complaint on condition they reveal the identity of their client. Petitioners refused to comply and assailed the condition on the ground that to reveal the identity of their client will violate the attorney-client privilege.

It is thus necessary to resolve whether the Sandiganbayan committed grave abuse of discretion when it rejected petitioners' thesis that to reveal the identity of their client would violate the attorney-client privilege. The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.[1] For the first time in this jurisdiction, we are asked to rule whether the attorney-client privilege includes the right not to disclose the identity of client. The issue poses a trilemma for its resolution requires the delicate balancing of three opposing policy considerations. One overriding policy consideration is the need for courts to discover the truth for truth alone is the true touchstone of justice.[2] Equally compelling is the need to protect the adversary system of justice where truth is best extracted by giving a client broad privilege to confide facts to his counsel.[3] Similarly deserving of sedulous concern is the need to keep inviolate the constitutional right against self-incrimination and the right to effective counsel in criminal litigations. To bridle at center the centrifugal forces of these policy considerations, courts have followed the prudential principle that the attorney-client privilege must not be expansively construed as it is in derogation of the search for truth.[4] Accordingly, a narrow construction has been given to the privilege and it has been consistently held that "these competing societal interests demand that application of the privilege not exceed that which is necessary to effect the policy considerations underlying the privilege, i.e., 'the privilege must be upheld only in those circumstances for which it was created.'"[5]

Prescinding from these premises, our initial task is to define in clear strokes the substantive content of the attorney-client privilege within the context of the distinct issues posed by the petition at bar. With due respect, I like to start by stressing the irreducible principle that the attorney-client privilege can never be used as a shield to commit a crime or a fraud. Communications to an attorney having for their object the commission of a crime "x x x partake the nature of a conspiracy, and it is not only lawful to divulge such communications, but under certain circumstances it might become the duty of the attorney to do so. The interests of public justice require that no such shield from merited exposure shall be interposed to protect a person who takes counsel how he can safely commit a crime. The relation of attorney and client cannot exist for the purpose of counsel in concocting crimes." [6] In the well chosen words of retired Justice Quiason, a lawyer is not a gun for hire.[7] I hasten to add, however, that a mere allegation that a lawyer conspired with his client to commit a crime or a fraud will not defeat the privilege.[8] As early as 1993, no less than the Mr. Justice Cardozo held in *Clark v. United States*[9] that: "there are early cases apparently to the effect that a mere charge of illegality, not supported by any evidence, will set the confidences free x x x But this conception of the privilege is without support x x x To drive the privilege away, there must be 'something to give colour to the charge'; there must be prima facie evidence that it has foundation in fact." In the petition at bar, however, the PCGG appears to have relented on its original stance as spelled out in its Complaint that petitioners are co-conspirators in crimes and cannot invoke the attorney-client privilege. The PCGG has agreed to exclude petitioners from the Complaint provided they reveal the identity of their client. In fine, PCGG has conceded that petitioners are entitled to invoke the attorney-client privilege if they reveal their client's identity.

Assuming then that petitioners can invoke the attorney-client privilege since the PCGG is no longer proceeding against them as co-conspirators in crimes, we should focus on the more specific issue of whether the attorney-client privilege includes the right not to divulge the identity of a client as contended by the petitioners. As a general rule, the attorney-client privilege does not include the right of non-disclosure of client identity. The

general rule, however, admits of well-etched exceptions which the Sandiganbayan failed to recognize. The general rule and its exceptions are accurately summarized in *In re Grand Jury Investigation*,^[10] viz:

"The federal forum is unanimously in accord with the general rule that the identity of a client is, with limited exceptions, not within the protective ambit of the attorney-client privilege. See: *In re Grand Jury Proceedings* (Pavlick), 680 F.2d 1026, 1027 (5th Cir. 1982) (en banc); *In re Grand Jury Proceedings* (Jones), 517 F.2d 666, 670-71 (5th Cir. 1975); *In re Grand Jury Proceedings* (Fine), 651 F.2d 199, 204 (5th Cir. 1981); *Frank v. Tomlinson*, 351 F.2d 384 (5th Cir. 1965), cert. denied, 382 U.S. 1028, 86 S.Ct. 648, 15 L.Ed.2d 540 (1966); *In re Grand Jury Witness* (Salas), 695 F.2d 359, 361 (9th Cir. 1982); *In re Grand Jury Subpoenas Duces Tecum* (Marger/Merenbach), 695 F.2d 363, 365 (9th Cir. 1982); *In re Grand Jury Proceedings* (Lawson), 600 F.2d 215, 218 (9th Cir. 1979).

The Circuits have embraced various "exceptions" to the general rule that the identity of a client is not within the protective ambit of the attorney-client privilege. All such exceptions appear to be firmly grounded in the Ninth Circuit's seminal decision in *Baird v. Koerner*, 279 F.2d 633 (9th Cir. 1960). In *Baird* the IRS received a letter from an attorney stating that an enclosed check in the amount of \$ 12,706 was being tendered for additional amounts due from undisclosed taxpayers. When the IRS summoned the attorney to ascertain the identity of the delinquent taxpayers the attorney refused identification asserting the attorney-client privilege. The Ninth Circuit, applying California law, adjudged that the "exception" to the general rule as pronounced in *Ex parte McDonough*, 170 Cal. 230, 149 P.566 (1915) controlled:

'The name of the client will be considered privileged matter where the circumstances of the case are such that the name of the client is material only for the purpose of showing an acknowledgment of guilt on the part of such client of the very offenses on account of which the attorney was employed.'

Baird, supra, 279 F.2d at 633. The identity of the *Baird* taxpayer was adjudged within this exception to the general rule. The Ninth circuit has continued to acknowledge this exception.

'A significant exception to this principle of non-confidentiality holds that such information may be privileged when the person invoking the privilege is able to show that a strong possibility exists that disclosure of the information would implicate the client in the very matter for which legal advice was sought in the first case.'

In re Grand Jury Subpoenas Duces Tecum (Marger/Merenbach), 695 F.2d 363, 365 (9th Cir. 1982). Accord: *United States v. Hodge and Zweig*, 548 F.2d 1347, 1353 (9th Cir. 1977); *In re Grand Jury Proceedings* (Lawson), 600 F.2d 215, 218 (9th Cir. 1979); *United States v. Sherman*, 627 F.2d 189, 190-91 (9th Cir. 1980); *In re Grand Jury Witness* (Salas), 695 F.2d 359, 361 (9th Cir. 1982). This exception, which can perhaps be most succinctly characterized as the "legal advice" exception, has also been recognized by other circuits. See: *In re Walsh*, 623 F.2d 489, 495, (7th Cir.), cert. denied, 449 U.S. 994, 101 S. Ct. 531, 66 L.Ed.2d 291 (1980); *In re Grand Jury Investigation* (Tinari), 631 F.2d 17, 19 (3d Cir. 1980), cert. denied, 449 U.S. 1083, 101 S. Ct. 869-70, 66 L.Ed.2d 808 (1981). Since the legal advice exception is firmly grounded in the policy of protecting confidential communications, this Court adopts and applies its principles herein. See: *In re Grand Jury Subpoenas Duces Tecum* (Marger/Merenbach), supra.

It should be observed, however, that the legal advice exception may be defeated through a prima facie showing that the legal representation was secured in furtherance of present or intended continuing illegality, as where the legal representation itself is part of a larger conspiracy. See: *In re Grand Jury Subpoenas Decus Tecum* (Marger/Merenbach), supra, 695 F.2d at 365 n. 1; *In re Walsh*, 623 F.2d 489, 495 (7th Cir.), cert. denied, 449 U.S. 994, 101 S. Ct. 531, 66 L.Ed. 2d 291 (1980); *In re Grand Jury Investigation* (Tinari), 631 F.2d 17, 19 (3d Cir. 1980); cert. denied, 449 U.S. 1083, 101 S. Ct. 869, 66 L. Ed. 2d 808 (1981); *In re Grand Jury Proceedings* (Lawson), 600 F.2d 215, 218 (9th Cir. 1979); *United States v. Friedman*, 445 F.2d 1076, 1086 (9th Cir. 1971). See also: *Clark v. United States*, 289 U.S. 1, 15, 53, S. Ct. 465, 469, 77 L. Ed. 993 (1933); *In re Grand Jury*

Proceedings (Pavlick), 680 F.2d 1026, 1028-29 (5th Cir. 1982 (en banc)).

Another exception to the general rule that the identity of a client is not privileged arises where disclosure of the identity would be tantamount to disclosing an otherwise protected confidential communication. In Baird, supra, the Ninth Circuit observed:

'If the identification of the client conveys information which ordinarily would be conceded to be part of the usual privileged communication between attorney and client, then the privilege should extend to such identification in the absence of other factors.'

Id., 279 F.2d at 632. Citing Baird, the Fourth Circuit promulgated the following exception:

To the general rule is an exception, firmly embedded as the rule itself. The privilege may be recognized where so much of the actual communication has already been disclosed that identification of the client amounts to disclosure of a confidential communication.

NLRB v. Harvey, 349 F.2d 900, 905 (4th Cir. 1965). Accord: United States v. Tratner, 511 F.2d 248, 252 (7th Cir. 1975); Colton v. United States, 306 F.2d 633, 637 (2d Cir. 1962), cert. denied, 371 U.S. 951, 83 S.Ct. 505, 9 L.Ed.2d 499 (1963); Tillotson v. Boughner, 350 F.2d 663, 666 (7th Cir. 1965); United States v. Pape, 144 F.2d 778, 783 (2d Cir. 1944). See also: Chirac v. Reinecker, 24 U.S. (11 Wheat) 280, 6 L.Ed. 474 (1826). The Seventh Circuit has added to the Harvey exception the following emphasized caveat:

The privilege may be recognized where so much of the actual communication has already been disclosed [not necessarily by the attorney, but by independent sources as well] that identification of the client [or offees paid] amounts to disclosure of a confidential communication.

United States vs. Jeffers, 532 F.2d 1101, 1115 (7th Cir. 1976 (emphasis added)). The Third Circuit, applying this exception, has emphasized that it is the link between the client and the communication, rather than the link between the client and the possibility of potential criminal prosecution, which serves to bring the clients' identity within the protective ambit of the attorney-client privilege. See: In re Grand Jury Empanelled February 14, 1978 (Markowitz), 603 F.2d 469, 473 n.4 (3d Cir. 1979). Like the "legal advice" exception, this exception is also firmly rooted in principles of confidentiality.

Another exception, articulated in the Fifth Circuit's en banc decision of In re Grand Jury Proceedings (Pavlick), 680 F.2d 1026 (5th Cir. 1982 (en banc)), is recognized when disclosure of the identity of the client would provide the "last link" of evidence:

We have long recognized the general rule that matters involving the payment of fees and the identity of clients are not generally privileged. In re Grand Jury Proceedings, (United States v. Jones), 517 F.2d 666 (5th Cir. 1975); see cases collected id. at 670 n. 2. There we also recognized, however, a limited and narrow exception to the general rule, one that obtains when the disclosure of the client's identity by his attorney would have supplied the last link in an existing chain of incriminating evidence likely to lead to the client's indictment."

I join the majority in holding that the Sandiganbayan committed grave abuse of discretion when it misdelineated the metes and bounds of the attorney-client privilege by failing to recognize the exceptions discussed above.

Be that as it may, I part ways with the majority when it ruled that petitioners need not prove they fall within the exceptions to the general rule. I respectfully submit that the attorney-client privilege is not a magic mantra whose invocation will ipso facto and ipso jure drape he who invokes it with its protection. Plainly put, it is not enough to assert the privilege[11] The person claiming the privilege or its exceptions has the obligation to present the underlying facts demonstrating the existence of the privilege.[12] When these facts can be presented only by revealing the very information sought to be protected by the privilege, the procedure is for the lawyer to move for

an inspection of the evidence in an in camera hearing.[13] The hearing can even be in camera and ex-parte. Thus, it has been held that "a well-recognized means for an attorney to demonstrate the existence of an exception to the general rule, while simultaneously preserving confidentiality of the identity of his client, is to move the court for an in camera ex-parte hearing.[14] Without the proofs adduced in these in camera hearings, the Court has no factual basis to determine whether petitioners fall within any of the exceptions to the general rule.

In the case at bar, it cannot be gainsaid that petitioners have not adduced evidence that they fall within any of the above mentioned exceptions for as aforesaid, the Sandiganbayan did not recognize the exceptions, hence, the order compelling them to reveal the identity of their client. In ruling that petitioners need not further establish the factual basis of their claim that they fall within the exceptions to the general rule, the majority held:

"The circumstances involving the engagement of lawyers in the case at bench therefore clearly reveal that the instant case falls under at least two exceptions to the general rule. First, disclosure of the alleged client's name would lead to establish said client's connection with the very fact in issue of the case, which is privileged information, because the privilege, as stated earlier, protects the subject matter or the substance (without which there would be no attorney-client relationship). Furthermore, under the third main exception, revelation of the client's name would obviously provide the necessary link for the prosecution to build its case, where none otherwise exists. It is the link, in the word of Baird, "that would inevitably form the chain of testimony necessary to convict the (client) of a . . . crime."

I respectfully submit that the first and third exceptions relied upon by the majority are not self-executory but need factual basis for their successful invocation. The first exception as cited by the majority is "x x x where a strong probability exists that revealing the clients' name would implicate that client in the very activity for which he sought the lawyer's advice." It seems to me evident that "the very activity for which he sought the lawyer's advice" is a question of fact which must first be established before there can be any ruling that the exception can be invoked. The majority cites Ex Parte Enzor,[15] and US v. Hodge and Zweig,[16] but these cases leave no doubt that the "very activity" for which the client sought the advice of counsel was properly proved. In both cases, the "very activity" of the clients reveal they sought advice on their criminal activities. Thus, in Enzor, the majority opinion states that the "unidentified client, an election official, informed his attorney in confidence that he had been offered a bribe to violate election laws or that he had accepted a bribe to that end.[17] In Hodge, the "very activity" of the clients deals with illegal importation of drugs. In the case at bar, there is no inkling whatsoever about the "very activity" for which the clients of petitioners sought their professional advice as lawyers. There is nothing in the records that petitioners were consulted on the "criminal activities" of their client. The complaint did allege that petitioners and their client conspired to commit crimes but allegations are not evidence.

So it is with the third exception which as related by the majority is "where the government's-lawyers have no case against an attorney's client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime."[18] Again, the rhetorical questions that answer themselves are: (1) how can we determine that PCGG has "no case" against petitioners without presentation of evidence? and (2) how can we determine that the name of the client is the only link without presentation of evidence as to the other links? The case of Baird vs. Koerner[19] does not support the "no need for evidence" ruling of the majority. In Baird, as related by the majority itself, "a lawyer was consulted by the accountants and the lawyer of certain undisclosed taxpayers regarding steps to be taken to place the undisclosed taxpayers in a favorable position in case criminal charges were brought against them by the US Internal Revenue Service (IRS). It appeared that the taxpayers' returns of previous years were probably incorrect and the taxes understated.[20] Once more, it is clear that the Baird court was informed of the activity of the client for which the lawyer was consulted and the activity involved probable violation of tax laws. Thus, the Court held:

"The facts of the instant case bring it squarely within that exception to the general rule. Here money was

received by the government, paid by persons who thereby admitted they had not paid a sufficient amount in income taxes some one or more years in the past. The names of the clients are useful to the government for but one purpose - to ascertain which taxpayers think they were delinquent, so that it may check the records for that one year or several years. The voluntary nature of the payment indicates a belief by the taxpayers that more taxes or interest or penalties are due than the sum previously paid, if any. It indicates a feeling of guilt for nonpayment of taxes, though whether it is criminal guilt is undisclosed. But it may well be the link that could form the chain of testimony necessary to convict an individual of a federal crime. Certainly the payment and the feeling of guilt are the reasons the attorney here involved was employed - to advise his clients what, under the circumstances, should be done."

In fine, the factual basis for the ruling in Baird was properly established by the parties. In the case at bar, there is no evidence about the subject matter of the consultation made by petitioners' client. Again, the records do not show that the subject matter is criminal in character except for the raw allegations in the Complaint. Yet, this is the unstated predicate of the majority ruling that revealing the identity of the client "x x x would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime." The silent implication is unflattering and unfair to petitioners who are marquee names in the legal profession and unjust to their undisclosed client.

Finally, it ought to be obvious that petitioners' right to claim the attorney-client privilege is resolutive of the Complaint against them, and hence should be decided ahead and independently of their claim to equal protection of the law. Pursuant to the rule in legal hermeneutics that courts should not decide constitutional issues unless unavoidable, I also respectfully submit that there is no immediate necessity to resolve petitioners' claim to equal protection of the law at this stage of the proceedings.

IN VIEW WHEREOF, I respectfully register a qualified dissent from the majority opinion.

[1] 8 J. Wigmore, Evidence, S. 2290 (McNaughton rev. 1961).

[2] In re Selser 15 N.J. 393, 405-406, 105 A.2d 395, 401-402 (1954).

[3] See Note, Professional Responsibility and In re Ryder: Can Attorney Serve Two Masters? 54 Va. L. Rev. 145 (1968).

[4] United States v. Nixon, 418 US 683, 710, 94 S. Ct. 3090, 41 L.Ed. 2d 1039 (1974).

[5] In re Grand Jury Investigation No. 83-2-3 5, 83-1290, 723 F.2d. 447 (1983) citing In re Walsh, 623 F.2d 489, cert. denied 449 US 994, 101 S.Ct. 531, 66 L.Ed.2d 291 (1980); Fisher v. United States, 425 US 391, 96 S. Ct. 1569, 48 L.Ed.2d 39 (1975).

[6] 125 American Law Reports Annotated 516-519 citing People v. Van Alstine, 57 Mich 69, 23 NW 594.

[7] Millare v. Montero, 246 SCRA 1.

[8] 81 AM JUR 2d. Witnesses, Section 395, pp. 356-357.

[9] 289 US 1 (1933).

[10] Op cit.

[11] Hoffman v. United States, 341 US 479, 71 S. Ct. 814, 95 L. ed. 118 (1951).

[12] US, et al. v. Tratner, 511 F., 2d, 248-255 (1975); US v. Landoff, 591 F 2d 36 (1978); US v. Bartlett, 449 F 2d 700 (1971); cert. denied, 405 US 932, 92 S.Ct. 990, 30 L.ed.2d 808 (1972).

[13] US v. Tratner, op cit., p. 252 citing US v. Johnson, 465 F2d 793 (1972).

[14] In re Grand Jury Investigation No. 83-2-35, 723 F2d 447 (1983).

[15] 270 ALA 254 (1960).

[16] 548 F2d 1347 (9th Cir. 197).

[17] See page 25 of majority decision.

[18] See page 31 of majority decision.

[19] 279 F2d 623 (1960).

[20] See pp. 31-32 of majority decision.

SEPARATE OPINION

VITUG, J.:

The legal profession, despite all the unrestrained calumny hurled against it, is still the noblest of professions. It exists upon the thesis that, in an orderly society that is opposed to all forms of anarchy, it so occupies, as it should, an exalted position in the proper dispensation of justice. In time, principles have evolved that would help ensure its effective ministration. The protection of confidentiality of the lawyer-client relationship is one, and it has since been an accepted firmanent in the profession. It allows the lawyer and the client to institutionalize a unique relationship based on full trust and confidence essential in a justice system that works on the basis of substantive and procedural due process. To be sure, the rule is not without its pitfalls, and demands against it may be strong, but these problems are, in the ultimate analysis, no more than mere tests of vigor that have made and will make that rule endure.

I see in the case before us, given the attendant circumstances already detailed in the ponencia, a situation of the Republic attempting to establish a case not on what it perceives to be the strength of its own evidence but on what it could elicit from a counsel against his client. I find it unreasonable for the Sandiganbayan to compel petitioners to breach the trust reposed on them and succumb to a thinly disguised threat of incrimination.

Accordingly, I join my other colleague who vote for the GRANT of the petition.

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