

2017

Brief of the Ethics Bureau at Yale Law School et al.
as Amici Curiae Supporting Petitioner, Office of the
Public Defender v. Lakicevic, 215 So.3d 112
(2017) (No. 16- 1371).

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 3D15-2084

**OFFICE OF THE PUBLIC DEFENDER,
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,**

Appellant,

v.

MILENA LAKICEVIC, et al

Appellees.

**AMICI CURIAE BRIEF OF THE ETHICS BUREAU OF YALE LAW
SCHOOL, THE UNIVERSITY OF MIAMI SCHOOL OF LAW CENTER
FOR ETHICS AND PUBLIC SERVICE, THE NATIONAL ASSOCIATION
OF PUBLIC DEFENSE AND THE FLORIDA ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS**

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STATEMENT OF INTERESTS OF AMICI CURIAE

The Ethics Bureau at Yale,¹ a clinic composed of fourteen law school students supervised by an experienced practicing lawyer/lecturer, drafts amicus briefs in cases concerning the professional responsibility obligations of lawyers and the ethical conduct of judges; assists defense counsel with ineffective assistance of counsel and other claims relating to professional responsibility matters; and offers ethics advice and counsel on a pro bono basis to not-for-profit legal service providers, courts and law schools.

The Ethics Bureau at Yale respectfully joins this brief as Amicus Curiae for three reasons. First, it believes the duties of lawyers to maintain confidentiality and preserve the attorney-client privilege are sacred obligations. Second, it believes that allowing lawyers to testify with respect to privileged or confidential information ultimately destroys the lawyer's access to critical information essential to effective representation. Third, any line drawing by the Courts as to the scope of the protection for lawyer-client communications should be drawn to protect from disclosure the former client's address.

The Florida Association of Criminal Defense Lawyers ("FACDL") is a statewide organization representing over 2,000 members, all of whom are criminal

¹ The reference to Yale is for identification purposes only. The views expressed herein are not necessarily the views of Yale University or its Law School.

defense practitioners. FACDL is a non-profit corporation whose goal is to assist in the reasoned development of Florida's criminal justice system. Its founding purposes are: promoting study and research in criminal law and related disciplines, ensuring the fair administration of criminal justice in the Florida courts, fostering and maintaining the independence and expertise of criminal defense lawyers, and furthering the education of the criminal defense community. The question presented by the Court has deep implications for the attorney-client relationship between FACDL's members and the clients they represent.

The National Association for Public Defense (NAPD) is an association of more than 14,000 professionals who deliver the right to counsel throughout all U.S. states and territories. NAPD members include attorneys, investigators, social workers, administrators and other support staff who are responsible for executing the constitutional right to effective assistance of counsel, including regularly researching and providing advice to clients on the immigration consequences of specific convictions. We are the advocates in jails, in courtrooms, and in communities and are experts in not only theoretical best practices, but also in the practical, day-to-day delivery of services. Our collective expertise represents state, county, and local systems through full-time, contract, and assigned counsel delivery mechanisms, dedicated juvenile, capital and appellate offices, and through a diversity of traditional and holistic practice models. NAPD provides webinar-based

and other training to its members, including training on the utmost importance of protecting attorney-client confidentiality and privileged information. Accordingly, NAPD has a strong interest in the issue raised in this appeal.

Founded in 1996, the Center for University of Miami Law School Ethics and Public Service (“Center”) is a law school-housed interdisciplinary ethics education, skills training, and community engagement program devoted to the values of ethical judgment, professional responsibility, and public service in law and society. The Center's goal is to educate law students to serve their communities as citizen lawyers. The Center’s curriculum, environmental justice clinic, and programs primarily focus on ethics education, professional training and community service. One of its programs, The Professional Responsibility & Ethics Program (PREP), is an ABA award-winning program that develops continuing legal education (CLE) legal ethics training for the legal community. PREP combines the attributes of an ethics institute and an ethics clinic, and has dedicated hundreds of student hours to public service and has educated thousands of members of the Bench & Bar.

QUESTION PRESENTED BY THIS COURT

DOES THE ATTORNEY-CLIENT PRIVILEGE SHIELD A PUBLIC DEFENDER FROM DISCLOSING THE ADDRESS OF A FORMER CLIENT IN RESPONSE TO A SUBPOENA BY A LITIGANT IN A SEPARATE CIVIL SUIT?

A. Introduction

Can Assistant Public Defender Stan Maslona, former counsel for Alex Vasquez, be required to help Appellees sue his former client by testifying at a deposition as to the former client's last known address? That is the question presented. And, standing alone, the information sought from the former lawyer—the address—is, in the view of amici, privileged and its forced disclosure an assault on the integrity of the lawyer-client relationship.

A fortiori, the much greater amount of information actually sought and ordered produced—all documents identifying the client's present address, his addresses for the last three years, his employers, his telephone numbers and all his contact information—represents a greater invasion of the privilege and would have an even more deleterious effect on lawyer-client relations.

Amici present this brief in the hope that their perspectives on these matters will provide the Court with a better understanding of how much is at stake in what Appellees would have the Court condone as a trivial request.

SUMMARY OF THE ARGUMENT

The vigilant defense of the attorney-client privilege by the courts is critical to preserving the integrity of the lawyer-client relationship. Accordingly, the Appellees' attempt here to secure the client information from the client's lawyer must be rejected with the same ardor as if the Appellees sought to swashbuckler through the lawyer's entire file. If the principle that lawyer-client communications

are sacrosanct were compromised in this case, the lessons from such a decision would eviscerate the attorney-client privilege in its entirety. Amici hope that their analysis will provide the Court with all of the constitutional, legal and practical reasons it needs to reject the demand for disclosure out of hand.

ARGUMENT

THE ATTORNEY-CLIENT PRIVILEGE SHIELDS A PUBLIC DEFENDER FROM DISCLOSING THE ADDRESS OF A FORMER CLIENT IN RESPONSE TO A SUBPOENA BY A LITIGANT IN A SEPARATE CIVIL LAWSUIT.

(i) The Information Sought is Privileged

Appellees want to force Assistant Public Defender Maslona to divulge a former client's address. There is no question that this information is confidential and, therefore, its voluntary disclosure by a current or former lawyer is absolutely prohibited by Rule 4-1.6 of the Florida Rules of Professional Conduct. Nevertheless, Appellees contend that the information does not come within the attorney-client privilege and, therefore, the lawyer can be forced to reveal it. Appellees' argument is deeply flawed and the decision below should be reversed.

Amici's analysis begins with a focus on the importance of the privilege to achieving trust between lawyer and client and a recognition of the broad definitions that the courts have adopted for capturing that which must be considered privileged if the benefits of the privilege are to be achieved. Privileged information is generally considered to protect from forced disclosure communications between a lawyer and

a client, or the agents of either, made in confidence, for the purposes of providing or receiving legal advice. As one court aptly put it, “the attorney-client privilege exists to protect not only the giving of professional advice, but also the giving of information to the lawyer to enable him to render sound and informed advice.” Hagens v. Gatorland Kubota LLC, 45 So. 3d 73, 76 (Fla. 1st DCA 2010) (citing Upjohn Co. v. U.S., 449 U.S. 383, 390, 101 S. Ct. 677, 66 L.Ed.2d 584 (1981)). Indeed, the Hagens opinion went on to specify that this principle bars Appellees’ attempt to obtain privileged intake information:

The central issue presented here is whether the intake documents prepared by Claimant’s attorney which memorialized Claimant’s communications made for the purpose of obtaining legal services are protected by the attorney-client privilege. Allowing discovery of the attorney’s intake documents would not only intrude into work product, but would allow the adversary to function on the wits and labor of an opponent. Such an interpretation would be antithetical to the purposes underlying the attorney-client privilege and would additionally impose a chilling effect on an attorney’s efforts to fully explore and memorialize the facts underlying his client’s clause.

Hagens, 45 So. 3 at 76.

The information sought in this case fits neatly within those definitions. But for the representation, Assistant Public Defender Maslona would not have obtained the client’s address. And he did not seek and obtain his client’s address out of idle

curiosity; he only sought and obtained the address in order to maintain communication with the client to enable him “to render sound and informed advice.”

Lawyers have a fiduciary duty to communicate with their clients in a timely and comprehensive manner. See Fla. Bar Reg. R. 4-1.3. The lawyer may not wait for the client to ask for an update, but instead must promptly initiate communication. See Fla. Bar Reg. R. 4-1.4. And in order to do so, that lawyer must know where and how to contact the client, because many indigent defendants do not have reliable telephone numbers or access to email.

Obtaining the client’s address is therefore critical to establishing and maintaining a meaningful and productive lawyer-client relationship. Knowing the client’s address ensures that the lawyer and the client will not be limited to communications that are face-to-face at counsel’s office or, in the unlikely event that the client has email, electronic. Rather, all generally-employed methods of communication must be available, including correspondence, for, if face-to-face communication were the only available alternative, the attendant expense and delay would compromise the effectiveness of the representation.

These concerns are only heightened in attorney-client relationships that arise in criminal cases, where the consequences of the representation, and any interference whatsoever with the effective communication necessary to maintain the attorney-client relationship, are so severe. Without the client’s address, the lawyer really

could not undertake to deliver competent legal services. See Fla. Bar Reg. R. 4–1.1. As a result, when that address is found in the lawyer’s file, it is found there not as an irrelevancy, but, rather, as a crucial facilitator of lawyer-client privileged communications, thereby facilitating the rendition of legal services.

(ii) Alleged Necessity Creates No Exception to the Privilege

From a review of the record it appears that the Appellees justify their extraordinary request to seek the privileged information from the Public Defender for Mr. Vasquez on their need to secure it. But this alleged need, even if it were asserted only after the party seeking the privileged information had exhausted every possible alternative source (a fact not present here), could never justify invading the privilege. As this Court concluded in Coffey-Garcia v. South Miami Hospital, Inc., --- So. 3d ---, 2016 WL 3410415 (Fla. 3d DCA June 22, 2016) just last month:

It is of no account that the answers to such questions might prove useful or even necessary to determine when the Garcias discovered or should have discovered that there was a “reasonable possibility” that medical malpractice caused Samantha’s cerebral palsy. The hospital, clinics, and doctors’ need for this information to prove their statute of limitations defense does not justify an invasion of the privilege. “[T]he attorney-client privilege . . . is not concerned with the litigation needs of the opposing party.” Genovese v. Provident Life & Accident Ins. Co., 74 So. 3d 1064, 1068 (Fla. 2011.) “[U]ndue hardship is not an exception, nor is disclosure permitted because the opposing party claims that the privileged information is necessary to prove their case.” Id. (quotation and citation omitted).

Id. at *4. The Hagens case reached the identical conclusion:

The attorney-client privilege is not subject to any balancing test and, unlike matters protected by work-product privilege, cannot be discovered by a showing of need, undue hardship, or some other competing interest. See Ehrhardt Florida Evidence, § 502.1 (2007 ed.) (citing Nat'l Sec. Fire & Cas. Co. v. Dunn, 705 So.2d 605, 608 (Fla. 5th DCA 1997) (“Notwithstanding a litigant's entitlement to work product material upon a showing of need and undue hardship, the attorney-client privilege is absolute.”)).

Hagens, 45 So. 3 at 76.

(iii) The Intent of the Rule Amendments was to Protect Information and Facilitate Communication

In their brief, Appellees cite several Florida cases for the proposition that a lawyer's knowledge of his or her client's whereabouts is outside the privilege. Specifically, Appellees rely on *Burden v. Church of Scientology of California*, 526 F. Supp. 44 (M.D. Fla 1981), to argue that the attorney-client privilege does not apply to the identity of the client and the client's address. But at the time these cases were decided, the rules of professional conduct regarding confidentiality of information were much narrower in scope.

The adoption on January 1, 1987 by the Florida Supreme Court of Rule 4-1.6 of the Rules of Professional Conduct signaled a dramatic change in the law, specifically addressing the scope of the duty of confidentiality. In the view of Amici,

two major expansions of what was to be considered confidential render cases decided under the Code provision significantly less persuasive.

First, just like the then current ABA Model Code of Professional Responsibility and the codes adopted by all of the states, the old Florida Code of Professional Responsibility defined confidential information in a narrow way, basically limiting the lawyer's confidentiality obligations to the "confidences" and "secrets" of a client. FLORIDA CODE OF PROF'L RESPONSIBILITY EC 4-1 (FL. BAR ASS'N 1975). See Sears, Roebuck & Co. v. Stansbury, 374 So. 2d 1051, 1053 (Fla. 5th DCA 1979).

Second, under the old Florida Code of Professional Responsibility, if the client wanted any other information kept confidential, the burden was on the client to ask the lawyer to do so. FLORIDA CODE OF PROF'L RESPONSIBILITY EC 4-2, 4-3 (FL. BAR ASS'N 1975) (using the language "[u]nless the client otherwise directs" to define the scope of confidentiality under EC 4-2 and 4-3).

But the Florida Rules of Professional Conduct changed the definition so that it is the lawyer's ethical obligation to preserve all information related to the representation, without regard to the effect of any disclosure or whether the client requested that it be maintained in confidence. Fla. Bar Reg. R. 4-1.6 ("unless the client gives informed consent" the lawyer must maintain confidentiality as to all information learned in the representation, demonstrating that the burden is now on

the lawyer to preserve confidential information unless he or she obtains consent from the client). This expansion signifies an intent to broaden the scope of confidential information in order to better facilitate legal representation.

(iv) Forcing Lawyers and Clients to Parse Distinctions Between Confidential and Privileged Information Undermines the Lawyer-Client Relationship

Amici are of the view that exploring the public policy reasons why the privilege must apply will demonstrate why the ruling below undermines the lawyer-client relationship. When lawyers meet with their clients for the first time to lay the foundation for the lawyer-client relationship, one of the key elements that introduction always includes is the lawyer's explanation to the client of two key matters. First, the lawyer emphasizes the importance of learning everything the lawyer needs to know about the client's circumstances. See Upjohn Co. v. United States, 449 U.S. 383, 389 (1981) ("The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client"). Part of the fiduciary duty of competence and diligence is full investigation of the facts and circumstances of the matter. See Trammel v. United States, 445 U.S. 40, 51 (1980) (the privilege "rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out").

Second, in order to facilitate full disclosure, the lawyer must explain how the lawyer will keep the client's communications confidential pursuant to Rule 4-1.6 and not share that information with anyone without the client's informed consent. Fla. Bar Reg. R. 4-1.6(a). This requirement exists because confidentiality encourages and facilitates full disclosure. Fla. Bar Reg. R. 4-1.6 cmt. Lawyers explain these core aspects of the lawyer-client relationship to clients up front because the attorney-client privilege developed from two fundamental principles: that good legal assistance requires full disclosure of a client's legal problems, and that a client will only reveal the details required for proper representation if his or her confidences are protected. Fisher v. United States, 425 U.S. 391, 403 (1976).

The order below, if left standing, would require lawyers to undertake a confusing and self-defeating explanation, warning the client that, if ever called to testify, the lawyer could be required to disclose any information learned that is merely confidential, but not privileged. In response to this Court's invitation, the Florida Bar refused to provide amicus curiae assistance to this Court based on its view of a strict demarcation between confidentiality and the attorney-client privilege. However, the reality is that even the practicing bar often does not understand the distinction between these two concepts. See, e.g., Shell Oil Co. v. Par Four P'ship, 638 So. 2d 1050, 1050 (Fla. 5th DCA 1994) ("Confidential communications between lawyers and clients are privileged from compelled

disclosure to third persons”); see also Fla. Stat. Ann. § 90.502(2). It necessarily follows that it is totally unrealistic to expect clients to understand the difference. Rather, clients would perceive such a warning for what it is: confusing and disturbing evidence that the lawyer is offering the client protection with one hand and taking it away with the other, undermining the client’s trust along the way.

The ruling below, therefore, strikes at the heart of the attorney-client relationship. The idea that courts can force lawyers to be witnesses against former clients, and, more specifically, can require lawyers to divulge confidential information to the former clients’ detriment, whether or not that information is subject to the attorney-client privilege, renders the very essence of a meaningful lawyer-client relationship a nullity. Neither the client nor the lawyer will be able to differentiate on a sentence-by-sentence or word-by-word analysis whether a particular communication falls within the privilege or is “merely” confidential. The order below opens lawyers’ files and lays bare their memories to invasion by third parties, even adversaries of the client, who can then claim an entitlement to wield an Exacto knife to cut out chunks of information that are confidential, but not attorney-client privileged, and use that information against former clients. The idea that a lawyer would be forced to testify against a former client on a surgically precise differentiation between that which is privileged and that which is confidential would,

in effect, destroy the very protection for communications between lawyer and client that the privilege was designed to provide.

This case calls to mind the policy reflected in the wise decision of the court in Purcell v. District Attorney for the Suffolk District, 424 Mass. 109, 676 N.E. 2d 436 (1997), a case many ethics professors teach. In Purcell the client came to the lawyer seeking legal advice about a landlord tenant problem. Id. at 110. At the end of the meeting, the lawyer concluded that the client might try to burn down his landlord's building. Id. The lawyer, scared that the client might actually wreak havoc, called the police who arrested the client in possession of items that could be used in such an endeavor. Id.

The client was charged with attempted arson and the lawyer was subpoenaed to testify at the client's retrial regarding the lawyer-client conversation, including the threat. Id. The client claimed privilege and the District Attorney responded that the "conversation" could not be privileged because it was either subject to the crime fraud exception or otherwise not privileged because the lawyer was not being consulted for advice about the planned arson. Id. at 111-112.

The court rejected the first argument because there was no evidence that the client had consulted the lawyer seeking legal advice regarding his threatened criminal conduct. Id. at 113. The court then rejected the district attorney's second fallback argument that there was an excluded middle category between crime-fraud

and privileged communication about which the lawyer could be forced to testify. Id. at 116. Rather, the court concluded that if the lawyer-client communication did not fall within the crime-fraud exclusion, it had to be privileged. Id. In the Court’s opinion, it was more important to encourage lawyers to come forward to prevent reasonably certain death or serious bodily harm, without discouraging the lawyer’s intervention with the possibility that the lawyer could be “rewarded” for the disclosure by being forced to testify in a criminal trial about the lawyer-client communication. Id.

So too here, it is far more important to encourage communication between lawyer and client, than have such communications inhibited by the thought that the lawyer could be turned into an instrumentality of the client’s adversary because the content of a lawyer-client communication was confidential, but not privileged. Indeed, in some ways the argument is stronger here. In Purcell, the lawyer was free to disclose, as he did, the possibility of arson because of an exception to the confidentiality rule to disclose client confidences to prevent criminal conduct. Here, there is no exception to the Florida confidentiality rule that would permit voluntary disclosure of the address.

(v) Why Stop There?

Amici are deeply concerned that if this Court requires former counsel to testify about the address of his former client and thereby become the instrumentality for

forcing the client to defend a lawsuit for which he otherwise might never be served, it will lead to further invasion of the lawyer-client relationship. After all, in the lawyer's memory or in the lawyer's file will be a great deal of information that falls into the category of confidential, but not privileged. In permitting such an exercise to take place, the outcome would be that lawyers would fail to learn important information regarding their clients, including information that was just helpful in gaining trust, but arguably outside of the scope of legal advice.

Of course, if we want to make discovery more efficient we would simply permit each side to depose the other side's lawyer. Would there be a treasure trove of information forthcoming? Of course there would. But we do not allow it because to do so would destroy the lawyer's role.

This policy is reflected in the jurisprudence surrounding the attorney-client privilege. While nothing about the privilege would prevent the former client from being deposed about his address, what the privilege enjoins, without exception, is any attempt to force either client or lawyer to testify about the communications between them. As a result, if the client is deposed, the client can be asked to reveal his address; but the client cannot be asked whether he gave his lawyer the address, nor may the lawyer be asked if he received it, or disclose what it is. See Upjohn Co. v. U.S., 449 U.S. 383, 395-96 (explaining client cannot be compelled to answer question, "What did you say or write to the attorney?") but may not refuse to disclose

any relevant fact within his knowledge merely because such fact was included in his communication to his attorney); see also Brookings v. State, 495 So. 2d 135, 139 (Fla. 1986) (“Appellant's contention that Lowery’s testimony against appellant waived her attorney-client privilege is erroneous. We hold that the mere fact that a witness-client testifies to facts which were the subject of consultation with counsel is no waiver of the privilege. It is the communication with counsel which is privileged, not the facts.”).

The lawyer can only gain the rapport that is required to create a healthy lawyer-client relationship if the client knows that the lawyer can be trusted with the client’s fondest hopes and greatest fears, that the lawyer will be the client’s one true champion, that the lawyer would never be forced to testify regarding communications with the client unless the client waives the privilege on informed consent or the communication comes within the crime fraud exception. See Fla. Bar v. Knowles, 99 So. 3d 918, 922 (Fla. 2012) (citing R. Regulating Fla. Bar 4-1.6 cmt.) (stating that “[a] fundamental principle in the client-lawyer relationship is that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation . . . [t]his [principle] contributes to the trust that is the hallmark of the client-lawyer relationship”).

It may be that in the most extraordinary case a lawyer could be forced to testify. But the rules clearly reflect an intent to bar the lawyer from testifying ever.

And all the policy reasons that create a strong bias against lawyers being forced to testify urge the same result here. Having a lawyer serve as the facilitator for whatever goal the former client's adversary hopes to achieve is one to be avoided if at all possible.

(vi) Forcing a Public Defender to Testify Against a Former Client is Especially Damaging

Many of the problems created by compelling lawyer testimony regarding confidential information from a former client apply to any lawyer-client relationship. Indeed, repeated studies have shown that full and open lawyer-client communication is a top priority for clients. *See, e.g.,* S.E. Schemenauer, *What We've Got Here ... Is a Failure ... To Communicate: A Statistical Analysis of the Nation's Most Common Ethical Complaint*, 30 Hamline L. Rev. 629 (2007).

The ill effects from forced disclosure of lawyer-client confidences are exacerbated, however, in cases involving defendants who are assigned criminal defense counsel because they cannot afford to hire lawyers. *See* Christopher C. Campbell, *et al., Unnoticed, Untapped, and Underappreciated: Clients' Perceptions of their Public Defenders*, 33 *Beh. Sci. & Law* 751, 755-56, 760-61 (2015). Public defenders already are engaged in a constant battle to overcome biases and low expectations, which are summed up in the painful epithet "Public Pretender." Cara H. Drinan, *The National Right to Counsel Act: A Congressional Solution to The Nation's Indigent Defense Crisis*, 47 Harv. J. on Legis. 487, 494 (2010) (describing

Florida exoneree’s description of state indigent defense bar). Indigent defendants often believe that a public defender’s first loyalty is to the government that provides the defender’s paycheck—the same government that is prosecuting the defendant. Jonathan D. Casper, *Did You Have a Lawyer When You Went to Court? No, I Had A Public Defender*, 1 Yale Rev. L. & Soc. Action 4, 7 (1971). Public defenders also are expected—incorrectly—to provide lower-quality representation than retained counsel. See, e.g., James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 Yale L. J. 154, 158-59 (2012).

In short, the public defender starts off the lawyer-client relationship with a deep deficit in good will. As a result, public defenders must invest much more time and energy than retained counsel in building a foundation of confidence and comfort with clients. Campbell, *et al.*, *supra*. Yet in filling this important need, under the ruling below public defenders will simultaneously be increasing the risk to clients as the quantum of confidential conversations grows. Thus, the ruling below infects the lawyer-client relationship with profound, unhealthy, and unnecessary conflicting concerns that undermine trust. This Court should nip that infection before it spreads by reversing the ruling below.

(vii) The Fifth and Sixth Amendments Require the Communications to be Privileged

Amici have focused this entire brief on the question presented, to wit: whether the information sought is privileged. But it is important to remember that the attorney-client privilege, by protecting the “ability to speak freely to one's attorney[,] helps to preserve rights protected by the Fifth Amendment privilege against self-incrimination and the Sixth Amendment right to legal representation.” Mills v. State, 476 So. 2d 172, 176 (Fla. 1985). Mills therefore puts an end to Appellees’ fishing expedition. Perhaps not every professional responsibility of lawyers to their clients takes on a constitutional dimension. But there is no doubt about the fundamental federal constitutional rights that are implicated by the lawyer’s duty of confidentiality and the attorney-client privilege. Without both, the right to be free from self-incrimination and the right to counsel would be hollow promises indeed since nothing could compromise those fundamental rights in the way that would occur if others could pry into the communications between lawyer and client.

CONCLUSION

It was an honor for amici to be asked to provide the Court with our views on this matter. The importance of the fundamental protections provided by the privilege and the duty of confidentiality are at the heart of the professional work each of the amici undertakes. Our hope is that we have provided a different perspective that will assist the Court in reaching the right result in this critical case.

Very respectfully submitted,

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Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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