Gloria Macapagal-Arroyo v. People: "OK, GMA" and the Plunder Law

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I. INTRODUCTION

In the wake of Martial Law and former President Ferdinand Emmanuel E. Marcos' 21-year regime, government prosecutors were faced with the monumental task of filing multiple and individual criminal cases against the former President for each and every crime committed during his term.[1] The difficulty of filing charges prompted the Senate and the House of Representatives to file Senate Bill (S.B.) No. 733[2] and House Bill (H.B.)

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1. An Act Defining and Penalizing the Offense of Plunder, Senate Bill (S.B.) No. 733, explan. n., 8th Cong., 2d Reg. Sess. (1988).
2. An Act Defining and Penalizing the Offense of Plunder, S.B. No. 733, 8th Cong., 2d Reg. Sess. (1988).

No. 22752,[3] respectively. These bills were eventually consolidated into Republic Act (R.A.) No. 7080 (Plunder Law).[4]

Although the aforementioned bills underwent a number of changes during the legislative deliberations, the Plunder Law itself remained relatively untouched after publication. It was amended in 1993 by R.A. No. 7659,[5] which reduced the minimum amount required for plunder from ₱75 million to ₱50 million,[6] but the elements of the crime[7] of plunder are essentially the same as they were when the law first came into effect in 1991:

> (1) Any public officer who acts by himself [or herself] or in connivance with members of his [or her] family, relatives by affinity or consanguinity, business associates, subordinates[,] or other persons;[8]
>
> (2) Amasses, accumulates[,] or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1[ ](d) hereof;[9] and

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3. An Act Defining and Penalizing the Crime of Plunder, House Bill No. 22752, 8th Cong., 2d Reg. Sess. (1988).
4. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991).
5. *Id.* § 2 & An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes, Republic Act No. 7659 (1993).
6. Republic Act No. 7080, § 2 & Republic Act No. 7659, § 12.
7. The Plunder Law is a special penal law, and special penal laws are ordinarily considered "offenses" and not "crimes." However, the title of the law is "The *Crime* of Plunder" because the legislators wanted to impress the fact that this is a crime *malum in se* and not merely *malum prohibitum*. CONG. REC., Vol. IV, at 1398, 8th Cong., 2d Reg. Sess. (June 6, 1989).
8. Republic Act No. 7080, § 2.
9. *Id.* Section 1 (d) of the same law provides that ill-gotten wealth may be acquired by any combination or series of the following means or similar schemes:
   (a) [t]hrough misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
   (b) [b]y receiving, directly or indirectly, any commission, gift, share, percentage, kickback[,] or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;
   (c) [b]y the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions,

(3) In the aggregate amount or total value of the at least ... [ ]₱50,000,000.00[ ].[10]

That is, of course, until the case of *Gloria Macapagal-Arroyo v. People*.[11] In 2012, the Ombudsman filed a case against former President Gloria Macapagal-Arroyo (President Arroyo) and several high-ranking public officials from the Philippine Charity Sweepstakes Office (PCSO) for plundering the national treasury of almost ₱366 million.[12] Four years later, in July 2016, in a highly controversial and politicized decision, the Supreme Court voted 10-4 in favor of dismissing the charges against former President Arroyo.[13]

The decision drew harsh criticism from an entire spectrum of legal and political commentators.[14] It also, unfortunately, substantially changed the Plunder Law itself.

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agencies[,] or instrumentalities of Government owned or controlled corporations or their subsidiaries;

(d) [b]y obtaining, receiving[,] or accepting directly or indirectly any shares of stock, equity[,] or any other form of interest or participation[,] including the promise of future employment in any business enterprise or undertaking;

(e) [b]y establishing agricultural, industrial or[,] commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f) [b]y taking advantage of official position, authority, relationship, connection[,] or influence to unjustly enrich himself [or herself] or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

Id. § 1 (d).

10. *Id.*

11. Macapagal-Arroyo v. People, 797 SCRA 241 (2016).

12. *Id.* at 269.

13. More accurately, the Court granted her demurrer to evidence against the Ombudsman's Information against her, effectively dismissing the case with prejudice.

14. *See, e.g.*, Margie Megan Lebrando, *Getting away with plunder*, Jan. 6, 2017, PHIL. DAILY INQ., *available at* http://opinion.inquirer.net/100584/getting-away-plunder (last accessed Aug. 10, 2017) & Rod Kapunan, *Noynoy on the acquittal of GMA*, July 23, 2016, MANILA STAND. TODAY, *available at* http://manilastandard.net/opinion/columns/backbencher-by-rod-kapunan/211381/noynoy-on-the-acquittal-of-gma.html (last accessed Aug. 10, 2017).

This Essay will analyze the case of *Gloria Macapagal-Arroyo* by examining the arguments therein and its implications for the future. Part I of this Essay is this Introduction; Part II will take a look at some of the jurisprudence before the *Gloria Macapagal-Arroyo* case; Part III will be devoted to discussing the nature of the Plunder Law; Part IV will tackle the major issues in the case itself; and Part V will discuss a few of the implications this ruling might have on future cases of plunder.

II. BRIEF HISTORY

Just two years after the Plunder Law was passed, it was amended by R.A. No. 7659, which lowered the required the threshold amount from ₱75 million to ₱50 million and made the crime punishable by death.[15] Then, in 1999, in the case of *Organo v. Sandiganbayan*,[16] the Supreme Court ruled that it was also impliedly amended by R.A. No. 8249.[17]

In *Organo*, four employees of the Bureau of Internal Revenue were accused of misappropriating over ₱190 million worth of tax revenue payments for their personal gain.[18] The case was dismissed based on lack of jurisdiction on the part of the Sandiganbayan.[19] While Section 3 of the Plunder Law provides that "all prosecutions under [the Plunder Law] shall be within the jurisdiction of the Sandiganbayan[,]"[20] this provision was

15. Republic Act No. 7659, § 12. The death penalty was suspended in 2006. There are plans to reinstate the same, but plunder is excluded as a crime punishable by death. An Act Prohibiting the Imposition of Death Penalty in the Philippines, Republic Act No. 9346 (2006); An Act Imposing The Death Penalty On Certain Heinous Crimes, Repealing For The Purpose Republic Act No. 9346, Entitled "An Act Prohibiting The Imposition Of Death Penalty In The Philippines", And Amending Act No. 3815, As Amended, Otherwise Known As "The Revised Penal Code", And Other Special Penal Laws, H.B. No. 4727, 17th Cong., 1st Reg. Sess. (2016); & DJ Yap, *Plunder excluded from death penalty*, Feb. 11, 2017, PHIL. DAILY INQ., *available at* http://newsinfo.inquirer.net/870463/plunder-excluded-from-death-penalty (last accessed Aug. 10, 2017).

16. Organo v. Sandiganbayan, 314 SCRA 135 (1999).

17. *Id.* at 139-40 & An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes, Republic Act No. 8249 (1997).

18. *Organo*, 314 SCRA at 137.

19. *Id.* at 140.

20. Republic Act No. 7080, § 3.

impliedly modified by the passage of R.A. No. 8249.[21] Under the later law, the jurisdiction over public officers with a Salary Grade below "27" is with the Regional or Municipal Trial Court.[22] Thus, even in Plunder, only public officers with Salary Grades "27" or higher are to be tried in the Sandiganbayan.[23]

A few years later, in the early 2000s, came the landmark case of *Joseph Ejercito Estrada v. Sandiganbayan*[24] and its sister case, *Jose "Jinggoy" Estrada v. Sandiganbayan (Third Division)*.[25] These cases are probably the most important cases in the history of the Plunder Law — they dealt with one of the biggest scandals in the country, with former President Joseph Ejercito Estrada (President Estrada) being the highest-ranking official to be accused and eventually charged of plunder at the time.[26]

In *Joseph Ejercito Estrada*, President Estrada challenged the constitutionality of the Plunder Law.[27] He anchored his case on the void-for-vagueness doctrine in relation to the words "combination" and "series" in Section 1 (d) of the Plunder Law.[28]

The Supreme Court was not swayed. According to them, the void-for-vagueness doctrine does not apply to penal statutes,[29] and the meanings of the words "combination" and "series" should be understood in their natural, plain, and ordinary sense.[30] Citing the dictionary and the legislative deliberations stating that the words should be understood only in their ordinary sense,[31] the Court defined combination and series as follows —

21. *Organo*, 314 SCRA at 140. The Supreme Court emphasized that Section 3 of the Plunder Law has the phrase "[u]ntil otherwise provided by law." Republic Act No. 8249 was that law. *Id.*

22. *Id.* at 139 (citing Republic Act No. 8249, § 4 (b)).

23. *Id.*

24. Joseph Ejercito Estrada v. Sandiganbayan, 369 SCRA 394 (2001).

25. Jose "Jinggoy" Estrada v. Sandiganbayan (Third Division), 377 SCRA 538 (2002). The case of Edward Serapio, another crony of President Estrada, also went up to the Supreme Court, but it is not discussed in this Essay because the pertinent points of that case are essentially the same as that in *Jinggoy Estrada*.

26. *Joseph Ejercito Estrada*, 369 SCRA at 427.

27. *Id.*

28. *Id.* at 427 & 435.

29. *Id.* at 439.

30. *Id.* at 436.

31. *Id.* at 436-38.

> Thus[,] when the Plunder Law speaks of ['']combination,['] it is referring to at least two [ ] acts falling under different categories of enumeration provided in [Section 1 (d)], e.g., raids on the public treasury in [Section 1 (d) (1)] and fraudulent conveyance of assets belonging to the National Government under [Section 1 (d) (3)].
>
> On the other hand, to constitute a ['']series[,'] there must be two [ ] or more overt or criminal acts falling under the same category of enumeration found in [Section 1 (d)] say, misappropriation, malversation[,] and raids on the public treasury, all of which fall under [Section 1 (d) (1)].[32]

Both the Court and the legislators were clear that plunder cannot be committed through a single act.[33] Even if the said act were to rob the National Treasury of over a hundred million pesos, the same would not constitute plunder, only graft and corruption.[34] It is necessary that there be two acts.[35]

Then, in 2014, a number of public officials were accused of misusing their allocation from the Priority Development Assistance Fund (PDAF) or "pork barrel" funds with the help of one Janet Lim Napoles (Napoles).[36] The events spawned a number of cases, most of which are still undergoing trial today.[37]

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32. *Joseph Ejercito Estrada*, 369 SCRA at 438.

33. *Id.* at 436-38.

34. RUFUS B. RODRIGUEZ, THE CRIME OF PLUNDER IN THE PHILIPPINES 129 (2002). Rodriguez cites the House of Representatives Journal from the 7 May 1991 Session of the second Regular Session of the eighth Congress.

35. *Joseph Ejercito Estrada* not only affirmed the constitutionality of the law, it also thoroughly discussed the nature of the law of plunder and conspiracy; a discussion later expanded in *Jose "Jinggoy" Estrada. Joseph Ejercito Estrada*, 369 SCRA at 431.

36. *See generally*, Kristine Angeli Sabillo & Matikas Santos, *Napoles, 37 others face plunder, graft raps*, Sep. 16, 2013, PHIL. DAILY INQ., *available at* http://newsinfo.inquirer.net/488567/napoles-3-senators-face-plunder-raps-over-pork-barrel-scam (last accessed Aug. 10, 2017).

37. *See, e.g.*, Marc Jayson Cayabyab, *Napoles, Revilla to finally face trial for plunder*, June 15, 2017, PHIL. DAILY INQ., *available at* http://newsinfo.inquirer.net/905730/napoles-revilla-to-finally-face-trial-for-plunder (last accessed Aug. 10, 2017).

III. THE PLUNDER LAW

A. Malum in Se

Plunder is one of those few special penal laws that are not *malum prohibita* but *malum in se*.[38] Intent is necessary.[39] The Supreme Court, citing the Separate Opinion of Justice Vicente V. Mendoza in *Joseph Ejercito Estrada*, has noted that the rules on mitigating and aggravating circumstances and degree of participation apply to plunder.[40] Section 2 of the Plunder Law states that "[i]n the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court."[41] Thus —

> The application of mitigating and extenuating circumstances in the Revised Penal Code to prosecutions under the Anti-Plunder Law indicates quite clearly that *mens rea* is an element of plunder since the degree of responsibility of the offender is determined by his [or her] criminal intent.[42]

The Court also pointed out that when R.A. No. 7659 amended the Plunder Law, the former made it clear that the crime of plunder is considered inherently wrong —

> WHEREAS, the crimes punishable by death under [R.A. No. 7659] are heinous for being grievous, odious[,] and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity[,] and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized[,] and ordered society[.][43]

In the words of Justice Marvic Mario Victor F. Leonen, it is "an offense so debased, it may as well be characterized as the apex of crimes chargeable against public officers."[44]

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38. *Joseph Ejercito Estrada*, 369 SCRA at 451.

39. *Id.*

40. *Id.* at 452. (citing *Joseph Ejercito Estrada*, 369 SCRA at 479 (J. Mendoza, concurring opinion)).

41. Republic Act No. 7080, § 2 (as amended) (also known as the Plunder Law).

42. *Id.* at 451-53 (citing *Joseph Ejercito Estrada*, 369 SCRA at 478-80 (J. Mendoza, concurring opinion)). Justice Vicente V. Mendoza also considered that the above phrase may apply only to the first part of the sentence — "[persons] who participated." However, according to him, "[t]here is no reason to believe [ ] that it does not apply as well to the public officer as principal in the crime." *Id.*

43. Republic Act No. 7659, whereas cl. para. 2.

44. *Macapagal-Arroyo*, 797 SCRA at 467 (J. Leonen, dissenting opinion).

B. Distinguished from Anti-Graft and Corruption

The Plunder Law should be distinguished from R.A. No. 3019[45] and Title VII of the Revised Penal Code.[46] While all three deal with bribery, extortion, malversation, and other similar acts by public officers, the Plunder Law is a separate and distinct law.[47] It is not merely an "extension" or "umbrella" crime for the two.[48]

This is clear from the lengthy debate between Congressman Pablo P. Garcia (Congressman Garcia) and Senator Wigberto E. Tañada (Senator Tañada) over the amount involved. Senator Tañada had wanted to reduce the original amount of ₱100 million to ₱50 million because he felt that such a high bar would make the law useless. To him, it was not about the amount, but about the national character of the crime.[49] He wanted it to have more impact in situations where national interest is already threatened, but the amount of money plundered had not yet met the required ₱100 million.[50] Congressman Garcia, on the other hand, was insistent that the amount should be kept at ₱100 million because to do otherwise would make it practically indistinguishable from R.A. No. 3019 —

> [Congressman Garcia]. ... So we want to distinguish this crime from the ordinary crime of malversation or [ ] the Anti-Graft and Corrupt Practices Act because ... we are not abolishing these crimes [—] these crimes still exist in our statute books. So, the prosecutors may have problems later on [with respect to] how to deal with this particular crime. Say, a treasurer of a[,] say, government-owned bank can easily malverse maybe more than [₱50 million] and yet we could [sic] define that crime as plunder but [only as] a simple case of malversation or estafa. So[,] we took this into account that we want really to create another crime other than the crimes defined in the Revised Penal Code or under the Anti-Graft and Corrupt Practices Act.
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> ...
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> [Senator Tañada]. ... [A]s you said, it is not just really the amount. It would be the [extent] of ... the series of criminal acts that had been committed. ...

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

46. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, tit. VII (1932).

47. RODRIGUEZ, *supra* note 34, at 121-22.

48. *See* RODRIGUEZ, *supra* note 34, at 122.

49. *Id.* at 120-21.

50. *Id.* Senator Tañada used the example of the Garchitorena Scam. RODRIGUEZ, *supra* note 34, at 121.

So[,] we would think that since it will not only be the amount involved that would be the crucial factor to be considered but it would only be one of the factors, then there would be basis in considering reducing the amount to [₱50] million [ ].

[Congressman Garcia]. The danger here is that we are creating, we are enacting a law which will practically repeal not only the provisions in the Revised Penal Code but also the Anti-Graft and Corrupt Practices Act. Crimes of this nature usually[,] or even invariably[,] involve several people. There is always conspiracy. Because in malversation, for example, the official concerned connives with the accountant and the auditor. So there is conspiracy. There is a series of acts. But then in our definition of ill-gotten wealth, ill-gotten wealth as defined in this bill, because there can be ill-gotten wealth involving only five thousand or three thousand pesos, but ill-gotten wealth as defined in this bill refers to wealth of substantial or immense proportion. ... And so[,] if we place the amount [₱50] million, there would practically be no distinction between the Anti-Graft and Corrupt Practices Act and this crime of plunder. ... .

[Senator Tañada]. Well, at the same time, Mr. Congressman, with the existing and prevailing laws that we have, which you have referred to, we have not yet really even caught the so-called big fish. We are still looking for that big fish.

...

[Congressman Garcia]. Well, let's face it. The enactment of this, no, not exactly, [ ] the filing of this Bill in the Senate [—] because it started in the Senate[—] was apparently the result of what happened during the Marcos years. How schemes, strategies were resorted to in order to plunder the nation's wealth and raid the treasury of the country. Because, actually, we have enough laws in our statute books[—] we have the Anti-Graft and Corrupt Practices Act and we have also the law on the ill-gotten wealth and [ ] the provisions of the Revised Penal Code. ... .

...

Now, if we are saying that crimes committed by public officers are not punished enough, then, we amend the Anti-Graft and Corrupt Practices Act by providing for stiffer penalties. ... .

[W]hat difference would there be between the crime of plunder and the crime penalized under the Anti-Graft and Corrupt Practices Act if we set the amount at only [₱50] [million]? One big construction would already now require an appropriation of some [250] [million] or even [billions] of pesos.

Now, if there is malversation here or there is Anti-Graft and Corrupt Practices here, then you will prosecute that under plunder[.] [T]hat is not plunder. That is a simple case of malversation or violation under the Anti-Graft and Corrupt Practices Act. So, we are trivializing this crime, as a

> matter of fact, because any and all crimes that may be committed under the Anti-Graft and Corruption Act may also be prosecuted under the crime of plunder. We want to distinguish this from the Anti-Graft and Corrupt Practices Act. The Anti-Graft and Corrupt Practices Act under Section 3 of the definition is already [all-embracing]. It embraces any and all criminal acts committed by public officers. But here, we are trying to deliver a message that the crime of plunder is one committed by an administration[,] like the past administration[,] through the aid of cronies [and] nominees.[51]

The two eventually arrived at a compromise of ₱75 million,[52] but unfortunately for Congressman Garcia, R.A. No. 7659 soon after amended this portion of the law and reduced the amount down to ₱50 million.[53] Still, the Plunder Law is clearly very distinct from R.A. No. 3019. It contemplates a "crime of immense magnitude"[54] — the plunder of an entire nation through some conspiracy or combination of acts.[55] The importance of the words "combination" or "series," as well as the idea of plunder as a conspiracy, are further taken up under the next Section of this Essay.

C. Plunder and Conspiracy

The Plunder Law, at the outset, contemplates a conspiracy.[56] The first element of the crime is broad enough to allow a person to be convicted of plunder even alone,[57] but, as Congressman Garcia said during the legislative deliberations, in these kinds of crimes, "[t]here is always conspiracy."[58]

The word conspiracy is found in Section 4 of the law —

> [Section 4. Rule of Evidence]. — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate[,] or acquire ill-gotten wealth, it being sufficient to establish

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51. *Id.* at 119–124.

52. *Id.* at 125.

53. Republic Act No. 7659, § 12.

54. RODRIGUEZ, *supra* note 34, at 120.

55. *Id.* at 121.

56. *Id.*

57. Republic Act No. 7080, § 2. The law states that "[a]ny person, *by himself, or* in connivance with" others may be convicted of the said crime. *Id.* (emphasis supplied).

58. RODRIGUEZ, *supra* note 34, at 121.

> beyond reasonable doubt *a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.*[59]

Like "combination" and "series," the word "pattern" was assailed in *Joseph Ejercito Estrada* for being vague.[60] The Supreme Court, in defining the word "pattern," simply quoted the Sandiganbayan and dissected the last line of Section 4, in relation to Section 1 (d) and Section 2 —

> [U]nder [Section] 1 (d) of the law, a 'pattern' consists of at least a combination or series of overt or criminal acts enumerated in [Subsections] (1) to (6) of [Section] 1 (d). Secondly, pursuant to [Section] 2 of the law, the pattern of overt or criminal acts is directed towards a common purpose or goal which is to enable the public officer to amass, accumulate[,] or acquire ill-gotten wealth. And thirdly, there must either be an 'overall unlawful scheme' or 'conspiracy' to achieve said common goal.[61]

Additionally, they stated that —

> the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal[-]accused and public officer and others conniving with him [or her] follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.[62]

The breakdown of Section 4 by the Sandiganbayan as a "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy"[63] further supports the idea that plunder always contemplates a conspiracy. It is a crime that it is almost impossible to commit alone.[64]

In fact, the word "pattern" was most likely taken from the Rackeeter Influenced and Corrupt Organizations (RICO) Act[65] of the United States,

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59. Republic Act No. 7080, § 4 (as amended) (also known as the Plunder Law) (emphasis supplied).

60. *Joseph Ejercito Estrada*, 369 SCRA at 435.

61. *Id.* at 439.

62. *Id.*

63. Republic Act No. 7080, § 4 & *Joseph Ejercito Estrada*, 369 SCRA at 435.

64. RODRIGUEZ, *supra* note 34, at 120.

65. 18 U.S.C. §§ 1961-68 (1970). The Rackeeter Influenced and Corrupt Organizations (RICO) Act defines "pattern" or "rackeetering activity" as an act that "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity[.]" *Id.*

which partly inspired the Plunder Law.[66] The RICO Act was enacted because the United States legislators recognized that in organized crime, those held directly liable were often only a small part of a criminal network.[67] The heads of these criminal syndicates, the criminal masterminds, were difficult to catch because of the lack of direct evidence against them.[68] The concept is the same in the Plunder Law — both laws are designed to tie crimes together and "catch the big fish."[69]

Under the RICO Act, conspiracy, by itself, is a crime.[70] In contrast, in the Philippines, as a general rule conspiracy itself is not a crime — it is only a *means* to commit a crime.[71] In *Joseph Ejercito Estrada*, it was even held that the allegation of conspiracy is only a matter of *procedure*.[72] In that case, one of President Estrada's grounds for assailing the information against him was that the word "pattern" in Section 4[73] was an element of the crime, and therefore must be sufficiently defined.[74] The idea was that, even though the word was not under Section 2, it was so essential to the crime that it must be an element without which there could be no conviction of plunder.[75] The Court, in answering such argument, clarified that Section 4

66. Rodriguez, *supra* note 34, at 120-21 & *Jose "Jinggoy" E. Estrada*, 377 SCRA at 556 (citing LAFAVE & SCOTT, CRIMINAL LAW 550-51 (1986)). "Pattern" is defined differently in the RICO Act from the Plunder Law, but it similarly requires a "proof of a 'pattern' of racketeering activity." USLegal, Racketeer Influenced and Corrupt Organizations (RICO) Act, *available at* https://extortion.uslegal.com/racketeer-influenced-and-corrupt-organizations-rico-act (last accessed Aug. 10, 2017).

67. *See* Justia, Criminal Law: Racketeer Influenced and Corrupt Organizations (RICO) Law, *available at* https://www.justia.com/criminal/docs/rico.html (last accessed Aug. 10, 2017).

68. *Id.*

69. *See* JUX Law Firm, RICO — Overview of Racketeer Influenced & Corrupt Organizations Act, *available at* https://jux.law/overview-of-racketeer-influenced-corrupt-organizations-rico-act (last accessed Aug. 10, 2017).

70. 18 U.S.C. § 1962, ¶¶ (a)-(c).

71. *Jose "Jinggoy" Estrada,* 377 SCRA at 557. Conspiracy itself is only a crime if the law specifically provides for it, such as in treason, rebellion, and sedition. *Id.*

72. *Joseph Ejercito Estrada*, 369 SCRA at 450. *Compare* 18 U.S.C. § 1962, ¶¶ (a)-(c) *with* Republic Act No. 7080, § 4.

73. Republic Act No. 7080, § 4.

74. *Joseph Ejercito Estrada*, 369 SCRA at 449-50.

75. *Id.*

> purports to do no more than prescribe a rule of procedure for the prosecution of a criminal case for plunder. Being a purely procedural measure, [Section] 4 does not define or establish any substantive right in favor of the accused but only operates in furtherance of a remedy. It is only a means to an end, an aid to substantive law. Indubitably, even without invoking [Section] 4, a conviction for plunder may be had[.][76]

Section 4 is a *procedural* rule on evidence, as clear from the epigraph of the provision.[77] The Court further emphasized that the only elements of plunder are those enumerated under Section 2:[78] that the person is a public officer, acting by himself or herself or in connivance with his or her family; that the acts enumerated under Section 1 (d) of the Plunder Law are committed; and that a minimum amount of ₱50 million is involved.[79]

The other case involving a determination of the elements of plunder spawned from the same facts as *Joseph Ejercito Estrada*. Jose "Jinggoy" E. Estrada (Jinggoy Estrada), President Estrada's son, was charged with plunder in conspiracy with the former President.[80] The Amended Information filed against President Estrada read, in part —

> (a) by receiving, OR collecting, directly or indirectly, on SEVERAL INSTANCES MONEY IN THE AGGREGATE AMOUNT OF ... [ ]₱545,000,000.00[ ], MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK[,] OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR *in connivance with co-accused ... Jose 'Jinggoy' Estrada* ... [.][81]

Jinggoy Estrada was charged under the first paragraph of the Information for profiting from illegal *jueteng* operations in conspiracy with Atty. Edward Serapio and his father.[82] The second, third, and fourth paragraphs of the Amended Information charged President Estrada and various others of taking money from the tobacco excise tax share allocated for the province of Ilocos Sur; Government Service Insurance System (GSIS) and Social Security System (SSS) funds; and other kickbacks, respectively.[83] Jinggoy Estrada's

76. *Id.* at 450.

77. *Id.* (emphasis supplied).

78. *Id.*

79. Republic Act No. 7080, § 2.

80. *Jose "Jinggoy" Estrada*, 377 SCRA at 546-47.

81. *Id.* (emphasis supplied).

82. *Id.* at 550-51.

83. *Id.* at 547-48.

name was not listed under the other three paragraphs.[84] Thus, one of his attacks on the Amended Information was that he was not named in the three other acts, and should be given a penalty lesser than *reclusion perpetua*.[85]

The Supreme Court described the conspiracy between President Estrada and his various cronies as a "wheel conspiracy."[86] Citing United States law, the Court described the wheel conspiracy as one where there is a central person, or a hub — in this case, President Estrada — who deals separately with different persons, or different spokes of the wheel, in order to achieve his ultimate goal of amassing, accumulating, or acquiring ill-gotten wealth.[87] Jinggoy Estrada, as one of the spokes, was therefore liable even for the acts of the other spokes of the wheel as he was part of the entire conspiracy.[88]

Here, the Supreme Court stated that the *gravamen of the charge of conspiracy*[89] is

> not that each accused agreed to receive protection money from illegal gambling, misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts[,] and kickbacks[.] [Rather], *it is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation*[,] *and acquisition of ill-gotten wealth of and/or for former President Estrada*.[90]

In short, the Court held Jinggoy Estrada liable under the well-established doctrine that in conspiracy, the act of one is the act of all.[91] However, this particular argument is not without criticism.[92] Jinggoy Estrada was charged with funneling more or less ₱545,000,000 from illegal gambling proceeds to his father's dummy corporations.[93] The amount, even without the other sources of illegal funds, far exceeds the 50 million-peso requirement in the

84. *Id.* at 547-48 & 554.

85. *Id.* at 551-52.

86. *Jose "Jinggoy" E. Estrada*, 377 SCRA at 556-57.

87. *Id.* at 555-56.

88. *Id.*

89. *Id.* at 555 (emphasis supplied).

90. *Id.* at 555-56 (emphasis supplied).

91. *Id.* at 552 & 555-56.

92. *See* Katrina V. Doble, Plunder: A Confusing Conspiracy at 53-54 (2004) (unpublished J.D. Thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

93. *Jose "Jinggoy" Estrada*, 377 SCRA at 547.

Plunder Law. But what if the amount in question had been ₱49 million? What if it had been in the hundred thousands, or only in the thousands? Under the doctrine in conspiracy that the act of one is the act of all, Jinggoy Estrada would still be guilty for the entire amount of plunder, regardless of his actual contribution to the same. That situation is precisely what the legislators contemplated when they included the phrase "[i]n the imposition of penalties, the degree of participation ... shall be considered by the court"[94] in Section 2 of the Plunder Law. The concept of degrees of participation, however, is incompatible with the idea that "the act of one is the act of all."[95]

As a last point on conspiracy, it is important to know that the Supreme Court established in *Jose "Jinggoy" Estrada* that Jinggoy Estrada was, without a doubt, sufficiently charged with conspiracy.[96] Again, there are two forms of conspiracy: conspiracy as a crime in itself, and conspiracy as a means to commit a crime.[97] In the first form, conspiracy is an element of the crime, and must be sufficiently established in the Information the same way that any other element is established — it must be alleged and clearly set forth in the complaint.[98] On the other hand, in conspiracy as a means to commit a crime, "there is less necessity of reciting its particularities in the Information[.]"[99] Citing the case of *People v. Quitlong*,[100] the Court said that, to allege conspiracy as a means of committing a crime, it is not even necessary to use the word "conspiracy" in the Information.[101] It is enough that the following requisites are met:

> (1) [ ] use of the word ['']conspire,['] or its derivatives or synonyms, such as confederate, connive, collude, etc[.]; or
>
> (2) [ ] allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the

94. Republic Act No. 7080, § 2.

95. Doble, *supra* note 92, at 53.

96. *Jose "Jinggoy" Estrada*, 377 SCRA at 565.

97. *Id.* at 557.

98. *Id.* at 561-63 (citing REVISED RULES OF CRIMINAL PROCEDURE, rule 110, § 6).

99. *Id.* at 563.

100. People v. Quitlong, 292 SCRA 360 (1998).

101. *Jose "Jinggoy" Estrada*, 377 SCRA at 563-65 (citing *Quitlong*, 292 SCRA at 375-77).

> accused to competently enter a plea to a subsequent indictment based on the same facts.[102]

The Court emphasized that the "allegation of conspiracy in the Information must not be confused with the adequacy of the evidence that may be required to prove it."[103] Even if Jinggoy Estrada was *not clearly charged* in the other three acts — which he actually was not, his name not having been listed in any of the three other acts — he was still sufficiently charged with conspiracy for having acted "in connivance with" President Estrada.

Quitlong continued to be upheld 17 years later, in the 2015 case of *Enrile v. People*.[104] Senator Juan Ponce Enrile (Senator Enrile) filed a motion for a bill of particulars against the Ombudsman, claiming that the Information against him did not properly allege "[w]ho among the accused acquired the alleged [']ill-gotten wealth ... [.']"[105] The Court, aside from citing *Quitlong*, also clarified that there is no need to specify who among the accused had acquired the ill-gotten wealth[106] —

> Since the crime of plunder may be done in connivance or in conspiracy with other persons, and the Information filed clearly alleged that [Senator] Enrile and Jessica Lucila [G.] Reyes conspired with one another and with [Napoles], Ronald John Lim[,] and John Raymund De Asis, then it is unnecessary to specify, as an essential element of the offense, whether the ill-gotten wealth amounting to at least ₱172,834,500.00 had been acquired by one, by two[,] or by all of the accused. *In the crime of plunder, the amount of ill-gotten wealth acquired by each accused in a conspiracy is immaterial* for as long as the total amount amassed, acquired[,] or accumulated is at least ₱50 million.[107]

IV. *GLORIA MACAPAGAL-ARROYO V. PEOPLE*

The facts of *Gloria Macapagal-Arroyo* are simple. Between 2008 and 2010, Rosario C. Uriarte (Uriarte), then PCSO General Manager and Vice-Chairman, made several cash advances (letter-requests) from the Confidential and Intelligence Fund (CIF) of the PCSO,[108] purportedly to address

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102. *Jose "Jinggoy" Estrada*, 377 SCRA at 565.

103. *Id.*

104. Enrile v. People, 766 SCRA 1, 53 (2015).

105. *Id.* at 52.

106. *Id.* (emphasis omitted).

107. *Id.* (emphasis supplied).

108. *Macapagal-Arroyo*, 797 SCRA at 270 & 279. Sergio O. Valencia, Philippine Charity Sweepstakes Office (PCSO) Chairman of the Board of Directors, also made cash advances, although not nearly as much as Uriarte. *Id.* at 270-73.

"fraudulent schemes and nefarious activities ... which affect the integrity of [the PCSO's] operations[.]" [109] These cash advances were ripe with irregularities: the CIF funds were commingled with the charity, operating, and prize funds of the PCSO, contrary to law;[110] the cash advances were not supported by documentation, but were still signed and approved by the PCSO Budget and Accounts Officer Benigno B. Aguas (Aguas), also contrary to law;[111] and the money was withdrawn even though PCSO was already working on a deficit.[112] In spite of all these irregularities, the cash advances were signed and approved by President Arroyo with an unqualified "OK."[113]

When an investigation into the PCSO funds revealed that these cash advances, totaling over ₱366 million, had vanished, the Ombudsman filed a case against President Arroyo, Uriarte, Aguas, and several others for plunder.[114] After the prosecution had rested its case, President Arroyo filed a demurrer to evidence, alleging that the evidence presented against her was not enough to show that she had either committed any overt act of plunder or that she had been in conspiracy with Uriarte, Aguas, or the others.[115] The Sandiganbayan denied the demurrer for evidence, and President Arroyo brought the case up to the Supreme Court on a petition for certiorari under Rule 65, claiming grave abuse of discretion on the part of the Sandiganbayan.[116]

The denial of a demurrer to evidence is an interlocutory order.[117] It is the Court's way of saying, "there is enough here for us to go to trial." Therefore, as a general rule, the remedy for the parties is to continue to trial and determine the guilt or innocence of the parties there.[118] The issue may be raised to the Supreme Court only if the lower court commits "grave

109. *Id.* at 324.

110. *Id.* at 274.

111. *Id.* at 261.

112. *Id.* at 274–78.

113. *Macapagal-Arroyo*, 722 SCRA at 301.

114. *Id.* at 270–71. The other parties involved in this case will not be discussed. The case of Benigno B. Aguas was consolidated with the case of President Arroyo, but it is not discussed in this Essay because except for the specific overt act, the Supreme Court's discussion is applicable to both.

115. *Id.* at 296–97.

116. *Id.* at 302.

117. *Id.* at 309.

118. *Id.*

abuse of discretion"[119] — if the lower court, despite the clear lack of evidence against the accused, denies the demurrer and continues to trial.[120]

This is the standard with which the case of *Gloria Macapagal-Arroyo* should be read. Did the prosecution, in presenting their evidence, present so little that the Supreme Court had jurisdiction to step in and strike down the ruling of the Sandiganbayan? The Supreme Court harps on the lack of clarity of the Information against President Arroyo,[121] the weakness of her "OK" as an overt act of plunder,[122] and the lack of conspiracy.[123] However, it seems as though the Supreme Court may have applied "reasonable doubt" as a standard for weighing the evidence against President Arroyo, and not the "sufficient evidence" standard that would have been the Sandiganbayan's standard,[124] seemingly substituting their own discretion for that of the lower court's. Given the overwhelming amount of evidence presented by the prosecution, the amounts involved, the public interest, and the very nature of President Arroyo's position as the most powerful person in the country,[125] it was arguably more than just reasonable for the Sandiganbayan to want a full-blown trial — it was their duty. As Chief Justice Maria Lourdes A. Sereno said in her dissenting opinion —

> The crime charged, the personalities involved, the amount in question, and the public interest at stake [ ] are considerations that should prompt us to demonstrate an even hand, conscious that the benefits of the [d]ecision would cascade to the least powerful accused in all future proceedings. We must be mindful of the potentially discouraging impact of a grant of this particular demurrer on the confidence of trial courts.
>
> Nearly ₱366 million of the People's money is missing. Direct documentary evidence whereby petitioner Aguas states that a large part of this[,] or ₱244.5 million to be exact[,] was diverted to the Office of the President under petitioner [President] Arroyo was considered sufficient by the Sandiganbayan to require both petitioners herein to proceed with the presentation of their defense evidence. This cogent conclusion by the

119. *Macapagal-Arroyo*, 722 SCRA at 310.

120. *Id.* at 310.

121. *Id.* at 314.

122. *Id.*

123. *Id.* at 311.

124. *Macapagal-Arroyo*, 797 SCRA at 371 (J. Leonen, dissenting opinion).

125. *Macapagal-Arroyo*, 797 SCRA at 372 (C.J. Sereno, dissenting opinion).

> constitutionally-mandated court that has tried the prosecution's evidence on plunder cannot be overridden willy-nilly by this Court.[126]

That said, the purpose of this Essay is not to analyze the propriety of a petition for *certiorari* in a denial of a demurrer to evidence. The Supreme Court went well into the substantial arguments of both parties, and it is those arguments that will be examined now.

A. New Elements

The decision in *Gloria Macapagal-Arroyo* stands out from the other cases on plunder for two reasons: the concept of *personal gain* and the concept of a *mastermind*. Prior to this case, these two elements had barely, if at all, been mentioned in the other cases on plunder. Yet, in *Gloria Macapagal-Arroyo*, they were not only central to ruling in favor of President Arroyo, they are also possibly forms of judicial legislation.

1. Personal Gain

President Arroyo's first defense against the plunder charges against her was the fact that the prosecution had never proved that she had "amassed, accumulated[,] or acquired even a single peso of the alleged ill-gotten wealth[.]"[127] The Sandiganbayan, at the first instance, rebuffed this defense by citing the Congressional deliberations of one of the bills[128] that eventually became the Plunder Law. There, it was clarified that the words "personal benefit" had been purposefully removed from the law.[129]

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126. *Id.* at 373 (C.J. Sereno, dissenting opinion).

127. *Macapagal-Arroyo*, 797 SCRA at 303 (emphasis omitted).

128. Referring to Senate Bill No. 733. *Id.* at 334.

129. The deliberations in question —

> Senator Enrile. The word here, Mr. President, [']such public officer or person who conspired or knowingly benefited[.'] One does not have to conspire or rescheme. The only element needed is that he or she [']knowingly benefited[.'] A candidate for the Senate[,] for instance, who received a political contribution from a plunderer, knowing that the contributor is a plunderer and therefore, he [or she] knowingly benefited from the plunder, would he [or she] also suffer the penalty, Mr. President, for life imprisonment?
>
> Senator Tañada. In the [Committee] amendments, Mr. President, we have deleted these lines 1 to 4 and part of line 5, on page 3. But, in a way, Mr. President, it is good that the Gentleman is bringing out these questions[.] I believe that under the examples he has given, the Court will have to[.]

The Supreme Court reversed the Sandiganbayan on this point.[130] Citing the same Senate deliberations, the Court said —

> The exchanges between Senator Enrile and Senator Tañada reveal, therefore that what was removed from the coverage of the bill and the final version that eventually became the law was a person who was not the main plunderer or a co-conspirator, but one who personally benefited from the plunderer's action. The requirement of personal benefit on the part of the main plunderer or his [or her] co-conspirators by virtue of their plunder was not removed.[131]

In the opinion of this Author, the Supreme Court here seems to be reading between lines that are not there. However, even assuming *arguendo* that Senator Enrile only referred to personal benefit for the passive parties, a look at the entire legislative deliberations behind the Plunder Law clearly shows that the lawmakers specifically intended that "personal benefit" *not* be necessary.

> [Congressman Garcia]. If the public official allows himself [or herself] to be used, then he [or she] is a co-conspirator in the crime, and he [or she] is equally guilty as the person who used him [or her], even if that person is only a private individual.

> Senator Enrile. How about the wife [or husband of the plunderer], Mr. President, [she or] he may not agree with the plunderer to plunder the country but because she is a dutiful wife or [he is] a faithful husband, she [or he] has to keep her or his vow of fidelity to the spouse. And, of course, she [or he] enjoys the benefits out of the plunder. Would the Gentleman now impute to her or him the crime of plunder simply because she or he knowingly benefited out of the fruits of the plunder and, therefore, ... he [or she] must suffer the penalty of life imprisonment?
>
> [Senator Jovito R. Salonga (Senator Salonga)]. That was stricken out already in the Committee amendment.
>
> Senator Tañada. Yes, Mr. President. Lines 1 to 4 and part of line 5 were stricken out in the Committee amendment. But, as I said, the examples of the Minority Floor Leader are still worth spreading in the [Record]. And, I believe that in those examples, the Court will [just have] to take into consideration all the other circumstances prevailing in the case and the evidence that will be submitted.
>
> [Senator Salonga]. In any event, ['']knowingly benefited['] has already been stricken off.[ ]

Id. at 336. (citing CONG. REC. Vol. IV, at 1403).

130. *Id.*

131. *Id.*

> [Congressman Rodolfo B. Albano (Congressman Albano)]. But he [or she] has not gained materially for such an act, but [ ] the individual was favored. For instance, in the creation of a monopoly where the public official did not profit materially for the act but it was the private individual [who did profit], will there be a crime of plunder in this case?
>
> [Congressman Garcia]. Yes, Mr. Speaker, because of conspiracy, and the profit motive may not be necessary in order that a person can be considered principal in the commission of an offense.
>
> [Congressman Albano]. Mr. Speaker, Section 2 is very definite in this, enumerating such acts or series of overt acts such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, etc. All these presuppose material gain on the principal actor of the crime. And as I have said, in this particular case, the public official, maybe out of love or, shall we say, friendship, and not being aware of the motivations of the private individual granted him [or her] favor by his [or her] official act.
>
> [Congressman Garcia]. Mr. Speaker, profit or gain is not always a necessary ingredient in the commission of the crime. Sometimes, even a motive may not be necessary because in order that conspiracy can exist, it is only sufficient that two or more persons agree on the commission of a felony and decide to commit it.
>
> [Congressman Albano]. May I just point to the bill itself, Mr. Speaker, on page 3, line 18, which states, [']conspired or knowingly benefited.['] Here is a public official who did not benefit at all.
>
> [Congressman Garcia]. Incidentally, Mr. Speaker, we have deleted that portion.[132]

Unfortunately, the Supreme Court even ruled that a *plain reading* of the words in Section 1 (d) (1) of the Plunder Law indicates that there must be *personal use* or *personal gain* on the part of the accused —

> To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation, conversion, misuse*[,] or *malversation of public funds*. ... .
>
> ...
>
> The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property

132. RODRIGUEZ, *supra* note 34, at 89-90.

> taken, the phrase *raids on the public treasury* similarly requires such use of the property taken.[133]

This interpretation, however, goes against exactly the situation that Congressman Albano contemplated. If, as explained by Congressman Albano and confirmed by Congressman Garcia, a public officer can be liable for plunder even without having gained materially, then there is no need to show "use" of the property taken. In the case of President Arroyo, it should not have mattered that the prosecution was unable to show that she received a single centavo of the missing funds.

The lawmakers, without a doubt, intended that personal benefit not be an element of the Plunder Law — and for good reason. Requiring a showing of personal benefit in a crime makes it incredibly difficult to prove. Plundered money, by nature, will be hidden behind the locked doors of Bank Secrecy laws, or on offshore accounts, or under false identities. Even Justice Estela Perlas-Bernabe, who concurred in the decision favoring President Arroyo, had this to say —

> Suppose a plunderer had already illegally amassed, acquired, or accumulated [₱50] [million] or more of government funds and just decided to keep it in his [or her] vault and never used such funds for any purpose to benefit him [or her], would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the person to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail.[134]

2. Mastermind

The existence of a conspiracy between President Arroyo, Aguas, and Uriarte, was the cornerstone of the prosecution's case against them. Without it, the entire case falls apart. Conspiracy in plunder has been thoroughly discussed in previous jurisprudence. To recapitulate, in *Joseph Ejercito Estrada*, the Supreme Court made it clear that conspiracy is a matter of procedure, and that the only elements of plunder are those enumerated in Section 2 of the law.[135] In *Jose "Jinggoy" Estrada*, the Court maintained the doctrine that in conspiracy, the act of one is the act of all. The Court upheld *Quitlong* in

133. *Macapagal-Arroyo*, 797 SCRA at 335. Some Justices also believe that the use of statutory construction in this instance is flawed. *Macapagal-Arroyo*, 797 SCRA at 399 (J. Perlas-Bernabe, concurring and dissenting opinion).

134. *Id.* at 400.

135. *Joseph Ejercito Estrada*, 369 SCRA at 450.

emphasizing that in alleging conspiracy, it is enough that there is a synonym or derivative of "conspire," and an allegation of basic facts constituting the conspiracy and that the accused is sufficiently informed of the charge against him or her.[136] The case of *Enrile*, decided just months before that of *Gloria Macapagal-Arroyo*, further confirmed the doctrine of *Quitlong*, and clarified that it need not be stated who actually gained the ill-gotten wealth.[137] Yet, the case of *Gloria Macapagal-Arroyo* has either overturned the long-standing doctrine of *Quitlong*, as upheld in *Jose "Jinggoy" Estrada* and *Enrile*, or added a new element of plunder not contemplated in any of these cases

According to Justice Lucas P. Bersamin, *ponente* in the case of *Gloria Macapagal-Arroyo*, for a case of plunder against multiple individuals to prosper, it is necessary that the Information against the accused state the existence of a "mastermind" or "main plunderer" —

> The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired[,] or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself [or herself] or in connivance with members of his [or her] family, relatives by affinity or consanguinity, business associates, subordinates[,] or other persons, amasses, accumulates[,] or acquires ill-gotten wealth in the aggregate amount or total value of at least [50 million] through a *combination* or *series* of overt criminal acts as described in Section 1[ ](d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and [his or] her co-conspirators, who may be members of [his or] her family, relatives by affinity or consanguinity, business associates, subordinates[,] or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy in the [Information] was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the [prosecution].[138]

The Information against President Arroyo was, in the words of the *ponente*, "fatally flawed" for not having identified the mastermind behind the plunder, or alleging an express conspiracy or a wheel conspiracy, in which case the mastermind would be clear.[139] The Court even went on to say that the case of *Jose "Jinggoy" Estrada* supported this conclusion because in that case, it was stated that the gravamen of the charge of conspiracy is that "each [person], by their individual acts, agreed to participate, directly or indirectly

136. *Jose "Jinggoy" Estrada*, 377 SCRA at 565.

137. *Enrile*, 766 SCRA at 1.

138. *Macapagal-Arroyo*, 797 SCRA at 319.

139. *Id.* at 322.

in the amassing, accumulation[,] and acquisition of ill-gotten wealth of and/or *for* President Estrada[,]" with emphasis on the word "for."[140]

The requirement for identification of a mastermind in the Information is necessarily incompatible with the well-established doctrine in *Quitlong*. If, in alleging conspiracy, there is not even a need to use the word "conspiracy," why should it be necessary that there is an allegation of a main plunderer, mastermind, or wheel conspiracy? The Supreme Court recognized this argument, and said —

> We are not unmindful of the holding in [*Jinggoy Estrada*] to the effect that an [Information] alleging conspiracy is sufficient if the [Information] alleges conspiracy either: (1) with the use of the word *conspire*, or its derivatives or synonyms, such as *confederate*, *connive*, *collude*, etc[.]; or (2) by allegations of the basic facts constituting the conspiracy in a manner that a person of common understanding would know what is being conveyed, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the facts. *We are not talking about the sufficiency of the* [*Information*] *as to the allegation of conspiracy, however, but rather*[,] *the identification of the main plunderer sought to be prosecuted under* [*the Plunder Law*] *as an element of the crime of plunder. Such identification of the main plunderer was not only necessary because the law required such identification*, but also because it was essential in safeguarding the rights of all the accused to be properly informed of the charges they were being made answerable for.[141]

Thus, the Court here is undoubtedly saying that the identification of a main plunderer, or mastermind, is an element of the crime of plunder.

It is humbly submitted by this Author that this is a form of judicial legislation. The Plunder Law and jurisprudence have made it clear that there are only three elements of plunder: the public officer who acts by himself or in connivance with others, a combination or series of overt or criminal acts to obtain ill-gotten wealth, and a collection of a minimum amount of ₱50 million.[142] The Supreme Court reasons that the first line of element, "[a]ny public officer who, by himself or in connivance," somehow indicates the need for a mastermind. However, the Court seems to again be reading into something that is not there. The natural, plain wording of the law only

140. *Id.* at 320 (emphasis omitted and supplied).

141. *Id.* at 321 (emphasis supplied).

142. Republic Act No. 7080, § 2 (as amended) (also known as the Plunder Law) & *Joseph Ejercito Estrada*, 369 SCRA at 450.

recognizes that the crime may be committed through conspiracy.[143] It does not make the presence of a "mastermind" an element of plunder — in fact, nowhere in the legislative deliberations for the Plunder Law are the words "mastermind" or "main plunderer" mentioned. In no case of plunder has "mastermind" been enumerated as an element of plunder or required in an Information. The case of *Joseph Ejercito Estrada* emphasized that the allegation of conspiracy is only a matter of procedure; how then could the identification of a mastermind in a conspiracy be an element? The case of *Jose "Jinggoy" Estrada*, quoted in support of this theory, simply illustrated that Jinggoy Estrada was liable for all of the acts in the conspiracy because they had the common design.

Further, it seems as though the Supreme Court had only zeroed in on the requirement of a mastermind because of the Sandiganbayan's Resolution against President Arroyo —

> What accused [President] Arroyo forgets is that although she did not actually commit any ['Jovert act['] of illegally amassing CIF funds, her act of approving not only the additional CIF funds but also their releases, aided and abetted accused Uriarte's successful raids on the public treasury. Accused [President] Arroyo is therefore rightly charged as a co-conspirator of Uriarte who accumulated the CIF funds. *Moreover, the performance of an overt act is not indispensable when a conspirator is the mastermind.*[144]

The Supreme Court considered this as grave abuse of discretion on the part of the Sandiganbayan, given that nowhere in the information was President Arroyo ever referred to as the "mastermind."[145] Yet, in the similar case of *Reyes v. Ombudsman*,[146] Napoles was also alleged to be a mastermind[147] — but in that decision, there was no controversy around the term, and certainly the conspiracy around Napoles was not shattered for its lack.[148]

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143. *Macapagal*-Arroyo, 797 SCRA at 367 (C.J. Sereno, dissenting opinion) & *Macapagal*-Arroyo, 797 SCRA at 382-83 (J. Perlas-Bernabe, concurring and dissenting opinion).

144. *Macapagal-Arroyo*, 797 SCRA at 302 (emphasis supplied).

145. *Id.*

146. Reyes v. Ombudsman, 787 SCRA 354, 372 (2016).

147. *Id.*

148. The Information against Napoles also did not contain the word, although there was, admittedly, a subtle difference between her Information and the former President's. In *Reyes* and *Enrile*, Senator Enrile and Jessica Lucila G. Reyes are accused of *conspiring with one another and with Napoles*. In *Gloria Macapagal-Arroyo*, the parties are only accused of *conspiring with one another*. Is this difference

Quitlong sufficiently established that, to establish conspiracy, it is enough that there are words like "connivance" or "conspiring," and that the accused is informed of the charges against them.[149] The Information against President Arroyo satisfied both those requirements. The existence of a mastermind is not an element that needs to be clearly laid out in the Information.

As a final point, it must be noted that in *Gloria Macapagal-Arroyo*, the Court stated that —

> [C]onsidering that 10 persons have been accused of amassing, accumulating[,] and/or acquiring ill-gotten wealth aggregating ₱365,997,915.00, it would be improbable that the crime charged was plunder if none of them was alleged to be the main plunderer. As such, each of the 10 accused would account for the aliquot amount of only ₱36,599,791.50, or exactly 1/10 of the alleged aggregate ill-gotten wealth, which is far below the threshold value of ill-gotten wealth required for plunder.[150]

The Author is of the opinion that this is merely obiter dictum, and should not be binding on future decisions. If conspiracy is not proven, then each accused should only be held liable for his or her own actions. Thus, if President Arroyo was not proved to have plundered any amount, she should not be held liable; but if Uriarte is proven to have plundered the entire amount of ₱365,997,915.00, then she should be held liable for the entire amount, regardless of the existence or non-existence of conspiracy. There is no rule, law, or reason for dividing the amount charged equally between the co-accused — in fact, it is actually very unlikely that each conspirator gets an equal share of the stolen money in a conspiracy as complex as plunder.

B. "OK, GMA"

1. Overt Act

Conspiracy, to be established, requires an "agreement to accomplish an illegal objective, coupled with one or more *overt acts* in furtherance of the illegal purpose; and [the] requisite intent necessary to commit the underlying

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material? Perhaps the Supreme Court in *Gloria Macapagal-Arroyo* think so — there was no question as to the existence of conspiracy in *Reyes*, but it was critical to deny the existence of a conspiracy in *Gloria Macapagal-Arroyo*. This Author, however, humbly submits that the difference in this case is of little consequence. The accusation against President Arroyo is clear.

149. *Quitlong*, 292 SCRA at 375-77.

150. *Macapagal-Arroyo*, 297 SCRA at 321.

substantive offense."[151] Mere silence, even in the presence of conspirators, will not render a person criminally liable.[152]

The majority opinion was of the belief that President Arroyo's act of merely signing and writing "OK" or "OK, GMA" on the letter-requests was not the "overt act" contemplated by law. Citing the 2003 case of *People v. Lizada*,[153] the Court quoted —

> An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. *The raison d'etre for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.* It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the ['] first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made.['] *The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.*[154]

Accordingly, the overt act must, at some point, cease to become equivocal;[155] and it must have an "immediate and necessary relation to the offense."[156] The Court further ruled that President Arroyo's act was neither illegal nor irregular,[157] but in fact a "common legal and valid practice of signifying approval of a fund release by the President."[158]

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151. *Jose "Jinggoy" Estrada*, 377 SCRA at 558 (emphasis supplied).

152. I LUIS B. REYES, THE REVISED PENAL CODE 134 (2012).

153. People v. Lizada, 396 SCRA 62 (2003).

154. *Macapagal-Arroyo*, 797 SCRA at 313-15 (citing *Lizada*, 396 SCRA at 94-95) (emphasis omitted and supplied).

155. *Id.*

156. *Macapagal-Arroyo*, 797 SCRA at 31.

157. *Id.* at 315.

158. *Id.*

Justice Leonen, in his dissent, opines that the Plunder Law provides that an act may be overt *or* criminal.[159] However, it must be remembered that the prosecution needed to prove that she was a co-conspirator — the issue is not whether President Arroyo can be held directly liable for a "series or combination of overt or criminal acts," but whether it shows her intent to be part of the conspiracy.

> [T]o be considered a part of the conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so[,] none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his [or her] own acts.[160]

Justice Perlas-Bernabe, in her separate concurring and dissenting opinion, elaborates —

> For a conspiracy charge to prosper, it is important to show that the accused had prior knowledge of the criminal design; otherwise, it would hardly be the case that his [or her] alleged participation would be in furtherance of such design.
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> ...
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> While [President Arroyo] may have approved the use of CIF funds which would be the determinative act for which Uriarte was able to amass, acquire, or accumulate the questioned funds, the prosecution failed to satisfactorily establish any overt act on [President] Arroyo's part that would clearly show that she knew that the funds she had approved for release was intended to further the alleged criminal design. In other words, *while [President] Arroyo's approval was an indispensible act in ultimately realizing the objective of the scheme or pattern of criminal acts alleged in the Plunder Information, there is no sufficient evidence — whether direct or circumstantial — to prove that she had knowledge of such objective, and hence, could not have given her assent to. Without knowledge, there can be no agreement, which is precisely the essence of conspiracy.*[161]

To prove that President Arroyo was liable for conspiracy, they needed to prove that her act of signing the CIF forms with an unqualified "OK" showed her knowledge of the fraudulent activities. They presented a wealth of evidence, including the very letter-request forms made by Uriarte and the circumstances surrounding President Arroyo's signing. It was a matter of appreciation of evidence — the Sandiganbayan denied President Arroyo's

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159. *Macapagal-Arroyo*, 797 SCRA at 408 (J. Leonen, dissenting opinion).

160. *Macapagal-Arroyo*, 797 SCRA at 312.

161. *Id.* at 384 (J. Perlas Bernabe, concurring and dissenting opinion) (emphases omitted and supplied).

demurrer because, in their judgment, the evidence presented was enough. The Supreme Court, on the other hand, believed the evidence was so lacking that they stepped in and overruled the decision of the Sandiganbayan.

The bone of contention of this case is simple — did President Arroyo know what she was signing when she approved the release forms of billions of taxpayers' money? The question is essentially one of evidence, the standard of which should be whether the evidence is *sufficient* to show that President Arroyo had knowledge of the conspiracy. The majority ruling states that she did not — a point that the dissents emphatically disagree with. In the opening line of the dissent penned by Justice Leonen, he says —

> [President Arroyo] was a highly intelligent President who knew what she was doing. Having had an extraordinary term of nine [ ] years as President of the Philippines, she had the experience to make her wise to many, if not all, of the schemes perpetrated within the government bureaucracy that allowed the pilferage of public coffers[,] especially if those were repeated acts in ever-increasing amounts reaching millions of pesos. As [President], it was her duty to stop — not abet or participate — in such schemes.[162]

To bolster his argument that President Arroyo must have known that the letter-requests were part of a nefarious scheme, Justice Leonen points out that the multiple requests, spanning 2008-2010, were formulaic.[163] The first paragraph would ask for the amount, in millions of pesos; the second paragraph would state the generated income of the PCSO; and the third paragraph would mention that the PCSO has "been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis."[164] Finally, the letter-requests would list some combination of "nefarious activities" that varied little from request to request.[165]

The prosecution stated that President Arroyo's act of approving the letter-requests without question was in violation of three things: Letter of Instruction (LOI) No. 1282,[166] Commission on Audit (COA) Circular 92-385,[167] and COA Circular 03-002.[168]

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162. *Macapagal-Arroyo*, 797 SCRA at 401 (J. Leonen, dissenting opinion).

163. *Id.* at 434-37.

164. *Id.*

165. *Id.*

166. Office of the President, Letter of Instruction No. 1282 [LOI No. 1282] (Jan. 12, 1983).

167. Commission on Audit, Commission on Audit Circular No. 92-385 [COA Circ. No. 92-385] (Oct. 1, 1992).

LOI No. 1282, a presidential issuance issued by former President Ferdinand E. Marcos, states,

> Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the *specific purposes* for which said funds shall be spent and shall explain the *circumstances* giving rise to the necessity for the expenditure and the *particular aims* to be accomplished.[169]

Justice Leonen opines that of the three requirements — the specific purpose, the circumstances, and the particular aims — only the second and third were met by Uriarte's letter-requests to President Arroyo.[170] The first requirement, the "specific purposes for which said funds shall be spent," were not laid out, much less laid out in "full detail."[171]

The main Decision, on the other hand, believed that the "specific purpose" was sufficiently stated in the phrase "to protect the image and integrity of PCSO operations" at the end of almost every letter-request.[172] LOI No. 1282 was substantially complied with. As said by Justice Perlas-Bernabe in her concurring opinion,

> [LOI No. 1282] did not provide for any other parameter as to how the purposes and the underlying circumstances should be particularized, *thereby giving the President ample discretion to scrutinize and deem by himself/herself whether or not a letter-request indeed complied with the requirements of LOI* [*No.*] *1282*.[173]

COA Circular 92-385 and 03-002 jointly provide for the general guidelines and procedure by which requests for CIF funds are made.[174] Justice Leonen, citing the prosecution's main witness, notes that President Arroyo approved the letter-requests despite the fact that they did not meet the requirements in the two circulars.[175] Justice Perlas-Bernabe, however, points out that these circulars were intended to apply only to lower-level

168. Commission on Audit, Commission on Audit Circular No. 03-002 [COA Circ. No. 03-002] (July 30, 2003).

169. LOI No. 1282, para. 2 (emphasis supplied).

170. *Macapagal-Arroyo*, 797 SCRA at 439-40 (J. Leonen, dissenting opinion).

171. *Id.*

172. *Macapagal-Arroyo*, 797 SCRA at 325.

173. *Macapagal-Arroyo*, 797 SCRA at 392 (J. Perlas-Bernabe, concurring and dissenting opinion) (emphasis supplied).

174. *See* COA Circ. 92-385 & COA Circ. 03-002.

175. *Macapagal-Arroyo*, 797 SCRA at 441-44 (J. Leonen, dissenting opinion).

officials.[176] They did not, according to her, "articulate any responsibility on the part of the President so as to render him/her accountable for the irregular processing of CIF funds."[177]

Meanwhile, Chief Justice Sereno, in her dissent, takes a "bird's eye" view of the circumstances surrounding the conspiracy, such as the various irregularities in disbursement, accounting, and liquidation and the viciousness of commingling funds.[178] To her, the numerous red flags of fraud clearly point to President Arroyo's knowledge of the conspiracy and are more than enough to warrant the Sandiganbayan's denial of the demurrer to evidence.[179]

Ultimately, however, the evidence, to the minds of the majority of the Court, was not enough to show that President Arroyo had knowledge of the conspiracy.[180] Nevertheless, it is the humble opinion of this Author that the idea that President Arroyo did not know what she was signing seems to run against common human experience. It is unimaginable that a woman as intelligent and capable as the former President of the Philippines would be so ignorant as to let billions of pesos slip through her fingers without question. It was precisely her duty, as President of the Philippines, to guard the national budget — she *should* have known.

2. Negligence

Regardless of the knowledge or intent, President Arroyo's act is easily of negligent character. It was her signature that allowed millions of pesos worth of taxpayers' money to vanish.

Consider a situation where a city accountant or treasurer, charged with the duty of processing and approving cash advances, is remiss in his or her duties. Millions of pesos slip through the cracks unnoticed, for years. The city accountant or treasurer, being a public officer, would be liable for *gross negligence*, regardless of the good faith, intent, or knowledge of the persons involved. This is the case of *Jaca v. People.*[181] Edna J. Jaca (Jaca) and Eustaquio B. Cesa (Cesa) were charged with essentially the same thing that

176. *Macapagal-Arroyo*, 797 SCRA at 393 (J. Perlas-Bernabe, concurring and dissenting opinion)

177. *Id* at 394.

178. *Macapagal-Arroyo*, 797 SCRA at 344-55 (C.J. Sereno, dissenting opinion).

179. *Id.* at 361.

180. And, as oft repeated in this Essay, the Court believed the evidence was so weak that the Sandiganbayan committed grave abuse of discretion in even allowing it.

181. Jaca v. People, 689 SCRA 270 (2013).

President Arroyo was charged with — signing off on cash advances without question.[182] The Supreme Court ruled that Jaca's and Cesa's acts constituted gross, inexcusable negligence, "characterized by the want of even slight care," and found both of them guilty.[183]

It is difficult to understand why lower-ranking officials can be sent to rot in prison, while a person who has once held the most powerful position in the country walks free, when both are essentially guilty of failure to comply with their duties — Jaca and Cesa, with safeguarding the money of Cebu City, and President Arroyo, with safeguarding the money of the entire nation. "With great power, comes great responsibility,"[184] but apparently no great consequences.

The difference can be explained by the fact that Jaca and Cesa were charged under R.A. No. 3019, while President Arroyo was charged with violation of the Plunder Law.

R.A. No. 3019, like the Plunder Law, is a crime *malum in se*.[185] In *Gloria Macapagal-Arroyo*, none of the Justices, dissenting or otherwise, questioned the requirement of intent in plunder. They only debated on whether or not President Arroyo could have been presumed to know, given her intelligence, her position, and the circumstances surrounding the controversy. Unlike the Plunder Law, however, *gross negligence* was specifically made punishable under R.A. No. 3019, in Section 3 (e) thereof —

> [Section 3. Corrupt practices of public officers]. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> ...
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> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage[,] or preference in the discharge of his [or her] official administrative or judicial functions through manifest partiality, evident bad faith[,] *or gross inexcusable negligence*. This provision shall apply to officers and employees of offices or

182. *See generally Jaca*, 689 SCRA.

183. *Jaca*, 689 SCRA at 296.

184. SPIDER-MAN (Columbia Pictures 2002).

185. *See Joseph Ejercito Estrada*, 369 SCRA at 563 (J. Kapunan, dissenting opinion).

> government corporations charged with the grant of licenses or permits or other concessions.[186]

There is no such provision in the Plunder Law, although one was initially contemplated by the Senate in the original version of the bill.

> SEC. 2. *Definition of the Crime and Penalty.* — Any public officer who, by himself [or herself] or in connivance with other persons, ... through a systematic or methodical scheme, or conspiracy consummated by a series of overt or criminal acts, *such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, theft, frauds and illegal exactions, violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, as amended)*[,] *and like offenses*, amass, accumulate[,] or acquire ill-gotten wealth as defined in Section one hereof ... .[187]

In the consolidation of the bill, however, the qualifying phrase "violations of the Anti-Graft and Corrupt Practices Act" and any mentions thereof were ultimately removed, and the liability for negligence was removed with it. Subsequent deliberations,[188] laws,[189] and jurisprudence[190] have also made it clear that plunder is something heinous and deliberate — something incompatible with negligence, however gross. The law will not allow a person, no matter how careless, to be punished under the maximum penalty for an act or omission of negligence.

V. CONCLUSION

The only act that President Arroyo was actually accused of in this whole affair was the signing of "OK, GMA." This act alone will most certainly not meet the three elements of plunder, so she cannot be held liable for plunder on her own. For this reason, the prosecution hinged their entire case against the former President on her liability as a co-conspirator of Uriarte, the last person to have handled the missing funds.

The Supreme Court, in ruling that there was no conspiracy, attacked the Information against President Arroyo for failing to state two "elements" of plunder: personal benefit on the part of the main plunderer, and the identification of a mastermind or express conspiracy in plunder involving multiple persons. The Supreme Court also ruled that President Arroyo's act of signing "OK, GMA" on the letter-requests was insufficient to show that

186. Republic Act No. 3019, § 3 (e) (emphasis supplied).

187. CONG. REC. VOL. IV, at 1308 (emphasis supplied).

188. *Id.* at 1315.

189. Republic Act No. 7659, § 12 & whereas cl. para 2.

190. *Joseph Ejercito Estrada*, 369 SCRA at 451-53.

the former President had knowledge of or intent to be part of the conspiracy involving the missing PCSO funds.

The Author is of the opinion that the Supreme Court may be construed as overstepping its boundaries in striking down the Sandiganbayan's appreciation of the evidence against President Arroyo. They seemed to have substituted their own judgment for that of the Sandiganbayan's instead of ruling only on whether or not there was grave abuse of discretion. Regardless, however, of the procedural merit of this case, it has set a precedent for how future cases of plunder should be treated.

Gloria Macapagal-Arroyo introduces new elements of plunder that are not contemplated by the Plunder Law. In that sense, it can be considered a form of judicial legislation. "Personal benefit," in fact, was clearly intended by legislature to *not* be an element of plunder. The requirement of a "mastermind," on the other hand, is a convolution of statutory construction and the well-established doctrines in criminal law.

These new elements are not only dangerous because they open the doors for abuse by the judiciary, but also because they have now made it much more difficult for any future public officer to be held liable under the Plunder Law. Now, if one is to accuse multiple parties of plunder — which is nearly always — the mastermind of the conspiracy must always be identified. This strict requirement is a far departure from how conspiracy is normally treated in law. Conspiracy, by nature, is difficult to prove and difficult to investigate, and until this case, law and jurisprudence have always been more lenient in this regard.

Even more difficult is the requirement of personal benefit on the main plunderer. If, even two decades later, the government has still not fully recovered the money plundered by the Marcoses, how are prosecutors expected to ever prove that the stolen money was used by an accused? Even now, the case of *Enrile*, involving millions of pesos, is still ongoing. A 700-million peso fertilizer scam was just dismissed by the Sandiganbayan.[191] The entire purpose of the Plunder Law is to make it easier for prosecutors to "catch the big fish."[192] The decision in *Gloria Macapagal-Arroyo* has all but defeated that purpose.

The Plunder Law, as stated at the beginning of this Essay, was conceived in response to the multiple acts of graft and corruption committed by former

191. Carolyn Bonquin, Joc-Joc Bolante cleared of plunder in feritilizer fund scam, *available at* http://news.abs-cbn.com/news/12/12/16/joc-joc-bolante-cleared-of-plunder-in-fertilizer-fund-scam (last accessed Aug. 10, 2017).

192. *See* RODRIGUEZ, *supra* note 34, at 123.

President Marcos and his cronies. It was not only difficult to file charges against him because of the "one crime, one information" rule. It was also difficult because of the kind of systemic thievery employed by the former dictator. Many of his crimes were committed with a cloak of legality[193] — Presidential Decrees, government corporations, and powerful allies, to name a few — that made it difficult to hold him directly responsible. He pulled his strings from the shadows, but he left his hands clean. The legislators recognized that the current laws, including R.A. No. 3019, were not enough to hold him liable for all that he was truly responsible for.

Thus, the Plunder Law. It is a great irony that the prosecution might have been better off charging President Arroyo with graft and corruption under R.A. No. 3019 than with plunder. The law is designed precisely to catch the elusive criminal, the mastermind that R.A. No. 3019 is incapable of prosecuting. Thus, this decision, with its incredibly strict interpretation of the Plunder Law, has unfortunately defeated the very purpose for which the law was made.

193. CONG. REC. Vol. IV, at 1314.