The Coconut Levy Funds as Public Funds: Establishing Guidelines for Judicial Recognition of the *Sui Generis* Nature of Ill-Gotten Wealth Suits

Maria Christina Capito Rabonza[*]

I. INTRODUCTION

A. Background of the Study

In 1987, the Republic of the Philippines (the Republic or the Government) filed Civil Case No. 0033[1] against Eduardo "Danding" M. Cojuangco, Jr. (Cojuangco) and several others for the recovery of ill-gotten wealth under Executive Order (E.O.) Nos. 1,[2] 2,[3] and 14.[4] The case was later subdivided into eight complaints, one of which was Civil Case No. 0033-F, entitled *Republic of the Philippines v. Eduardo M. Cojuangco, Jr., et al.*[5] It sought to recover shares of stocks of San Miguel Corporation (SMC) registered in the names of Cojuangco and several corporations under his control.[6]

The Republic alleged that the shares are in the nature of public funds since they were acquired using the coconut levy funds, which are essentially taxes imposed by the State on coconut farmers during the administration of President Ferdinand E. Marcos. Cojuangco was, at one time or another, the President and/or Chief Executive Officer (CEO) of several institutions and corporations mandated under law to utilize the coconut levy funds for the development of the coconut industry.[7] This served as the crucial link for the Republic to allege that Cojuangco used his official position to access the coconut levy funds and used it for his personal benefit, which was to acquire

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1. Republic of the Philippines v. Eduardo M. Cojuangco, Jr., et al., SB Civ. Case No. 0033-F, Nov. 28, 2007.
2. Office of the President, Creating the Presidential Commission on Good Government, Executive Order No. 1 [E.O. No. 1] (Feb. 28, 1986).
3. Office of the President, Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees, Executive Order No. 2 [E.O. No. 2] (Mar. 2, 1986).
4. Office of the President, Defining the Jurisdiction over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees, Executive Order No. 14 [E.O. No. 14] (May 7, 1986). E.O. No. 14 was further amended by E.O No. 14-A. *See* Office of the President, Amending Executive Order No. 14 [E.O. No. 14-A] (Aug. 18, 1986).
5. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 003-F.
6. *Id.*
7. *Id.*

the SMC shares for himself, in unlawful concert with his co-defendants, and in flagrant breach of public trust and fiduciary obligations.[8]

The SMC shares that the Government sought to recover are divided into two blocks. The first block was the subject of the suit, *Republic v. Sandiganbayan (First Division)*,[9] which was decided by the Supreme Court on 12 April 2011 (2011 Case). This block is equivalent to 20% of the outstanding capital stock of SMC at the time of its acquisition in 1983.[10] Due to the issuance of new SMC shares in 2010, it has been reduced to 15% with an estimated value of ₱56,000,000,000.00 as of June 2012.[11] Over two decades after the filing of Civil Case No. 0033, the Court dismissed the Government's claim to the 20% block of SMC shares and declared Cojuangco and his co-defendants to be its lawful owners.[12]

Less than a year later, the Supreme Court promulgated its decision in *Philippine Coconut Products Federation, Inc. (COCOFED) v. Republic*[13] (hereinafter 2012 Case). It involved the second block of SMC shares that the Government sought to recover which was equivalent to 27% of the outstanding capital stock of SMC at the time of its acquisition.[14] The Court awarded that second block of shares to the Republic, declaring the latter as its lawful owner, but subject to the requirement that the shares be used for the benefit of the coconut farmers and the development of the coconut industry.[15] These shares are estimated to be worth ₱57,000,000,000.00.[16]

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8. *Id.*

9. Republic of the Philippines v. Sandiganbayan (First Division), 648 SCRA 47 (2011) [hereinafter *2011 Case*].

10. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

11. *2011 Case*, 648 SCRA at 278 (J. Brion, dissenting opinion). The 15% shares are comprised of 493,375,183 common shares. *Id.*

    Based on the average trading price of the SMC shares of ₱114.00 as of 18 June 2012, the awarded shares are worth an estimated ₱56,200,000,000.00. Philippine Stock Exchange, San Miguel Corporation, *available at* http://www.pse.com.ph/stockMarket/companyInfo.html?id=154&security=165&tab=0 (last accessed June 16, 2013).

12. *2011 Case*, 648 SCRA at 162-63.

13. Philippine Coconut Products Federation, Inc. (COCOFED) v. Republic, 663 SCRA 514 (2012) [hereinafter *2012 Case*].

14. *See* San Miguel Corporation v. Sandiganbayan, 340 SCRA 289 (2000).

15. *2012 Case*, 663 SCRA at 638-43.

16. The remaining 27% block of shares is reportedly comprised of 753,850,000 preferred shares. They were originally common shares that were swapped for

Such Supreme Court decisions resulted in two cases, which involved the same subject matter, cause of action, and parties, having opposing conclusions. The question is *why* were they decided differently?

A reading of the *2011 Case* reveals that one of the main reasons for this was the Supreme Court's use of a self-concocted definition of ill-gotten wealth, which deviated from what is provided by law and jurisprudence.[17] This error is crucial because it effectively altered the cause of action for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14. By applying this erroneous made-up definition, the Court subjected the Republic to substantive legal and evidentiary requirements that did not exist prior to the promulgation of the *2011 Case*, and which the Court nevertheless faulted the Republic for since it failed to meet such requirements.[18] Another major factor that contributed to the Republic's defeat was the Court's refusal to recognize the public character of the coconut levy funds.[19]

Nonetheless, the Court in the *2012 Case* reverted to the definition of ill-gotten wealth established by law and jurisprudence, and even expressly acknowledged that coconut levy funds are public funds.[20] This paved the way for the Republic to recover the 27% block of SMC shares. The decision in the *2011 Case* is now final and executory. As for the *2012 Case*, the opposing party filed a Motion for Reconsideration on 14 February 2012 and, until that is resolved, the decision is not final and executory.[21]

Under the current legal framework, this kind of inconsistency between rulings of the Supreme Court is countenanced because of legal rules and principles that ensure the stability and certainty of judicial decisions and

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preferred shares in September 2009, pursuant to an agreement entered into by the Arroyo administration that gave SMC the exclusive option to redeem and purchase the shares on the third year, or on 2012. It also fixed the price of the shares at ₱75.00. At the fixed price of ₱75.00, they are worth an estimated ₱56,500,000,000.00. Omi C. Royandonan, *Cojuangco's victory*, PHIL. DAILY INQ., Apr. 18, 2012, *available at* http://opinion.inquirer.net/27019/cojuangco%E2%80%99s-victory (last accessed June 16, 2013).

Note, however, that these shares were recently diluted to 24% due to the failure of the Government to subscribe to an increase in SMC's authorized capital stock. Dean Andy Bautista, *For the record*, PHIL. STAR, Apr. 14, 2012, *available at* http://www.philstar.com/opinion/796548/record (last accessed on June 16, 2013).

17. *2011 Case*, 648 SCRA at 129-36.

18. *Id.* at 136-56.

19. *Id.* at 156-57.

20. *2012 Case*, 663 SCRA at 604.

21. Motion for Reconsideration, *2012 Case*, 663 SCRA 514, *motion for reconsideration filed*, G.R. Nos. 177857-58 (Feb. 14, 2012).

prevent delay in the administration of justice. For example, the doctrine of immutability of judgments prohibits any revision, amendment, or reversal of a final and executory judgment even if it is erroneous.[22] The doctrine of *stare decisis* requires that a principle of law or *ratio*[23] established by the Court should be applied to all future cases that bear substantially the same facts.[24] While *stare decisis* accommodates changes to an established *ratio* when proven to be erroneous, the new ruling must be applied prospectively,[25] leaving the parties in the past cases to bear the consequences of an erroneous ruling.

The observation made here is that the Philippine legal system favors a forward or a linear movement akin to time, such that once a particular point in time has passed, it can no longer be revisited. Similarly, it bars the relitigation of both issues and actions because it is an attempt to repeat a process that has already been done. For purposes of this Note, this characteristic of the legal system is referred to as the "linear progression of judicial decisions."

The problem with this linear progression is that it fails to accommodate the extraordinary and peculiar nature of ill-gotten wealth suits, which are comprised of approximately 276 cases[26] that bear the same cause of action for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14. Some even involve the same parties, varying only in the asset to be recovered or the subject matter. Others involve the same cause of action, parties, and even subject matter, but differ only with respect to the issues to be resolved — one case will deal only with the *validity of the sequestration* of the subject matter, while another case will deal with the *ownership* of the same subject matter. Therefore, the cases contain interlocking issues where the resolution of one in a pending action can potentially affect all the other cases that depend on the same issue.

However, ill-gotten wealth suits do not reach the Supreme Court in a chronological or rational order. The Court settles each suit as they arrive, regardless of the presence of interlocking issues in cases pending in the lower

22. WILLARD B. RIANO, CIVIL PROCEDURE (A RESTATEMENT FOR THE BAR) 414 (2009 ed.) [hereinafter RIANO, CIVIL PROCEDURE].

23. This is also known as *ratio decidendi*, which is defined as the principle or rule of law on which a court's decision is founded. BLACK'S LAW DICTIONARY 1376 (9th ed. 2009).

24. Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform, 519 SCRA 582, 618-19 (2007).

25. Columbia Pictures, Inc. v. Court of Appeals, 261 SCRA 144, 168 (1996).

26. This figure is updated as of 27 March 2012. It is the latest available figure provided by the PCGG on 22 June 2012.

courts. Therefore, conflict arises when an issue essential to the resolution of an earlier case recurs in another action, after the former has already become final and executory.

This Note, therefore, attempts to resolve that conflict and fill in the inadequacy of the current legal framework by proposing guidelines or grounds to invoke reconsideration of a final and executory judgment of the Supreme Court, specifically involving the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14. The guidelines are premised on the claim that ill-gotten wealth suits are *sui generis*[27] due to the peculiarities of having 276 cases bearing a common cause of action, and due to the fact that they involve the recovery of public funds and, therefore, present matters of paramount public interest.

B. Significance of the Study

One of the biggest challenges confronting the successful resolution of the 276 pending ill-gotten wealth suits is the Supreme Court's act of changing the definition of ill-gotten wealth, as it did in the *2011 Case*. This was neither a negligible act nor an ordinary exercise of the judicial function to interpret and fill in the gaps in the law. It was an act that effectively altered the cause of action for the recovery of ill-gotten wealth, in violation of the law laid down in E.O. Nos. 1, 2, and 14, as well as in the Presidential Commission on Good Government (PCGG) Rules and Regulations (PCGG Rules).[28] It was an act of judicial legislation.

Yet, the significance and impact of this act clearly escapes the courts. On 11 June 2012, only five months after the promulgation of the decision in the *2012 Case*, the Sandiganbayan rendered a decision dismissing another ill-gotten wealth suit that impleaded business tycoon Lucio C. Tan as a defendant.[29] The said decision adopted *in toto* the Supreme Court's definition of ill-gotten wealth in the *2011 Case*, and concluded that the Republic failed to meet the requirements of this definition. One can

27. *Sui generis* literally means "[o]f its own kind or class; unique or peculiar." BLACK'S LAW DICTIONARY 1572 (9th ed. 2009).

28. Presidential Commission on Good Government, Rules and Regulations Implementing Executive Orders No. 1 and 2 (Apr. 11, 1986) [hereinafter PCGG Rules].

29. Republic of the Philippines v. Lucio C. Tan, et al., SB Civ. Case No. 0005, June 11, 2012. *See* Ira Pedrasa, Ill-gotten wealth case vs Lucio Tan dismissed, *available at* http://www.abs-cbnnews.com/business/06/13/12/ill-gotten-wealth-case-vs-lucio-tan-dismissed (last accessed June 16, 2013). *See also* The Feed, Tycoon Lucio Tan's ill-gotten wealth case gets dismissed by Sandiganbayan after 25 years of litigation, *available at* http://www.spot.ph/the-feed/51307/lucio-tans-ill-gotten-wealth-case-gets-dismissed-by-sandiganbayan-after-25-years-of-litigation (last accessed June 16, 2013).

presume that this is the start of a dangerous trend. Just how many more cases must be decided, and, worse, dismissed using the erroneous *2011 Case* as basis?

But, there is a more dangerous trend that must be guarded against. An erroneous decision perpetuated by the courts is not uncommon under the command of *stare decisis* and the doctrine of immutability of judgments, and it can be argued that to disturb the underlying policy of these doctrines is to cause evil to our legal system. However, the act of forgetting or rewriting history to the extent of demoting the class of ill-gotten wealth suits to just another legal suit is tantamount to disregarding their extraordinary character — from the historical circumstances that created them and, consequently, the value behind the persistent pursuit of the Marcos ill-gotten wealth, to their inherent peculiarities that necessitate a legal treatment distinct from all others. [30] This, the Author proposes, is a far greater evil that must be curbed.

This Note does not seek for ill-gotten wealth suits to be made as an exception to the rule — it claims that they are, by nature, an exception. This occurred from the moment that former President Corazon C. Aquino used her revolutionary legislative powers in making it a State policy to recover the Marcos ill-gotten wealth, and from the moment that the courts willingly responded to that call. It is to be remembered that the driving force behind these suits is the recovery of public funds, assets, and properties.[31] It is the recovery of what properly belongs to the State for the benefit of its people.[32] That, in itself, places these suits in their very own league and calls for a different treatment than the rest.

It is hoped that the significance of this Note goes beyond a critique of an erroneous decision, but becomes a humble contribution to a concerted effort to recalibrate the legal system, and once again give ill-gotten wealth suits the attention and legal consideration they have always deserved.

II. *REPUBLIC V. SANDIGANBAYAN (FIRST DIVISION)* AND *PHILIPPINE COCONUT PRODUCTS FEDERATION, INC. (COCOFED) V. REPUBLIC*

History is the long and tragic story of the fact that privileged groups seldom give up their privileges voluntarily.

30. *See generally* Second Motion for Reconsideration at 36-46, *2011 Case*, 648 SCRA 47 (G.R. Nos. 166859, 169203, 180702).

31. *See* E.O. No. 2, whereas cl.

32. *Id.*

— Martin Luther King, Jr.[33]

A. History of the Coconut Levy Funds

1. The Creation of the Coconut Levy Funds

The coconut levy funds were created by a series of laws promulgated by President Marcos, [34] which consist of the following:

(1) The Coconut Investment Fund (CIF) created under Republic Act (R.A.) No. 6260;[35]

(2) The Coconut Consumers Stabilization Fund (CCSF) created under Presidential Decree (P.D.) No. 276;[36]

(3) The Coconut Industry Development Fund (CIDF) created under P.D. No. 582;[37] and

(4) The Coconut Industry Stabilization Fund (CISF) created under P.D. No. 1841.[38]

These laws imposed on coconut farmers various levies on each sale of copra or equivalent coconut product from 1972 to 1982.[39] The laws mandated that the levies be used for the specific purpose for which each fund was created, under the general framework of developing the domestic coconut industry.[40] For instance, the CIF was created to provide capital

33. Martin Luther King, Jr., *Letter from Birmingham Jail*, *in* THE BEST AMERICAN ESSAYS OF THE CENTURY 267 (Joyce Carol Oates & Robert Atwand, eds., 2000).

34. Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government (PCGG), 178 SCRA 236, 240-44 (1989) [hereinafter *COCOFED v. PCGG*].

35. An Act Instituting A Coconut Investment Fund and Creating A Coconut Investment Company for the Administration Thereof [Coconut Investment Act], Republic Act No. 6260 (1971).

36. Establishing A Coconut Consumers Stabilization Fund, Presidential Decree No. 276 (1973).

37. Further Amending Presidential Decree No. 232, as Amended, Presidential Decree No. 582 (1974).

38. Prescribing a System of Financing the Socio-Economic and Developmental Program for the Benefit of the Coconut Farmers and Accordingly Amending the Laws Thereon, Presidential Decree No. 1841 (1981).

39. Philippine Daily Inquirer, *In the Know: Coconut Levy*, PHIL. DAILY INQ., Jan. 22, 2012, *available at* http://newsinfo.inquirer.net/132171/in-the-know-coconut-levy (last accessed June 16, 2013).

40. *See COCOFED v. PCGG*, 178 SCRA at 240-244.

investment financing to the industry.[41] To do this, the Philippine Coconut Administration (PHILCOA),[42] as agent and trustee of the CIF, would use part of the levies to pay the Government's subscription in the Coconut Investment Company (CIC). The CIC would then provide loans to coconut farmers and those engaged in business in the coconut industry, as well as organize subsidiaries to operate coconut oil mills and centrals.[43] The plan was to transfer the Government's shares in CIC to coconut farmers who had paid the levies, whereupon a new private entity fully owned by the farmers would be incorporated.[44] Meanwhile, the remaining portion of the collected levies was used for the operations of PHILCOA and a "recognized national association of coconut producers with the largest number of membership as determined by the Philippine Coconut Administration,"[45] which became the Philippine Coconut Producers Federation, Inc. or COCOFED.[46]

On the other hand, the CCSF was used to subsidize coconut-based consumer goods at set prices in order to promote "socialized pricing of coconut-based commodities," and to curb the effects of "supply and price dislocations" caused by the crisis in the world market for fats and oils.[47] CCSF funds were then used to establish the CIDF, which was created to finance the Government's replanting program for coconut farms and idle lands, using "superior hybrid coconut trees."[48] Collections under the CCSF and CIDF were suspended in 1980, only to be re-imposed a year later along with the conversion of the CCSF into the CISF.[49] The funds collected

41. R.A. No. 6260, § 2.

42. PHILCOA was the new name given to the National Coconut Corporation (NACOCO) in 1954. NACOCO was established in 1940 to promote the growth and development of the coconut industry. In 1973 and by virtue of P.D. No. 232, the Philippine Coconut Authority (PCA) absorbed the powers, functions, assets, and personnel of PHILCOA, the Philippine Coconut Research Institute (PHILCORIN), and the Coconut Coordinating Council (CCC). The PCA is now an attached agency of the Department of the Agriculture and is the sole government agency tasked to develop the coconut industry. Department of Agriculture, Philippine Coconut Authority, History of the Philippine Coconut Authority, *available at* http://www.pca.da.gov.ph/history.html (last accessed June 16, 2013).

43. R.A. No. 6260, § 5.

44. *Id.* § 7.

45. *Id.* § 9.

46. *COCOFED v. PCGG*, 178 SCRA at 241.

47. P.D. No. 276, whereas cl. *See also COCOFED v. PCGG*, 178 SCRA at 242.

48. P.D. No. 582, whereas cl.

49. *COCOFED v. PCGG*, 178 SCRA at 244.

under the CISF were apportioned among the CIDF, COCOFED, the Philippine Coconut Authority (PCA),[50] and the "bank acquired for the benefit of coconut farmers under P.D. 755."[51] This bank would be later known as the United Coconut Planters Bank (UCPB).[52]

2. United Coconut Planters Bank: The Bank Acquired for the Benefit of Coconut Farmers

In an attempt to provide coconut farmers with easy access to credit, President Marcos issued P.D. No. 755 in 1975 directing the PCA to acquire a commercial bank using funds from the CCSF.[53] Collections under the CCSF and the CIDF were then deposited into the bank to serve the credit requirements of the coconut farmers by providing credit facilities at preferential rates.[54] P.D. No. 755 also authorized the PCA to distribute to coconut farmers the shares of stocks of the bank for free, in accordance with rules and regulations of the PCA.[55]

The commercial bank contemplated in P.D. No. 755 would eventually become UCPB. Originally called First United Bank (FUB) and owned by Pedro Cojuangco, the PCA arranged to acquire the former's controlling shares amounting to 72.2% of the outstanding capital stock of the bank, through Pedro's nephew, Cojuangco.

Cojuangco had the exclusive option to acquire his uncle's shares so he purchased them for and in his behalf, as well as in behalf of "certain other buyers," which referred to the PCA.[56] The PCA, then, acquired those shares from Cojuangco, save for 7.22% of the outstanding capital stock of FUB, which Cojuangco retained for himself as a form of compensation for the transaction.[57] The total acquisition amount for the shares of $150,000,000.00

50. *See generally* Department of Agriculture, *supra* note 42.

51. P.D. No. 1841, §§ 1 & 11.

52. *COCOFED v. PCGG*, 178 SCRA at 245-246.

53. Approving the Credit Policy for the Coconut Industry as Recommended by the Philippine Coconut Authority and Providing Funds Therefor, Presidential Decree No. 755, §§ 1 & 2 (1975).

54. *See* An Act to Codify the Laws Dealing with the Development of the Coconut and other Palm Oil Industry and for Other Purposes [COCONUT INDUSTRY CODE] Presidential Decree No. 961, art. III, § 8 (1976). *See also* Revising Presidential Decree Numbered Nine Hundred Sixty One [REVISED COCONUT INDUSTRY CODE], Presidential Decree No. 1468, art. III, § 8 (1978) & P.D. No. 755, § 2.

55. P.D. No. 755, § 1.

56. *2012 Case*, 663 SCRA at 531.

57. *Id.*

or ₱6,400,000,000.00[58] came from the coffers of the PCA, which the latter reimbursed using the coconut levy funds. The shares were then registered in the name of the PCA and eventually distributed to coconut farmers holding PCA-registered receipts, which were issued in exchange for paying levies under the CIF.[59]

3. Creation of the Coconut Industry Investment Fund and Acquisition of the San Miguel Shares of Stocks

In 1976, President Marcos issued P.D. No. 961 in order to codify the various laws dealing with the development of the coconut and other palm oil industries.[60] This became known as the Coconut Industry Code.[61] It turned the PCA into an independent public corporation with the sole power to impose the levies and implement the policies created under the CCSF and the CIDF.[62] It also authorized UCPB to use surplus funds of the CCSF and the CIDF to acquire shares of stocks in corporations engaged in the establishment and operation of businesses relating to the coconut and palm oil industries.[63] The acquired shares would then be distributed to the coconut farmers for free.[64] These allotted surpluses of the CCSF and the CIDF became known as the Coconut Industry Investment Fund or CIIF.[65]

UCPB, as administrator of the CIIF, was tasked to invest the funds in accordance with the various laws relating to the coconut levies. Since Cojuangco was the President and member of the board of directors of UCPB, he naturally became responsible for pouring CIIF funds into various corporations, including, but not limited to, six oil mills (hereinafter CIIF Oil

58. Based on the exchange rate as of 16 June 2013 of $1.00 = ₱42.47. OANDA, Currency Converter, *available at* http://www.oanda.com/currency/converter/ (last accessed June 16, 2013).

59. *2012 Case*, 663 SCRA at 532-33.

60. Department of Agriculture, *supra* note 42.

61. *See generally* REVISED COCONUT INDUSTRY CODE.

62. *Id.* art. II, § 1 & art. III, §§ 1-3.

63. *Id.* art. III, § 9.

64. *Id.* art. III, § 10.

65. *COCOFED v. PCGG*, 178 SCRA at 243. Under Letter of Instructions (LOI) No. 926 issued in 1979 by President Ferdinand E. Marcos, the corporations that the CIIF would invest in were required to be at least 50% owned or controlled by coconut farmers. *See* Office of the President, Rationalization of the Coconut Oil Milling Industry, Letter of Instructions No. 926, Series of 1979 [LOI No. 926, s. 1979], § 2 (a) (Sep. 3, 1979). *See also 2012 Case*, 663 SCRA at 530.

Mills) and food and beverage giant, San Miguel Corporation (SMC).[66] Cojuangco reportedly acquired approximately 60% of the shares of SMC with the use of coconut levy funds amounting to $150,000,000.00 or ₱6,400,000,000.00.[67] This became the subject of a suit for the recovery of ill-gotten wealth, docketed as Civil Case No. 0033-F.

4. On the Path to Recovering Ill-Gotten Wealth

In 1986, the EDSA People Power Revolution broke out and brought an end to the 21-year regime of President Marcos. Mrs. Corazon Aquino was installed as President and, through her revolutionary government, she began the process of recovering the ill-gotten wealth amassed by President Marcos and his family, their close relatives, nominees, and associates located in the Philippines and abroad.[68]

The first step was to issue E.O. No. 1, which stressed the "urgent need to recover all ill-gotten wealth"[69] and, for which purpose, the PCGG was created.[70] Soon after this, E.O. No. 2 was issued in order to freeze the assets and properties of the Marcos family and their cronies.[71] It also laid down the rule that the assets and properties to be recovered from such persons may be in the form of both real and personal properties, including shares of stocks.[72] These efforts came full circle with the issuance of E.O. No. 14, as amended by E.O. No. 14-A, because it allowed PCGG to pursue civil and criminal suits for the recovery of ill-gotten wealth by vesting the Sandiganbayan with original and exclusive jurisdiction over such suits.[73]

Pursuant to the rule-making authority granted to it by E.O. No. 1,[74] the PCGG issued the PCGG Rules on 11 April 1986. One of its most important features is that it provides a complete definition of ill-gotten wealth not found in E.O. Nos. 1 and 2.[75]

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66. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

67. *2011 Case*, 648 SCRA at 92. *See also Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F & OANDA, *supra* note 58.

68. *2012 Case*, 663 SCRA at 533.

69. Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government, 150 SCRA 181, 202 (1987) (citing E.O. No. 1, whereas cl.).

70. E.O. No. 1, § 1.

71. E.O. No. 2, §§ 1-4.

72. *2012 Case*, 663 SCRA at 533.

73. E.O. No. 14, §§ 1 & 2.

74. E.O. No. 1, § 3 (h). This Section provides that "[t]he Commission shall have the power and authority [ ] ... [t]o promulgate such rules and regulations as may be necessary to carry out the purpose of this order." *Id.*

75. PCGG Rules, § 1 (A). This Section provides —

In keeping with its powers and duties under E.O. No. 1, the PCGG sequestered various assets and properties alleged to be part of the Marcos ill-gotten wealth, which included the controversial SMC shares.[76] On 31 July 1987, the PCGG instituted a suit before the Sandiganbayan on behalf of the Republic for the recovery of ill-gotten wealth in connection with the coconut levy funds, docketed as Civil Case No. 0033.[77] In 1989, this case was subdivided into eight complaints, each pertaining to a separate transaction or set of assets, and impleading as defendants only the parties alleged to have owned the assets or participated in the transaction.[78] One of

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> Sec. 1. Definition.
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> (A) 'Ill-gotten wealth' is hereby defined as any asset, property, business enterprise[,] or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates[,] and/or business associates by any of the following means or similar schemes:
>
> (1) Through misappropriation, conversion, misuse[,] or malversation of public funds or raids on the public treasury;
>
> (2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks[,] or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;
>
> (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities[,] or government-owned or controlled corporations;
>
> (4) By obtaining, receiving[,] or accepting directly or indirectly any shares of stock, equity[,] or any other form of interest or participation in any business enterprise or undertaking;
>
> (5) Through the establishment of agricultural, industrial[,] or commercial monopolies or other combination and/or by the issuance, promulgation[,] and/or implementation of decrees and orders intended to benefit particular persons or special interests; and
>
> (6) By taking undue advantage of official position, authority, relationship[,] or influence for personal gain or benefit.
>
> *Id.*

76. *See* Republic v. Sandiganbayan (First Division), 240 SCRA 376, 391-97 (1995) [hereinafter *Lobregat*].

77. *2011 Case*, 648 SCRA at 85.

78. *Id.* at 86.

the resulting subdivided complaints is Civil Case No. 0033-F involving the said SMC shares.[79]

5. Civil Case No. 0033-F: Recovering the San Miguel Shares of Stocks

Civil Case No. 0033-F entitled, *Republic of the Philippines v. Eduardo M. Cojuangco, Jr., et al.* sought to recover the SMC shares that the defendants allegedly acquired in 1983 with the use of coconut levy funds.[80] Impleaded as individual defendants were Cojuangco, Marcos, his wife Imelda, several lawyers from Angara Abello Concepcion Regala & Cruz Law Offices (ACCRA), and Danilo Ursua. Impleaded as corporate defendants were the CIIF Oil Mills and their 14 wholly-owned holding companies (CIIF Companies). Also impleaded were several corporations that Cojuangco allegedly used to acquire a particular block of the SMC shares (hereinafter Cojuangco Companies).[81]

The SMC shares that the Government sought to recover are divided into two blocks. The first block pertains to 33,133,266 shares of stocks or approximately 31% of the outstanding capital stock of SMC at the time of the acquisition, registered in the names of the CIIF Companies.[82] A portion of this block, representing four percent of the outstanding capital stock of SMC at the time of the acquisition, was awarded to the Government in a decision rendered by the Supreme Court on 14 September 2000.[83] The remaining shares in this block, which shall be referred to as the "CIIF block," pertains to 27% of the outstanding capital stock of SMC at the time of the acquisition. This was the subject of the dispute in the *2012 Case*. The CIIF block has since been reduced to 24% due to the issuance of new SMC shares.[84] The second block pertains to 16,276,879 shares of stocks or 20% of the outstanding capital stock of SMC at the time of the acquisition.[85]

79. *Id.*

80. *Id.* at 148.

81. In 2000, COCOFED was allowed to intervene in the case since it was entitled under the law to a portion of the coconut levy funds to finance its operations. In that same year, the Sandiganbayan excluded the ACCRA lawyers from the case. *Id.* at 94, 97-98.

82. *See Eduardo M. Cojuangco, Jr. et al.*, SB Civ. Case No. 0033-F. *See also* Pre-Trial Brief for Eduardo M. Cojuangco, Jr. at 6, *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

83. *See generally San Miguel Corporation*, 340 SCRA 327. *See also* Presidential Commission on Good Government, PCGG files motion with SC seeking to recover ₱17.65B worth of SMC shares, *available at* http://pcgg.gov.ph/tag/coco-levy/ (last accessed June 16, 2013).

84. Bautista, *supra* note 16.

85. *See Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

Cojuangco allegedly acquired this block (Cojuangco block) through the Cojuangco Companies,[86] which hold 18% thereof.[87] This block has also been reduced to 15% due to SMC's issuance of new shares. [88]

The Third Amended Complaint in Civil Case No. 0033-F alleged that the defendants, in unlawful concert with one another, used their various positions in government to access the coconut levy funds and misuse it, in breach of their trust and fiduciary obligations as public officers.[89] The alleged misuse occurred when the defendants used coconut levy funds to acquire majority of the shares of stocks of SMC for their personal benefit, resulting in unjust enrichment and the acquisition of assets, funds, and other properties manifestly disproportionate to the lawful income of the individual defendants.[90]

The complaint alleged that the defendants incorporated the Cojuangco Companies and the CIIF Companies to serve as holding companies for the SMC shares. Cojuangco, together with the ACCRA lawyers, then used the funds of the CIIF Oil Mills and 10 copra trading companies to borrow money from UCPB. [91] The borrowed funds reportedly amounted to $150,000,000.00[92] or ₱6,400,000,000.00,[93] some of which came directly from UCPB, while others passed through institutions dependent on the coconut

86. *2011 Case*, 648 SCRA at 87-88.

87. *2011 Case*, 648 SCRA at 202 (J. Brion, dissenting opinion).

88. *Id.* at 278.

89. The Third Amended Complaint in Civil Case No. 0033-F alleged that Cojuangco held positions in various institutions and corporations that were established by the coconut levy fund laws issued under President Marcos. These positions were Director of PCA and United Coconut Oil Mills (UNICOM); President and member of the Board of Directors of UCPB, United Coconut Planters Life Assurance Corporation (COCOLIFE), and United Coconut Chemicals, Inc; and Chairman of the Board of Directors and CEO of SMC. Cojuangco admitted in his Answer to having held these positions, but he alleged that they were all private corporations. *2011 Case*, 648 SCRA at 145-46.

    Meanwhile, co-defendant Lobregat was a member of the PCA board of directors from 1970 to 1985. *2012 Case*, 663 SCRA at 524, n.1.

90. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

91. *Id.*

92. *2011 Case*, 648 SCRA at 92. *See also Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

93. OANDA, *supra* note 58.

levy funds.[94] This amount served as: (1) acquisition money or equity for the holding companies; and (2) loans to the same holding companies, which the latter then used to acquire the SMC shares.[95] However, these holding companies were mere shell corporations owned on paper by the ACCRA lawyers, who admitted, as early as 1987, that they were only nominee shareholders and did not have proprietary interest over the shares of these holding companies.[96] This was evidenced by several documents executed by the stockholders of the holding companies, which gave Cojuangco control over and the right to vote on the SMC shares.[97] Through this elaborate corporate framework, the complaint alleged that Cojuangco was able to control more than 60% of shares of SMC from the time of their purchase in 1983 until Marcos was deposed in 1986.[98] It further allowed Cojuangco to "get favors" from the Marcos government, such as the lowering of excise taxes on beer — one of the main products of SMC.[99]

In his Answer to the Third Amended Complaint, Cojuangco countered that he is indeed the beneficial owner of the SMC shares registered in his name, since the funds used to acquire them were not coconut levy funds but proceeds of loans that he obtained from various sources.[100] These "various sources" were enumerated in his Pre-Trial Brief as loans from UCPB and loans or credit advances from the CIIF Oil Mills.[101] The Cojuangco Companies, in their Answer, also claimed to be the beneficial owners of the

94. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F. The Third Amended Complaint in Civil Case No. 0033-F referred to these coconut levy-dependent institutions as UNICOM and United Coconut Planters Assurance Corporation (COCOLIFE), among others. *Id.*

95. *Id.*

96. *Id.*

97. These agreements consist of: (1) individual affidavits of the ACCRA lawyers stating that he or she is merely a nominee stockholder of the holding companies with no proprietary interest in them; (2) a blank Declaration of Trust and Assignment executed by Atty. Jose C. Concepcion (one of the ACCRA lawyers), stating that his ownership of 99.6% of the outstanding stock of three Cojuangco Companies was being held by him for the benefit of an unnamed assignee; and (3) Voting Trust Agreements executed in favor of Cojuangco by Atty. Concepcion and four others, as stockholders of the same three Cojuangco Companies. *Id. See also 2011 Case*, 648 SCRA at 260-63 (J. Brion, dissenting opinion).

98. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

99. *Id.*

100. *2011 Case*, 648 SCRA at 283 (J. Brion, dissenting opinion).

101. *2011 Case*, 648 SCRA at 202 (J. Carpio-Morales, dissenting opinion). *See also 2011 Case*, 648 SCRA at 283 (J. Brion, dissenting opinion).

SMC shares registered in their names, and that they used their own funds to acquire these shares and not coconut levy funds.[102]

B. The Cojuangco Block of Shares: The Case of Republic v. Sandiganbayan (First Division)

1. Background of the Case

On 12 April 2011, the Supreme Court rendered its decision in the *2011 Case*. Penned by Justice Lucas P. Bersamin, the decision put an end to the decades-long issue of ownership of the Cojuangco block of shares. Unfortunately, it did not end well for the Government, as the Court, with seven justices voting favorably, ruled that the block of shares properly belonged to Cojuangco and his companies. Four of the remaining justices voted against the ruling, while another four abstained.[103] This decision is now final and executory. The case is a consolidation of three petitions filed by the Republic to assail the resolutions and decision of the Sandiganbayan in Civil Case No. 0033-F. The petitions that are of concern to this Note are those that assail the 10 December 2004 resolution[104] and the 28 November 2007 decision of the Sandiganbayan.[105]

The dispute in the *2011 Case* began in 2002, when the Republic moved for Partial Summary Judgments on both the CIIF and Cojuangco block of SMC shares.[106] The Republic claimed that trial was unnecessary in view of the admissions made by the defendants in their pleadings [107] The Sandiganbayan granted the Republic's motion on the CIIF block on 7 May 2004.[108] In that resolution, the court ordered the reconveyance of the CIIF block to the Government, declaring it to be owned by the Government in trust for coconut farmers.[109] In stark contrast to this, on 10 December 2004, the Sandiganbayan denied the Republic's motion on the Cojuangco block on the ground that there were "genuine factual issues raised by the defendants which need to be threshed out in a full-blown trial."[110]

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102. *2011 Case*, 648 SCRA at 201-02 (J. Carpio-Morales, dissenting opinion).

103. *2011 Case*, 648 SCRA at 163.

104. *Id.* at 118.

105. *Id.* at 120-21.

106. *Id.* at 102-03.

107. *2011 Case*, 648 SCRA at 173 (J. Carpio-Morales, dissenting opinion).

108. *2011 Case*, 648 SCRA at 107-08.

109. *Id.*

110. *Id.* at 109.

a. The 10 December 2004 Resolution: The Sandiganbayan Denies the Motion for Partial Summary Judgment on the Cojuangco Block of SMC Shares

The Republic sought for a Motion for Partial Summary Judgment on the Cojuangco block based on the defendants' admissions in their respective Answers and Pre-Trial Briefs. This included statements made by Cojuangco in his Pre-Trial Brief under the section entitled, "Proposed Evidence," namely: (1) that he used "various sources" to buy the 20% block of SMC shares, which included loans from UCPB and loans or credit advances from the CIIF Oil Mills; and (2) that his evidence consists of "records of UCPB" and "a representative of the CIIF Oil Mills."[111] The Republic claimed that these constitute outright admissions that Cojuangco, who was President and CEO of UCPB and the CIIF Oil Mills, took advantage of his positions by: (1) obtaining money from UCPB, an institution entrusted by law with the administration of coconut levy funds; and (2) obtaining more money from the CIIF Oil Mills in which part of the coconut levy funds were placed in, in order to acquire the 20% SMC shares that he now claims ownership over.[112]

The Sandiganbayan rejected this argument, claiming that Cojuangco's statements could not be considered as judicial admissions of misuse of coconut levy funds. There must be a factual basis to support such a conclusion, and to arrive at this it would be necessary that Cojuangco present his evidence consisting of UCPB records and the witness from the CIIF Oil Mills.[113] The court also found the presence of other genuine factual issues that were not answered in the Republic's submissions, making it imperative to deny summary judgment and proceed to trial in order that evidence may be adduced to resolve such issues.[114] The Republic assailed

111. *Id.*

112. *Id.* at 109-11.

113. *Id.*

114. *2011 Case*, 648 SCRA at 109-11. The Sandiganbayan enumerated the genuine factual issues in the case, to wit:

> (1) What are the 'various sources' of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?
>
> (2) Whether or not such funds acquired from alleged 'various sources' can be considered coconut levy funds;
>
> (3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PC, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;
>
> (4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain

this resolution before the Supreme Court via petition for *certiorari*, but it was dismissed in the *2011 Case*.

b. The 28 November 2007 Decision: The Sandiganbayan Dismisses Civil Case No. 0033-F

Since summary judgment on the Cojuangco block was denied, the case proceeded to trial at the Sandiganbayan. The CIIF block was excluded from trial due to the Sandiganbayan's 11 May 2007 resolution, which declared the judgment on the CIIF block to be a "separate appealable judgment that finally disposes the issue of ownership of the said shares."[115]

During the first trial hearing on 8 August 2006, the Republic manifested that it did not intend to present any testimonial evidence and, instead, sought permission from the court to take judicial notice of.[116] These exhibits were comprised of the same evidence that the Republic relied upon when it moved for Partial Summary Judgment on the Cojuangco block,[117] namely: (1) statements made by Cojuangco and his co-defendants in their respective Answers and Pre-Trial Briefs; (2) certain laws relating to the coconut levy funds;[118] and (3) the Supreme Court decision in *Republic v. COCOFED*.[119] The court admitted all of the exhibits in September of the same year after the Republic formally offered them as evidence.[120]

In reaction to this, Cojuangco and his co-defendants claimed that the Republic had not proven its allegations and, therefore, saw no need to present controverting evidence, except for documentary evidence to support their counterclaims.[121] By February 2007, the case was deemed submitted for

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> favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?

Id.

115. *Id.* at 112-13.

116. *Id.* at 115-17.

117. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

118. *See generally* P.D. No. 961; P.D. No. 1468; & P.D. No. 755.

119. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F (citing Republic v. COCOFED, 372 SCRA 462 (2001) [hereinafter *COCOFED 2001*]).

120. *Eduardo M. Cojuangco, Jr., et al.*, SB Civ. Case No. 0033-F.

121. *Id.*

decision and, on 28 November 2007, the Sandiganbayan rendered its decision dismissing Civil Case No. 0033-F with respect to the Government's claim on the Cojuangco block of shares.

The Sandiganbayan narrowed the issues of the case to this: whether or not the Republic was able to prove the material allegations of its complaint, specifically whether or not public funds were used to acquire the Cojuangco block of SMC shares.[122] Its decision to dismiss the case can be summarized into three points.

(1) First, the Sandiganbayan said that the exhibits offered by the Republic, particularly the laws relating to the coconut levy funds, could only be used in reference to the CIIF block and not the Cojuangco block.

These laws relating to the coconut levy funds were the same ones that the Republic submitted in its Motions for Partial Summary Judgments on both the Cojuangco and CIIF block.[123] The Sandiganbayan found the provisions of these laws to be unconstitutional for ordering the distribution of the coconut levies or their proceeds to private individuals, namely coconut farmers, when the levies are in the nature of public funds. This led the court to grant summary judgment on the CIIF block. But the Sandiganbayan said that this ruling could not apply to the Cojuangco block since it is a ruling made in specific reference to the CIIF block of shares. Moreover, reliance on the said laws would not settle the Republic's material allegation that Cojuangco and his co-defendants *violated their fiduciary duties* by using their positions in government to acquire the SMC shares.[124]

(2) Second, the Sandiganbayan already stated in its denial of the Republic's Motion for Partial Summary Judgment on the Cojuangco block, that there are genuine factual issues that need to be threshed out during trial, and yet the Republic still failed to present any other evidence during trial.

In such resolution of the Sandiganbayan denying summary judgment, the court stressed that the Republic could not simply rely on its interpretation of the statements made by the defendants in their Answers and Pre-Trial Briefs, as being admissions of exclusive use and misuse of coconut levy funds. Despite this, the Republic, during trial, used the same evidence it relied upon in moving for summary judgment, which obviously did not meet the burden of proof that the court was looking for since it already previously rejected it.[125]

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

(3) Third, even if the Sandiganbayan took judicial notice of the exhibits, it does not mean that it would accord full probative value to them.

This is especially so when there are factual matters in controversy that the Republic, as plaintiff, ought to have proven with relevant and competent evidence other than the exhibits.

In sum, the Sandiganbayan found that the Republic failed to prove through sufficient evidence that the source of funds used to acquire the Cojuangco block indeed came from the coconut levy funds. The court commented that not even a paper trail or testimonial evidence was presented to provide a direct link that the loans Cojuangco obtained from UCPB were also used to pay the SMC shares.[126] The Supreme Court affirmed the foregoing decision of the Sandiganbayan in the *2011 Case*.

2. "The Concept and Genesis of Ill-Gotten Wealth" According to the Supreme Court in *Republic v. Sandiganbayan (First Division)*

To understand the Supreme Court's decision denying the Republic's claim to the Cojuangco block of shares in the *2011 Case*, it is necessary to first discuss the Court's definition therein of "ill-gotten wealth." In a section of the decision entitled "The Concept and Genesis of Ill-Gotten Wealth,"[127] the Court sought to explain its definition by narrating the origin and development of the term in Philippine jurisdiction. It claimed that the concept of ill-gotten wealth originated from E.O. Nos. 1, 2, and 14, and was simply "elaborated" over time in decisions of the Supreme Court.[128] Although this was not explicitly enumerated in the decision, a plain reading shows that the Court's definition of ill-gotten wealth is comprised of the following elements[129] —

(1) It consists of vast resources of the government, assets, or properties that must have originated from the government itself;

(2) It must have been taken by former President Marcos, his immediate family, relatives, and close associates both here and abroad;

(3) The persons who took the assets or properties must have done so through illegal means; and

126. *2011 Case*, 648 SCRA at 136-42.

127. *See 2011 Case*, 648 SCRA at 129-36.

128. *Id.* at 129-31.

129. *Id.* at 129-34.

(4) There must be competent evidentiary substantiation made in appropriate judicial proceedings to determine:

(a) Whether the assets or properties involved had come from the vast resources of the government; and

(b) Whether the individuals owning or holding such assets or properties were close associates of President Marcos.

The succeeding paragraphs will expound on how these elements were derived.

According to the Court, E.O. Nos. 1, 2, and 14 provided the subject matter of ill-gotten wealth and the persons who could amass them, but did not provide an explicit definition of "ill-gotten wealth."[130] It can be inferred that what the Court was referring to here was the absence of a cause of action for the recovery of ill-gotten wealth in the mentioned executive issuances, or what exactly makes the subject matter ill-gotten or illegal. The Court filled this perceived gap by turning to the "WHEREAS" clause of E.O. No. 1, which refers to "vast resources of the government" as being the subject of what President Marcos, his immediate family, relatives, and close associates both here and abroad have amassed, and which must therefore be recovered for being ill-gotten, to wit —

> E.O. No. 1 contained only two WHEREAS Clauses, to wit:
>
> 'WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;
>
> WHEREAS, there is an urgent need to recover all ill-gotten wealth;
>
> Paragraph (4) of E.O. No. 2 further required that the wealth, to be ill-gotten, must be 'acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks[,] or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection[,] or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.'
>
> *Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (i.e., E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of ill-gotten wealth, we can still discern the meaning and concept of ill-gotten wealth from the WHEREAS Clauses themselves of E.O. No. 1*, in that ill-gotten wealth consisted of the '*vast resources of the government'* amassed by 'former President Ferdinand E. Marcos, his immediate family, relatives[,] and close associates both here and abroad.' *It*

130. *Id.* at 130.

> *is clear, therefore, that ill-gotten wealth would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the 'vast resources of the government.*[131]

What can be deduced from the foregoing discussion is that ill-gotten wealth, according to the Court, refers to two elements: (1) they refer to vast resources of the government, or assets or properties that belong to the government, as provided in the "WHEREAS" clause of E.O. No. 1; and (2) such vast resources, or assets or properties of the government must have been taken by former President Marcos, his immediate family, relatives, and close associates both here and abroad.[132] The Court elaborated on this definition using six Supreme Court cases, namely *Republic v. Migrino*,[133] *Cruz, Jr. v. Sandiganbayan*,[134] *Republic v. Sandiganbayan*,[135] *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*,[136] *Presidential Commission on Good Government v. Tan*,[137] and *Chavez v. Presidential Commission on Good Government*.[138]

The Court claimed that the cases of *Migrino*, *Cruz*, and *Republic v. Sandiganbayan* clarified the meaning of "close associates" of President Marcos, his immediate family, and relatives as used in E.O. No. 1. Meanwhile, referencing the cases of *Bataan Shipyard & Engineering Co., Inc.*, *Tan*, and *Chavez* was a way for the Court to illustrate an additional requirement in the definition of ill-gotten wealth, to wit —

> All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as *ill-gotten wealth*, namely: (a) they must have 'originated from the government itself,' and (b) they must have been taken by former President Marcos, his immediate family, relatives, and close associates by *illegal means*.[139]

Therefore, in addition to the first two elements of ill-gotten wealth earlier deduced, a third element must be added pertaining to the *manner of taking* of such vast resources, assets, or properties of the government. In other

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131. *Id.* at 129-31 (citing E.O. No. 1, whereas cl.) (emphasis supplied).

132. *2011 Case*, 648 SCRA at 129-31.

133. Republic v. Migrino, 189 SCRA 289 (1990).

134. Cruz, Jr. v. Sandiganbayan, 194 SCRA 474 (1991).

135. Republic v. Sandiganbayan, 407 SCRA 10 (2003) [hereinafter *Republic 2003*].

136. *Bataan Shipyard & Engineering Co., Inc*, 150 SCRA 181.

137. Presidential Commission on Good Government v. Tan, 539 SCRA 464 (2007).

138. Chavez v. Presidential Commission on Good Government, 299 SCRA 744 (1998).

139. *2011 Case*, 648 SCRA at 132-33.

words, to constitute as ill-gotten wealth, the vast resources, assets, or properties of the government taken by former President Marcos, his immediate family, relatives, and close associates both here and abroad must be taken by *illegal means*.

The Court added a fourth and final requirement to the definition of ill-gotten wealth, which it claimed to be based on E.O. No. 1 and its related issuances, as well as jurisprudence. The Court said there must be "competent evidentiary substantiation" of the acts constituting ill-gotten wealth, specifically —

> It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation made in appropriate judicial proceedings* to determine: (a) whether the assets or properties involved had come from the vast resources of government, and (b) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed.[140]

In other words, the Court requires that there be a judicial proceeding where competent evidence is presented to prove the other elements of the definition of ill-gotten wealth, namely: (1) whether the assets or properties involved had come from the vast resources of government; and (2) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The Court explained the reason for this requirement by again referring to the case of *Bataan Shipyard & Engineering Co., Inc.*, to wit —

> There can be no debate about the validity and eminent propriety of the Government's plan to recover all ill-gotten wealth.
>
> Neither can there be any debate about the proposition that[,] assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family[,] and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.
>
> *But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise* which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.
>
> ...

140. *Id.* at 134.

> Consequently, *the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated*; although there are some who maintain that the fact — that an immense fortune, and 'vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad,' and they have resorted to all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions — is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. *Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in [E.O.] No. 14.*[141]

Essentially, the Court meant to highlight the policy behind requiring competent evidentiary substantiation in ill-gotten wealth suits, which is the Constitutional guaranty of freedom to enjoy one's private property and to engage in free enterprise.

3. The Ruling of the Court: A Lost Battle

After the discussion on the definition of ill-gotten wealth, the Supreme Court proceeded to deny the Republic's claim to the Cojuangco block of shares by simply affirming the 28 November 2007 decision of the Sandiganbayan. The decision can be summarized into three points.

(1) First, the Republic did not substantiate its allegations via competent proof adduced in proper judicial proceedings.

The Court stated that the denial of summary judgment by the Sandiganbayan should have served as a warning for the Republic to produce factual evidence during trial to prove its allegations.[142] Nevertheless, the Republic insisted on submitting during trial the *same evidence* presented in its Motion for Partial Summary Judgment. Since this evidence was previously deemed insufficient to prove the Republic's allegations, it could, by no stretch of imagination, be suddenly considered sufficient the second time around.[143]

(2) Second, the Court rejected the notion of awarding the Cojuangco block to the Government on the sole premise that coconut levy funds are public funds.

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141. *Id.* at 135-36 (citing *Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 206-08).

142. *2011 Case*, 648 SCRA at 142.

143. *Id.*

The Republic took the position that since the Cojuangco block of shares was purchased using loans and advances from UCPB and the CIIF Oil Mills, then the SMC shares are necessarily public in character and should be reconveyed to the Government.[144] The Republic anchored its claim on the Court's pronouncement in *Republic v. COCOFED*,[145] which is that, "*the coconut levy funds are not only affected with public interest; they are, in fact, prima facie public funds.*"[146] Since UCPB and the CIIF Oil Mills are dependent on coconut levy funds, then the funds sourced from them are necessarily public funds.[147]

The Supreme Court rejected this argument for the following reasons. First, the 28 November 2007 decision of the Sandiganbayan did not rule on whether or not coconut levy funds are public funds.[148] The *ponente* suggests that the Sandiganbayan probably saw no need to rule on the matter since the Republic could not even establish, through preponderance of evidence, that the funds used to pay the Cojuangco block were indeed coconut levy funds.[149]

Second, the Court said that the Republic cannot rely on its ruling in *Republic v. COCOFED* since it was made only to determine the issue in that case, which was whether the PCGG had the right to vote on sequestered UCPB shares for a particular stockholders' meeting. That ruling was in no way meant to resolve the other related cases, such as Civil Case No. 0033-F.[150] The Court also said that it could not reverse the 28 November 2007 decision of the Sandiganbayan on the sole basis of a judicial pronouncement that coconut levy funds are *prima facie* public funds, without any competent evidence to show that the funds used to acquire the Cojuangco block are in fact coconut levy funds.[151]

Third, the Republic's argument that the loans and advances from UCPB and the CIIF Oil Mills, which Cojuangco admitted to using as acquisition money for the Cojuangco block, are in fact coconut levy funds, is premised on the allegation that UCPB and the CIIF Oil Mills are public corporations.[152] The Supreme Court could not agree with this argument,

144. *Id.* at 121.

145. This decision was one of the exhibits offered by the Republic as evidence during trial at the Sandiganbayan.

146. *COCOFED 2001*, 372 SCRA at 481.

147. *2011 Case*, 648 SCRA at 142-43.

148. *Id.* at 143.

149. *Id.*

150. *Id.* at 143-44.

151. *Id.* at 156-57.

152. *Id.* at 144.

finding it presumptuous to declare UCPB and the CIIF Oil Mills as public corporations since Cojuangco specifically controverted this in his Answer to the Republic's Third Amended Complaint.[153]

(3) Finally, the Republic failed to prove through competent evidence that Cojuangco breached his fiduciary duties.

The Republic claimed that it was illegal for Cojuangco to use the loans and advances from UCPB and the CIIF Oil Mills when he was then an officer of these institutions, in order to acquire the SMC shares for himself and not for the benefit of the coconut farmers.[154] The Republic relied on Cojuangco's statements in his Answer and Pre-Trial Brief, where he admitted to being an officer of such institutions, including President and member of the Board of Directors of UCPB.[155]

The Court rejected this argument on the ground that there was nothing in Cojuangco's Answer that served as an admission that he held the positions at the same time as the contested acquisition of SMC shares took place, and which the Sandiganbayan considered to be a genuine factual issue to be proven during trial.[156] In addition, the statements made by Cojuangco in his Pre-Trial Brief under the section entitled "Proposed Evidence" did not constitute admissions of misuse of coconut levy funds precisely because whatever statements it contained were only being "proposed," and therefore "*not yet* intended or offered as admission of any fact stated therein."[157] The Court also said that the statements were ambiguous since they did not show the details of the supposed transactions. Ambiguous statements, according to the Court, are disqualified from being relied upon as admissions.[158]

Lastly, the Court ruled that, in acquiring the SMC shares, Cojuangco did not breach his fiduciary duties as a member of the UCPB Board since the Republic again failed to establish the breach by competent evidence, contrary to the requirement that a breach of trust is never presumed but must be alleged and proved. In addition, Cojuangco's defense that the funds used to acquire the Cojuangco block was in the nature of a loan from

153. *2011 Case*, 648 SCRA at 144.

154. *Id.* at 145.

155. *Id.*

156. *Id.* at 145-48.

157. *Id.* at 150.

158. *Id.* at 150-51.

UCPB, precludes the existence of a trust since there is no fiduciary relationship between a creditor and debtor in a contract of loan.[159]

C. The CIIF Block of Shares: The Case of Philippine Coconut Products Federation, Inc. (COCOFED) v. Republic

1. Background of the Case

The Supreme Court decision in *Philippine Coconut Products Federation, Inc. (COCOFED) v. Republic* or the *2012 Case* was promulgated on 24 January 2012. Penned by Justice Presbitero Velasco, Jr., this case put an end to the issue of ownership of the CIIF block of shares. Fortunately for the Republic, the Court declared the Government as the owner of the shares, with the caveat that the shares should only be used for the benefit of all coconut farmers and for the development of the coconut industry.[160] COCOFED filed a Motion for Reconsideration on 14 February 2012, which is yet to be resolved by the Court.[161] The *2012 Case* is a consolidation of several petitions for review on *certiorari* under Rule 45 of the Rules of Court.[162] They seek to annul certain issuances of the Sandiganbayan relating to ownership of the CIIF block of SMC shares under Civil Case No. 0033-F and shares of stocks of UCPB under Civil Case No. 0003-A.[163]

a. The UCPB Shares

Briefly, Civil Case No. 0033-A deals with the alleged anomalous purchase of 72.2% of shares of stocks of First United Bank (now known as UCPB), and the transfer by the PCA of a portion of these acquired shares to private individuals.[164] These private individuals are comprised primarily of coconut farmers that paid the CIF levies under R.A. No. 6260.[165] The distribution of the shares of stocks to private individuals was done pursuant to Section 1 of P.D. No. 755, while the process of distribution was done in accordance with

159. *2011 Case*, 648 SCRA at 161-62.

160. *2012 Case*, 663 SCRA at 642.

161. Motion for Reconsideration, *supra* note 21.

162. *2012 Case*, 663 SCRA at 524.

163. *Id.*

164. *Id.* at 535.

165. *Id.* at 536. The coconut farmers that paid the CIF levies were given corresponding receipts that they registered with the PCA. These registered receipts were then exchanged for the UCPB shares of stocks. Reportedly some coconut farmers opted to sell their shares, resulting in their transfer to non-coconut farmer owners. However, most of the UCPB shares are held and registered in the name of COCOFED for further distribution to coconut farmers who have not yet received their shares. *Id.*

PCA's administrative issuances.[166] All these shares were sequestered by PCGG around the same time as the SMC shares.

In 2001, the Republic filed a Motion for Partial Summary Judgment on the UCPB shares, praying that certain provisions of P.D. Nos. 755, 961, and 1469 — all of which authorized the distribution of shares for free to coconut farmers — be declared unconstitutional, and that the Republic be held as the true and absolute owner of the coconut levy funds and the UCPB shares acquired therefrom.[167] The Sandiganbayan granted the Republic's motion on 11 July 2003 and declared the 64.98% of sequestered UCPB shares, plus other shares paid out by the PCA, as "conclusively owned by the Republic."[168]

b. The CIIF Block of Shares

When the Republic moved for Partial Summary Judgments on both the Cojuangco and CIIF block of shares in 2002, it justified the motions by using the same argument as the one used for the UCPB shares.[169] The Republic claimed that certain laws relating to the coconut levy funds were unconstitutional for allowing the funds to be distributed for free to coconut farmers.[170] The Sandiganbayan granted the Republic's motion on 7 May 2004 but only with respect to the CIIF block.[171] On 11 May 2007, the Sandiganbayan issued a resolution rendering it unnecessary to conduct further trial on the issue of ownership on both the CIIF block and the UCPB shares.[172] This means that the issue of ownership over these shares is deemed finally resolved.[173]

At the center of the controversy in the *2012 Case* were these resolutions issued by the Sandiganbayan dated 11 July 2003 (UCPB shares) and 7 May 2004 (CIIF block), as modified by the Sandiganbayan's 11 May 2007 resolution. Although the focus of herein discussion is the CIIF block of shares, the UCPB shares will be simultaneously discussed to clarify issues surrounding the former.

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166. *Id.* at550.

167. *2012 Case*, 663 SCRA at 550.

168. *Id.* at 551.

169. *Id.* at 551-53.

170. *Id.* at 554.

171. *Id.* at 556.

172. *Id.* at 560.

173. *2012 Case*, 663 SCRA at 560.

2. The Ruling of the Court

The Supreme Court reiterated its ruling in *Republic v. COCOFED* that the coconut levy funds are taxes and can, therefore, only be used for a public purpose.[174] The levies were enforced contributions exacted on select persons, under pain of penal sanctions, for the public purpose of protecting and developing the coconut industry.[175] Thus, not only are they public funds, they are special public funds.[176] This means that the coconut levy funds can only be used for the special purpose they were intended for and, thereafter, any balance must revert to the general fund[177] in accordance with Section 29 (3), Article VI of the Constitution.[178]

The special purpose for which the coconut levy funds are to be used for can be found in the laws creating them. The Court said there is no doubt that the purpose behind the creation of the coconut levy funds was not simply for the benefit of coconut farmers, but for the entire coconut industry since its improvement would eventually redound to the coconut farmers.[179] Thus, P.D. Nos. 755, 961, and 1468 are unconstitutional because not only did they authorize the distribution of the coconut levy funds to coconut farmers, to be owned in their private capacities,[180] they also provided that the levies shall not be construed by any law to be a special and/or fiduciary fund that shall form part of the general fund of the national government later on.[181] The assailed laws not only converted a public fund into a private fund for the benefit of private individuals, it also "effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made by law."[182] PCA's

174. *COCOFED 2001*, 372 SCRA at 481.

175. *Id.* at 483.

176. *Id.* at 485.

177. *2012 Case*, 663 SCRA at 605.

178. PHIL. CONST. art. 6, § 29, ¶ 3. This Section provides that —

> All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

PHIL. CONST. art. 6, § 29, ¶ 3.

179. *2012 Case*, 663 SCRA at 608.

180. *See, e.g.*, P.D. No. 755, § 1; P.D. No. 961, art. III, § 5; & P.D. No. 1468, art. III, § 5.

181. *Id.*

182. *2012 Case*, 663 SCRA at 609 (citing PHIL. CONST. art. 6, § 29, ¶ 1).

administrative issuances providing for the process of distributing the UCPB shares were also declared void.[183]

As regards the CIIF block, the foregoing ruling of the Court confirming the character of coconut levy funds as public funds means that the CIIF block is also public in character and belongs to the Government.[184] The Court based this on the fact that the CIIF Oil Mills were acquired by UCPB using coconut levy funds. The CIIF Companies were in turn acquired, and its capitalization sourced from coconut levy funds. The CIIF Companies were actually organized solely for the purpose of holding the CIIF block of SMC shares, while the purchase price for these shares came from borrowed UCPB funds, which are also coconut levy funds.[185] Therefore, there is no doubt that the CIIF block was acquired using coconut levy funds. These funds, being public in character, means that the assets acquired through such funds are also owned by the Government. As stated by the Court, "[i]n net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry."[186] Therefore, the Court merely upheld the 7 May 2004 resolution of the Sandiganbayan that conferred ownership of the CIIF block to the Government.[187]

3. The Definition of Ill-Gotten Wealth in *Philippine Coconut Products Federation, Inc. (COCOFED) v. Republic*

Recall that in the *2011 Case*, the Court stated that there is no "explicit definition of *ill-gotten wealth*."[188] This made it necessary to seek clues from E.O. Nos. 1, 2, 14, and jurisprudence, which led the Court to deduce the definition of ill-gotten wealth into four elements.[189] On the other hand, the *2012 Case* did not rely nor did it even make mention of these four elements. Instead, it relied on an existing single and explicit definition of ill-gotten wealth in order to resolve one of the issues raised by the petitioners.

The petitioners questioned the jurisdiction of the Sandiganbayan over Civil Cases Nos. 0033-A and 0033-F. It argued that in order for the Sandiganbayan to acquire jurisdiction over the subject matter of a suit for the recovery of ill-gotten wealth, the Republic has to prove the ill-gotten nature

183. *Id.*

184. *Id.* at 622.

185. *Id.* at 622–24.

186. *Id.* at 624.

187. *Id.*

188. *2011 Case*, 648 SCRA at 130.

189. *See 2011 Case*, 648 SCRA at 129–34.

of the assets or properties sought to be recovered, which it failed to do. The petitioners claimed that the shares of stocks sought to be recovered by the Republic cannot be considered ill-gotten wealth because the petitioner coconut farmers are not "subordinates, close and/or business associates, dummies, agents[,] and nominees" of Cojuangco or the Marcoses, nor were the shares acquired "through or as a result of improper or illegal use or conversion of funds belonging to the Government."[190] To address this issue, the Court went into a discussion of the definition of ill-gotten wealth. While acknowledging that the origins of the term "ill-gotten wealth" are found in E.O. Nos. 1, 2, and 14, as amended by 14-A, when defining the term itself, the Court proceeded to quote Section 1 (A) of the PCGG Rules —

> Correlatively, the PCGG Rules and Regulations defines the term 'Ill-Gotten Wealth' as '*any asset, property, business enterprise[,] or material possession of persons within the purview of [E.O.] Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates[,] and/or business associates by any of the following means or similar schemes*[.]'[191]

The Court placed emphasis on the phrase "dummies, nominees, agents, subordinates[,] and/or business associates," and even quoted E.O. Nos. 1 and 2, which also use the term "nominee" in relation to the concept of ill-gotten wealth, to wit —

> Section 2 (a) of E.O. No. 1 charged the PCGG with the task of assisting the President in '[t]he recovery of all ill-gotten wealth accumulated by former ... [President] Marcos, his immediate family, relatives, subordinates[,] and close associates ... including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through *nominees*, by taking undue advantage of their public office and/or using their powers, authority, influence, connections[,] or relationship.' Complementing the aforesaid Section 2 (a) is Section 1 of E.O. No. 2 decreeing the freezing of all assets 'in which the [Marcoses], their close relatives, subordinates, business associates, dummies, agents[,] or nominees have any interest or participation.'[192]

The Court then said that, contrary to the petitioners' contention, the Court finds that, as regards the UCPB shares, the coconut farmers are nominees of Cojuangco or the Marcoses therefore making the shares ill-gotten wealth.[193] This not only settled the issue raised by the petitioners on the Sandiganbayan's jurisdiction, it also served as basis for the Court to order the reconveyance of the UCPB shares to the Republic.

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190. *2012 Case*, 663 SCRA at 574.

191. *Id.* (citing PCGG Rules, § 1 (A)).

192. *2012 Case*, 663 SCRA at 575.

193. *Id.* at 580-81.

According to the Court, the word "nominee" in its most common signification "refers to one who is designated to act for another usually in a limited way" or "a person in whose name a stock or bond certificate is registered but who is not the actual owner thereof."[194] But, it stressed that "nominee" as used in E.O. No. 1, 2, and 14, must be understood not only in its plain meaning, but also in relation to the purpose for which these executive orders were issued.

The Court said that the purpose of these executive orders was "precisely to effect recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates[,] and cronies, or through their nominees."[195] Therefore, "nominee" must be understood as "persons listed as associated with the Marcoses" and who are "in possession of ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery."[196]

A more succinct definition provided by the Court is "any person or group of persons, natural or juridical, in whose name government funds or assets were transferred to by [President] Marcos, his cronies or his associates."[197] According to the Court, there is rationale behind this definition since it would be natural for a person not to flaunt ownership of assets that are ill-gotten in nature, but instead hide them under the name of persons or entities other than the real owner. It would also be done in a way that the persons or entities do not have obvious or traceable connections to the real owner, a fact that the Court claims to have, and can still in the future, take judicial notice of, to wit —

> The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations or manipulated instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in [*Presidential Commission on Good Government v. Peña*,][198] the Court, describing the rule of Marcos as a '*well entrenched plundering regime of twenty years*,' noted the magnitude of the past regime's organized pillage and the ingenuity of the

194. *Id.* at 580.

195. *Id.* at 581.

196. *Id.* at 581.

197. *Id.*

198. Presidential Commission on Good Government v. Peña, 159 SCRA 556 (1988).

> plunderers and pillagers with the assistance of experts and the best legal minds in the market.[199]

Using its construction of the word "nominee," the Supreme Court concluded that the coconut farmers who were meant to receive UCPB shares were simply nominees within the meaning of E.O. Nos. 1, 2, and 14.[200] Under the administrative orders of the PCA, the certificates of stocks were delivered to coconut farmers, who were then required to execute irrevocable proxies in favor of UCPB's manager.[201] The execution of the irrevocable proxies is proof, according to the Court, that the PCA had no intention to constitute the approximately 1,500,000 registered coconut farmers as stockholders. They were merely nominal stockholders, and since the UCPB shares were acquired using coconut levy funds, then rightful ownership of the shares belongs to the Government.[202]

In sum, the Supreme Court, in the *2012 Case*, recognizes that, first, there is a single, explicit definition of ill-gotten wealth and that is found Section 1 (A) of the PCGG Rules. Second, a construction of the word "nominee" as used in Section 1 (A) of the PCGG Rules, and in E.O. Nos. 1 and 2, leads to the conclusion that ill-gotten wealth can be in the form of assets or properties of the government, or the fruits thereof, that have been transferred by former President Marcos, his cronies, or his associates, to another person or group of persons, whether natural or juridical, and when such transfer is done in a way that would prevent its detection. This includes: (1) transferring the illegal assets to parties that do not have obvious connections to Marcos, his cronies, or his associates; (2) setting up layers of shell or dummy corporations and/or manipulation of instruments that aim to confuse or prevent would-be investigators from finding or recovering the illegal assets.

III. ESTABLISHING GUIDELINES FOR JUDICIAL RECOGNITION OF THE *SUI GENERIS* NATURE OF ILL-GOTTEN WEALTH SUITS

A. A Critique of the Definition of Ill-Gotten Wealth in Republic v. Sandiganbayan (First Division)

> *Half the truth is often a great lie.*

199. *2012 Case*, 663 SCRA at 582 (citing *Presidential Commission on Good Government*, 159 SCRA at 574).

200. *2012 Case*, 663 SCRA at 582–83.

201. *Id.*

202. *Id.*

— Benjamin Franklin[203]

1. A Case of Oversight?

As previously explained, the Supreme Court in the *2011 Case* rendered a definition of ill-gotten wealth that it claimed to be rooted in E.O. Nos. 1, 2, and 14, and developed over time through jurisprudence.[204] The resulting definition can be likened to an amalgamation of elements taken from one source or another, which we earlier deduced into four. The definition assigned by the Court to ill-gotten wealth in the *2011 Case* is important, since it established the basis for the Court to rule that the Cojuangco block is not ill-gotten wealth and properly belongs to the defendants. The Court based its ruling mainly on the absence of the fourth element, specifically the lack of competent evidence to substantiate the Republic's allegation that the defendants acquired the Cojuangco block using public funds in the form of coconut levy funds.[205]

Considering how the definition of ill-gotten wealth played such an important role in the case, one can only hazard a guess as to why the Court went to great lengths to conjure a patchwork definition. It can be inferred from the language of the Court that it was its belief that there is no explicit and monolithic definition of ill-gotten wealth. However, a reading of the *2012 Case* reveals that there is in fact such a definition and it can be found in Section 1 (A) of the PCGG Rules.[206] Relying on the definition of ill-gotten wealth under the PCGG Rules would have indeed been appropriate for the *2011 Case*, considering that these pre-existed not just the *2011 Case* itself, but also the six cases that the Court used as support for its own definition of ill-gotten wealth.[207] In fact, the PCGG Rules even pre-existed the 1987 Constitution since it was promulgated on 11 April 1986, and took effect immediately after its promulgation.[208] The Supreme Court also recognized

203. Benjamin Franklin, *Poor Richard's Almanack*, *in* THE QUOTABLE FOUNDING FATHERS 310 (Buckner F. Melton, Jr., ed., 2004).

204. *See 2011 Case*, 648 SCRA at 129-36.

205. *Id.* at 134.

206. PCGG Rules, § 1 (A).

207. The earliest of the six cases was *Bataan Shipyard & Engineering Co., Inc.*, which was promulgated on 27 May 1987.

208. PCGG Rules, § 11. This Section provides that "[t]he provisions of these Rules and Regulations shall be effective immediately. *Id.*

Meanwhile, the 1987 Constitution took effect on 2 February 1987. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE

the definition of ill-gotten wealth in the PCGG Rules when it applied the same to the 2005 case of *Republic v. Estate of Hans Menzi*.[209] There is no way that the Court could feign ignorance of the PCGG Rules because it even used the same in the *2011 Case*, when it resolved the issue of validity of the sequestration orders issued over the SMC shares.[210]

a. The Case of Republic v. Estate of Hans Menzi

The Supreme Court promulgated its decision in *Menzi* on 23 November 2005. The case stemmed from a complaint for recovery of ill-gotten wealth in the form of shares of stocks in Bulletin Publishing Corporation (Bulletin), filed against Cojuangco as one of the defendants.[211] The complaint alleged that the defendants acted as dummies, nominees, and/or agents of the Marcos spouses in acquiring substantial shares in Bulletin in order to prevent disclosure and recovery of the illegally obtained assets.[212] The Bulletin shares were divided into three blocks, and the Sandiganbayan ruled two out of three to be ill-gotten wealth and ordered their reconveyance to the Government. These are blocks 198 and 214.[213]

Block 198 was comprised of shares of stocks originally owned by Cojuangco, Campos, and Zalamea, which they sold to Bulletin prior to sequestration by the PCGG.[214] Thereafter, Campos made a deposition in Canada where he admitted that he held the Bulletin shares "per instruction of President Marcos."[215] In the same deposition, he stated that the beneficial owner "must be President Marcos" and that he received dividend checks from Bulletin "for the benefit of President Marcos."[216] On the other hand, Zalamea had executed a deed of assignment where he manifested that he was not the true and beneficial owner of the Bulletin shares registered in his name.[217]

Based on these findings, the Sandiganbayan declared Cojuangco, Campos, and Zalamea to be dummies or nominees of Marcos.[218] Cojuangco

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PHILIPPINES: A COMMENTARY 1410 (2009 ed.) (citing De Leon v. Esguerra, 153 SCRA 602 (1987)).

209. Republic v. Estate of Hans Menzi, 476 SCRA 20 (2005).

210. *See 2011 Case*, 648 SCRA at 212 (J. Carpio-Morales, dissenting opinion).

211. *Menzi*, 476 SCRA at 25-26.

212. *Id.* at 26.

213. *Id.* at 41.

214. *Id.*

215. *Id.* at 45.

216. *Id.*

217. *Menzi*, 476 SCRA at 45.

218. *Id.* at 49.

contested this, claiming instead to be a nominee of the late Hans Menzi who owned and delivered to him the shares registered in his name.[219] Cojuangco interposed the same defense as regards a portion of the 214 block registered in his name. But the Sandiganbayan rejected Cojuangco's defense since he failed to substantiate it.[220]

The Supreme Court affirmed the Sandiganbayan's ruling on the ground that Cojuangco's affirmative defense — that he was a nominee of Menzi and not of Marcos — was not proven by evidence, the burden of which fell on Cojuangco.[221] On the other hand, the Court found the Republic's case to be preponderant and, therefore, sufficient to establish that blocks 198 and 214 were indeed ill-gotten wealth within the meaning provided in Section 1 (A) of the PCGG Rules. [222]

The case of *Menzi* establishes two important things. First, that contrary to what the *2011 Case* shows, there is in fact a single definition of ill-gotten wealth found in Section 1 (A) of the PCGG Rules — one that need not be deduced from various laws and jurisprudence. Second, this definition sets a precedent for cases involving similar issues as *Menzi*, in that Section 1 (A) of the PCGG Rules provides a cause of action for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14, such that if the evidence proves the existence of elements provided in the definition, then the Government is entitled to relief in the form of reconveyance of the assets.

Also, *Menzi* sets the precedent for how the Court should treat an affirmative defense in response to allegations based on Section 1 (A) of the PCGG Rules. In such a case, failure to prove the affirmative defense entitles the Government to relief, provided that the latter also presents evidence that is preponderant.[223]

b. Validity of the Writs of Sequestration in Republic v. Sandiganbayan (First Division)

In 1986, and prior to the institution of Civil Case No. 0033-F, the Government issued writs of sequestration (WOS) over the SMC shares, which prevented their registered owners from exercising acts of ownership over them. However, in 2003, the Sandiganbayan declared the writs

219. *Id.*

220. *Id.* at 55.

221. *Id.* at 56.

222. *Id.* at 56–57.

223. *See 2011 Case*, G.R. Nos. 166859, 169203, & 180702, Apr. 12, 2011 (J. Sereno, dissenting opinion) (unreported).

"automatically lifted for being null and void,"[224] and upheld the same in a resolution promulgated in 2005.[225] When this was questioned via a petition for *certiorari* in the *2011 Case*, the Supreme Court settled the issue by merely upholding the 2003 resolution of the Sandiganbayan.[226]

In the said resolution, the Sandiganbayan resolved the question of validity of the writs by referring to the requirements laid out in the PCGG Rules. It was upon finding that the questioned writs did not conform to the requirements provided in the PCGG Rules that the Sandiganbayan declared them to be void.[227] What is important to note here is that in upholding the Sandiganbayan's 2003 resolution, the Supreme Court in the *2011 Case* recognized the deliberate reference to and the use of the PCGG Rules in resolving the issue of validity of the nine writs. Thus, it remains a mystery as to why the Court in the *2011 Case* refused to take a closer look at the PCGG Rules in discussing the definition of ill-gotten wealth in the same case. One can only find humor in the fact that, while the requirements for issuing a WOS are found in Section 3 of the PCGG Rules,[228] the "overlooked" definition of ill-gotten wealth appears, where else, but in Section 1 (A).

2. Testing the Integrity of the Sources of *Republic v. Sandiganbayan (First Division)*

The Court in the *2011 Case* referred to the three Supreme Court rulings to establish two out of the four elements of its conjured definition of ill-gotten wealth, namely: (1) the assets alleged to be ill-gotten must have "originated from the government itself;"[229] and (2) they must have been taken by former President Marcos, his immediate family, relatives, and close associates by illegal means.[230] The three cases used were those of *Bataan Shipyard & Engineering Co., Inc.*, *Tan*, and *Chavez*. The Court directly quoted from these cases and claimed that the excerpts contain the definition of ill-gotten wealth. But, an assessment of these three cases and the context in which the

224. *2011 Case*, 648 SCRA at 103-05.

225. *Id.*

226. *Id.* at 162-63.

227. *Id.* at 123-27.

228. PCGG Rules, § 3. This Section provides that —

> A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

Id.

229. *2011 Case*, 648 SCRA at 132 (citing *Chavez*, 299 SCRA at 768-69).

230. *Id.*

excerpts originally appeared in reveal that they concern an entirely different issue or sets of issues, with the definition of ill-gotten wealth serving only as collateral discussion or *obiter dictum.*[231] The following sub-sections will explore this point further through a discussion of each case.

a. The Case of Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government

The *Bataan Shipyard & Engineering Co., Inc.* decision was promulgated on 27 May 1987. The petitioner Bataan Shipyard & Engineering Company (BASECO) was a private corporation that was among the several corporations sequestered by the PCGG via a written order issued on 14 April 1986.[232] In its petition for *certiorari* and prohibition, BASECO sought to declare E.O. Nos. 1 and 2 unconstitutional for authorizing sequestration without resort to judicial action.[233] BASECO argued that this was a violation of the Bill of Rights of the 1973 Constitution, which it claimed to be in effect at the time of its sequestration. In seeking to declare the executive orders unconstitutional, BASECO prayed for the annulment of the sequestration order, the takeover order, and other acts done by the PCGG pursuant to E.O. Nos. 1 and 2.[234]

The Court dismissed the petition and upheld the validity of E.O. Nos. 1 and 2 on the ground that sequestration is only a type of provisional remedy.[235] It is availed of pending judicial determination of whether or not the sequestered assets are indeed ill-gotten wealth. It stressed that sequestration does not amount to deprivation of one's property since it is done only to prevent the disappearance or dissipation of the property.[236] The Court added that in any case, both the Freedom Constitution and the 1987 Constitution have already sanctioned sequestration, and it is also justified under the State's inherent police power to promote public welfare.[237] In

231. An *obiter dictum* is defined as an opinion or remark made by a judge in the decision, on some cause that is not necessarily involved in the determination of the case. It may have been made simply to illustrate a point, or as an analogy or argument. More importantly, it lacks the force of an adjudication and has no binding force for purposes of *res judicata.* Land Bank of the Philippines v. Suntay, 662 SCRA 614, 647-48 (2011).

232. *Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 193-94.

233. *Id.* at 198.

234. *Id.*

235. *Id.* at 213-14.

236. *Id.* at 211-13.

237. *Id.* at 217-18.

arriving at this conclusion, the Court discussed the meaning of "sequestration" in relation to ill-gotten wealth, thus —

> By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be 'ill-gotten' means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including 'business enterprises and entities,' — for the purpose of preventing the destruction, concealment[,] or dissipation of, and otherwise conserving and preserving [ ] the same — *until it can be determined, through appropriate judicial proceedings, whether the property was in truth 'ill-gotten,' i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks[,] or financial institutions, or by taking undue advantage of official position, authority relationship, connection[,] or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.*[238]

The sentences emphasized above are the portions directly quoted by the Court in the *2011 Case*. A plain reading of the text above shows that the Court's discussion in *Bataan Shipyard & Engineering Co., Inc.* was not focused on the meaning of ill-gotten wealth *per se*, but on the meaning of "sequestration" in relation to ill-gotten wealth — as opposed to, for instance, sequestration in the context of the Anti-Subversion Law.[239] In Footnote 44 of the *Bataan Shipyard & Engineering Co., Inc.* case, which was inserted right after the phrase "resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State," the Court explains that the text is "substantially the definition of sequestration set out in Section 1 (B) of the Rules and Regulations of the PCGG."[240]

The point here is this: in including this "definition" of ill-gotten wealth in *Bataan Shipyard & Engineering Co., Inc.*, it appears that the *ponente* therein had no intention of either creating a conclusive definition of ill-gotten wealth, or citing what it considers to be a pre-existing conclusive definition of ill-gotten wealth. What the Court was really trying to do was to define "sequestration" under E.O. Nos. 1 and 2.

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238. *Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 208-09 (emphasis supplied).

239. *Id.* at 209-10. Footnote 44 of *Bataan Shipyard & Engineering Co., Inc.* provides the definition of "sequestration" in P.D. No. 885 or the Revised Anti-Subversion Law. It appears this was included to simply provide another instance where the term "sequestration" appears, and to draw a parallel with the definition of "sequestration" as used in E.O. Nos. 1 and 2. It would appear that in both definitions, there is an element of possession or control of private property by the Government for purposes of protecting public interest. *Id.*

240. *Id.* at 209-10.

It may be argued that, in defining "sequestration" under E.O. Nos. 1 and 2, it is necessary to define "ill-gotten wealth" since what is in fact ordered to be sequestered under these executive issuances are assets constituting ill-gotten wealth. Therefore, if the meaning of "sequestration" under E.O. Nos. 1 and 2 is the main issue of the case, but to arrive at this, "ill-gotten wealth" must be defined because it is an integral part of the meaning and purpose of sequestration, then pronouncements of the Court on the definition of "ill-gotten wealth," even if made incidentally, would not be *obiter dictum*. As explained by the Court in *Villanueva, Jr. v. Court of Appeals*[241] —

> A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*. So, also, where a case presents two [ ] or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.[242]

Valid as this argument may be, it is submitted that it cannot apply to the *Bataan Shipyard & Engineering Co., Inc.* case precisely because the issue of the case did not concern the definition of ill-gotten wealth or the definition of sequestration itself. The issue raised by the petitioner was the unconstitutionality of E.O. Nos. 1 and 2, which if it were so declared by the Court, would entitle the petitioner to its prayer to annul the sequestration order, among others, since sequestration is only valid for as long as E.O. Nos. 1 and 2 also remain valid and constitutional.[243]

To state it differently, the issue or *lis mota* of the case is whether or not the sequestration that is sanctioned by E.O. Nos. 1 and 2, and which petitioner claims to be "*sequestration, without resorting to judicial action*," violates the Bill of Rights.[244] In fact, the petitioner did not even raise the issue of illegality of the sequestration on the ground that the assets are not ill-gotten wealth, which would have prompted the Court to delve into an

241. Villanueva, Jr. v. Court of Appeals, 379 SCRA 463 (2002).

242. *Id.* at 470 (citing 21 C.J.S. *Dicta* § 190).

243. *Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 198.

244. *See Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 198-00.

interpretation of what constitutes ill-gotten wealth. In any case, the Court did not find E.O. Nos. 1 and 2 unconstitutional.[245]

Without going into an exhaustive explanation of the Court's *ratio*, it might be useful to point out that *Bataan Shipyard & Engineering Co., Inc.'s* discussion on the definition of "sequestration" that was partially quoted in the *2011 Case*, was part of a section in the *Bataan Shipyard & Engineering Co., Inc.* decision entitled, "Provisional Remedies Prescribed by Law."[246] What can be gleaned from this is that the *ponente* discussed the definition of sequestration simply with the intention of stressing on its provisional character under E.O. Nos. 1 and 2, in order to counter the petitioner's allegation that private property was being permanently taken away by the Government without due process, and in blatant disregard of petitioner's Constitutional rights.[247]

With all due respect to the Supreme Court, it appears that it was misleading for it to cite in the *2011 Case* this particular text from *Bataan Shipyard & Engineering Co., Inc.*, on the premise that it is the definition that the Supreme Court has assigned to the term "ill-gotten wealth."[248] As if to cause even more confusion, the Court even directly quoted in the *2011 Case* this particular sentence in *Bataan Shipyard & Engineering Co., Inc.* that says, "[a]nd this, too, is the sense in which the term is commonly understood in other jurisdictions,"[249] without quoting the entire discussion that this sentence originally appeared in. It gives the reader of the *2011 Case* the impression that the supposed definition of ill-gotten wealth that was mentioned right before this sentence is precisely the definition that is commonly understood in other jurisdictions. Whether the Court in the *2011 Case* intended this is unknown, but it must be clarified, at least for purposes of this Note, that this particular sentence, as used in *Bataan Shipyard & Engineering Co., Inc.*, was referring to the definition of "sequestration" and not "ill-gotten wealth."[250] Footnote 45, which was inserted at the end of this particular sentence, proves this because it contains an explanation of the purpose of a writ of sequestration as found in *Corpus Juris Secundum*, and the definition of "sequester" in Black's Law Dictionary.[251]

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245. *Id.* at 217-18.

246. *Id.* at 208.

247. *Id.* at 208-15.

248. *See 2011 Case*, 648 SCRA at 131-32 (citing *Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 208-09).

249. *2011 Case*, 648 SCRA at 131.

250. *See Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 208-09.

251. *Id.* at 209-10. Footnote 45 states that —

b. The Case of Presidential Commission on Good Government v. Tan

Curiously in the *Tan* case, the Court seemed to have been operating under the same mindset as the members of the Court in the *2011 Case*, because it also directly quoted the same *Bataan Shipyard & Engineering Co., Inc.* excerpt that appeared in the *2011 Case*.[252]

The *Tan* decision was promulgated on 7 December 2007. The controversy began when throughout the years of 1986 and 1987, the PCGG sequestered shares of stocks in various corporations registered under the names of the respondent individuals, which included business tycoon, Lucio Tan.[253] The Sandiganbayan, upon motion of the respondents, nullified the sequestration orders on the ground that they were issued without *prima facie* evidence that the covered assets are ill-gotten wealth, which is required under Section 26, Article 18 of the 1987 Constitution.[254] The court found

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> 'As employed under the statutory and code provisions of some states, the writ of sequestration is merely, but essentially, a conservatory measure, somewhat in the nature of a judicial deposit. It is a process which may be employed as a conservatory writ whenever the right of the property is involved, to preserve, pending litigation, specific property subject to conflicting claims of ownership or liens and privileges[.]'
>
> ...
>
> 'Sequester' means, according to Black's Law Dictionary, 'to deposit a thing which is the subject of a controversy in the hands of a third person, to hold for the contending parties, to take a thing which is the subject of a controversy out of the possession of the contending parties, and deposit it in the hands of a third person.'

Id.

252. *Tan*, 539 SCRA at 481 (citing *Bataan Shipyard & Engineering Co., Inc.*, 150 SCRA at 208-09).

253 *Tan*, 539 SCRA at 466.

254. PHIL. CONST. art. 18, § 26, ¶¶ 2 & 3. This Section provides —

> A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.
>
> The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

PCGG's evidence to be insufficient, which the PCGG contested at the Supreme Court.

However, the Court affirmed the decision of the Sandiganbayan since the PCGG's evidence, consisting of minutes of the meetings when it supposedly deliberated on whether or not to issue the sequestration orders against respondents, were found to contain mere conclusions of law that the assets are ill-gotten wealth.[255] The Court held that the absence of any reason as to why the shares of stocks were being sequestered would deprive respondents of the opportunity to contest the validity of the sequestration.[256]

While *Tan* directly quoted the *obiter dictum* definition of ill-gotten wealth in *Bataan Shipyard & Engineering Co., Inc.*, it did so only for the purpose of determining whether there was *prima facie* evidence of ill-gotten wealth, which is a requirement for determining the validity of sequestration under the Constitution.[257] In other words, the Court's pronouncement in *Tan* on what constitutes ill-gotten wealth is not conclusive because this was not the main issue of the case, but rather whether or not the sequestration was valid.

Even assuming that the Court purported to define what ill-gotten wealth is, its definition would still be inconclusive because it never had the opportunity to apply this definition to the facts of the case. The evidence to prove that the sequestered shares of stocks were *prima facie* ill-gotten wealth was simply absent in this case, that the Court had no choice but to deny the PCGG's petition.

c. The Case of Chavez v. Presidential Commission on Good Government

The *Chavez* case concerns an entirely different issue from the cases of *Bataan Shipyard & Engineering Co., Inc.* and *Tan*. The petitioner here sought to restrain the PCGG from entering into a compromise agreement with the heirs of Marcos concerning the latter's assets both here and abroad, and to compel the PCGG to make public all negotiations and documents relating to the compromise agreement.[258]

The portion in *Chavez* that purportedly defines ill-gotten wealth, and which was directly quoted in the *2011 Case*, was a discussion intended to resolve the main issue in *Chavez* regarding the Constitutional right to compel information from the government.[259] It sought to answer the

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PHIL. CONST. art. 18, § 26, ¶¶ 2 & 3.

255. *Tan*, 539 SCRA at 469-78.

256. *Id.* at 483-84.

257. *See* PHIL. CONST. art. 18, § 26.

258. *Chavez*, 299 SCRA at 749. This case was promulgated on 9 December 1998. Justice Artemio V. Panganiban penned the decision.

259. *See Chavez*, 299 SCRA at 763-70.

question of whether the petitioner had, under the Constitution, a right to compel the PCGG to disclose any agreement made with the Marcos heirs in relation to the disputed assets. In order to answer this, the Court had to decipher the meaning of "public concern" since the Constitutional right to compel the release of information from the government is limited to matters of public concern.[260]

The Court said that the language of E.O. Nos. 1, 2, and 14, which have the force and effect of legislative enactments, undoubtedly make the recovery of ill-gotten wealth from Marcos, his immediate family, relatives, and close associates "a matter of public concern and imbued with public interest."[261] It said —

> With such pronouncements of our government, whose authority emanates from the people, there is no doubt that the recovery of the Marcoses alleged ill-gotten wealth is a matter of public concern and imbued with public interest. *We may also add that 'ill-gotten wealth,' by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives[,] and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influences or relationships, 'resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.' Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.*

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260. PHIL. CONST. art. 3, § 7. This Section provides —

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

Id.

261. *Chavez*, 299 SCRA at 768.

> We believe the foregoing disquisition settles the question of whether petitioner has a right to respondent[']s disclosure of any agreement that may be arrived at concerning the Marcoses purported ill-gotten wealth.[262]

The sentences emphasized above represent the portion that was directly quoted in the *2011 Case* and which was purported by the Court to be a definition of ill-gotten wealth.[263] When read in the proper context, it is submitted that the Court was simply describing how ill-gotten wealth is portrayed in E.O. Nos. 1, 2, and 14. More importantly, the discussion of what constitutes ill-gotten wealth is again not the focus of *Chavez*. Instead, the focus is on what constitutes as an appropriate subject matter to apply the Constitutional right to information. The Court determined that the terms of the negotiations on the compromise agreement is indeed an appropriate subject matter of the Constitutional right to information and must, therefore, be disclosed.[264]

d. The Cases on "Close Associates" and "Subordinates"

The remaining cases that the Court in the *2011 Case* used as reference for its definition of ill-gotten wealth were *Migrino*, *Cruz*, and *Republic v. Sandiganbayan*. The Court claimed that these cases clarified the inherent difficulty in deciphering who are considered "close associates" within the meaning of E.O. No. 1.[265]

However, upon closer reading of the cases, it is clear that the central issue is whether or not the PCGG has jurisdiction to investigate and prosecute cases involving unexplained wealth of public officials under R.A. No. 3019[266] and R.A. No. 1379.[267] The confusion was due to the concurrent jurisdiction of the PCGG and the Ombudsman in conducting preliminary investigation and prosecution of cases involving public officials. These cases laid down the rule that the PCGG only has jurisdiction over public officers and employees if the controversy relates to the alleged ill-gotten wealth of Marcos, his immediate family, relatives, subordinates, and close associates, otherwise jurisdiction properly resides with the Ombudsman.[268] Therefore, to establish the jurisdiction of the PCGG, it

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262. *Id.* at 768-69 (emphasis supplied).

263. *2011 Case*, 648 SCRA at 132.

264. *Chavez*, 299 SCRA at 770.

265. *2011 Case*, 648 SCRA at 133.

266. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

267. An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor, Republic Act No. 1379 (1955).

268. *Migrino*, 189 SCRA at 302-303; *Republic 2003*, 407 SCRA at 41; & *Cruz*, 194 SCRA at 483.

must be proven that the respondent public official is a subordinate or close associate of Marcos.[269]

Consequently, the Court's reliance on *Migrino*, *Cruz*, and *Republic v. Sandiganbayan* should not be taken at face value, and the Court's rulings in these cases should not be considered as having conclusively settled the matter of who constitutes a "subordinate" or "close associate" of Marcos. The defendants in these cases were not found to be subordinates or close associates within the purview of E.O. No. 1, mainly because in each case, the PCGG failed to establish that link between Marcos and the defendant in relation to the charge of unlawfully acquired wealth. Besides, establishing that said "link" for each case was only for the purpose of determining whether the PCGG had jurisdiction over the investigation and prosecution of the case. Therefore, the Court's findings on the existence of a close

269. Thus, in *Migrino*, Tecson was charged with violation of R.A. No. 3019 in connection with his position as Finance Officer of the Philippine Constabulary during the administration of Marcos. The Court interpreted the meaning of "subordinate" under E.O. No. 1 as someone who enjoys a close association or relation with Marcos and his wife, in the same way that his immediate family, relatives, close associates, business associates, dummies, agents, and nominees would. *Migrino*, 189 SCRA at 297.

Since there was no *prima facie* showing that Tecson unlawfully accumulated his wealth by virtue of his close association or relation to Marcos, the Court determined that the suit was not related to ill-gotten wealth under E.O. Nos. 1, 2, and 14. Consequently, PCGG had no authority to proceed with the preliminary investigation of Tecson. Nonetheless, the Court said that investigation and prosecution for unlawfully acquired wealth may still proceed, but only through the city or provincial prosecutor and the Solicitor General, since Tecson had already retired and was considered to be a private citizen. But the Court said that had Tecson remained active in government service, the Ombudsman would have had jurisdiction. *Migrino*, 189 SCRA at 296-99 & 302.

Meanwhile, the case of *Cruz* involved the President and General Manager of the GSIS who was also charged under R.A. No. 3019. The Court ruled that PCGG had no jurisdiction to investigate and prosecute him since the complaint did not show evidence that the crime imputed to him is "crony-related." *Cruz*, 194 SCRA at 484.

Finally, in *Republic v. Sandiganbayan*, Ramas who was Commanding General of the Philippine Army, was not considered a "subordinate" of Marcos so as to grant PCGG jurisdiction over his investigation and prosecution. The Court reasoned that PCGG would have to provide a *prima facie* showing that Ramas was indeed a close associate of Marcos by alleging acts of "complicity" with Marcos in accumulating ill-gotten wealth, or the latter's acquiescence in Ramas's own accumulation of ill-gotten wealth. *Republic 2003*, 407 SCRA at 42-43.

relationship between Marcos and the defendants as subordinates or close associates of the latter, or the lack thereof, were only *prima facie*.

B. The Implications of Altering the Definition of Ill-Gotten Wealth

> *When the mind's eye rests on objects illuminated by truth and reality, it understands and comprehends them, and functions intelligently; but when it turns to the twilight world of change and decay, it can only form opinions, its vision is confused and its beliefs shifting, and it seems to lack intelligence.*
>
> — Plato[270]

1. Ignoring PCGG Rules

In deciding the issue of ownership over the Cojuangco block in the *2011 Case*, the Supreme Court saw the need to first define ill-gotten wealth.[271] The purpose of this was to assess whether or not the evidence adduced by the Republic did in fact prove the elements of ill-gotten wealth under E.O. Nos. 1 and 2, and consequently, whether or not the Government is entitled to its remedy of reconveyance of the shares. This was all well and good until the Court decided that there is no existing explicit and singular definition of ill-gotten wealth, such that it found it necessary to discern this by sifting through E.O. Nos. 1, 2, and 14, and jurisprudence relating to the matter.[272] The Court made its own definition of ill-gotten wealth, which seemed to ignore the fact that there is already an existing definition of it, and which has even been applied by the Court in a previous case against Cojuangco.[273]

In the Philippines, the legislature is given the power to make and enact laws, but the power to interpret the law and, more importantly, the Constitution, lies solely with the judiciary.[274] While the Supreme Court is allowed to formulate guidelines as well as controlling doctrines or rules when interpreting the law, it cannot enlarge or restrict it. This is equivalent to judicial legislation,[275] which courts are prohibited from engaging in because it encroaches on the power of the legislature and violates the principle of separation of powers.[276] Thus, when a Court formulates guidelines, doctrines, or rules, it must do so only to "clearly delineate what the law

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270. Plato Quotes, *available at* http://www.iperceptive.com/authors/plato_quotes.html (last accessed June 16, 2013).

271. *See 2011 Case*, 648 SCRA at 129-36.

272. *Id.* at 130.

273. *See Menzi*, 476 SCRA 20 (2005).

274. DENNIS B. FUNA, CANONS OF STATUTORY CONSTRUCTION 18-21 (2011 ed.) (citing Endencia v. David, 93 Phil. 696 (1953)).

275. RUBEN E. AGPALO, STATUTORY CONSTRUCTION 147-48 (2009 ed.).

276. *See generally* BERNAS, *supra* note 208, at 677-78.

requires."[277] It cannot provide for situations or requirements that were not provided nor intended by the legislature at the time the statute was enacted, even if wisdom dictates its inclusion.[278]

E.O. Nos. 1 and 2 created the concept of ill-gotten wealth as amassed by Marcos, his immediate family, relatives, and close associates both here and abroad.[279] They also made it imperative for Government to recover this ill-gotten wealth. [280] Meanwhile, E.O. No. 14 provided the means of conducting such recovery by vesting Sandiganbayan with the exclusive and original jurisdiction to hear and decide cases relating to it.[281] These executive issuances were promulgated by then President Aquino in the exercise of her revolutionary legislative power,[282] and are thus part of the law of the land. Meanwhile, the PCGG Rules, which define ill-gotten wealth, were issued in accordance with the rule-making authority granted to the PCGG under Section 3 (h) of E.O. No. 1. Rule-making power is granted to administrative agencies[283] in order to fill in the details of a statute, which Congress may not have been able to do due to lack of time or expertise on the matter.[284]

In effect, the PCGG Rules are in the form of subordinate legislation, since they were created pursuant to the rule-making authority granted to the PCGG by E.O. No. 1, the latter being considered as law since President Aquino issued it in the exercise of her revolutionary legislative power. Valid subordinate legislation has the force and effect of law[285] and it is considered "just as binding as if the regulation had been written in the original statute itself."[286]

Applying now the rule that courts merely interpret the law or make guidelines that clearly delineate the law, it is submitted that the Supreme

277. AGPALO, *supra* note 275, at 148.

278. *Id.* at 151 (citing Morales v. Subido, 26 SCRA 150 (1968)).

279. *See* E.O. Nos. 1 & 2, whereas cl.

280. *Id.*

281. *See* E.O. No. 14, whereas cl.

282. *See generally* BERNAS, *supra* note 208, at 684-85.

283. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 22-23 (6th ed. 2010).

284. *Id.* at 79 (citing Kilusang Mayo Uno Labor Center v. Garcia, Jr., 239 SCRA 386 (1994) & Department of Agrarian Reform v. Sutton, 473 SCRA 392 (2006)).

285. DE LEON & DE LEON, JR., *supra* note 283, at 78-80 & 84. *See also* BERNAS, *supra* note 208, at 686.

286. BERNAS, *supra* note 208, at 687.

Court exceeded its authority when it created a definition of ill-gotten wealth rather than applying and interpreting the current law on this, which is Section 1 (A) of the PCGG Rules. Therefore, it is humbly submitted that the Court in the *2011 Case* engaged in judicial legislation, which violates the principle of separation of powers.[287]

2. Creation of a Substantive Requirement

Assuming for a moment that the Court did not engage in judicial legislation and merely established guidelines in interpreting the current law on ill-gotten wealth, it is respectfully submitted that this argument still fails when one compares the Court's definition with what is found in Section 1 (A) of the PCGG Rules. Table 1 is provided to illustrate this point.

Table 1.Comparison of Ill-Gotten Wealth Definitions as Found in the *2011 Case* and the PCGG Rules

	Definition of Ill-Gotten Wealth According to the *2011 Case*	Definition of Ill-Gotten Wealth Under Section 1 (A) of the PCGG Rules
Subject matter of ill-gotten wealth.	Vast resources of the government, or assets or properties that must have originated from the government itself.[288]	Any asset, property, business enterprise, or material possession of persons within the purview of Executive Orders Nos. 1 and 2.[289]
Persons who have taken or amassed the ill-gotten	Former President Marcos, his immediate family, relatives, and close associates located in the Philippines and abroad.[290]	Persons within the purview of Executive Order Nos. 1 and 2. [291] *The persons mentioned in these executive orders are former President Marcos, and/or his wife, Mrs. Imelda Romualdez Marcos, his immediate*

287. *See generally 2011 Case*, 648 SCRA at 129-36. *See also* Bengzon v. Drilon, 208 SCRA 133, 142 (1992). In *Bengzon*, the Court declared that —

> Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws[,] and the judiciary to their interpretation and application to cases and controversies.

Id.

288. *See 2011 Case*, 648 SCRA at 131.

289. PCGG Rules, § 1 (A).

290. *2011 Case*, 648 SCRA at 132-33.

291. PCGG Rules, § 1 (A).

wealth.		*family, their close relatives, subordinates, business or close associates located in the Philippines and abroad, dummies, agents, or nominees.*[292]
Manner of taking or amassing.	The taking or amassing of the subject matter must be done through illegal means.[293]	It must be taken or amassed: (a) Directly by the persons mentioned above; or (b) Indirectly thru dummies, nominees, agents, subordinates, and/or business associates. In either instance, the manner of taking or amassing can be committed through any of the following means: (1) Misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (2) Receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks, or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned; (3) Illegal or fraudulent conveyance or

292. E.O. No. 1, § 2 (a) & E.O. No. 2, whereas cl.

293. *2011 Case*, 648 SCRA at 132-33.

		disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities, or government-owned or controlled corporations; (4) Obtaining, receiving, or accepting directly or indirectly any shares of stock, equity, or any other form of interest or participation in any business enterprise or undertaking; (5) The establishment of agricultural, industrial, or commercial monopolies or other combination and/or by the issuance, promulgation, and/or implementation of decrees and orders intended to benefit particular persons or special interests; and (6) Taking undue advantage of official position, authority, relationship, or influence for personal gain or benefit.
Burden of proof.	There must be competent evidentiary substantiation made in appropriate judicial proceedings to determine: (a) Whether the assets or properties involved had come from the vast resources of the	No equivalent.

> government; and
>
> (b) Whether the individuals owning or holding such assets or properties were close associates of President Marcos.[294]

As one can observe above, there are fundamental differences between the two definitions. First, as regards the subject matter, the *2011 Case* is limited to the taking or amassing of resources of the government, or public funds and assets.[295] Meanwhile the PCGG Rules expand the coverage to include non-public funds and properties, or those that do not belong directly to the government.[296] Second, with respect to the manner of amassing ill-gotten wealth, the *2011 Case* uses the broad term of "illegal means"[297] while the PCGG Rules specify six instances of how taking or amassing through illegal means is committed.[298] Third, the PCGG Rules recognize an indirect form of taking or amassing ill-gotten wealth by using dummies, nominees, agents, subordinates, or business associates, such that the "ill-gotten wealth" is no longer in the name or possession of the beneficial owner.[299] As mentioned in the previous discussion on the *2012 Case*, this is done in order to conceal assets and prevent traceability to the beneficial owner. Such indirect form of taking, however, is not recognized in the *2011 Case*. Fourth and more importantly, the *2011 Case* created an additional requirement in

294. *Id.* at 135-36.

295. *See 2011 Case*, 648 SCRA at 130.

296. Under Section 1 (A), Paragraph 2 of the PCGG Rules, it would seem that the subject matter of the ill-gotten wealth is not confined to funds and assets directly belonging to the government, so long as it is a "pecuniary benefit" obtained in connection with any government contract or project, or by reason of public office or position. PCGG Rules, § 1 (A), ¶ 2

Under PCGG Rules, the subject matter pertains to "shares of stock, equity[,] or any other form of interest or participation in any business enterprise or undertaking," without limiting the language of the law to purely public businesses or undertakings. *Id.* § 1 (A), ¶ 4.

297. *See 2011 Case*, 648 SCRA at 130-33.

298. *See* PCGG Rules, § 1 (A), ¶¶ 1-6.

299. *Id.* § 1 (A).

defining ill-gotten wealth, which is not found in the PCGG Rules.[300] As can be seen in the last row in Table 1, the Court required "competent evidentiary substantiation" of the other elements in its definition.

Essentially, the Court, in the guise of interpreting the law on ill-gotten wealth, changed the elements of the cause of action for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14. A cause of action is the act or omission by which a party violates the right of another.[301] To constitute a cause of action, there must be (1) a right in favor of the plaintiff arising from whatever means or under whatever law; (2) an obligation on the part of the defendant to respect or not to violate such right; and (3) an act or omission on the part of the defendant that violates the right of the plaintiff, for which the latter may maintain an action for recovery of damages or other appropriate relief.[302] The elements of a cause of action are facts that determine whether the specified offense has indeed been committed. The complaint filed by the plaintiff must then assert the ultimate facts that prove or show how these elements were met, without going into evidentiary matters which are reserved for trial.[303]

Serving as proof that the Court in the *2011 Case* made "competent evidentiary substantiation" an element of the cause of action based on ill-gotten wealth, is how its ruling was based almost entirely on the failure of the Republic to meet this requirement, resulting in the dismissal of the Republic's claim over the Cojuangco block.[304] When the Court required "competent evidentiary substantiation" as an element constitutive of the cause of action for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14, two problematic consequences arose. First, it elevated a procedural rule into substantive law. Second, the Court applied this new element of the cause of action retroactively, which the Author proposes is similar to the scenario that the Court denounced in the case of *Columbia Pictures, Inc. v. Court of Appeals*.[305]

a. From Procedural Law to Substantive Law

The need for "competent evidentiary substantiation" simply reflects an elemental rule in procedure that evidence must be adduced during trial in

300. *See 2011 Case*, 648 SCRA at 134.

301. 1997 RULES OF CIVIL PROCEDURE, rule 2, § 2.

302. RIANO, CIVIL PROCEDURE, *supra* note 22, at 83.

303. *Id.* at 96.

304. *2011 Case*, 648 SCRA at 136.

305. *See generally Columbia Pictures, Inc.*, 261 SCRA at 144.

order to resolve a question of fact raised in the pleadings.[306] But, it is precisely because of this — that it is a rule of evidence — which should have cautioned the Court into constituting it as an element of the cause of action for the recovery of ill-gotten wealth.

Substantive law creates, defines, and regulates rights and duties concerning life, liberty or property, and which produces a cause of action once violated.[307] Every suit filed in court must contain a cause of action.[308] On the other hand procedural or remedial law pertains to methods of enforcing the rights and obligations created by substantive law.[309] In our jurisdiction, this would refer to the Rules of Court as a whole, which govern pleading, practice, and procedure.[310] While remedial law is not strictly law, it has the force and effect of law provided it is not in conflict with substantive law. When the Rules of Court conflict with substantive law, the latter will prevail.[311] No less than the Constitution guarantees that the rule-making power granted to the judiciary with respect to pleading, practice, and procedure must not "diminish, increase, or modify substantive rights."[312]

A significant difference between substantive and procedural law is that the latter is to be liberally construed "in order to promote their objective of securing a just, speedy[,] and inexpensive disposition of every action and proceeding."[313] Thus, it has been consistently held by the Court that procedural law must not be applied rigidly so as to defeat or frustrate substantial justice.[314] This is subject to the *caveat* that liberality cannot be invoked if it would result in the "wanton disregard of the rules and cause

306. REVISED RULES ON EVIDENCE, rule 128, § 1. *See also* WILLARD B. RIANO, EVIDENCE (THE BAR LECTURE SERIES) 3 (2009 ed.) [hereinafter RIANO, EVIDENCE] & RIANO, CIVIL PROCEDURE, *supra* note 22, at 395-95.

307. RIANO, CIVIL PROCEDURE, *supra* note 23, at 28 (citing Primicias v. Ocampo, 81 Phil 650 (1953) & Bustos v. Lucero, 81 Phil. 640 (1948)).

308. RULES OF CIVIL PROCEDURE, rule 2, § 1.

309. RIANO, CIVIL PROCEDURE, *supra* note 22, at 29 (citing *Bustos*, 81 Phil. 640).

310. RIANO, CIVIL PROCEDURE, *supra* note 22, at 29.

311. *Id.* at 28 (citing Alvero v. De la Rosa, 76 Phil 428 (1946); Shioji v. Harvey, 43 Phil. 333 (1922); Inchausti v. De Leon, 24 Phil. 224 (1913); & Alvatas v. Court of Appeals, 106 Phil. 940 (1960)).

312. PHIL. CONST. art. 8, § 5, ¶ 5.

313. RULES OF CIVIL PROCEDURE, rule 1, § 6.

314. *See* De la Cruz v. Court of Appeals, 510 SCRA 103 (2006) & Canton v. City of Cebu, 515 SCRA 441 (2007).

needless delay."[315] In effect, every party litigant is given ample opportunity to have his cause determined without being constrained by technicalities in procedural law.[316] Even the rules on evidence may be waived or agreed upon by parties in writing, provided it is not contrary to law, morals, good customs, and public policy.[317]

On the other hand, substantive law is to be strictly observed since a disregard or violation thereof results in a cause of action.[318] This, then, becomes the basis for a person to file a suit in court in order to enforce or protect the right that has been violated, or prevent or obtain redress for the wrong done.[319] This is also in accord with Article 3 of the Civil Code, which states that "[i]gnorance of the law excuses no one from compliance therewith."[320]

By making "competent evidentiary substantiation" a necessary or substantive part of the offense, there was no longer any room for liberality in deciding the *2011 Case*, and it seemed as well that the established doctrines under the Rules on Evidence were no longer applicable either. Justice Carpio-Morales, in her dissenting opinion in the *2011 Case*, provides an example of this point. She categorically stated that the Sandiganbayan erred in dismissing the Republic's case for failing to prove that the SMC shares were in whole or in part funded by loans and credit advances from UCPB and the CIIF Oil Mills, when this was already admitted by Cojuangco in his Answer and Pre-Trial Brief.[321] Being a judicial admission, the Rules on Evidence provide that this no longer requires proof.[322] While the courts generally allow a party to vary or counter their admissions by admitting contrary evidence during trial, this was not done since Cojuangco opted to no longer present evidence except on his counterclaims. Since Cojuangco's

315. Heritage Park Management Corporation v. Construction Industry Arbitration Commission, 568 SCRA 108 (2008).

316. Tabujara v. People, 570 SCRA 229 (2008).

317. RIANO, EVIDENCE, *supra* note 306, at 47-48.

318. *See generally* RIANO, CIVIL PROCEDURE, *supra* note 22, at 83.

319. RULES OF CIVIL PROCEDURE, rule 1, § 3 & rule 2, §§ 1-2.

320. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950), art. 3.

321. *2011 Case*, 648 SCRA at 210 (J. Carpio-Morales, dissenting opinion).

322. REVISED RULES ON EVIDENCE, rule 129, § 4. This Section provides that "[a]n admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." *Id.*

statements remained uncontradicted, they "solidified" into judicial admissions that are binding on him.[323]

The Honorable Justice continues by saying that since it was already an admitted fact that the source of funds used to acquire the SMC shares came from institutions dependent on coconut levy funds, the Republic no longer had the burden of establishing proof.[324] It was now up to Cojuangco and his co-defendants to prove their affirmative defense,[325] that the source of funds did not constitute a portion of the coconut levy funds because they were in the nature of loans and credit advances, thus, legitimately converting them into private funds.[326]

Despite these settled doctrines under the Rules of Civil Procedure and Evidence, the Sandiganbayan, as affirmed by the Supreme Court, decided to impose the need for "competent evidentiary substantiation" with such strictness so as to require exhaustive evidence, rather than let the case stand on the defendant's judicial admissions and his failure to prove his affirmative defenses.[327] It is no wonder then that the Republic's decision not to adduce evidence during trial was akin to its own death sentence. Note, however, that Paragraph 2, Section 3 of E.O. No. 14 clearly states that, "[t]he technical rules of procedure and evidence shall not be strictly applied to the civil cases filed hereunder."[328] The civil cases being referred to in this provision are those filed in relation to the recovery of ill-gotten wealth under E.O. Nos. 1 and 2.[329] There is, therefore, an explicit instruction under

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323. *2011 Case*, 648 SCRA at 209 (J. Carpio-Morales, dissenting opinion).

324. *Id.* at 205.

325. RULES OF CIVIL PROCEDURES, rule 8, § 11. This Section provides that "[m]aterial averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath." *Id.*

326. *2011 Case*, 648 SCRA at 205 (J. Carpio-Morales, dissenting opinion).

327. *See 2011 Case*, 648 SCRA at 136.

328. E.O. No. 14, § 3, ¶ 2. Note that in Rodriguez's copy of E.O. No. 14, this particular paragraph appears to have been deleted by the amendments made in E.O. No. 14-A. RUFUS B. RODRIGUEZ, THE SANDIGANBAYAN, THE OMBUDSMAN, THE PCGG, THE ANTI-GRAFT LAWS, AND THE CODE OF CONDUCT FOR PUBLIC OFFICIALS 166 (1995 ed.).

However, as seen in *Republic v. Sandiganbayan (Second Division)* the Supreme Court continues to recognize the enforceability of E.O. No. 14, § 3, ¶ 2. Republic v. Sandiganbayan (Second Division), 629 SCRA 55, 74-75 (2010).

329. *See* E.O. No. 14, § 1.

the law not to impede the Republic's efforts to recover ill-gotten wealth through the strict application of technical rules of procedure and evidence.

This was even recognized by the Supreme Court as recent as 2010 in the case of *Republic v. Sandiganbayan (Second Division)*,[330] when it reiterated the Court's pronouncement in the 1997 case of *Republic v. Sandiganbayan (Third Division)*,[331] to wit —

> Executive Order No. 14, series of 1986, issued by former President Corazon C. Aquino, provided that *technical rules of procedure and evidence shall not be strictly applied to cases involving ill-gotten wealth. Apropos* is our pronouncement in *Republic v. Sandiganbayan (Third Division)*:
>
> 'In all cases involving alleged ill-gotten wealth brought by or against the Presidential Commission on Good Government, it is the policy of this Court to set aside technicalities and formalities that serve merely to delay or impede their judicious resolution[.]'
>
> ...
>
> It was incumbent upon the public respondent [in this case] to adopt a liberal stance in the matter of procedural technicalities[.] [332]

Additionally, the PCGG Rules state in Section 8 that the PCGG's power to investigate cases within its jurisdiction, which includes the recovery of ill-gotten wealth,[333] shall not be strictly bound by the technical rules of evidence.[334] While it may be argued that, notwithstanding a liberal

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330. *Sandiganbayan (Second Division)*, 629 SCRA at 74-75. In this case, the Republic sued respondents for recovery of ill-gotten wealth. The Republic moved to reopen its presentation of evidence after discovering the documentary evidence it intended but failed to present earlier (the documents had been misfiled and were not produced during the Republic's presentation of evidence). The Sandiganbayan denied the Republic's motion. The Supreme Court found grave abuse on the part of the Sandiganbayan in "not adopting a liberal stance in the matter of procedural technicalities," thereby depriving the Republic the opportunity to fully present its evidence against respondents. *Id.*

331. Republic v. Sandiganbayan (Third Division), 269 SCRA 316 (1997).

332. *Sandiganbayan (Second Division)*, 629 SCRA at 74-75 (citing *Sandiganbayan (Third Division)*, 269 SCRA at 334-35).

333. *See* E.O. No. 14, § 1. This Section provides that "[a]ny provision of the law to the contrary notwithstanding, the Presidential Commission on Good Government, with assistance of the Office of the Solicitor General and other government agencies, is hereby empowered to file and prosecute all cases investigated by it under [E.O] No. 1, ... and [E.O] No. 2[.]" *Id.*

334. PCGG Rules, § 8. This Section provides that "[the] Commission, in the exercise of its powers to investigate or hear cases within its jurisdiction shall act according to the requirements of due process and fairness, and shall not be strictly bound by the technical rules of evidence. The hearing shall be open to the public." *Id.*

application of the technical rules of procedure, it is still within the court's discretion which evidence it will allow and give probative weight to, it is submitted that requiring "competent evidentiary substantiation" in the context of the *2011 Case* went beyond what was fair and just.

b. Retroactive Application

In the case of *Columbia*, the Court established that judicial decisions that modify or overturn doctrines should be applied prospectively.[335] It should not be applied in a way that will prejudice those who relied on the old doctrine in good faith.[336] In this case, it is argued that the Republic had a right to rely on the old doctrine as established in the case of *Menzi*.

This case of *Menzi* was a precedent for the Republic's case on the Cojuangco block of SMC shares for two reasons. First, it unequivocally used the definition of ill-gotten wealth in the PCGG Rules as its basis to rule that the disputed Bulletin shares were ill-gotten wealth and should be reconveyed

335. *Columbia Pictures, Inc.*, 261 SCRA at 168.

336. *Id.* at 168. The petitioner here was able to obtain a search warrant against respondents for violation of the Decree on the Protection of Intellectual Property, or copyright infringement of videograms exclusively distributed by the petitioner. Upon motion of the respondents, the trial court ordered the quashal of the search warrant, which the Court of Appeals affirmed on the basis of the Supreme Court's ruling in *20th Century Fox Film Corporation v. Court of Appeals*, 164 SCRA 655 (1988).

The said case was promulgated over eight months after the search warrant was issued to the petitioner. It required the presentation of master tapes and pirated tapes for comparison in order to satisfy the requirement of probable cause in issuing a search warrant. The Court of Appeals found it proper to quash the said warrant precisely because the petitioner failed to present these master tapes during its application for the warrant. *Columbia Pictures, Inc.*, 261 SCRA at 165 & 170.

On appeal, the Supreme Court ordered the reinstatement of the search warrant and ruled that judicial decisions should be applied prospectively and not retroactively. It said that at the time the search warrant was issued to the petitioner, the only requirements for determining probable cause were those found in Sections 3 and 4 of Rule 126 of the Rules of Court. The petitioner could not have been expected to produce evidence beyond this, and in the form of the master tapes when such requirement for determining probable cause was still inexistent — meaning, at the time of the issuance of the search warrant, the decision in *20th Century Fox Film* had yet to be promulgated. Thus, the Court said, it would be unfair for the petitioner if this new doctrine were applied to it retroactively, especially since the search warrant it obtained was, at that time, in accord with the prevailing requirements. *Id.* at 165-69.

to the Government.[337] In other words, it relied on Section 1 (A) as the cause of action for recovering ill-gotten wealth under E.O. Nos. 1, 2, and 14. Second, the case established that the defendant's failure to prove his affirmative defense in a civil action for recovery of ill-gotten wealth, entitles the Government to relief in the form of reconveyance of the subject matter provided that the latter presents evidence that is preponderant.[338]

In the *Menzi* case, the Court categorically stated that the burden of proof fell upon Cojuangco when he alleged as his affirmative defense that he was a nominee of Menzi and not of Marcos. Since he failed to prove his defense by adducing evidence, the Court affirmed the Sandiganbayan's ruling that the Bulletin shares were indeed ill-gotten wealth and ordered it reconveyed to the Government.[339]

This being the prevailing doctrine at the time the Republic was fighting its case at the Sandiganbayan on the Cojuangco block, it was improper and unjust to subject it to a higher burden of proof when the Sandiganbayan, as later affirmed by the Supreme Court, still required the Republic to prove its allegations despite Cojuangco's judicial admissions and failure to prove his affirmative defense. It is submitted that this is reminiscent of how the Court in *Columbia* found it unfair to quash the search warrant earlier obtained by the petitioner, due to its failure to meet a probable cause requirement that did not exist at the time it obtained the warrant.[340]

c. Going Back to the Case of Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government

Looking at the foregoing arguments, the Author would like to stress that there was no basis for the Court to demand "competent evidentiary substantiation" as a substantive requirement in proving a cause of action based on the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14. A reading of the *2011 Case* will show that the Court took this requirement from the case of *BASECO*.[341] It was already established earlier that *BASECO* is not the proper authority to cite in defining ill-gotten wealth since the issue there is the validity of E.O. Nos. 1 and 2, in relation to the validity of the sequestration conducted by the PCGG on the petitioner corporation. In any case, the pronouncement in *BASECO* that was directly quoted by the Court in the *2011 Case*, by itself, belies any insinuation made by the Court in the *2011 Case* that "competent evidentiary substantiation" is

337. *Menzi*, 476 SCRA at 57.

338. *See 2011 Case*, 648 SCRA at 213 (J. Carpio-Morales, dissenting opinion). *See also Menzi*, 476 SCRA at 55.

339. *Menzi*, 476 SCRA at 58-59.

340. *See generally Columbia Pictures, Inc.*, 261 SCRA at 165-70.

341. *See 2011 Case*, 648 SCRA at 136.

a substantive requirement of the cause of action for the recovery of ill-gotten wealth. It said therein —

> Consequently, the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated. ... *Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.*[342]

The foregoing pronouncement in *BASECO* claims that the requirement of evidentiary substantiation is recognized in E.O. No. 14. The said executive issuance refers to the exclusive and original jurisdiction of the Sandiganbayan to hear and decide civil and criminal cases under E.O. Nos. 1 and 2.[343] It also vests jurisdiction in the Sandiganbayan over civil suits based on recovery of unlawfully acquired property under R.A. No. 1379, or any other civil action based on the Civil Code or other existing laws, when filed against Marcos, his immediate family, close relatives, subordinates, close and/or business associates, dummies, agents, and nominees.[344] The other sections of E.O. No. 14 refer to the right of a witness to refuse to testify or provide information on the basis of the privilege against self-incrimination; immunity from criminal prosecution for persons who provide information or testify in any investigation conducted by PCGG; and the prescription period for filing cases.

Therefore, there is nothing in E.O. No 14, inclusive of its amendment, that requires at the outset competent evidentiary substantiation as an element of the cause of action based on ill-gotten wealth under E.O. Nos. 1 and 2. If anything, the Court's statement in *BASECO* that "the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14,"[345] simply means that no person shall be held liable or punished under E.O. Nos. 1 and 2 without going through a judicial proceeding, one which is cognizable by the Sandiganbayan.

3. A Different Ruling: Follow the Precedent

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342. *2011 Case*, 648 SCRA at 135-36 (emphasis supplied).

343. E.O. No. 14, § 2.

344. *Id.* § 3.

345. *Bataan Shipyard & Engineering Co. Inc.*, 150 SCRA at 208.

What the Author respectfully and humbly submits is that, had the Court in the *2011 Case* followed precedent, which is expected under the principle of *stare decisis*, the Republic may have been able to win its case for the Cojuangco block of shares.

This Note discussed previously that the Court had already laid down the precedent in the *Menzi* case. Cojuangco, just like in the *Menzi* case, alleged an affirmative defense that he failed to prove by not adducing evidence on it during trial. However, the Court in the *2011 Case* did not take this against Cojuangco and instead placed the burden of proof on the Republic despite the presence of judicial admissions from Cojuangco.[346]

The use of an incorrect definition or the deviation from a previously established definition of ill-gotten wealth, also limited the ways in which one can acquire ill-gotten wealth. Justice Carpio-Morales, in her dissenting opinion in the *2011 Case*, rejected the affirmative defense of Cojuangco that since he acquired the SMC shares using loans and credit advances from UCPB and the CIIF Oil Mills, the ownership of the funds became private in character.[347] She also criticized the majority's definition of ill-gotten wealth as something that must be acquired through "illegal means" only.[348] She claims that Cojuangco's defense and the majority's definition, is premised on a myopic view that ill-gotten wealth exists only when public funds are used directly via illegal means.[349]

To accept this view would be to accept the proposition that if public funds are used indirectly, such as when funds of an institution acting as a repository of public funds is provided as a loan to an individual, then the loan itself and the fruits thereof are not ill-gotten wealth. Justice Carpio-Morales states that this view of ill-gotten wealth fails to consider the fact that ill-gotten wealth also covers assets that were acquired through other improper or illegal means, and through conversion of public funds. She, then, directly cites the definition of ill-gotten wealth under the PCGG Rules to show the other modes by which ill-gotten wealth is amassed, and states that this has already been "quoted and applied" in the *Menzi* case.[350]

The Author agrees with the position of the Honorable Justice that had the correct definition of ill-gotten wealth been applied in the *2011 Case*, the Cojuangco block of SMC shares would have been declared as ill-gotten wealth considering the manner employed in acquiring such shares. The shares of stocks would have been considered as being acquired by either a

346. *See 2011 Case*, 648 SCRA at 135-36.

347. *2011 Case*, 648 SCRA at 202-03 (J. Carpio-Morales, dissenting opinion).

348. *Id.* at 227.

349. *Id.* at 226-27.

350. *Id.* at 225-27.

subordinate or close associate of Marcos, indirectly through dummies or nominees.[351]

4. A Different Ruling: This Time, Follow the Successor

There is also another way of looking at how the *2011 Case* could have been decided in such a way that it would have favored the Republic. Unlike the previous proposal to use *Menzi* as a precedent, this requires using a later case as a precedent in a way that can only be described, for lack of a better term, "reverse *stare decisis*." It would entail having to decide the *2011 Case* based on legal rules established in a later promulgated case, and which are essential to the resolution of the *2011 Case*.

To illustrate, the Republic in the *2011 Case* argued that the admission of Cojuangco, that he used the funds of UCPB and the CIIF Oil Mills as purchase money for the SMC shares albeit in the form of loans, was proof that he used public funds for his personal gain. The Republic based this on the 2001 ruling in *Republic v. COCOFED*[352] that coconut levy funds are *prima facie* public funds. Since UCBP and the CIIF Oil Mills are repositories of coconut levy funds, then the funds they gave to Cojuangco, regardless of what form, are public in character.

However, the Court in the *2011 Case* rejected this argument on the ground that the ruling in *Republic v. COCOFED* was made only to

351. *Id.* at 257.

352. *COCOFED 2001*, 372 SCRA at 472. The controversy in this case arose from the Republic's sequestration of UCPB shares of stocks registered in the names of Cojuangco and COCOFED, et al. and Ballares, et al. Subsequently the Sandiganbayan issued an Order enjoining the PCGG from voting on the sequestered shares in a particular stockholders' meeting. The Republic assailed this Order in the case at bar. The Court determined that the Government, through the PCGG, should be allowed to vote on the shares since they were purchased using coconut levy funds, which are "*prima facie* public in character or, at the very least, 'clearly affected with public interest.'" Their public character stems from the fact that they were imposed via the State's taxing and police powers. *Id.*

The classification of coconut levy funds into public funds means that the two-tiered test — traditionally used to determine the need for continued sequestration and voting by the government over sequestered shares — does not apply when the sequestered shares are shown *prima facie* to have been: (1) originally government shares; or (2) purchased with public funds or those affected with public interest. The two-tiered test is thus confined to cases when the sequestered shares are alleged to have been acquired with ill-gotten wealth, and not when they are alleged to have been purchased with public funds. *Id.*

determine the issue in that case, which was whether or not the PCGG can vote on the sequestered UCPB shares. It then quoted the relevant portion of the decision in *Republic v. COCOFED*, thus —

> In making this ruling, *we are in no way preempting the proceedings* the Sandiganbayan may conduct or the final judgment it may promulgate in Civil Case No. 0033-A, 0033-B[,] and *0033-F. Our determination here is merely prima facie, and should not bar the anti-graft court from making a final ruling*, after proper trial and hearing, *on the issues and prayers in the said civil cases, particularly in reference to the ownership of the subject shares.*
>
> We also lay down the caveat that, in declaring the coco levy funds to be *prima facie* public in character, we are not ruling in any final manner on their classification — whether they are general or trust or special funds — since such classification is not at issue here. Suffice it to say that the public nature of the coco levy funds is decreed by the Court only for the purpose of determining the right to vote the shares, pending the final outcome of the said civil cases.
>
> Neither are we resolving in the present case the question of whether the shares held by Respondent Cojuangco are, as he claims, the result of private enterprise. This factual matter should also be taken up in the final decision in the cited cases that are pending in the court *a quo*. Again, suffice it to say that the only issue settled here is the right of PCGG to vote the sequestered shares, pending the final outcome of said cases.[353]

It is conceded that the *ponente* in the *2011 Case* was correct to confine the determination, that coconut levy funds are *prima facie* public funds, to the issue presented in *Republic v. COCOFED*. Nevertheless, the Court in the *2012 Case* expressly recognized and even adopted the *ratio* of *Republic v. COCOFED*, thus conclusively settling the matter of ownership and public character of the coconut levy funds. Note that the *2012 Case* was the result of an appeal assailing the Sandiganbayan's resolutions, which granted Partial Summary Judgments on the UCBP shares and CIIF block of SMC shares.[354] Both assailed resolutions declared the disputed shares as conclusively owned by the Government.[355] Therefore, the issue presented to the Court in the *2012 Case* fell squarely on the matter of ownership over the UCPB and CIIF block of SMC shares, and ultimately whether or not the said shares are public in character.

Hence, unlike *Republic v. COCOFED*, the ruling in the *2012 Case* on coconut levy funds being public funds was not limited to the case. It

353. *2011 Case*, 648 SCRA at 143-44 (citing *COCOFED 2001*, 372 SCRA at 495) (emphasis supplied).

354. *2012 Case*, 663 SCRA at 524-27.

355. *Id.* at 604-06.

conclusively settled the matter of ownership and the public nature of the coconut levy funds.[356]

It appears then that had the ruling of the Court in the *2012 Case* preceded the *2011 Case*, it would have given the Republic a strong legal basis to argue that indeed, the funds given by the UCPB and the CIIF Oil Mills are public in character. With this scenario, once Cojuangco failed to prove his affirmative defense that a loan legitimately converts the coconut levy funds to private funds, then the fruits of such public funds — the SMC shares — being also public in character, would likely be reconveyed to the Government. This was in fact the same reasoning applied by the Court in the *2012 Case* when the petitioners COCOFED, together with others, disputed public ownership of the CIIF block by claiming that the funds used to acquire them were loans from UCPB and advances from the CIIF Companies (comprised of the CIIF Oil Mills) — the very same defense used by Cojuangco in the *2011 Case*. The Court had this to say —

> It may be conceded hypothetically, as COCOFED et al. urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. *But there can be no gainsaying that the same advances and UCPB loans are public in character*, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. *And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry.* In *Republic v. COCOFED*, the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: '*Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.*' By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.[357]

Another precedent established in the *2012 Case* is the definition of the term "nominee" within the context of Section 1 (A) of the PCGG Rules and E.O. Nos. 1 and 2, as well as the Court's declaration that execution of an irrevocable proxy by the registered stockholder is proof that the latter is a nominee.[358] Applying these same principles to the *2011 Case*, it is submitted that the Cojuangco Companies, which hold 18% of the 20% Cojuangco

356. *Id.* at 622-24.

357. *2012 Case*, 663 SCRA at 623-24 (emphasis supplied).

358. *Id.* at 582-83.

block of shares,[359] are mere nominees of Cojuangco, who is an alleged crony of Marcos.

First, using the Court's ruling that coconut levy funds are public funds, and not merely *prima facie* public in character, it follows that the funds of UCPB and the CIIF Oil Mills are also public in character since they are repositories of coconut levy funds.

Second, as admitted by Cojuangco, the funds of UCPB and the CIIF Oil Mills were used to purchase the Cojuangco block of shares. Whether the funds were in the form of loans thereby making them private funds, or not, is a matter of defense that must be proven by Cojuangco. As far as the Republic is concerned, public funds were used to purchase the Cojuangco block of shares.

Third, some of these shares are held by and registered in the names of the Cojuangco Companies. But it appears that these companies are mere shell or dummy corporations because some of the shareholders of these companies have admitted to being mere nominee stockholders, or to have executed voting trust agreements in favor of Cojuangco.

Essentially, then, all the elements of a "nominee" as defined in the *2012 Case* were met. *Mutatis mutandis*, the conclusion in the *2012 Case* — that the UCPB shares, being acquired with public funds, are to revert back to the Government — would also be applicable to the *2011 Case*.

C. The Conflict Between the Linear Progression of Judicial Decisions and Ill-Gotten Wealth Suits

> *[W]e have been brought up for many generations in the belief, however tacit, that all humanity was almost unanimously engaged in going forward, naturally to better things and to higher reaches.*
>
> — Katherine Anne Porter[360]

1. Knowledge, Judicial Decisions, and their Linear Limitation

The fact that the application of the doctrines in the *2012 Case* could have possibly reversed the outcome of the *2011 Case* illustrates the problem in our legal framework. There is no way to modify the judgment in the *2011 Case* by applying the ruling in the *2012 Case*. *Stare decisis*, *res judicata*, the law of the case, and immutability of judgments all operate on a linear concept of time. This means that these doctrines ensure that our legal system moves forward following the natural progression of time.

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359. *2011 Case*, 648 SCRA at 202 (J. Brion, dissenting opinion).

360. Katherine Anne Porter, *The Future Is Now*, *in* THE BEST AMERICAN ESSAYS OF THE CENTURY 195 (Joyce Carol Oates & Robert Atwand, eds., 2000).

These legal rules all apply the principle that once a case or issue has been decided, we cannot "go back" and relitigate.[361] Circuitous movement is barred in favor of a forward direction. Meanwhile, judicial decisions are applied prospectively, bolstered by the command of *stare decisis* to adhere to precedents.[362] Again, the movement is forward — we apply the *ratio* of an earlier case to a current case, but we never reverse the process by applying the *ratio* of the current case to the earlier case.[363]

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361. *See generally* RULES OF CIVIL PROCEDURE, rule 39, § 47. This Section provides that —

> The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> ...
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties of their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Id.

362. *See* Lambino v. Commission on Elections, 505 SCRA 160, 308 (2006) (citing Robert Barnhart, *Principled Pragmatic Stare Decisis in Constitutional Cases*, 80 NOTRE DAME L. REV. 1911 (2005)). In this case, the Court characterized *stare decisis* as such —

> The latin phrase *stare decisis et non quieta movere* means 'stand by the thing and do not disturb the calm.' The doctrine started with the English Courts. '[I]t is an established rule to abide by former precedents where the same points come again in litigation.'

Id.

363. *See* Escobar v. Luna, 519 SCRA 1, 8 (2007) (citing Kabankalan Catholic College v. Kabankalan Catholic College Union-PACIWU-TUCP, 461 SCRA 481 (2005)). In this case, the Court declared —

> [U]nder the principle of the *law of the case*, whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, so long as the facts on which the decision was predicated continues.

Because the legal system operates on a forward, chronological basis that continuously builds on past judicial decisions, the natural tendency is that at any point in time in this linear framework, the legal system is only as good as the last judicial decision. To state it differently, a judicial decision represents a point in time where all the laws, rules, doctrines, and information needed to decide the case, come from the existing body of knowledge that has built up from the very beginning up until this particular point in time.

Thus, for instance, if a case were to be decided today, the body of knowledge available to the judge would consist of all the decisions issued by the Supreme Court, from the very first one in 1901 to the most recent one decided in the current year, or 2012. Therefore, a principle of law established in the year 2013 that would have been crucial in deciding a case in the current year of 2012 — either because it delineates the meaning of a law or corrects an erroneous legal rule that has been perpetuated in our legal system due to *stare decisis* — would naturally fail to apply although through no fault of any of the parties, and neither the judge. This is because judges are ordered not to decline rendering a judgment by reason of the silence, obscurity or insufficiency of the laws.[364] A judge must still resolve the legal controversy on the basis of equity, fairness, and a sense of justice, despite the absence of that principle of law that appeared in the later ruling, in order not to deprive the litigant of his or her Constitutional right to due process.[365]

This presents now a peculiar problem for interrelated cases like the ill-gotten wealth suits under E.O. Nos. 1, 2, and 14. To illustrate the magnitude of the problem, the ill-gotten wealth suits are comprised of 276 cases[366] classified into 15 clusters.[367] Civil Case No. 0033 represents only one cluster,

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Id.

364. *See* CIVIL CODE, art. 9. *See also* THE INTERNAL RULES OF THE SUPREME COURT, A.M. No. 10-4-20-SC, May 4, 2010, rule 3, § 1. This Section provides —

> The Court is a court of law. Its primary task is to resolve and decide cases and issues presented by litigants according to law. However, it may apply equity where the court is unable to arrive at a conclusion or judgment strictly on the basis of law due to a gap, silence, obscurity or vagueness of the law that the Court can still legitimately remedy, and the special circumstances of the case.

Id.

365. MELENCIO S. STA. MARIA, JR. PERSONS AND FAMILY RELATIONS LAW 16-18 (2004 ed.).

366. This figure is updated as of 27 March 2012. It is the latest available figure provided by the PCGG on 22 June 2012.

367. Presidential Commission on Good Government, An Introduction to the Conclusion: 100 Day Report and Plan of Action annex D, *available at*

which is comprised of civil and criminal cases filed in relation to the misuse of coconut levy funds. Civil Case No. 0033 was subdivided into eight complaints, each pertaining to a different transaction or asset, one of them being Civil Case No. 0033-F involving the recovery of the SMC shares.[368] Having originated from just one complaint, all eight subdivided complaints, therefore, bear the same causes of action, pray for substantially the same reliefs, and contain substantially the same parties.

This is the extraordinary and peculiar nature of the ill-gotten wealth suits that makes this class of suits truly *sui generis*. Although the ill-gotten wealth suits are comprised of individual complaints, they have a common cause of action of recovering ill-gotten wealth under E.O. Nos. 1, 2, and 14. The complaints allege substantially the same general averments, and the same prayer for judgment of reconveyance.[369] As stated by PCGG Commissioner Richard R.T. Amurao, when describing the ill-gotten wealth suits, "[t]hey are all the same, only the faces of the parties change."[370]

These suits are in fact unprecedented because they originate from the same or similar complaints, notwithstanding the prohibition in the Rules of Court on splitting a single cause of action.[371] The effect of this is that the cases contain interlocking issues that the determination by the Supreme Court in one case, say on the definition of ill-gotten wealth and the elements of its cause of action, ultimately affects all the other cases that depend on that as a building block for its ruling.

One can liken it to a math equation, say "x + y + z = n" where "n" is a single action, and variables "x," "y," and "z" are issues that need to be

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http://thenewcommission.files.wordpress.com/2011/01/pcgg-100-day-report-and-plan-of-action1.pdf (last accessed June 16, 2013).

368. *2011 Case*, 648 SCRA at 86-87.

369. *See generally Lobregat*, 240 SCRA at 398-99. The Court described here the similarities among the various ill-gotten wealth suits.

370. Interview with Richard R.T. Amurao, Commissioner, Presidential Commission on Good Government, in Manila (June 22, 2012).

371. RULES OF CIVIL PROCEDURE, rule 2, §§ 3 & 4. These Sections provide —

> Section 3. *One suit* for *a single cause of action.* — A party may not institute more than one suit for a single cause of action.
>
> Section 4. *Splitting a single cause of action; effect of.* — If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.

Id.

settled first in order to resolve the controversy in that suit. Alternatively, "x," "y," and "z" may represent premises or statements, which if proven true, result in a particular outcome for the case — variable "n" — thus, likening the equation "x + y + z = n" to the theory of the case. Being variables, each of them — "x," "y," and "z" — is also a sum of a particular equation. This means that whatever "x" is depends on how the equation "a + b = x" is solved. Thus, if the equation of "a + b = x" is solved erroneously, the sum "n" is also invariably wrong.

a. The Linear Limitation in Republic v. Sandiganbayan (First Division)

Assuming, for the sake of example, that the *2011 Case* is the math equation "a + b + c + d = x" where "x" is the following outcome or statement, "the SMC shares are purchased with public funds." The following would have to be proven:

(1) "a" would be that coconut levy funds are public funds;

(2) "b" would be that UCPB and the CIIF Oil Mills are repositories of coconut levy funds;

(3) "c" would be that UCPB and the CIIF Oil Mills gave Cojuangco its funds; and

(4) "d" would be that Cojuangco used the funds to purchase the SMC shares.

Therefore "x" would logically produce the statement "*the SMC shares are public funds.*" It follows that since public funds belong to the Government, then the SMC shares must also belong to the Government.

At the time the *2011 Case* was being decided, the variable "a" had not yet been adequately solved. What this means is that while the Supreme Court had already ruled that "coconut levy funds are public funds" in *Republic v. COCOFED*,[372] this ruling was not doctrinal because it was limited to that case alone. In that case, the Court acknowledged that there were pending actions relating to the ownership of not just the UCPB shares, but other shares allegedly purchased using coconut levy funds, and which would conclusively determine their character as either public or private.[373] It even mentioned Civil Case No. 0033-F as one such pending action.[374] The question of public or private ownership of the coconut levy funds could not be resolved in *Republic v. COCOFED* because it was simply not the issue of the case. Therefore, a ruling on the matter would only be for the purpose of

372. *COCOFED 2001*, 372 SCRA at 481.

373. *Id.* at 495.

374. *Id.*

deciding the issue of that case and, thus, *prima facie*. The variable "a" was, therefore, only an estimate, or a guess at most.

As predicted by the Court in that case, the variable "a" was finally solved and the matter of ownership and character of shares acquired with coconut levy funds was conclusively settled in the *2012 Case*. Unfortunately, this came a year too late for the *2011 Case*.

While certainly critics would suggest that the Republic's counsel should have simply built a better case or presented a different theory of the case, this fails to put the situation into its proper context. As mentioned, the ill-gotten wealth suits are comprised of 276 cases with interlocking issues.[375] It is reasonable to assume that these cases will reach the Supreme Court at different times, while some may never even reach that stage in the proceedings. Following the premise that a judge works with a body of knowledge that is only as good as the last judicial decision, and further, cannot refuse to decide simply because there is an absence, ambiguity, or insufficiency within that body of knowledge, it is inevitable that a case will be decided on an incomplete, or worse, erroneous set of legal rules, doctrines, and information. Once the case is decided and the decision becomes final and executory, there is, under our current legal framework, no point of return if it so happens that this body of knowledge increases, improves, or is corrected through subsequent judicial decisions.

Take for example the case of *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan v. Executive Secretary*,[376] promulgated on 10 April 2012. It was a consolidation of two petitions for *certiorari* under Rule 65, one of which sought to nullify E.O. Nos. 312 and 313 issued by former President Joseph Estrada.[377] Both executive orders established funds to be used for the coconut farmers and other designated programs and activities, using the: (1) sale proceeds of assets acquired using coconut levy funds or assets of entities supported by such funds; and (2) the CIIF block of shares, the ownership of which was still being disputed at the Sandiganbayan at the time this petition was filed on 1 March 2001.[378] The Court granted the

375. This figure is updated as of 27 March 2012. It is the latest available figure provided by the PCGG on 22 June 2012.

376. Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN) v. Executive Secretary, 669 SCRA 49 (2012).

377. *Id.* at 52–57.

378. *See generally* Office of the President, Establishing the ERAP's *Sagip Niyugan* Program as an Emergency Measure to Alleviate the Plight of Coconut Farmers Adversely Affected by Low Prices of Copra and Other Coconut Products, and Providing Funds Therefor [E.O. No. 312], Executive Order No. 312 (Nov. 3,

petition and nullified both executive orders by first acknowledging the ruling in the *2012 Case*, that coconut levy funds are in the nature of taxes to be used for a public purpose.[379] Because of this, the Court applied the provisions of the 1987 Constitution relating to taxes and audit of government funds, and found the executive orders to be in contravention thereof.[380]

Had the Court refused to expressly acknowledge the ruling in the *2012 Case*, or had this case been promulgated prior to the *2012 Case* — which was possible considering the petition was filed on 1 March 2001,[381] or six years prior to the filing of the petition for review on *certiorari* that led to the decision in the *2012 Case*[382] — then that crucial variable needed to invalidate the executive orders (which is the Court's conclusive determination that coconut levy funds are taxes and therefore public funds) would have been absent. Since the Court cannot refuse to render judgment because of the absence of a conclusive ruling on the nature of coconut levy funds as public funds, the Court could have potentially (1) opted to uphold the validity of the executive orders, since the Constitutional provisions on taxes and audit of government funds would be inapplicable, or to apply them would be

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2000) & Rationalizing the Use of the Coconut Levy Funds by Constituting a "Fund for Assistance to Coconut Farmers" as an Irrevocable Trust Fund and Creating a Coconut Trust Fund Committee for the Management Thereof [E.O. No. 313], Executive Order No. 313 (Nov. 8, 2000).

379. *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN)*, 669 SCRA at 60. *See also* Philip C. Tubeza, *SC voids 2 Estrada's Eos to use coco levy funds*, PHIL. DAILY INQ., Apr. 21, 2012, *available at* http://newsinfo.inquirer.net/180051/sc-voids-2-estradas-eos-to-use-coco-levy-funds (last accessed June 16, 2013).

380. *See Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN)*, 669 SCRA at 68-70. The Court found E.O. Nos. 312 and 313 unconstitutional because: (1) they removed the funds that they created from the jurisdiction of the Commission on Audit (COA), in violation of Section 2 (1) of Article IX-D of the 1987 Constitution, when the coconut levy funds (the base of the funds created by E.O. Nos. 312 and 313) are in fact collected by PCA, a government-owned and controlled corporation subject to COA review and audit; and (2) E.O. No. 313 violates Section 29, Article VI of the 1987 Constitution because it deviated from the special purpose of the coconut levy funds by allotting a portion of the trust fund for "improving productivity in other food areas" and not just the coconut industry. The Court also nullified E.O. No. 312 for creating a Committee and transferring to it the power to administer the coconut levy funds held by PCA under law via P.D. No. 232, without the authority of the Legislature and in violation of P.D. No. 232. *Id.*

381. *Id.* at 57.

382. The petition for review on *certiorari* that led to the *2012 Case* was filed on 28 May 2007. *See* Class Action Petition for Review on *Certiorari* under Rule 45, *2012 Case*, 663 SCRA 514 (G.R. No. 177857-58).

premature; or (2) made a ruling on whether or not the coconut levy funds are public funds, but similar to *Republic v. COCOFED*, such determination would only be *prima facie* or for the purposes of resolving the main issue of the case.

The case of *San Miguel Corporation v. Sandiganbayan*[383] also illustrates the presence of interlocking issues among ill-gotten wealth suits. Here, the Supreme Court found no grave abuse of discretion on the part of the Sandiganbayan in disapproving the Compromise Agreement executed between UCPB as administrator of the CIIF, and SMC, which transferred to SMC four percent of the 31% SMC shares owned by the CIIF Companies. The Sandiganbayan said —

> It appearing that the *sequestered character of the shares of stock* subject of the instant petition for the approval of the compromise agreement, which are shares of stock in the San Miguel Corporation in the name of the CIIF Corporations, *is independent of the transaction involving the contracting parties in the Compromise Agreement* between what may be labeled as the 'SMC Group' and the 'UCPB Group,' and it appearing further that the said sequestered SMC shares of stock have not been physically seized nor taken over by the PCGG, so much so that the reversions contemplated in said Compromise Agreement are without prejudice to the perpetuation of the sequestration thereon, *until such time as a judgment might be rendered on said sequestration (which issue is not before this Court a[t] this time)*, and it appearing finally that the PCGG has not interposed any objection to the contractual resolution of the problems confronting the 'SMC Group' and the 'UCPB Group' to the extent that the sequestered character of the shares in question is not affected, *this Court will await the pleasure of the Presidential Commission on Good Government before consideration of the Compromise Agreement is reinstated in the Court's calendar.*
>
> While this is, in effect, a denial of the 'UCPB Group's' Motion to set consideration of the Compromise Agreement herein, *this denial is without prejudice* to a reiteration of the motion or any other action by the parties *should developments hereafter justify the same*.[384]

In other words, the Sandiganbayan, on the one hand, disapproved the Compromise Agreement because its validity could not be resolved without a conclusive determination of the validity of the sequestration of the SMC shares. That issue was not before the court in this instance, therefore, it opted to await judgment on that issue before considering the Compromise Agreement anew.

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383. *San Miguel Corporation*, 340 SCRA 289.

384. *Id.* at 302 (emphasis supplied).

The Supreme Court, on the other hand, upheld the resolutions of the Sandiganbayan to disapprove the Compromise Agreement, and to order SMC to physically deliver to PCGG the transferred four percent shares together with accrued dividends, claiming that the Sandiganbayan merely sought to preserve the shares pending determination of their ownership in another litigation.[385]

If the Sandiganbayan and the Supreme Court had not been mindful of the pending interlocking issues of sequestration and ownership of the SMC shares, that Compromise Agreement may have been approved resulting in the relinquishment of the Government's claim to the four percent shares. Unfortunately, such mindfulness was futile since UCPB and SMC implemented the terms of the Compromise Agreement even without the approval of the Sandiganbayan and the Supreme Court. To date, the Government has yet to recover the four percent shares, and to add insult to injury, these do not even earn dividends since SMC converted them into treasury shares.[386]

What this Note proposes therefore is, more than just an exception to the principles of *stare decisis*, *res judicata*, the law of the case, and immutability of judgments, that there be a legal framework or a set of guidelines for the Supreme Court to defer to, in order to address the challenges and conflicts posed by the linear progression of judicial decisions to ill-gotten wealth suits. The legal framework must take into consideration the *sui generis* nature of the these suits, which is in turn founded not just on the extraordinary and peculiar qualities just mentioned, but also on the fact that these suits involve issues of great public interest.[387]

D. Creating a Different Paradigm for Ill-Gotten Wealth Suits: Establishing Guidelines to Resolve the Challenges Posed by the Linear Progression of Judicial Decisions

> *All that is said here grows out of a tragic misconception of time. It is the strangely irrational notion that there is something in the very flow of time that will inevitably cure all ills. Actually time is neutral. It can be used either destructively or constructively.*
>
> — Martin Luther King, Jr.[388]

1. Proposed Guidelines

a. General Principles and When to Apply

385. *Id.* at 313-14.

386. *Id.*

387. *See generally* E.O. Nos. 1, 2, & 14, whereas cl.

388. King, Jr., *supra* note 33, at 271.

First and foremost, it is recognized that the principles of *stare decisis*, *res judicata*, the law of the case, and immutability of judgments exist to protect and perpetuate the certainty and stability of our legal system. They are not tools of mere convenience for the courts. They actually preserve the legal rights of litigants and foster the proper and efficient administration of justice.[389] They cannot simply be disregarded. But it must be acknowledged that these tools also provide exceptions if only to achieve the very same objectives of certainty and stability of the law, as well as justice for litigants. Besides, as in the case of *res judicata*, which is a rule of procedure, it is characteristic for it to be applied liberally to achieve a just, speedy, and inexpensive disposition of an action or proceeding.[390]

Thus, in establishing the guidelines for the Supreme Court to advert to in dealing with a reconsideration of a final and executory judgment involving an ill-gotten wealth suit, we pay particular attention to the recognized exceptions to the principles that bar reconsideration of a case. These exceptions are used as basis for the guidelines in order that this proposed legal framework would not be construed as an offense to the fundamental policies underlying our existing legal framework. Second, these guidelines will only apply to final and executory decisions of the Supreme Court. Third and finally, the cases involved must be civil actions for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14.[391]

b. Patently Unjust and Legally Erroneous

It is proposed that not all final and executory judgments relating to the recovery of ill-gotten wealth be subject to reconsideration. This would cause chaos, the clogging of dockets, and overall instability in the legal system. Winning parties long declared as such will be prejudiced.

The legal framework must only pertain to interrelated cases where the timing of the promulgation of a decision can lead to unjust results in a previously decided case because the former conclusively settles an issue that interlocks with the latter.[392] The interlocking issue must not be trivial. It

389. *See* Barnhart, *supra* note 362, at 1911.

390. RULES OF CIVIL PROCEDURE, rule 1, § 6.

391. The Author wishes to limit the application of the guidelines to civil cases for practical reasons. Since the Author is arguing for the application of a ruling in one case to another, it would be practical for both actions to be of the same nature because, then, the required burden of proof will be the same, and both actions will be governed by the Rules of Civil Procedure.

392. The situation is akin to a prejudicial question under Section 7, Rule 111 of the Rules on Criminal Procedure, which requires that there be a: (1) previously

must be an issue that substantially alters the earlier decision, or an issue on which the case turns, so to speak, or one that is constitutive of the party's theory of the case in the earlier action that it determines its success or failure.

In order to justify the reconsideration of an immutable judgment, the non-application of the ruling in the second case to the first case, must lead to a patently unjust situation where the party who invokes the reconsideration of the first case suffers unwarranted and irreparable injury. This is in keeping with the grounds relied upon by the Supreme Court in its Internal Rules (SC Rules) in entertaining a second motion for reconsideration "in the higher interest of justice."[393] This is not to say that the relief that is being sought here is a second motion for reconsideration from the Court, for then

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instituted civil action involving an issue that is *similar or intimately related* to the issue raised in the subsequent criminal action; and (2) the resolution of such issue determines whether or not the criminal action may proceed. Thus an action to nullify a deed of sale based on the ground of forgery is considered prejudicial to a criminal action based on *estafa*, provided that both cases involve the same facts, and the resolution of the issue in the civil case "would be necessarily determinative of the guilt or innocence of the accused." Under Section 6, Rule 111 of the Rules on Criminal Procedure, the criminal action will be suspended until the prejudicial question is resolved. OSCAR M. HERRERA, REMEDIAL LAW VOLUME IV 260-261 (2007 ed.).

In the situation contemplated in this Note, the subsequent decision contains the prejudicial question, which would have been determinative of the outcome of the previous decision. But, unlike the rule on prejudicial questions, the action that is determined by the prejudicial question is not suspended pending the resolution of the question. The purpose of establishing the guidelines in the Note is rooted in the fact that there is no preventive remedy, similar to what is provided in Section 6, Rule 111, for civil suits involving ill-gotten wealth, nor is there a curative one. *See* HERRERA, *supra* note 392, at 260-261.

393. INTERNAL RULES OF THE SUPREME COURT, rule 15, § 3. This Section provides —

> SEC. 3. Second motion for reconsideration. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
>
> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

Id.

there would be no need for these guidelines.[394] We only use the same grounds because this is the standard that the Court feels is deserving of a second reconsideration, despite the fact that it is generally prohibited, and is therefore more likely to be looked upon with favor.

For a second motion for reconsideration to prosper, the SC Rules also require that the decision to be reconsidered is legally erroneous.[395] It was explained in *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*[396] that to sustain a legally erroneous ruling by virtue of *stare decisis* is to undermine the very reason why such doctrine exists, which is to ensure the certainty and stability of judicial decisions, to wit —

> This, we declare, is how Section 6(8) of [R.A. No.] 7941 should be understood and applied. We do so under our authority to state what the law is, and *as an exception to the application of the principle of stare decisis.*
>
> ...
>
> The doctrine enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of its Supreme Court. ... *The doctrine is grounded on the necessity for securing certainty and stability of judicial decisions*[.]

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394. The Republic actually filed a second motion for reconsideration to assail the decision in the *2011 Case*. However, the Supreme Court expunged this from the records in a resolution dated 17 January 2012, which means the Court never even considered the arguments raised by the Republic in its motion. Therefore, it is important that the proposed guidelines provide a remedy for situations like this, where even if there is the remedy of a second motion for reconsideration at the Supreme Court, it is not adequate or it is no longer available through no fault of the aggrieved party. *See* Second Motion for Reconsideration, *supra* note 30, at 36-46.

395. *See* INTERNAL RULES OF THE SUPREME COURT, rule 15, § 3.

396. Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections, 619 SCRA 585 (2010) [hereinafter *PGBI*]. In this case, the COMELEC used Section 6 (8) of R.A. No. 7941 to delist PGBI as a party-list organization for the 2010 elections. The COMELEC based its resolution on the Supreme Court's interpretation of Section 6 (8) of R.A. No. 7941 in *Philippine Mines Safety Environment Association (MINERO) v. Commission on Elections*, G.R. No. 177548, May 10, 2007, which upheld the delisting of the party, MINERO, on the same ground. PGBI assailed the COMELEC's resolution at the Supreme Court, but it was dismissed due to the Court's reliance on *Minero* as good law. On reconsideration, the Supreme Court reversed itself and granted the prayer of PGBI to annul the resolution of the COMELEC. The Court stated that *Minero* erroneously interpreted Section 6 (8) of R.A. No. 7941 and as such, could not serve as basis to sustain the delisting of PGBI.

...

> The doctrine though is not cast in stone for *upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of stare decisis, the Court is justified in setting it aside.*
>
> As our discussion above shows, *the most compelling reason to abandon Minero exists; it was clearly an erroneous application of the law — an application that the principle of stability or predictability of decisions alone cannot sustain.* Minero did unnecessary violence to the language of the law, the intent of the legislature, and to the rule of law in general. Clearly, we cannot allow PGBI to be prejudiced by the continuing validity of an erroneous ruling. Thus, we now abandon Minero and strike it out from our ruling case law.[397]

Certainly an erroneous ruling has no place in our legal system and must be corrected. Therefore, we adopt the same benchmark in these proposed guidelines. Whether a ruling is legally erroneous or not will depend on the circumstances of each case and cannot be specified in these proposed guidelines. However, what can be used as an indicator of a legally erroneous ruling is when it is supported by narrow voting by the Supreme Court Justices, such as when the majority arises by just one vote. This, we draw from the *Kilosbayan* cases.[398]

In *Kilosbayan, Incorporated v. Guingona, Jr.*[399] (*Kilosbayan I*), one of the issues raised was whether or not the petitioners had standing to sue or *locus standi*. The Court, voting seven concurring, six dissenting, and one abstention, ruled that petitioners had *locus standi*.

In *Kilosbayan v. Morato*[400] (*Kilosbayan II*) brought by the same petitioners, the respondents once again put into question the legal standing of the petitioners. This time, however, the Court found that the petitioners had no standing to sue with the Justices voting eight concurring, five dissenting, and one abstention. It said that the ruling in *Kilosbayan I* on petitioners' legal standing is *not binding* on the Court because it is erroneous, and when the precedent is erroneous, *stare decisis* does not apply.[401]

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397. *PGBI*, 619 SCRA at 594-96 (emphasis supplied).

398. *See generally* Kilosbayan, Incorporated v. Guingona, Jr., 232 SCRA 110 (1994) [hereinafter *Kilosbayan I*]; Kilosbayan v. Morato, 246 SCRA 540 (1995) [hereinafter *Kilosbayan II*]; & Kilosbayan v. Morato, 250 SCRA 130 (1995) [hereinafter *Kilosbayan II, Reconsideration*].

399. *Kilosbayan I*, 232 SCRA at 110.

400. *Kilosbayan II*, 246 SCRA at 540.

401. *Id.* at 562-63. The Court said that the ruling in *Kilosbayan I* on the *locus standi* of the petitioners was based on the constitutional concept of "standing." But since the case did not deal with constitutional issues, then this was an erroneous premise for a ruling that resulted in an equally erroneous decision on the matter

The Court also said that the ruling in *Kilosbayan I* on petitioners' legal standing is not the law of the case in *Kilosbayan II* since the latter is *not* a continuation of the previous case. The Court was also quick to point out that neither could the same ruling be considered as foreclosed upon on the ground of conclusiveness of judgment. It considered the issue of standing in *Kilosbayan II* as a legal question, which according to the Court's various sources on American law, is exempted from the application of the doctrine of conclusiveness of judgment.[402] Lastly, the Court stated that it could reexamine the ruling on standing in *Kilosbayan I* because the composition of the Court had changed since then, to wit —

> There is an additional reason for a reexamination of the ruling on standing. The voting on petitioners' standing in the previous case was a narrow one, with seven [ ] members sustaining petitioners' standing and six [ ] denying petitioners' right to bring the suit. The majority was thus a *tenuous* one that is not likely to be maintained in any subsequent litigation. In addition, there have been changes in the membership of the Court, with the retirement of Justices Cruz and Bidin and the appointment of the writer of this opinion and Justice Francisco. *Given this fact*[,] *it is hardly tenable to insist on the maintenance of the ruling as to petitioners' standing.*[403]

In effect, the Court had again declared the situation in *Kilosbayan II* as an exception to the application of *stare decisis* because of the change in composition of the Court. Theodore Te, in his 2011 article in the *Philippine Law Journal*, echoes this same point. In discussing his observations on how the Supreme Court applies *stare decisis* in its decisions, he adduces standards set by the Court, one of which is —

> The Court considers itself bound by precedent, despite changes in the composition of the Court for so long as the precedent remains consistent with the law and has disposed of a legal issue in a very particular way. *However, changes in the composition of the Court may trigger a reexamination and, if necessary, a rectification of the precedent because the Court does not consider stare decisis to be a rule that is to be followed rigidly but a convenient means to ensure stability of judicial decisions.*[404]

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of standing. What should have been applied instead was the rule on real parties in interest. *Id.*

402. *Kilosbayan II*, 246 SCRA at 560-62.

403. *Id.* at 558-59 (emphasis supplied).

404. Theodore Te, *Stare (In)Decisis: Some Reflections on Stare Decisis in the Wake of the Judicial Flip-Flopping in League of Cities v. COMELEC and Navarro v. Ermita*, 85 PHIL. L.J., 4, 809 (2011).

But the mere change in composition of the Court was not the reason *per se* for the Court to allow a reexamination of the ruling on legal standing in *Kilosbayan I*. Rather, it was the fact that the voting in that case was too "tenuous." Webster's Dictionary defines "tenuous" as "adhering little substance or strength," "flimsy, insignificant, weak," and "not firmly based or supported."[405]

Therefore, what can be gleaned from the Court's pronouncement in *Kilosbayan II* is that a ruling supported by narrow voting, such as when the majority decision arises by just one vote, may be evidence of a questionable or a legally unsound ruling that could warrant a later reexamination by the Court when the circumstances call for it.[406] This conclusion was affirmed by the Court in its resolution on the motion for reconsideration on *Kilosbayan II*. The Court defended the change in its ruling in *Kilosbayan II* by discussing instances when a split decision in a case, resulted in a reversal of the Court's ruling in a subsequent case due to the change in membership of the Court. There is no need to delve into these cases, since the point that the Court wanted to make is this — that a change in composition of the Court could be the "means of undoing an erroneous decision."[407]

c. Overriding Public Interest

In *Apo Fruits Corporation v. Land Bank of the Philippines*,[408] the Supreme Court overturned a final and executory decision rendered by it through its Third Division upon the filing of a second motion for reconsideration (although the dissenting Justice Roberto A. Abad argues that it was actually a third motion for reconsideration).[409] The Court considered the issue in the case as one of "overriding public interest" and therefore a valid exception to the doctrine of immutability of judgments, since it no longer concerned the parties alone or mere private interests.[410] The issue in the case regarding the proper computation of just compensation in eminent domain, exercised by the State in relation to the agrarian reform program, was deemed to be a matter of "overriding public interest" because just compensation is a right guaranteed by the Constitution.[411] The Court opined —

> In assailing our [10 October 2010] resolution, the LBP emphasizes the need to respect the doctrine of immutability of final judgments. The LBP maintains that we should not have granted the petitioners' motion for

405. Webster's Third New International Dictionary.

406. *See Kilosbayan II*, 246 SCRA at 579-80.

407. *Kilosbayan II, Reconsideration*, 250 SCRA at 136.

408. Apo Fruits Corporation v. Land Bank of the Philippines, 647 SCRA 207 (2011).

409. *Apo Fruits Corporation*, 647 SCRA at 236 (J. Abad, dissenting opinion).

410. *Apo Fruits Corporation*, 647 SCRA at 218.

411. *Id.* at 218-19.

> reconsideration in our 12 October 2010 Resolution because the ruling deleting the 12% interest had already attained finality when an Entry of Judgment was issued. The LBP argues, too, that the present case does not involve a matter of transcendental importance, as it does not involve life or liberty. The LBP further contends that the Court mistakenly used the concept of transcendental importance to recall a final ruling; this standard should only apply to questions on the legal standing of parties.
>
> In his dissenting opinion, Mr. Justice Roberto Abad agrees with the LBP's assertion, positing that this case does not fall under any of the exceptions to the immutability doctrine since it only involves money and does not involve a matter of overriding public interest.
>
> We reject the basic premise of the LBP's and Mr. Justice Abad's arguments for being flawed. *The present case goes beyond the private interests involved; it involves a matter of public interest — the proper application of a basic constitutionally-guaranteed right, namely, the right of a landowner to receive just compensation when the government exercises the power of eminent domain in its agrarian reform program.*
>
> Section 9, Article III of the 1987 Constitution expresses the constitutional rule on eminent domain — '*Private property shall not be taken for public use without just compensation.*' ... Contrary to the LBP's and Mr. Justice Abad's assertions, the outcome of this case is not confined to the fate of the two petitioners alone. This case involves the government's agrarian reform program whose success largely depends on the willingness of the participants, both the farmers-beneficiaries and the landowners, to cooperate with the government. Inevitably, if the government falters or is seen to be faltering through lack of good faith in implementing the needed reforms, including any hesitation in paying the landowners just compensation, this reform program and its objectives would suffer major setbacks. *That the government's agrarian reform program and its success are matters of public interest, to our mind, cannot be disputed as the program seeks to remedy long existing and widespread social justice and economic problems.*
>
> In a last ditch attempt to muddle the issues, the LBP focuses on our use of the phrase 'transcendental importance,' and asserts that we erred in applying this doctrine, applicable only to legal standing questions, to negate the doctrine of immutability of judgment. *This is a very myopic reading of our ruling as the context clearly shows that the phrase 'transcendental importance' was used only to emphasize the overriding public interest involved in this case.*[412]

It is submitted that the recovery of ill-gotten wealth presents issues of "overriding public interest," which the Court has recognized in a number of cases.

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412. *Id.* (emphasis supplied).

In one case, the Republic sought to assail a resolution of the Sandiganbayan involving the recovery of approximately $356,000,000.00[413] worth of Swiss bank deposits (approximately ₱15,120,000,000.00) [414] purported to be the ill-gotten wealth of the Marcos family. Although the Republic chose a wrong remedy in doing so, the Court took cognizance of the petition since it considered the recovery of ill-gotten wealth as a matter of great public interest and concern,[415] such that the Court has adopted a policy to set aside technicalities than impede substantial justice. It stated —

> Normally, decisions of the Sandiganbayan are brought before this Court under Rule 45, not Rule 65. *But where the case is undeniably ingrained with immense public interest, public policy*[,] *and deep historical repercussions*, certiorari is allowed notwithstanding the existence and availability of the remedy of appeal.
>
> One of the foremost concerns of the Aquino Government in February 1986 was the recovery of the unexplained or ill-gotten wealth reputedly amassed by former President and Mrs. Ferdinand E. Marcos, their relatives, friends[,] and business associates. Thus, the very first [E.O.] issued by then President Corazon Aquino ... was EO No. 1, ... It created the [PCGG] and charged it with the task of assisting the President in the 'recovery of all ill-gotten wealth[.]' ... The urgency of this undertaking was tersely described by this Court in [ ] *Lobregat*[.][416]

In the case referred to in the last sentence of the foregoing text, the Court acknowledged the recovery of ill-gotten wealth as a matter of State policy.[417] A number of corporations — alleged to be dummies that were used to acquire ill-gotten wealth — questioned the PCGG's sequestration of their assets considering they were not impleaded as defendants in the various complaints filed at the Sandiganbayan.[418] It involved the interpretation of Section 26, Article 18 of the 1987 Constitution.[419] The Court upheld the validity of the sequestration, and stated that the sequestration itself should have put the corporate petitioners on notice that they were suspected of

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413. *See Sandiganbayan 2003*, 407 SCRA at 208-09. In this case, the Sandiganbayan had earlier granted the Republic's motion for summary judgment, which effectively declared the bank deposits as ill-gotten wealth and forfeited them in favor of the Republic. On reconsideration, the Sandiganbayan set aside this decision which the Republic then assailed at the Supreme Court. *Id.*

414. OANDA, *supra* note 58.

415. *See also* Republic v. Sandiganbayan (Fourth Division), 662 SCRA 152, 181 (2011).

416. *Sandiganbayan 2003*, 406 SCRA at 219-20 (citing *Lobregat*, 240 SCRA at 388-89) (emphasis supplied).

417. *Lobregat*, 240 SCRA at 388-89.

418. *Id.* at 435.

419. *See* PHIL. CONST. art. 18, § 26.

being instruments for committing impropriety.[420] From that moment forward, "they were *charged with notice of the State policy*, enunciated by the Revolutionary Government, reiterated in the Freedom Constitution, and *explicitly set forth in the 1987 Constitution, that preferential attention be given to the mission of recovering ill-gotten wealth.*"[421] It stated further —

> Political normalization of the country — which fortunately came not too long after the EDSA Revolution of 1986 — did not abrogate, or diminish the strength of the lofty state policy for recovery of ill-gotten wealth, no matter that its prosecution has thus far yielded what not a few are disposed to regard as at best only fixed results, or was attended by much abuse on the part of some of its officers or 'fiscal agents;' indeed, that circumstance should vigorously argue for its more sustained and effective pursuit and implementation.
>
> And equally, if not more, important, *strong paramount public policy is not to be set at naught by technical rules of procedure or by narrow constructions of constitutional provisions* that frustrate their clear intent or unreasonably restrict their scope. This, of course, even on the premise that impleading sequestered firms is necessary to the maintenance of their sequestration — a premise that is of doubtful validity, as already pointed out, given the language of the constitutional provision.[422]

As to why the recovery of ill-gotten wealth should be considered as a matter of public interest and State policy is poignantly addressed by Chief Justice Teehankee as *ponente* in the case of *Presidential Commission on Good Government v. Peña*, to wit —

> That the public interest and the general welfare are subserved by sequestering the purported ill-gotten assets and properties and taking over stolen properties of the government channeled to dummy or front companies is stating the obvious. *The recovery of these ill-gotten assets and properties would greatly aid our financially crippled government and hasten our national economic recovery, not to mention the fact that they rightfully belong to the people.* While as a measure of self-protection, if, in the interest of general welfare, *police power, may be exercised to protect citizens and their businesses in financial and economic matters, it may similarly be exercised to protect the government itself against potential financial loss and the possible disruption of governmental functions.* Police power as the power of self-protection on the part of the community that the principle of self-defense bears to the individual. *Truly, it may be said that even more than self-defense, the recovery of ill-gotten wealth and of the government's own properties involves the material and*

420. *Lobregat*, 240 SCRA at 471-72.

421. *Id.* (emphasis supplied).

422. *Id.* at 472 (emphasis supplied). *See also Sandiganbayan (Third Division)*, 269 SCRA at 326.

> *moral survival of the nation, marked as the past regime was by the obliteration of any line between private funds and the public treasury and abuse of unlimited power and elimination of any accountability in public office, as is a matter of public record and knowledge.*[423]

In effect, the Court considers the recovery of ill-gotten wealth as a matter of state policy because it concerns the pillaging of our public coffers. Since public funds are devoted to public purposes, such as public infrastructure, national and civil defense, social welfare services, and education, among others, then the recovery of such funds naturally concerns the general public who ought to benefit from such funds. That such matter affects the lives of our nation's people makes it deserving of utmost consideration and priority from the courts, even at the expense of a strict application of technical rules of procedure when to do so would only frustrate the government's efforts to recover ill-gotten wealth. With respect to the coconut levy funds, there is no need to look any further than the *2012 Case* for proof of its paramount importance.[424] The Court's ruling therein, that coconut levy funds are conclusively public funds owned by the Republic, is judicial affirmation of the fact that coconut levy fund cases are imbued with public interest.[425]

2. In Sum

Thus far, the proposed guidelines for the Supreme Court to advert to in reconsidering a final and executory decision rendered by it, are as follows —

(1) There must be a decision on the merits rendered by the Supreme Court that has attained the status of a final and executory judgment;

(2) There must be a subsequent decision on the merits that conclusively settles an issue, and which substantially alters the first decision, either because it is the issue on which the first case turns, or it is so intimately connected to the first case that it determines the success or failure of the party's theory of the case;

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423. *Presidential Commission on Good Government*, 159 SCRA at 574-75 (emphasis supplied). In this case, the PCGG questioned the jurisdiction of the respondent Regional Trial Court (RTC) Judge over an action for damages filed against the PCGG in connection with properties sequestered by the latter. The Court ruled that the RTC had no jurisdiction, and further, jurisdiction over all sequestration cases related to the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14 are vested in the Sandiganbayan. *Id.* at 558-59.

424. *See 2012 Case*, 663 SCRA at 604.

425. *Id.*

(3) Both cases must be a civil action for the recovery of ill-gotten wealth under E.O. Nos. 1, 2, and 14 and therefore present issues of overriding public interest;

(4) The non-application of the ruling in the second case to the first case, despite the fact that it is determinative of the outcome in the first case, leads to a patently unjust situation that causes unwarranted and irreparable injury to the party seeking relief; and

(5) The ruling in the first case is legally erroneous.

Illustrations of each guideline have been made throughout this Note by way of a critique of the *2011 Case*. Thus, we will only draw attention to the last guideline.

a. Voting as Evidence of a Legally Erroneous Ruling

The decision in the *2011 Case* garnered a vote among the Supreme Court Justices of seven concurring, four dissenting, and four abstentions. Meanwhile, the decision in the *2012 Case* garnered a vote of 11 concurring, four abstentions, and no dissents. Using the ruling in *Kilosbayan II*, we make the following observations.

First, the seven Justices that voted for the majority opinion in the *2011 Case* are the same Justices that voted for the majority opinion in the *2012 Case*.[426] After having established in this Note just how the rulings in these two cases and their foundational doctrines conflict with each other, the inference made here is that these seven Justices changed their position and abandoned the ruling in the *2011 Case*, specifically on the following points: (1) that there is no single and explicit definition of ill-gotten wealth, and consequently, they are abandoning the definition they made in the *2011 Case*; and (2) that coconut levy funds are not public funds, after refusing to recognize the ruling in *Republic v. COCOFED*.[427]

Second, in both cases, a total of 11 Justices actually took part in the deliberations of the issues and voted. However, in the *2011 Case*, only seven voted for the majority opinion, while in the *2012 Case*, all 11 Justices concurred in the majority opinion with no dissent.[428]

426. *Compare 2011 Case*, 648 SCRA at 163, *with 2012 Case*, 663 SCRA at 643.

427. *COCOFED 2001*, 372 SCRA 462 (2001).

428. *Compare 2011 Case*, 648 SCRA at 163, *with 2012 Case*, 663 SCRA at 643.

In the *2011 Case*, the majority led by three votes over those that dissented. Admittedly this is not the exact scenario contemplated in *Kilosbayan II*, where the Court stated that it is "hardly tenable" to sustain a ruling supported by a "tenuous" vote, the evidence of a tenuous vote being that when the majority arises by just one vote.[429]

However, if the underlying logic in *Kilosbayan II* is true, which the Court spelled out in its resolution on the motion for reconsideration, and which was pointed out by Te in his article — that is, a change in the composition of Members of the Court can be the "means of undoing an erroneous decision,"[430] or "may trigger a reexamination" and a change of precedent[431] — then, the fact that an overwhelming 11 Justices voted on a ruling that was in opposition to the ruling in the *2011 Case* is evidence that the latter is in fact questionable or legally erroneous. This is reinforced by the fact that the seven Justices that voted for the majority opinion in the *2011 Case* changed their opinion by voting in the majority in the *2012 Case*.

The Author is aware that the foregoing may be construed as pure speculation, but in light of the other observations made with respect to the use of a wrong definition of ill-gotten wealth, and the Court's act of ignoring judicial precedents like the *Menzi* case, it is submitted that there is, in fact, sufficient basis to question the Court's ruling in the *2011 Case*.

b. Feasibility of the Proposed Guidelines: Manotok IV v. Heirs of Homer L. Barque[432]

To close, it would be proper to test whether these proposed guidelines would actually transcend the pages of an academic paper and stand the rigors of actual practice. In other words, we lay out here the more important question: Can a final and executory decision of the Supreme Court really be reconsidered?

On 18 December 2008, the Supreme Court promulgated its resolution in *Manotok IV v. Heirs of Homer L. Barque*. This case involved the highly disputed friar land known as the Piedad Estate. Barque filed for administrative reconstitution of the original Transfer Certificate of Title (TCT) of a portion of the said estate after a fire gutted the Office of the Register of Deeds of Quezon City.[433] Manotok claimed to own the land covered by Barque's title, also by virtue of a reconstituted TCT. The

429. *Kilosbayan II*, 246 SCRA at 559.

430. *Kilosbayan II, Reconsideration*, 250 SCRA at 136.

431. Te, *supra* note 404, at 809.

432. Manotok IV v. Heirs of Homer L. Barque, 574 SCRA 468 (2008) [hereinafter *Manotok 2008*].

433. *Id.* at 485.

reconstituting officer of the Land Registration Administration (LRA) denied Barque's petition, finding it to be spurious and recognizing Manotok's title instead.[434] The LRA reversed on appeal, but since only the Regional Trial Court (RTC) has authority to cancel a Torrens title, it ruled that it could only act on Barque's petition upon cancellation of Manotok's title by a court of competent jurisdiction.[435]

Both parties filed separate petitions for review with the Court of Appeals (CA).[436] In both cases, the CA ruled in favor of Barque and ordered the cancellation of Manotok's title. Manotok appealed to the Supreme Court, and its First Division affirmed the two decisions of the CA on 12 December 2005. Manotok even filed a second motion for reconsideration but it was denied. Then, on 2 May 2006, entry of judgment was made on the decision of the Court's First Division dated 12 December 2005.[437]

Undaunted, the Manotok heirs filed another motion for reconsideration at the Supreme Court's Special First Division. The said Division referred the cases to the Court *en banc*, which it accepted in a resolution dated 26 July 2006.[438]

The Supreme Court *en banc* acknowledged the "procedural unorthodoxies" of the case, namely in its act of taking cognizance of the case anew after entry of judgment had been made.[439] The Court claimed that this is not the first time it has recalled an entry of judgment, and that doing so is only part and parcel of its power to suspend or disregard rules of procedure. The Court justified the exercise of this power on the view that the 12 December 2005 decision was erroneous or "inconsistent with the precedents of the Court," that to let it stand undisturbed would be to cause uncertainty,[440] to wit —

> It is a constitutional principle that 'no doctrine or principle of law laid down by the [C]ourt in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.' It has been argued that the 2005 Decision of the First Division is inconsistent with precedents

434. *Id.* at 492–93.

435. *Id.*

436. *Id.* at 498. Manotok appealed the finding of the LRA that his title is spurious, while Barque sought to have the LRA immediately reconstitute his title without waiting for Manotok's title to be cancelled.

437. *Id.* at 490.

438. *Manotok 2008*, 574 SCRA at 484–90.

439. *Id.* at 491.

440. *Id.*

> of the Court, *and leaving that decision alone without the imprimatur of the Court en banc would lead to undue confusion* within the bar and bench, with lawyers, academics and judges quibbling *over whether the earlier ruling of the Division constitutes the current standard with respect to administrative reconstitution of titles. Our land registration system is too vital to be stymied by such esoteric wrangling, and the administrators and courts which implement that system do not deserve needless hassle.*
>
> The Office of the Solicitor General correctly pointed out that this Court before had sanctioned the recall entries of judgment. *The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final.* The militating concern for the Court *en banc* in accepting these cases is not so much the particular fate of the parties, but the stability of the Torrens system of registration by ensuring clarity of jurisprudence on the field.[441]

The Court, then, proceeded to resolve the merits of the case *pro hac vice*.[442] With the support of eight Justices,[443] the Court resolved to set aside the 12 December 2005 decision of its First Division, and recalled the entry of judgment thereon two years after its entry on 2 May 2006. It then remanded the case to the CA for further proceedings.[444] The CA later denied all claims to the property, which the Court affirmed on 24 August 2010, declaring the Piedad Estate as belonging to the Government and subject to reversion proceedings.[445] In a resolution dated 6 May 2012, the Court upheld its 24 August 2010 decision and resolved to deny all motions for reconsideration with finality.[446]

Therefore, the Author submits that it is indeed possible for the Court to reconsider a final and executory decision. The *Manotok* case is a clear example of the Court acknowledging its power to suspend or disregard the rules of procedure as being pervasive, meaning to say that only the Court itself can really decide on what it deems to be final. Which is precisely why, thus far, we have attempted to conform the proposed guidelines to matters that the Court itself has found deserving of a reexamination. It is conceded that being a *pro hac vice* resolution, the *Manotok* case cannot be invoked as a precedent. But it is submitted that only the *ratio* concerning the legal issues raised in the case are to be considered *pro hac vice*, and not the principle behind the Court's decision to recall the entry of judgment, which can be and has been applied by the Court in other cases similarly situated.

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441. *Id.* at 492.

442. *Id.* at 491.

443. Manotok IV v. Heirs of Homer L. Barque, 579 SCRA 240 (2009) [hereinafter *Manotok 2009*].

444. *Manotok 2009*, 579 SCRA at 242-43.

445. Manotok IV v. Heirs of Homer L. Barque, 628 SCRA 699 (2010).

446. Manotok IV v. Heirs of Homer L. Barque, 667 SCRA 472, 537 (2012).

Nevertheless, we maintain that the ultimate consideration as to why ill-gotten wealth suits should be accorded reconsideration, when proper, is because they involve the recovery of public funds. This is the second aspect of our claim that ill-gotten wealth suits are indeed *sui generis*.[447] The statement of the Court in *Manotok* that accepting the case "is not so much the particular fate of the parties, but the stability of the Torrens system of registration"[448] is taken to mean that the Court was aware that its decision on the matter affected not just private interests, but the general public who rely on the Torrens system of registration. Similarly, the claim for judicial recognition of ill-gotten wealth suits as *sui generis* rests on the argument that these suits go beyond mere private interests; they are imbued with public interest seeing as it is that they involve the recovery of public funds, assets, and properties.

But, as seen in the Court's treatment of the *2011 Case*, and which appears to have been carried over in the Sandiganbayan's recent decision involving Lucio Tan,[449] that level of importance given to the recovery of State properties in the form of ill-gotten wealth is slowly fading.

If the *Manotok* case recognized value in maintaining the stability of the Torrens system, should not there be the same, if not greater level of consideration made when the subject matter is the recovery of the State's funds, assets, and other properties, illegally amassed by the former President, his family, associates, subordinates, dummies, and nominees in a manner that has quite ashamedly become of public record and knowledge? Is not there a disconnect, so to speak, when we demote the ill-gotten wealth suits to a manner of treatment that is more appropriately applied when the matters at bar affect only private interests?

As stated by former Chief Justice Teehankee in a decision earlier cited, in the same way that police power may be exercised to protect citizens and their businesses when it comes to financial and economic matters, the State also has a right to protect itself "against potential financial loss and the possible disruption of governmental functions."[450] It is for this reason that the Constitution allows the State to recover properties unlawfully acquired

447. The first aspect of this claim is that the extraordinary and peculiar nature of ill-gotten wealth suits conflicts with the linear progression of judicial decisions. This was discussed in a previously.

448. *Manotok 2008*, 574 SCRA at 492.

449. Republic of the Philippines v. Lucio C. Tan, et al., Case No. 0005, Sandiganbayan (Fifth Division), June. 11, 2012. *See also* Pedrasa, *supra* note 29 & The Feed, *supra* note 29.

450. *Presidential Commission on Good Government*, 159 SCRA at 574-75.

by public officials or employees without being hindered by prescription, laches, or estoppel,[451] the same being substantially echoed in R.A. No. 1379.[452]

The attempt to recalibrate the legal system so that it may accord ill-gotten wealth suits the treatment it deserves does not end with the justification that they involve public funds. It is endeavored to take one step further and ask — What is the significance of these public funds or rather, what do we stand to lose in refusing to recognize the claim of sui generis over ill-gotten wealth cases, particularly the ones involving the coconut levy funds?

An attempt to answer this may be found in the conclusion of this Note.

IV. CONCLUSION AND RECOMMENDATIONS

> *There is a kind of bastard generosity, which, by being extended to all men, is as fatal to society, on one hand, as the want of true generosity is on the other. A lax manner of administering justice, falsely termed moderation, has a tendency both to dispirit public virtue and promote the growth of public evils.*
>
> — Thomas Paine[453]

A. Putting Things into Perspective

In 1775, Jean Jacques Rousseau wrote in his "A Dissertation on the Origin and Foundation of Inequality of Mankind" the following passage: "The first man who, having enclosed a piece of ground, bethought himself of saying, 'This is mine,' and found people simple enough to believe him, was the real founder of civil society."[454] Hailed as the first great modern philosopher,[455] Rousseau set out in his work to discover the origin of inequality among

451. This Section provides that "[t]he 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. PHIL. CONST., art. 11, § 15.

452. R.A. No. 1379, § 11. This Section provides that "[t]he laws concerning acquisitive prescription and limitation of actions cannot be invoked by, nor shall they benefit the respondent, in respect of any property unlawfully acquired by him." *Id.*

453. Thomas Paine, *The Crisis (1776), in* THE QUOTABLE FOUNDING FATHERS 185 (Buckner F. Melton, Jr., ed., 2004).

454. Jean Jacques Rousseau, A Dissertation on the Origin And Foundation of the Inequality of Mankind, *available at* http://www.constitution.org/jjr/ineq.txt (last accessed on June 16, 2013).

455. MICHAEL CURTIS, THE GREAT POLITICAL THEORIES VOL. 2 15 (1981 ed.).

men, and whether it is authorized by natural law.[456] He concluded that moral inequality was "authorized by the consent of men," when they created social institutions that bestowed privileges to some men at the prejudice of others, "such as that of being more rich, more honoured, more powerful or even in a position to exact obedience."[457] To him, the origin and purpose of society, government, and law is the protection of the individual's life, liberty, and more importantly, property. But due to the inequality of property among men, jealousy, dissension, and war arose, causing the deterioration of the institutions that man created precisely to protect individual property. This, he thought, was forthcoming "since it is plainly contrary to the law of nature, however defined, that children should command old men, fools wise men, and that the privileged few should gorge themselves with superfluities, while the starving multitude are in want of the bare necessities of life."[458]

That such inequality and injustice exist has not escaped modern governments. The Philippines has, in fact, expressly acknowledged this through the social justice provision in Section 10, Article II of the 1987 Constitution,[459] and in the entire Article XIII of the same. The import of the social justice provision is that those who have less in life should have more in law.[460] For purposes of the judiciary, it mandates that when the law is clear and valid, it simply must be applied, but when there is more than one interpretation of it, then the interpretation that must be followed is that which favors the underprivileged.[461] Under the same social justice provision in the 1973 Constitution, the Supreme Court's response has been, for instance, to allow a liberal application of technical rules of procedure when the failure to do so would frustrate adequate protection for labor.[462]

Social justice in our Constitution is said to espouse two tracks — *firstly*, the regulation of property, and, *secondly*, is the creation of economic opportunities based on freedom of initiative and self-reliance.[463] However,

456. WILLIAM EBENSTEIN & ALAN EBENSTEIN, GREAT POLITICAL THINKERS, PLATO TO THE PRESENT 445 (6th ed.).

457. *Id.*

458. *Id.*

459. This Section provides that "[t]he State shall promote social justice in all phases of national development." PHIL. CONST. art. 2, § 10.

460. BERNAS, *supra* note 208, at 77.

461. *Id.* at 82.

462. *Id.* at 81 (citing Estrada v. NLRC, 112 SCRA 688 (1982) & Galceran v. Sec. of Labor, 115 SCRA 300 (1982)).

463. BERNAS, *supra* note 208, at 1239.

Section 10, Article II dictates that social justice shall be promoted in all phases of national development, which means that the liberal policy towards the underprivileged is not limited to socio-economic inequalities, but extends to those that are political and cultural in nature.[464] As such, Sections 1 and 2, Article XIII[465] lay down the dual goal of diffusing economic wealth and political power, which Bernas says, is a "recognition of the reality that, in a situation of extreme mass poverty, political rights, no matter how strongly guaranteed by the Constitution, become largely rights enjoyed by the upper and middle class and are a myth for the underprivileged."[466] The only restriction therefore on the application of social justice is that it must not lead to the violation of the law.[467]

With that in mind, the Author submits that the pursuit to recover the coconut levy funds that have become ill-gotten wealth — seeing as they are public funds devoted for a public purpose — is an act mandated by the social justice provision of the Constitution.

Several laws imposed the coconut levies on coconut farmers in order to generate funds that would be used to protect, develop, and to benefit the entire coconut industry, inclusive of the coconut farmers.[468] No less than the Supreme Court in *Pambansang Koalisyon Ng Mga Samahang Magsasaka At Manggagawa Sa Niyugan v. Executive Secretary* has recognized that coconut levies, being taxes exacted for a public purpose, has for its end the promotion of social justice.[469] In declaring the unconstitutionality of certain coconut levy-related laws that removed the levies from the general funds of the government and converted them into private properties, the Court said —

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464 *Id.* at 82.

465 PHIL. CONST. art. 13, §§ 1 & 2. These Sections provide —

> Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.
>
> Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

Id.

466. BERNAS, *supra* note 208, at 1239.

467. *Id.* at 81, 1238.

468. *2012 Case*, 663 SCRA at 602.

469. *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN)*, 669 SCRA at 60.

> Section 2 of P.D. 755, Article III, Section 5 of P.D. 961, and Article III, Section 5 of P.D. 1468 completely ignore the fact that coco-levy funds are public funds raised through taxation. And since taxes could be exacted only for a public purpose, they cannot be declared private properties of individuals although such individuals fall within a distinct group of persons.
>
> The Court of course grants that there is no hard-and-fast rule for determining what constitutes public purpose. It is an elastic concept that could be made to fit into modern standards. Public purpose, for instance, is no longer restricted to traditional government functions like building roads and school houses or safeguarding public health and safety. *Public purpose has been construed as including the promotion of social justice.* Thus, public funds may be used for relocating illegal settlers, building low-cost housing for them, and financing both urban and agrarian reforms that benefit certain poor individuals. *Still, these uses relieve volatile iniquities in society and, therefore, impact on public order and welfare as a whole.*
>
> *But the assailed provisions*, which removed the coco levy funds from the general funds of the government and declared them private properties of coconut farmers, *do not appear to have a color of social justice for their purpose.* The levy on copra that farmers produce appears, in the first place, to be a business tax judging by its tax base. *The concept of farmers-businessmen is incompatible with the idea that coconut farmers are victims of social injustice and so should be beneficiaries of the taxes raised from their earnings.*[470]

It can be seen from the foregoing that despite the State's ownership of the coconut levy funds, the Court recognizes that the beneficiaries of these funds are the coconut farmers who are "victims of social injustice."[471] That the levies are intended for their benefit is in accord with the public purpose of taxation, since public purpose includes the promotion of social justice.[472] In fact, when the coconut levy laws established the public purpose of the levies to be the protection and development of the coconut industry, this was done out of the recognition that a robust coconut industry is the means by which the coconut farmers can participate in the wealth created by it, and to achieve social progress.[473] In effect, while the State owns the coconut levy funds, the ultimate intended beneficiaries are the underprivileged coconut farmers.[474]

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470. *Id.* at 66-67 (emphasis supplied).

471. *Id.* at 67.

472. *Id.*

473. *See generally* P.D. Nos. 755 & 1841, whereas cl.

474. *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN)*, 669 SCRA at 67.

With this in mind, it is respectfully submitted that the Supreme Court committed a gravely injudicious act in affirming the Sandiganbayan's 28 November 2007 decision based on the Republic's failure to substantiate its allegations, despite the presence of judicial admissions from Cojuangco, who failed to vary or counter this during trial, and despite raising an affirmative defense that he also failed to prove during the same.[475] It ignored the controlling law and jurisprudence on the matter as found the PCGG Rules and *Menzi*, as well as altered the substantive requirements for the cause of action for the recovery of ill-gotten wealth, in violation of the doctrine in *Columbia*.[476] In doing all of these, the Court decided the case based on procedural lapses that were ambiguous to begin with, thereby disregarding Paragraph 2, Section 3 of E.O. No. 14,[477] and the Constitution's directive to the Government to ensure that those who have less in life should have more in law.[478]

The ambiguity is found in the fact that in the *Menzi* case, the Court ruled in favor of the Republic upon Cojuangco's failure to prove his affirmative defense. However, the Court neither applied nor even mentioned this in the majority opinion of the *2011 Case*, and even if it failed to do so, it should have applied the Rules of Civil Procedure, which clearly provide that an admission may be inferred from the failure of a party to specifically deny the material allegations in the other party's pleadings.[479] It is also argued that there was ambiguity in the majority opinion's interpretation of the statements made under the section entitled, "Proposed Evidence," of Cojuangco's Pre-Trial Brief.

That the majority did *not* consider these statements as judicial admissions, being merely preparatory, contravenes the clear import of the Rules on Evidence that an admission, whether verbal or written, that is made by a party in the course of the proceedings in the same case, does not require proof.[480] The Rule does not make any qualification, nor does it require a specific form of an admission.[481] Jurisprudence even states that the stipulation

475. *2011 Case*, 648 SCRA at 136.

476. *See generally* PCGG Rules, § 1 (A); *Menzi*, 476 SCRA at 20; & *Columbia*, 261 SCRA at 144.

477. E.O. No. 14, § 3, ¶ 2. This Section provides that, "[t]he technical rules of procedures of evidence shall not be strictly applied to the civil case filed hereunder." *Id.*

478. *See* BERNAS, *supra* note 208, at 77.

479. RULES OF CIVIL PROCEDURE, rule 8, § 11 & RIANO, EVIDENCE, *supra* note 306, at 101.

480. RULES ON EVIDENCE, rule 129, § 4.

481. RIANO, EVIDENCE, *supra* note 306, at 99.

of facts at the pre-trial stage constitutes judicial admissions,[482] and so do admissions contained in an answer to a complaint.[483] It is only by showing that the admission was made through palpable mistake, or that no such admission was made, can the admission be contradicted,[484] which again, Cojuangco did not do since he chose not to present evidence during trial.

To be clear, fidelity to the social justice provision of the Constitution does not mean that the case should have been, at all costs, decided in favor of the Government. The limitation on the application of the social justice provision is that it must not tolerate the commission of illegal acts. Hence, it must not be implemented in violation of the basic Constitutional rights of Cojuangco and his co-defendants. But no such violation occurred in the *2011 Case*, and the dissenting Justice Brion even alleged that it was, in fact, the right of the Republic that was violated. He postulates that the counsel of the Republic committed gross negligence in handling the case at the Sandiganbayan, which deprived the Republic of a fair opportunity to present its case and a "fair chance of achieving the recovery it sought."[485] An example of this is the counsel's failure to present evidence at trial despite warnings from the court.[486] The Honorable Justice states that the Republic is "no ordinary client," and that for it to have been deprived of due process due to the gross negligence of its counsel, renders its necessary to remand the case for a full-blown trial on the merits in order that the Government may be given a chance to present all of its evidence.[487] He adds that this is in accord with the authority of the Court to modify the rules of procedure at any time, so long as it does not affect vested rights.[488]

B. Limitations of the Proposed Guidelines and an Alternative Route

> *When great evils happen, I am in the habit of looking out for what good may arise from them as consolations to us; and Providence has in fact so established the order of things as that most evils are the means of producing some good.*

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482. *Id.* at 100 (citing Cuenco v. Talisay Tourist Sports Complex, 569 SCRA 616 (2008)).

483. RIANO, EVIDENCE, *supra* note 306, at 101 (citing Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien, 501 SCRA 405 (2006)).

484. RULES ON EVIDENCE, rule 129, § 4.

485. *2011 Case*, 648 SCRA at 304 (J. Brion, dissenting opinion).

486. *Id.* at 311–15.

487. *Id.* at 317.

488. *Id.* at 303–04 & 323.

— Thomas Jefferson[489]

It is conceded that the application of the proposed guidelines is also limited by public policy considerations, such as protection of third party buyers of the disputed shares, or what Justice Brion referred to as "vested rights."[490] A reconsideration of the *2011 Case* would throw open the question of ownership of the Cojuangco block of SMC shares, and in the event that it is decided in favor of the Republic, third parties who purchased the shares in the interim and who had a right to rely on the final and executory judgment of the Supreme Court, will be prejudiced if the Court insists on a reconveyance of the shares. This cannot be allowed for a wrong act cannot be remedied by another wrong act.

An alternative route for the Republic to take is to file a new case based on a different cause of action.[491] Justice Brion, in his dissenting opinion in the *2011 Case*, mentioned that Civil Case No. 0033-F was originally comprised of two causes of action: (1) to recover properties that were alleged to be manifestly disproportionate to Cojuangco's income or unjust enrichment; and (2) to recover the properties that Cojuangco allegedly acquired in breach of the public trust and through abuse of the power he enjoyed due to his close association with Marcos.[492] The Honorable Justice states that during the prosecution of the case, the Republic dropped the first cause of action, while the second cause of action was divided into two — the Cojuangco block and the CIIF block.[493]

A reading of the *2011 Case* shows that the pursuit of the second cause of action might have been the wrong choice because it made it imperative upon the Republic to adduce evidence to prove that there was a breach of fiduciary obligations on the part of Cojuangco. The majority contended that there was no such breach, while both dissenting Justices Conchita Carpio-Morales and Maria Lourdes P. Sereno claim that there was, in the form of self-dealing.[494] The said dissenting Justices claim that Cojuangco ended up serving his own pecuniary interests, depriving the coconut farmers, who are the beneficiaries of the coconut levy funds, from a business opportunity that

489. Thomas Jefferson, *To Benjamin Rush*, Sep. 23, 1800, *in* THE QUOTABLE FOUNDING FATHERS 110 (Buckner F. Melton, Jr., ed., 2004).

490. *2011 Case*, 648 SCRA at 323 (J. Brion, dissenting opinion).

491. *Id.* at 304-10.

492. *Id.* at 259.

493. *Id.* at 275-77.

494. *2011 Case*, 648 SCRA at 239. (J. Carpio-Morales, dissenting opinion).

rightfully belonged to them in violation of Sections 31 and 34 of the Corporation Code.[495]

Meanwhile, the other dissenter, Justice Arturo D. Brion, agrees with the majority that the Republic failed to prove such breach, but pointed out that the Republic already had in its possession a certification from the UCPB corporate secretary, which shows that Cojuangco had been among its officers and directors from 1983 to 1986.[496] That the Republic did not include this in its formal evidence was obviously a point against its case.

The filing of a new case to recover the SMC shares from Cojuangco based on the cause of action of unjust enrichment, or having unlawfully acquired properties manifestly disproportionate to Cojuangco's income as a then public official, would fall under R.A. No. 1379 in relation to the ill-gotten wealth suits.[497] This would be within the cognizance of the PCGG to

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495. *Id.* at 239-49. *See also* The Corporation Code of the Philippines [CORPORATION CODE], Batas Pambansa Bilang 68, §§ 31 & 34. These Sections provide that —

> Sec. 31. Liability of directors, trustees or officers. — Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.
>
> Sec. 34. Disloyalty of a director. — Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

CORPORATION CODE, §§ 31 & 34.

496. *2011 Case*, 648 SCRA at 269-70 & 298 (J. Brion, dissenting opinion).

497. *Id.* at 304-10.

investigate and prosecute, and for the Sandiganbayan to hear and decide the case.[498] The action would not be barred by prescription despite the 20-year delay.[499] To support this claim, note that Justice Sereno, in her dissenting opinion in the *2011 Case*, emphasized on the Constitutional provision that renders prescription, laches or estoppel inapplicable in an action to recover property unlawfully acquired by public officials or their nominees.[500] She states —

> Despite the setback to the efforts of the government and the coconut farmers to wrestle ownership over the Cojuangco block of SMC shares, prescription, laches or estoppel will not bar a subsequent action to recover unlawfully acquired property by public officials or their dummies. As public funds, coco levy funds, including its proceeds and whatever form they may have taken in the past or will take in the future, are to be held by public officers and their assigns or transferees under a continuing public trust in favor of the coconut farmers and the public at large. *When the time comes that the legal impediment presented before the Court today is lifted (perhaps through newly discovered evidence or another justifiable reason), the opportunity to revisit the ruling of this Court may present itself, and Philippine history may have a chance to be redeemed in part.*[501]

In effect, Justice Sereno's opinion reinforces the possibility of filing a new case against the same parties, and even for the same cause of action should there be for instance, newly discovered evidence, notwithstanding the final and executory judgment in the *2011 Case*. Despite being only a dissenting opinion, the alternative route that this Note proposes draws strength from the ruling of the Supreme Court in *Kilosbayan II*, which is that neither *stare decisis*, the law of the case, *res judicata*, nor conclusiveness of judgment serve to bar the courts from taking cognizance of a case that deals with an entirely new cause of action, provided it is not merely a continuance of the previous case, or which though similar, poses a question of law.[502]

C. In Closing

This Note is not an attack on Cojuangco or on any of the defendants in the ill-gotten wealth cases *per se*. Rather, this is a call for institutions to recognize and implement the Constitution's explicit instruction to the government in bringing about social justice.[503] The Constitution recognizes a socially

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498. *See* E.O. No. 14, §§ 1 & 2.

499. *See* R.A. No. 1379 § 11. This provision is reproduced verbatim in footnote 452.

500. *See 2011 Case*, G.R.Nos. 166859, 169203, & 180 702 (J. Sereno, dissenting opinion). *See also* PHIL. CONST., art. 11, § 15.

501. *2011 Case*, G.R.Nos. 166859, 169203, & 180702 (J. Sereno, dissenting opinion).

502. *Kilosbayan II*, 246 SCRA at 560-62.

503. *See generally* PHIL. CONST. art. 2, § 10 & art. 13, §§ 1 & 2.

oriented concept of property[504] because it acknowledges that the great disparity of wealth and political power in our country, can only be remedied through the machinery of the State, acting on behalf of the underprivileged who cannot do it on their own.

Similarly, this Note would like the reader to remember that the coconut farmers, the intended beneficiaries of the coconut levy funds, were the ones who labored in the farms and paid these exorbitant levies[505] believing they would receive something greater than had they kept it for themselves. Unfortunately, they became entangled in this complex world of ill-gotten wealth suits, the pursuit of which is just as imperative as the coconut levy funds, considering it deals with the recovery of what rightfully belongs to the government, and the correction of the massive pillaging done to our national coffers.

The crucial point that this Note would like to make is that the coconut levy funds and the ill-gotten wealth suits are not ordinary legal suits. It cannot be stressed any further just how much public interest is involved. These are public funds that ought to have benefited millions of coconut farmers, and, as for the other ill-gotten wealth suits, public funds that ought to have benefited the entire nation and its people, and not just one or a few individuals of privileged status.

This underlying value behind the pursuit of the ill-gotten wealth suits is further bolstered by the historical circumstances that led to such pursuit. The

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504. BERNAS, *supra* note 208, at 80 & 129.

505. An article published in 2001 in the Philippine Daily Inquirer illustrated the burden imposed by the levies, to wit —

> The levy went up or down but was always pegged to 100 kilos of copra, regardless of the fluctuations of the buying price. The lower the price, the heavier was the farmer's burden. For example, from January to March 1974, when the price of copra was [₱443.00] per 100 kilos, the [₱55.00] levy was only 12[%] of buying price. *But from May to November 1974, when the price dropped to [₱202.00] per 100 kilos, the levy, which had gone up to [₱100.00], accounted for a bone crushing 49.5[%] of the buying price.* Faced with mounting protests from the farmers, the coconut levy was mercifully stopped in 1982. After the 1986 People Power Revolution, the Commission on Audit was able to determine that, in 10 years that the levy was in effect, a whopping [₱9,700,000,000.00] [ ] had been fleeced from the coconut farmers.

Honesto C. General, *What? Another coco levy fund?*, PHIL. DAILY INQ., Dec. 16, 2001, *available at* http://news.google.com/newspapers?nid=2479&dat=20011203&id=8X02AAAAIBAJ&sjid=hCUMAAAAIBAJ&pg=1027,1656777 (last accessed June 16, 2013) (emphasis supplied).

recovery of the Marcos ill-gotten wealth is indeed extraordinary since it was borne out of equally extraordinary circumstances — from the ouster of Marcos via a bloodless revolution; the establishment of a revolutionary government, which then made it a State policy to recover the Marcos ill-gotten wealth by immediately promulgating E.O. Nos. 1, 2, and 14; the institutionalization of this policy through the creation of a specialized agency to handle the recovery of ill-gotten wealth, that is, the PCGG; and culminating in the decisions of the Supreme Court that recognize the great public interest involved in the recovery of ill-gotten wealth, such that it has on more than a few occasions, allowed a relaxation of the rules of procedure in order not to frustrate the recovery efforts of the Government. These are all existing affirmations of the extraordinary character of ill-gotten wealth suits that, to argue for their *sui generis* treatment, is to merely confirm, spell out, or remind the reader of what has been there all along.

It was stated at the beginning of this Note that there is a greater evil to be curbed in arguing for a reconsideration of a final and executory decision of the Supreme Court, that is, the danger of forgetting, or of rewriting history, such that the class of ill-gotten wealth suits is demoted to just any other legal suit. It has come perilously close with the *2011 Case*, and, unless it is overturned, the nation may not see the end of similarly decided cases. The long passage of time since the issuance of E.O. Nos. 1, 2, and 14 should not be a cause to wind down the pursuit of these cases. In fact, the rigor and tenacity shown during the early years in pursuing these cases should be intensified now that over two decades have passed, that the nation may not consign the ill-gotten wealth suits to a relic of the past. As stated by the Court in 1997 —

> *Eleven years have passed since the government started its search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud*[,] *or illicit conduct, let it be brought out now.* Let the titles over these properties be finally determined and quieted down with all reasonable speed, free of delaying technicalities and annoying procedural sidetracks.[506]

While it can only be hoped that the propositions made in this Note be translated into realities, the Author wishes at the very least that the reader be informed, if not reminded of what may be lost, if the nation choose to ignore what history has commanded it never to forget.

> *Having heard all of this, you may choose to look the other way, but you may never again say that you did not know.*

506. *Sandiganbayan (Third Division)*, 269 SCRA at 334 (emphasis supplied).

— William Wilberforce[507]

V. EPILOGUE

On 24 August 2012, Associate Justice Maria Lourdes P.A. Sereno was appointed as Chief Justice of the Supreme Court[508] following the impeachment of then Chief Justice Renato C. Corona.[509] On 21 November 2012, the vacancy in the Supreme Court was filled in with the appointment of Associate Justice Marvic Mario Victor F. Leonen.[510]

It may be recalled that Chief Justice Sereno rendered a dissenting opinion in the *2011 Case*, where she voted to forfeit the Cojuangco block of SMC shares in favor of the Republic.[511] There is a notable portion in her dissenting opinion where she addresses the possibility of revisiting the case, even after the Court has rendered judgment.[512] In view of this, calls to reopen the *2011 Case* have intensified with coconut farmer groups asking the Honorable Chief Justice "to put her money where her mouth is for the sake of a quarter of the Philippine population mired in poverty."[513] There are reports of efforts to challenge the decision as unconstitutional for failing to state the law on which the decision is based,[514] in contravention of Section 14 of Article VIII of the 1987 Constitution.[515] If found unconstitutional, the

507. UNESCO, The Slave Route, *available at* http://www.unesco.org/new/en/culture/themes/dialogue/the-slave-route/resistances-and-abolitions/william-wilberforce/ (last accessed June 16, 2013).

508. Supreme Court of the Philippines, Chief Justice Maria Lourdes P.A. Sereno, *available at* http://sc.judiciary.gov.ph/aboutsc/justices/cj-sereno.php (last accessed June 15, 2013).

509. Maila Ager, *Senate votes 20-3 to convict Corona*, PHIL DAILY INQ., May 29, 2012, *available at* http://newsinfo.inquirer.net/202929/senate-convicts-corona (last accessed June 15, 2013).

510. Supreme Court of the Philippines, Justice Marivic Mario Victor F. Leonen, *available at* http://sc.judiciary.gov.ph/aboutsc/justices/j-leonen.php (last accessed June 15, 2013).

511. *2011 Case*, 648 SCRA at 163.

512. *Id.* at

513. Fernando del Mundo, *Reopen coconut levy case, Sereno urged*, PHIL. DAILY INQ., Aug. 27, 2012, *available at* http://newsinfo.inquirer.net/258268/farmers-ask-chief-justice-sereno-to-reopen-coconut-levy-case (last accessed June 15, 2013).

514. *Id.*

515. PHIL. CONST. art. VIII, § 14. This Section provides that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for

2011 Case would be a void judgment that the Court can lawfully revise, reverse, or amend despite its current final and executory status. This is because a void judgment is a valid exception to the doctrine of immutability of judgments.

Meanwhile, the 20% block of SMC shares awarded to Mr. Cojuangco, Jr. in the *2011 Case* has already been sold. SMC stakeholder, Top Frontier, acquired nine percent of the shares, while SMC chief operating officer, Mr. Ramon S. Ang, acquired the remaining 11% of shares.[516] The sale was reported as of the end of June 2012.

Although to date, the *2011 Case* remains unchallenged, there are indicators that perhaps all is not lost. The appointment of Justice Leonen signifies a change in membership of the Supreme Court, which as explained in the Note, could be the "means of undoing an erroneous decision."[517] This, combined with Chief Justice Sereno's dissenting opinion that there is a chance of revisiting the case through "newly discovered evidence or another justifiable reason,"[518] serves as a reminder that the arguments laid out here, though untested, still carry the potential to effect meaningful change.

As regards the sale of the Cojuangco block, it was acknowledged in the thesis that reconsideration of the *2011 Case* cannot prejudice the rights of an innocent purchaser for value. But the sale of the shares, by itself, does not bar the reconsideration of the *2011 Case*. First, this is a matter of defense that the proper party must raise at the opportune time. It is the court that will determine whether or not the defense is meritorious. Second, should the case be reconsidered and the decision reversed, the fact that Mr. Cojuangco, Jr. no longer owns the shares does not deprive the Court from executing its decision. In *Echegaray v. Secretary of Justice*,[519] the Court stated that the power to control the execution of its decision is an essential aspect of jurisdiction.[520] This includes the power to intervene and adjust the rights of the litigants even after final judgment, in order to prevent unfairness in cases where supervening events change the circumstance of the parties.[521] Should the Court declare the sale of the shares a supervening event, which makes it

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reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

516. Likha Cuevas-Miel, ANALYSIS: San Miguel's 'Boss' rewards trusted lieutenant, InterAksyon.com, Jun. 29, 2012, *available at* http://www.interaksyon.com/business/36110/analysis-san-miguels-boss-rewards-trusted-lieutenant (last accessed on June 15, 2012).

517. *Kilosbayan II, Reconsideration*, 250 SCRA at 136.

518. *2011 Case*, G.R.Nos. 166859, 169203, & 180702 (J. Sereno, dissenting opinion).

519. Echegaray v. Secretary of Justice, 301 SCRA 96 (1999).

520. *Id.* at 108.

521. *Id.*

impossible to execute the decision to reconvey the shares to the Republic, the Court may adjust by requiring Mr. Cojuangco, Jr. to instead pay the monetary equivalent of the shares or damages. In any case, it was discussed in the thesis that the option to file a new case under R.A. No. 1379 remains available as an alternative remedy.