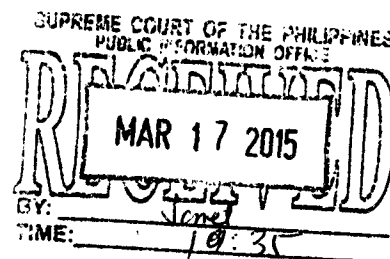




Republic of the Philippines  
Supreme Court  
Manila



EN BANC

**FIRST CLASS CADET ALDRIN  
JEFF P. CUDIA** of the Philippine  
Military Academy, represented by  
his father **RENATO P. CUDIA**, who  
also acts on his own behalf, and  
**BERTENI CATALUÑA CAUSING**,  
Petitioners,

- versus -

**THE SUPERINTENDENT OF THE  
PHILIPPINE MILITARY  
ACADEMY (PMA), THE HONOR  
COMMITTEE (HC) OF 2014 OF  
THE PMA and HC MEMBERS, and  
the CADET REVIEW AND  
APPEALS BOARD (CRAB)**,  
Respondents.

X-----X  
**FILIPINA P. CUDIA**, in behalf of  
**CADET FIRST CLASS ALDRIN  
JEFF P. CUDIA**, and on her own  
behalf,

Petitioner-Intervenor.

X-----X

**G.R. No. 211362**

**Present:**

**SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,\*  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,  
LEONEN, and  
JARDELEZA,\*\* JJ.**

**Promulgated:**

February 24, 2015

**DECISION**

**PERALTA, J.:**

The true test of a cadet's character as a leader rests on his personal commitment to uphold what is morally and ethically righteous at the most critical and trying times, and at the most challenging circumstances. When a cadet must face a dilemma between what is true and right as against his security, well-being, pleasures and comfort, or dignity, what is at stake is his honor and those that [define] his values. A man of an honorable character does not think twice and chooses the fore. This is the essence of

\* On leave.  
\*\* No part.

and the Spirit of the Honor Code – it is championing truth and righteousness even if it may mean the surrender of one's basic rights and privileges.<sup>1</sup>

### **The Procedural Antecedents**

Six days prior to the March 16, 2014 graduation ceremonies of the Philippine Military Academy (*PMA*), petitioners Renato P. Cudia, acting for himself and in behalf of his son, Cadet First Class Aldrin Jeff P. Cudia (*Cadet 1CL Cudia*), and Berteni Cataluña Causing filed this petition for *certiorari*, prohibition, and mandamus with application for extremely urgent temporary restraining order (*TRO*).<sup>2</sup>

In a Resolution dated March 17, 2014, the Court denied the prayer for *TRO* and, instead, required respondents to file their comment on the petition.<sup>3</sup>

On March 25, 2014, Filipina P. Cudia, acting for herself and in behalf of her son Cadet 1CL Cudia, filed a motion for leave to intervene, attaching thereto the petition-in-intervention.<sup>4</sup> Per Resolution dated March 31, 2014, the Court granted the motion and resolved to await respondents' comment on the petition.<sup>5</sup>

A manifestation was then filed by petitioners on April 3, 2014, recommending the admission of the petition-in-intervention and adopting it as an integral part of their petition.<sup>6</sup> On May 20, 2014, petitioner-intervenor filed a manifestation with motion for leave to admit the Final Investigation Report of the Commission on Human Rights (*CHR*) dated April 25, 2014.<sup>7</sup> The Report<sup>8</sup> was relative to CHR-CAR Case No. 2014-0029 filed by the spouses Renato and Filipina Cudia (*Spouses Cudia*), for themselves and in behalf of their son, against the PMA Honor Committee (*HC*) members and Major Vladimir P. Gracilla (*Maj. Gracilla*)<sup>9</sup> for violation of Cadet 1CL Cudia's rights to due process, education, and privacy of communication. Subsequently, on June 3, 2014, petitioners filed a motion for leave to adopt

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<sup>1</sup> The Honor Code and Honor System Handbook, Series 2011, p. 7 (*Rollo*, p. 156).

<sup>2</sup> *Rollo*, pp. 3-31.

<sup>3</sup> *Id.* at 48.

<sup>4</sup> *Id.* at 49-117.

<sup>5</sup> *Id.* at 204.

<sup>6</sup> *Id.* at 209-213.

<sup>7</sup> *Id.* at 222-235.

<sup>8</sup> *Id.* at 236-266.

<sup>9</sup> Maj. Gracilla is the Intelligence and Operations Officer of the PMA. Allegedly, on February 25, 2014, Cadet 1CL Cudia saw a recording device taped at the wall and covered by a blanket in an adjacent room where he was staying at while in the PMA Holding Center (*Rollo*, pp. 257-258, 261-262, 477).

the submission of the CHR Report.<sup>10</sup> The manifestation was granted and the motion was noted by the Court in its Resolution dated July 7, 2014.

After filing three motions for extension of time,<sup>11</sup> respondents filed their Consolidated Comment<sup>12</sup> on June 19, 2014. In a motion, petitioner-intervenor filed a Reply, which was later adopted by petitioners.<sup>13</sup> Submitted as Annex “A” of the Reply was a copy of the CHR Resolution dated May 22, 2014 regarding CHR-CAR Case No. 2014-0029.<sup>14</sup> We noted and granted the same on August 11, 2014 and October 13, 2014.

Petitioner-intervenor twice filed a manifestation with motion to submit the case for early resolution,<sup>15</sup> which the Court noted in a Resolution dated August 11, 2014 and October 13, 2014.<sup>16</sup>

### **The Facts**

Cadet 1CL Cudia was a member of *Siklab Diwa* Class of 2014 of the PMA, the country’s premiere military academy located at Fort Gregorio del Pilar in Baguio City. He belonged to the “A” Company and was the Deputy Baron of his class. As claimed by petitioners and petitioner-intervenor (hereinafter collectively called “petitioners,” unless otherwise indicated), he was supposed to graduate with honors as the class salutatorian, receive the Philippine Navy Saber as the top Navy cadet graduate, and be commissioned as an ensign of the Philippine Navy.

On November 14, 2013, the combined classes of the Navy and Air Force 1CL cadets had a lesson examination (LE) on Operations Research (OR432) under Dr. Maria Monica C. Costales (Dr. Costales) at the PMAFI Room. Per published schedule from the Headquarters Academic Group, the 4<sup>th</sup> period class in OR432 was from 1:30-3:00 p.m. (1330H-1500H), while the 5<sup>th</sup> period class in ENG412 was from 3:05-4:05 p.m. (1505H-1605H).

Five days after, Professor Juanita Berong (Prof. Berong) of the 5<sup>th</sup> period class issued a Delinquency Report (DR) against Cadet 1CL Cudia because he was “[l]ate for two (2) minutes in his Eng 412 class x x x.”<sup>17</sup>

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<sup>10</sup> *Rollo*, pp. 273-277.

<sup>11</sup> *Id.* at 204-213, 217-221, 267-272.

<sup>12</sup> *Id.* at 282-337.

<sup>13</sup> *Id.* at 383-452, 522-525.

<sup>14</sup> *Id.* at 453-497.

<sup>15</sup> *Id.* at 509-519.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 32, 150, 366.

Cadets 1CL Narciso, Arcangel, Miranda, Pontillas, Diaz, Otila, and Dela Cruz were also reported late for five minutes.<sup>18</sup>

On December 4, 2013, the DRs reached the Department of Tactical Officers. They were logged and transmitted to the Company Tactical Officers (CTO) for explanation of the concerned cadets. Two days later, Cadet 1CL Cudia received his DR.

In his Explanation of Report dated December 8, 2013, Cadet 1CL Cudia reasoned out that: *"I came directly from OR432 Class. We were dismissed a bit late by our instructor Sir."*<sup>19</sup>

On December 19, 2013, Major Rommel Dennis Hindang (Maj. Hindang), the CTO of Cadet 1CL Cudia, meted out to him the penalty of 11 demerits and 13 touring hours. Immediately, Cadet 1CL Cudia clarified with Maj. Hindang his alleged violation. The latter told him that the basis of the punishment was the result of his conversation with Dr. Costales, who responded that she never dismissed her class late, and the protocol to dismiss the class 10-15 minutes earlier than scheduled. When he expressed his intention to appeal and seek reconsideration of the punishment, he was advised to put the request in writing. Hence, that same day, Cadet 1CL Cudia addressed his Request for Reconsideration of Meted Punishment to Maj. Benjamin L. Leander, Senior Tactical Officer (STO), asserting:

I strongly believe that I am not in control of the circumstances, our 4<sup>th</sup> period class ended 1500H and our 5<sup>th</sup> period class, which is ENG412, started 1500H also. Immediately after 4<sup>th</sup> period class, I went to my next class without any intention of being late Sir.<sup>20</sup>

A day after, Maj. Leander instructed Maj. Hindang to give his comments on the request of Cadet 1CL Cudia and to indicate if there were other cadets belonging to the same section who were also late.

On December 28, 2013, Maj. Hindang submitted his reply to Maj. Leander pointing out that, based on his investigation, the 4<sup>th</sup> period class was not dismissed late. As a result, Maj. Leander sustained the penalty imposed. Petitioners alleged that Cadet 1CL Cudia came to know of the denial of his request only on January 24, 2014 upon inquiry with Maj. Leander.

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<sup>18</sup> *Id.* at 338.

<sup>19</sup> *Id.* at 150.

<sup>20</sup> *Id.* at 34, 139.

Several days passed, and on January 7, 2014, Cadet 1CL Cudia was informed that Maj. Hindang reported him to the HC<sup>21</sup> for violation of the Honor Code. The Honor Report stated:

Lying that is giving statement that perverts the truth in his written appeal, stating that his 4<sup>th</sup> period class ended at 1500H that made him late in the succeeding class.<sup>22</sup>

Upon asking the HC Chairman, Cadet 1CL Mike Anthony P. Mogol (*Cadet 1CL Mogol*), as to what Maj. Hindang meant in his Report, Cadet 1CL Cudia learned that it was based on Maj. Hindang's conversations with their instructors and classmates as well as his statement in the request for reconsideration to Maj. Leander. He then verbally applied for and was granted an extension of time to answer the charge against him because Dr. Costales, who could shed light on the matter, was on emergency leave.

On January 13, 2014, Dr. Costales sent text messages to Cadet 1CL Cudia, conveying:

Gud pm cdt cudia. Mam belandres gave me bkground na. She told me its a report dated november. When maj hindang ask me, no time referens. (04:25:11 P.M.)

All the while I thot he was refering to dismissal during last day last december. Whc i told, i wud presume they wil finish early bec its grp work. (04:29:21 P.M.)<sup>23</sup>

The next day, Cadets 1CL Cudia and Arcangel approached Dr. Costales, who reaffirmed that she and Maj. Hindang were not in the same time reference when the latter asked her.

Later, Cadet 1CL Cudia submitted his letter of explanation on the Honor Report. He averred:

Sir,

We had an LE that day (14 November 2013) in OR432 class. When the first bell rang (1455), I stood up, reviewed my paper and submitted it to my instructor, Ms. Costales. After which, I and Cadet 1cl Arcangel asked for some query with regards (*sic*) to the deductions of our

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<sup>21</sup> The Honor Committee is a body of cadets who are entrusted by the Cadet Corps to preserve the sanctity of the Honor Code and conduct the procedural aspect of the Honor System. It is composed of representatives from the first, the second and the third classes in each company, the Chairman, the Vice-Chairman, and the Cadet First Captain, who is an Ex-Officio member (The Honor Code and Honor System Handbook, Series 2011, p. 29 [*Rollo*, p. 167]).

<sup>22</sup> *Rollo*, pp. 35, 63, 120-121, 140, 247, 285.

<sup>23</sup> *Id.* at 136.

previous LE. Our instructor gladly answered our question. She then told me that she will give the copy of our section grade, so I waited at the hallway outside the ACAD5 office, and then she came out of the room and gave me a copy of the grades. Cadet Arcangel, Cadet Narciso and I immediately went to our 5<sup>th</sup> period class which is ENG412.

With these statements, I would like to clarify the following:

1. How could this be lying?
2. What is wrong with the side of Maj. Hindang (why did he come up to that honor report)?
3. What are his assumptions?

I appeal, in the name of clarity, fairness and truth[,] that my case be reopened and carefully reviewed for I did not violate the honor code/system, I can answer NO to both questions (Did I intend to deceive? Did I intend to take undue advantage?) and for the following reasons:

1. The honor report of Maj. Hindang was already settled and finalized given the fact that no face-to-face personal conversation with Ms. Costales was conducted to clarify what and when exactly was the issue at hand.
2. Statements of the respondents support my explanation.
3. My explanation to my appeal to my DR (*Request for reconsideration of meted punishment*) further supports my explanation in my delinquency report.
4. My understanding of the duration of the “CLASS” covers not just a lecture in a typical classroom instruction but includes every transaction and communication a teacher does with her students, especially that in our case some cadets asked for queries, and I am given instruction by which (*sic*) were directly related to our CLASS. Her transaction and communication with our other classmates may have already ended but ours extended for a little bit.

*I agree and consider that because Cadet CUDIA is under my instruction to wait, and the other cadets still have business with me, it is reasonable enough for him to say that “Our class was dismissed a bit late” (dealing with matter of seconds or a minute particularly 45 seconds to 1 minute and 30 seconds)*

*And with concern to (*sic*) OR432 class, I can say it ended on time (1500H).*

*(signed)*  
*M. COSTALES*  
*w/ attached certification*

5. I was transparent and honest in explaining the 2-minute delay and did not attempt to conceal anything that happened or I did.
6. Furthermore, CPT DULAWAN PA, the Tactical Officer of Hawk Company[,] and I had a conversation with regards (*sic*) to the same matter for which he can give important points of my case.

7. Cadet 1cl DIAZ “D” Co can also stand as a witness that I waited for Ms. Costales.<sup>24</sup>

On January 15, 2014, the HC constituted a team to conduct a preliminary investigation on the reported honor violation of Cadet 1CL Cudia. The Foxtrot Company was designated as the investigating team and was composed of Cadet 1CL Hasigan as Presiding Officer, and Cadets 1CL Mogol, 1CL Raguindin, 2CL Gumilab, 2CL Saldua, 3CL Espejo, and 3CL Poncardas as members.<sup>25</sup> Soon after, the team submitted its Preliminary Investigation Report recommending that the case be formalized.

The formal investigation against Cadet 1CL Cudia then ensued. The Presiding Officer was Cadet 1CL Rhona K. Salvacion, while the nine (9) voting members were Cadets 1CL Jairus O. Fantin, 1CL Bryan Sonny S. Arlegui, 1CL Kim Adrian R. Martal, 1CL Jeanelyn P. Cabrido, 1CL Shu-Aydan G. Ayada, 1CL Dalton John G. Lagura, 2CL Renato A. Cariño, Jr., 2CL Arwi C. Martinez, and 2CL Niko Angelo C. Tarayao.<sup>26</sup> Acting as recorders tasked to document the entire proceedings were 4CL Jennifer A. Cuarteron and 3CL Leoncio Nico A. de Jesus II.<sup>27</sup> Those who observed the trial were Cadets 1CL Balmeo, Dag-uman, Hasigan, Raguindin, Paulino, Arcangel, and Narciso; Cadets 2CL Jocson and Saldua, Jr.; and Cadet 3CL Umaguing.<sup>28</sup>

The first formal hearing started late evening of January 20, 2014 and lasted until early morning the next day. Cadet 1CL Cudia was informed of the charge against him, as to which he pleaded “Not Guilty.” Among those who testified were Cadet 1CL Cudia, Maj. Hindang, and Cadets 1CL Arcangel and Narciso. On the second night of the hearing held on January 21, 2014, Cadet 1CL Cudia again appeared and was called to the witness stand along with Cadets Brit and Barrawed. Dr. Costales also testified under oath via phone on a loudspeaker. Deliberation among the HC voting members followed. After that, the ballot sheets were distributed. The members cast their votes through secret balloting and submitted their accomplished ballot sheets together with their written justification. The result was 8-1 in favor of a guilty verdict. Cadet 1CL Dalton John G. Lagura (Cadet 1CL Lagura) was the lone dissenter. Allegedly, upon the order of HC Chairman Cadet 1CL Mogol, the Presiding Officer and voting members

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<sup>24</sup> *Id.* at 35-36, 140-141.

<sup>25</sup> In the CHR’s Final Investigation Report, those who acted as members of the preliminary investigation team were Cadet 1CL Hasigan, 1CL Raguindin, 1CL Dag-uman, 2CL Gumilab, 2CL Saldua, 3CL Espejo, and Cdt Laturmas (*Rollo*, p. 253).

<sup>26</sup> *Rollo*, p. 458. However, in the CHR’s Final Investigation Report as well as the Final Investigation Report of the Fact-Finding Board/Investigating Body, Cadet 1CL Bianchiheimer L. Edra was named as one of the voting members instead of Cadet 1CL Jeanelyn P. Cabrido or Cadet 1CL Shu-Aydan G. Ayada (*Rollo*, pp. 254, 339).

<sup>27</sup> *Rollo*, pp. 254, 458.

<sup>28</sup> *Id.* at 242, 470-471.

went inside a chamber adjoining the court room for further deliberation. After several minutes, they went out and the Presiding Officer announced the 9-0 guilty verdict. Cadet 1CL Cudia, who already served nine (9) touring hours, was then informed of the unanimous votes finding him guilty of violating the Honor Code. He was immediately placed in the PMA Holding Center until the resolution of his appeal.

On January 24, 2014, Cadet 1CL Cudia filed a written appeal addressed to the HC Chairman, the full text of which stated:

#### WRITTEN APPEAL

14 NOVEMBER 2013

This is when I was reported for “Late for two (2) minutes in Eng412 class”, my explanation on this delinquency report when I received it, is that “Our class was dismissed a (little) bit late and I came directly from 4<sup>th</sup> period class... etc”. Knowing the fact that in my delinquency report, it is stated that ENG412 classes started 1500H and I am late for two minutes, it is logical enough for I (*sic*) to interpret it as “I came 1502H during that class”. This is the explanation that came into my mind that time. (*I just cannot recall the exact words I used in explaining that delinquency report, but what I want to say is that I have no intention to be late*). In my statements, I convey my message as “since I was not the only one left in that class, and the instructor is with us, I used the term “CLASS”, I used the word “DISMISSED” because I was under instruction (*to wait for her to give the section grade*) by the instructor, Ms. Costales. The other cadets (1CL MIRANDA, 1CL ARCANGEL) still have queries and business with her that made me decide to use the word “CLASS”, while the others who don’t have queries and business with her (ex: 1CL NARCISO and 1CL DIAZ) were also around.

Note:

*The four named cadets were also reported late.*

*Reference: Para 171.0. (Leaving the Classroom Prior to Dismissal Time)(Sec XVII, CCAFPR s2008)*

*It is stated in this reference that “Cadets shall not linger in the place of instruction after the section has been dismissed. EXCEPT when told or allowed to do so by the instructor or by any competent authority for official purposes.”*

The instruction by Ms. Costales was given to me before the two bells rang (indicating the end of class hour, 1500H). I waited for her for about 45 seconds to 1 minute and 30 seconds, that made me to decide to write “a little bit late” in my explanation. Truly, the class ENDED 1500H but due to official purpose (*instruction by Ms. Costales to wait*) and the conflict in academic schedule (*to which I am not in control of the circumstances, 4<sup>th</sup> PD class 1330H-1500H and 5<sup>th</sup> PD class 1500H-*



1600H), and since Ms. Costales, my other classmates, and I were there, I used the word “CLASS”.

19 December 2013

I was informed that my delinquency report was awarded, 11 Demerits and 13 Touring hours. Not because I don't want to serve punishment, but because I know I did nothing wrong, I obeyed instruction, and believing that my reason is justifiable and valid, that is why I approached our tactical officer, MAJ HINDANG PAF, to clarify and ask why it was awarded that day.

In our conversation, he said that he had a phone call to my instructor and he even added that they have a protocol to dismiss the class, 15 minutes or 10 minutes before 1500H. I explained:

*Sir, I strongly believe that I am not in control of the circumstances, our 4<sup>th</sup> period class ended 1500H and our 5<sup>th</sup> period class, which is ENG412, started 1500H also. Immediately after 4<sup>th</sup> period class, I went to my next class without any intention of being late Sir.*

These statements are supplementary to my explanation in my delinquency report, in here, I specified the conflict in the schedule and again, I have no intention to be late. After explaining it further with these statements, my tactical officer said that since I was reported in a written form, I should make an appeal in a written form. Thinking that he already understood what I want to say, I immediately made an appeal that day stating the words that I used in having conversation with him.<sup>29</sup>

Attached to the written appeal was a Certification dated January 24, 2014, wherein Dr. Costales attested:

1. That Cadet MIRANDA, ARCANGEL, [and] NARCISO was (*sic*) with Cadet CUDIA in making query about their latest grades in OR432 and/or results of UE1 outside the ACADS office. The following facts may explain their queries on 14 November 2013:
  - a. That I held my class in the PMAFI room instead of room 104.
  - b. That OR432 releases grades every Wednesday and cadets are informed during Thursday, either in class or posted grades in the bulletin board (grades released was [*sic*] based on the previous LEs: latest LE before UE was Decision Trees).
  - c. That UE papers were already checked but not yet recorded due to (*sic*) other cadets have not taken the UE. Cadets were allowed to verify scores but not to look at the papers.
  - d. Last 23 January 2014, Captain Dulawan clarified if indeed Cadet NARCISO and ARCANGEL verified grades. The two cadets said that they verified something with me after the OR432 class and they were with Cadet CUDIA. That the statements of the three (3) cadets are all the same and consistent, thus[,] I honor that as true.

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<sup>29</sup>

*Id.* at 32-33, 137-138.

2. As to the aspect of dismissing late, I could not really account for the specific time that I dismissed the class. To this date, I [cannot] really recall an account that is more than two (2) months earlier. According to my records, there was a lecture followed by an LE during (*sic*) on 14 November 2013. To determine the time of my dismissal, maybe it can be verified with the other members of class I was handling on that said date.<sup>30</sup>

Respondents contend that the HC denied the appeal the same day, January 24, as it found no reason to conduct a re-trial based on the arguments and evidence presented.<sup>31</sup> Petitioners, however, claim that the written appeal was not acted upon until the filing of the petition-in-intervention.<sup>32</sup>

From January 25 to February 7, 2014, respondents allege that the Headquarters Tactics Group (*HTG*) conducted an informal review to check the findings of the HC. During the course of the investigation, Prof. Berong was said to have confirmed with the Officer-in-Charge of the HC that classes started as scheduled (*i.e.*, 3:05 p.m. or 1505H), and that Cadet 1CL Barrawed, the acting class marcher of ENG412, verified before the Commandant, Assistant Commandant, and STO that the class started not earlier than scheduled.

Meantime, on February 4, 2014, the OIC of the HC forwarded the Formal Investigation Report to the Staff Judge Advocate (*SJA*) for review. The next day, the SJA found the report to be legally in order.

On February 8, 2014, Colonel Rozzano D. Briguez (*Col. Briguez*), the Commandant of Cadets, affirmed the HC findings and recommended to Vice Admiral Edgar Abogado, then PMA Superintendent, the separation from the PMA of Cadet 1CL Cudia for violation of the First Tenet of the Honor Code (Lying, pursuant to Sec. VII.12.b of the CCAFPR S-2008). On the same date, Special Orders No. 26 was issued by the PMA Headquarters placing Cadet 1CL Cudia on indefinite leave of absence without pay and allowances effective February 10, 2014 pending approval of his separation by the AFP-GHQ, barring him from future appointment and/or admission as cadet, and not permitting him to qualify for any entrance requirements to the PMA.<sup>33</sup>

Two days later, Vice Admiral Abogado approved the recommendation to dismiss Cadet 1CL Cudia.

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<sup>30</sup> *Id.* at 37, 142, 149.

<sup>31</sup> *Id.* at 340.

<sup>32</sup> *Id.* at 68.

<sup>33</sup> *Id.* at 143, 172, 199.

On February 13, 2014, Cadet 1CL Cudia submitted a letter to the Office of the Commandant of Cadets requesting for reinstatement by the PMA of his status as a cadet.<sup>34</sup>

Four days passed, Annavee P. Cudia (*Annavee*), the sister of Cadet 1CL Cudia, posted his plight in her Facebook account. The day after, the Spouses Cudia gave a letter to Major General Oscar Lopez (*Maj. Gen. Lopez*), the new PMA Superintendent, asking to recognize the 8-1 voting of the HC,<sup>35</sup> copies of which were furnished to the AFP Chief of Staff and other concerned military officials. Subsequently, Maj. Gen. Lopez was directed to review Cadet 1CL Cudia's case. The latter, in turn, referred the matter to the Cadet Review and Appeals Board (*CRAB*).

On February 19, 2014, Cadet 1CL Cudia made his personal appeal letter to Maj. Gen. Lopez. On even date, the AFP Chief of Staff ordered a reinvestigation following the viral Facebook post of Annavee demanding the intervention of the military leadership.

Petitioners claim that, on February 21, 2014, Special Order No. 1 was issued directing all PMA cadets to ostracize Cadet 1CL Cudia by not talking to him and by separating him from all activities/functions of the cadets. It is said that any violation shall be a "Class 1" offense entailing 45 demerits, 90 hours touring, and 90 hours confinement. Cadet 1CL Cudia was not given a copy of the order and learned about it only from the media.<sup>36</sup> According to an alleged news report, PMA Spokesperson Major Agnes Lynette Flores (*Maj. Flores*) confirmed the HC order to ostracize Cadet 1CL Cudia. Among his offenses were: breach of confidentiality by putting documents in the social media, violation of the PMA Honor Code, lack of initiative to resign, and smearing the name of the PMA.<sup>37</sup>

On February 24, 2014, Cadet 1CL Cudia requested the CRAB for additional time, until March 4, 2014, to file an appeal on the ground that his intended witnesses were in on-the-job training (*OJT*).<sup>38</sup> As additional evidence to support his appeal, he also requested for copies of the Minutes of the HC proceedings, relevant documents pertaining to the case, and video footages and recordings of the HC hearings.

The next day, Cadet 1CL Cudia and his family engaged the services of the Public Attorney's Office (*PAO*) in Baguio City.

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<sup>34</sup> *Id.* at 143-144.

<sup>35</sup> *Id.* at 145-146, 202-203.

<sup>36</sup> *Id.* at 11, 70.

<sup>37</sup> *Id.* at 40.

<sup>38</sup> *Id.* at 132.

The CRAB conducted a review of the case based on the following: (a) letter of appeal of the Spouses Cudia dated February 18, 2014; (b) directive from the AFP-GHQ to reinvestigate the case; and (c) guidance from Maj. Gen. Lopez.

On February 26, 2014, Brigadier General Andre M. Costales, Jr. (Brig. Gen. Costales, Jr.), the CRAB Chairman, informed Cadet 1CL Cudia that, pending approval of the latter's request for extension, the CRAB would continue to review the case and submit its recommendations based on whatever evidence and testimonies received, and that it could not favorably consider his request for copies of the HC minutes, relevant documents, and video footages and recordings of the HC hearings since it was neither the appropriate nor the authorized body to take action thereon.<sup>39</sup> Subsequently, upon verbal advice, Cadet 1CL Cudia wrote a letter to Maj. Gen. Lopez reiterating his request.<sup>40</sup>

Two days after, the Spouses Cudia filed a letter-complaint before the CHR-Cordillera Administrative Region (CAR) Office against the HC members and Maj. Gracilla for alleged violation of the human rights of Cadet 1CL Cudia, particularly his rights to due process, education, and privacy of communication.<sup>41</sup>

On March 4, 2014, Cadet 1CL Cudia, through the PAO, moved for additional time, until March 19, 2014, to file his appeal and submit evidence. PAO also wrote a letter to AFP Chief of Staff General Emmanuel T. Bautista (Gen. Bautista) seeking for immediate directive to the PMA to expeditiously and favorably act on Cadet 1CL Cudia's requests.<sup>42</sup>

Exactly a week prior to the commencement exercises of *Siklab Diwa* Class, the following events transpired:

On March 10, 2014, Annavee sought the assistance of PAO Chief Public Attorney Persida V. Rueda-Acosta.<sup>43</sup> On the other hand, the CRAB submitted a report to the AFP-GHQ upholding the dismissal of Cadet 1CL Cudia.<sup>44</sup>

On March 11, 2014, PAO received a letter from Maj. Gen. Lopez stating the denial of Cadet 1CL Cudia's requests for extension of time to file an Appeal Memorandum in view of the ample time already given, and to be

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<sup>39</sup> *Id.* at 179.

<sup>40</sup> *Id.* at 133-135.

<sup>41</sup> *Id.* at 462.

<sup>42</sup> *Id.* at 181-182.

<sup>43</sup> *Id.* at 183-185.

<sup>44</sup> *Id.* at 340.

furnished with a copy of relevant documents because of confidentiality and presumption of regularity of the HC proceedings.<sup>45</sup> Cadet 1CL Cudia, through PAO, then filed an Appeal Memorandum<sup>46</sup> before the CRAB.

On March 12, 2014, Spouses Cudia wrote a letter to President Benigno Simeon C. Aquino III (*Pres. Aquino*), who is the Commander-in-Chief of the AFP, attaching thereto the Appeal Memorandum.<sup>47</sup> On the same day, Special Orders No. 48 was issued by the PMA constituting a Fact-Finding Board/Investigation Body composed of the CRAB members and PMA senior officers to conduct a deliberate investigation pertaining to Cadet 1CL Cudia's Appeal Memorandum.<sup>48</sup> The focus of the inquiry was not just to find out whether the appeal has merit or may be considered but also to investigate possible involvement of other cadets and members of the command related to the incident and to establish specific violation of policy or regulations that had been violated by other cadets and members of the HC.<sup>49</sup>

On March 13, 2014, the Cudia family and the Chief Public Attorney had a dialogue with Maj. Gen. Lopez.

On March 14, 2014, the CHR-CAR came out with its preliminary findings, which recommended the following:

- a. For the PMA and the Honor Committee to respect and uphold the 8 Guilty – 1 Not guilty vote;
- b. For the PMA and the Honor Committee to officially pronounce Cdt Cudia as Not Guilty of the charge filed against him before the Honor Committee;
- c. For the PMA to restore Cadet Cudia's rights and entitlements as a full-fledge graduating cadet and allow him to graduate on Sunday, 16 March 2014;
- d. For the PMA to fully cooperate with the CHR in the investigation of Cudia's Case.<sup>50</sup>

On March 15, 2014, Cadet 1CL Cudia and his family had a meeting with Pres. Aquino and Department of National Defense (*DND*) Secretary Voltaire T. Gazmin. The President recommended that they put in writing

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<sup>45</sup> *Id.* at 152.

<sup>46</sup> *Id.* at 118-131.

<sup>47</sup> *Id.* at 186.

<sup>48</sup> The Chairman and Vice Chairman of the Fact-Finding Board/Investigation Body were BGen. Andre M. Costales and Capt. Allan Ferdinand V. Cusi, respectively. The members were Col. Archimedes V. Viaje, Col. Monico S. Batle, Maj. Ma. Victoria Asther R. Excelise, Maj. Raul V. Verceles, Maj. Xerxes A. Trinidad, Maj. Charles V. Calucag (Secretary), Maj. Lope A. Domingo, Jr., Maj. Agnes Lynette A. Flores, Cpt. Charity G. Fuentespina, Cpt. Dhylyne Enchon B. Espejo (Legal Officer Adviser), Cpt. Almira C. Jabagat, and 2Lt. Marlon B. Nido.

<sup>49</sup> *Rollo*, p. 359.

<sup>50</sup> *Id.* at 191.

their appeal, requests, and other concerns. According to respondents, the parties agreed that Cadet 1CL Cudia would not join the graduation but it was without prejudice to the result of the appeal, which was elevated to the AFP Chief of Staff. The President then tasked Gen. Bautista to handle the reinvestigation of the case, with Maj. Gen. Oscar Lopez supervising the group conducting the review.

Four days after *Siklab Diwa* Class' graduation day, petitioner Renato S. Cudia received a letter dated March 11, 2014 from the Office of the AFP Adjutant General and signed by Brig. Gen. Ronald N. Albano for the AFP Chief of Staff, affirming the CRAB's denial of Cadet 1CL Cudia's appeal. It held:

After review, The Judge Advocate General, AFP finds that the action of the PMA CRAB in denying the appeal for reinvestigation is legally in order. There was enough evidence to sustain the finding of guilt and the proprietary (*sic*) of the punishment imposed. Also, your son was afforded sufficient time to file his appeal from the date he was informed of the final verdict on January 21, 2014, when the decision of the Honor Committee was read to him in person, until the time the PMA CRAB conducted its review on the case. Moreover, the continued stay of your son at the Academy was voluntary. As such, he remained subject to the Academy's policy regarding visitation. Further, there was no violation of his right to due process considering that the procedure undertaken by the Honor Committee and PMA CRAB was consistent with existing policy. Thus, the previous finding and recommendation of the Honor Committee finding your son, subject Cadet guilty of "Lying" and recommending his separation from the Academy is sustained.

In view of the foregoing, this Headquarters resolved to deny your appeal for lack of merit.<sup>51</sup>

Thereafter, the Fact-Finding Board/Investigating Body issued its Final Investigation Report on March 23, 2014 denying Cadet 1CL Cudia's appeal.<sup>52</sup> Subsequently, on April 28, 2014, the special investigation board tasked to probe the case submitted its final report to the President.<sup>53</sup> Pursuant to the administrative appeals process, the DND issued a Memorandum dated May 23, 2014, directing the Office of AFP Chief of Staff to submit the complete records of the case for purposes of DND review and recommendation for disposition by the President.<sup>54</sup>

Meanwhile, on May 22, 2014, the CHR-CAR issued its Resolution with respect to CHR-CAR Case No. 2014-0029, concluding and recommending as follows:

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<sup>51</sup> *Id.* at 200-201.

<sup>52</sup> *Id.* at 338-358.

<sup>53</sup> *Id.* at 289.

<sup>54</sup> *Id.* at 360.

**WHEREFORE, PREMISES CONSIDERED**, the Commission on Human Rights-CAR Office finds **PROBABLE CAUSE FOR HUMAN RIGHTS VIOLATIONS** against the officers and members of the PMA Honor Committee and certain PMA officials, specifically for violations of the rights of CADET ALDRIN JEFF P. CUDIA to dignity, due process, education, privacy/privacy of communication, and good life.

**IN VIEW OF THE FOREGOING**, the CHR-CAR Office **RESOLVED** to indorse to competent authorities for their immediate appropriate action on the following recommendations:

1. The Philippine Military Academy must set aside the “9-Guilty, 0-Not Guilty” verdict against Cadet Aldrin Jeff P. Cudia, for being null and void; to uphold and respect the “8-Guilty, 1-Not Guilty” voting result and make an official pronouncement of NOT GUILTY in favor of Cadet Cudia;
2. The PMA, the AFP Chief of Staff, and the President in whose hands rest the ends of justice and fate of Cadet Cudia, to:
  - 2.1 officially proclaim Cadet Cudia a graduate and alumnus of the Philippine Military Academy;
  - 2.2 issue to Cadet Cudia the corresponding Diploma for the degree of Bachelors of Science; and
  - 2.3 Issue to Cadet Cudia the corresponding official transcript of his academic records for his BS degree, without conditions therein as to his status as a PMA cadet.
3. The Public Attorneys’ Office to provide legal services to Cadet Cudia in pursuing administrative, criminal and civil suits against the officers and members of the Honor Committee named hereunder, for violation of the Honor Code and System and the Procedure in Formal Investigation, dishonesty, violation of the secrecy of the ballot, tampering the true result of the voting, perjury, intentional omission in the Minutes of substantive part of the formal trial proceedings which are prejudicial to the interest of justice and Cadet Cudia’s fundamental rights to dignity, non-discrimination and due process, which led to the infringement of his right to education and even transgressing his right to a good life.
  - 3.1 Cdt 1CL MIKE ANTHONY MOGUL, now 2<sup>nd</sup> Lt. of the AFP
  - 3.2 Cdt 1CL RHONA K. SALVACION, now 2<sup>nd</sup> Lt. of the AFP
  - 3.3 Cdt 2CL ARWI C. MARTINEZ
  - 3.4 Cdt 2CL RENATO A. CARIÑO, JR.
  - 3.5 Cdt 2CL NIKO ANGELO C. TARAYAO
  - 3.6 Cdt 1CL JEANELYN P. CABRIDO, now 2<sup>nd</sup> Lt. of the AFP
  - 3.7 Cdt 1CL KIM ADRIAN R. MARTAL, now 2<sup>nd</sup> Lt. of the AFP
  - 3.8 Cdt 1CL JAIRUS O. FANTIN, now 2<sup>nd</sup> Lt. of the AFP
  - 3.9 Cdt 1CL BRYAN SONNY S. ARLEGUI, now 2<sup>nd</sup> Lt. of the AFP
  - 3.10 Cdt 1CL DALTON JOHN G. LAGURA, now 2<sup>nd</sup> Lt. of the AFP
  - 3.11 Cdt 1CL BIANCHIHEIMER L. EDRA, now 2<sup>nd</sup> Lt. of the AFP
  - 3.12 Cdt 4CL JENNIFER A. CUARTERON (recorder)
  - 3.13 Cdt 3CL LEONCIO NICO A. DE JESUS II (recorder)

4. The Office of the AFP Chief of Staff and the PMA competent authorities should investigate and file appropriate charges against Maj. VLADIMIR P. GRACILLA, for violation of the right to privacy of Cadet Cudia and/or failure, as intelligence officer, to ensure the protection of the right to privacy of Cudia who was then billeted at the PMA Holding Center;
5. The Office of the AFP Chief of Staff and PMA competent authorities should investigate Maj. DENNIS ROMMEL HINDANG for his failure and ineptness to exercise his responsibility as a competent Tactical Officer and a good father of his cadets, in this case, to Cadet Cudia; for failure to respect exhaustion of administrative remedies;
6. The Secretary of National Defense, the Chief of Staff of the Armed Forces of the Philippines, the PMA Superintendent, to immediately cause the comprehensive review of all rules of procedures, regulations, policies, including the so-called practices in the implementation of the Honor Code; and, thereafter, adopt new policies, rules of procedures and relevant regulations which are human-rights based and consistent with the Constitution and other applicable laws;
7. The Congress of the Philippines to consider the enactment of a law defining and penalizing ostracism and discrimination, which is apparently being practiced in the PMA, as a criminal offense in this jurisdiction;
8. His Excellency The President of the Philippines to certify as priority, the passage of an anti-ostracism and/or anti-discrimination law; and
9. Finally, for the AFP Chief of Staff and the PMA authorities to ensure respect and protection of the rights of those who testified for the cause of justice and truth as well as human rights of Cadet Cudia.

**RESOLVED FURTHER**, to monitor the actions by the competent authorities on the foregoing CHR recommendations.

Let copy of this resolution be served by personal service or by substituted service to the complainants (the spouses Renato and Filipina Cudia; and Aldrin Jeff P. Cudia), and all the respondents. Also, to the PMA Superintendent, the AFP Chief of Staff, the Secretary of National Defense, His Excellency The President of the Philippines, The Public Attorneys' Office.

**SO RESOLVED.**<sup>55</sup>

On June 11, 2014, the Office of the President sustained the findings of the AFP Chief of Staff and the CRAB. The letter, which was addressed to the Spouses Cudia and signed by Executive Secretary Paquito N. Ochoa, Jr., stated in whole:

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<sup>55</sup> *Id.* at 495-497. (Emphasis in the original)



This refers to your letters to the President dated 12 March 2014 and 26 March 2014 appealing for a reconsideration of the decision of the Philippine Military Academy (PMA) Honor Committee on the case of your son, Cadet 1CL Aldrin Jeff Cudia.

After carefully studying the records of the case of Cadet Cudia, the decision of the Chief of Staff of the Armed Forces of the Philippines (AFP), and the Honor Code System of the AFP Cadet Corps, this Office has found no substantial basis to disturb the findings of the AFP and the PMA Cadet Review Appeals Board (CRAB). There is no competent evidence to support the claim that the decision of the Honor Committee members was initially at 8 “Guilty” votes and 1 “Not Guilty” vote. The lone affidavit of an officer, based on his purported conversation with one Honor Committee member, lacks personal knowledge on the deliberations of the said Committee and is hearsay at best.

Similarly, the initial recommendations of the Commission on Human Rights cannot be adopted as basis that Cadet Cudia’s due process rights were violated. Apart from being explicitly preliminary in nature, such recommendations are anchored on a finding that there was an 8-1 vote which, as discussed above, is not supported by competent evidence.

In the evaluation of Cadet Cudia’s case, this Office has been guided by the precept that military law is regarded to be in a class of its own, “applicable only to military personnel because the military constitutes an armed organization requiring a system of discipline separate from that of civilians” (*Gonzales v. Abaya*, G.R. No. 164007, 10 August 2005 citing *Calley v. Callaway*, 519 F. 2d 184 [1975] and *Orloff v. Willoughby*, 345 US 83 [1953]). Thus, this Office regarded the findings of the AFP Chief, particularly his conclusion that there was nothing irregular in the proceedings that ensued, as carrying great weight.

Accordingly, please be informed that the President has sustained the findings of the AFP Chief and the PMA CRAB.<sup>56</sup>

### **The Issues**

To petitioners, the issues for resolution are:

#### **I.**

WHETHER THE PHILIPPINE MILITARY ACADEMY, THE HONOR COMMITTEE AND THE CADET REVIEW AND APPEALS BOARD COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING CADET FIRST CLASS ALDRIN JEFF P. CUDIA FROM THE ACADEMY IN UTTER DISREGARD OF HIS RIGHT TO DUE PROCESS

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*Id.* at 499-500.

CONSIDERING THAT:

- A. Despite repeated requests for relevant documents regarding his case, Cadet First Class Aldrin Jeff Cudia was deprived of his right to have access to evidence which would have proven his defense, would have totally belied the charge against him, and more importantly, would have shown the irregularity in the Honor Committee's hearing and rendition of decision
- B. Cadet First Class Aldrin Jeff Cudia was vaguely informed of the decisions arrived at by the Honor Committee, the Cadet Review and Appeals Board and the Philippine Military Academy
- C. The Honor Committee, the Cadet Review and Appeals Board and the Philippine Military Academy have afforded Cadet First Class Aldrin Jeff Cudia nothing but a sham trial
- D. The Honor Committee, the Cadet Review and Appeals Board and the Philippine Military Academy violated their own rules and principles as embodied in the Honor Code
- E. The Honor Committee, the Cadet Review and Appeals Board and the Philippine Military Academy, in deciding Cadet First Class Aldrin Jeff Cudia's case, grossly and in bad faith, misapplied the Honor Code so as to defy the 1987 Constitution, notwithstanding the unquestionable fact that the former should yield to the latter.

II

WHETHER THE PHILIPPINE MILITARY ACADEMY, THE HONOR COMMITTEE AND THE CADET REVIEW AND APPEALS BOARD COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT CADET FIRST CLASS ALDRIN JEFF P. CUDIA LIED, THEREBY VIOLATING THE HONOR CODE

III

WHETHER THE RESULT OF THE FACT-FINDING INVESTIGATION INDEPENDENTLY CONDUCTED BY THE COMMISSION ON HUMAN RIGHTS IS OF SUCH GREAT WEIGHT AND PERSUASIVE NATURE THAT THIS HONORABLE COURT MAY HONOR, UPHOLD AND RESPECT<sup>57</sup>

On the other hand, in support of their prayer to dismiss the petition, respondents presented the issues below:

PROCEDURAL GROUNDS

I.

THE MANDAMUS PETITION PRAYING THAT CADET CUDIA BE INCLUDED IN THE LIST OF GRADUATES OF SIKLAB DIWA

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<sup>57</sup>

*Id.* at 79-81.

CLASS OF 2014 AND BE ALLOWED TO TAKE PART IN THE COMMENCEMENT EXERCISES HAS ALREADY BEEN RENDERED MOOT.

II.

THE ISSUES RAISED IN THE PETITIONS ARE ACTUALLY FACTUAL WHICH ARE BEYOND THE SCOPE OF A PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS.

III.

MANDAMUS DOES NOT LIE TO COMPEL RESPONDENTS TO GRANT THE RELIEFS PRAYED FOR.

IV.

IT IS PREMATURE TO INVOKE JUDICIAL REDRESS PENDING THE DECISION OF THE PRESIDENT ON CADET CUDIA'S APPEAL.

V.

WITH UTMOST DUE RESPECT, THE HONORABLE COURT MUST EXERCISE CAREFUL RESTRAINT AND REFRAIN FROM UNDULY OR PREMATURELY INTERFERING WITH LEGITIMATE MILITARY MATTERS.

SUBSTANTIVE GROUNDS

VI.

CADET CUDIA HAS NECESSARILY AND VOLUNTARILY RELINQUISHED CERTAIN CIVIL LIBERTIES BY VIRTUE OF HIS ENTRY INTO THE PMA.

VII.

THE PMA ENJOYS THE ACADEMIC FREEDOM WHICH AUTHORIZES IT TO IMPOSE DISCIPLINARY MEASURES AND PUNISHMENT AS IT DEEMS FIT AND CONSISTENT WITH THE PECULIAR NEEDS OF THE ACADEMY.

VIII.

CADET CUDIA WAS PROPERLY AFFORDED PROCEDURAL DUE PROCESS.

The PMA has regulatory authority to administratively terminate cadets despite the absence of statutory authority.

Violation of the Honor Code warrants the administrative dismissal of a guilty cadet.

Cadet Cudia violated the first tenet of the Honor Code by providing untruthful statements in the explanation for his tardiness.

The higher authorities of the PMA did not blindly adopt the findings of the Honor Committee.

The procedural safeguards in a student disciplinary case were properly accorded to Cadet Cudia.

The subtle evolution in the voting process of the Honor Committee, by incorporating executive session/chambering, was adopted to further strengthen the voting procedure of the Honor Committee.

Cadet Lagura voluntarily changed his vote without any pressure from the other voting members of the Honor Committee.

Ostracism is not a sanctioned practice of the PMA.

The findings of the Commission on Human Rights are not binding on the Honorable Court, and are, at best, recommendatory.

Cadet Cudia was not effectively deprived of his future when he was dismissed from the PMA.<sup>58</sup>

## **The Ruling of the Court**

### **PROCEDURAL GROUNDS**

#### *Propriety of a petition for mandamus*

Respondents argue that the mandamus aspect of the petition praying that Cadet 1CL Cudia be included in the list of graduating cadets and for him to take part in the commencement exercises was already rendered moot and academic when the graduation ceremonies of the PMA *Siklab Diwa* Class took place on March 16, 2014. Also, a petition for mandamus is improper since it does not lie to compel the performance of a discretionary duty. Invoking *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,<sup>59</sup> respondents assert that a mandamus petition could not be availed of to compel an academic institution to allow a student to continue studying therein because it is merely a privilege and not a right. In this case, there is a clear failure on petitioners' part to establish that the PMA has the ministerial duty to include Cadet 1CL Cudia in the list, much less award him with academic honors and commission him to the Philippine Navy. Similar to the case of *University of San Agustin, Inc. v. Court of Appeals*,<sup>60</sup> it is

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<sup>58</sup> *Id.* at 290-292.

<sup>59</sup> 160-A Phil. 929 (1975).

<sup>60</sup> G.R. No. 100588, March 7, 1994, 230 SCRA 761.

submitted that the PMA may rightfully exercise its discretionary power on who may be admitted to study pursuant to its academic freedom.

In response, petitioners contend that while the plea to allow Cadet 1CL Cudia to participate in the PMA 2014 commencement exercises could no longer be had, the Court may still grant the other reliefs prayed for. They add that *Garcia* enunciated that a respondent can be ordered to act in a particular manner when there is a violation of a constitutional right, and that the certiorari aspect of the petition must still be considered because it is within the province of the Court to determine whether a branch of the government or any of its officials has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess thereof.

We agree that a petition for mandamus is improper.

Under Section 3, Rule 65 of the Rules of Civil Procedure, a petition for mandamus may be filed when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It may also be filed when any tribunal, corporation, board, officer, or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.

For mandamus to lie, the act sought to be enjoined must be a ministerial act or duty. An act is ministerial if the act should be performed "[under] a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of [the tribunal or corporation's] own judgment upon the propriety or impropriety of the act done." The tribunal, corporation, board, officer, or person must have no choice but to perform the act specifically enjoined by law. This is opposed to a discretionary act whereby the officer has the choice to decide how or when to perform the duty.<sup>61</sup>

In this case, petitioners pray for, among others:

Also, after due notice and hearing, it is prayed of the Court to issue a **Writ of Mandamus** to:

1. direct the PMA to include Cadet Cudia in the list of graduates of Siklab Diwa Class of 2014 of the PMA, including inclusion in the yearbook;

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<sup>61</sup> *Buena v. Benito*, G.R. No. 181760, October 14, 2014.

2. direct the PMA to allow Cadet Cudia to take part in the commencement exercises if he completed all the requirements for his baccalaureate degree;
3. direct the PMA to award unto Cadet Cudia the academic honors he deserves, and the commission as a new Philippine Navy ensign;
4. direct the Honor Committee to submit to the CRAB of the PMA all its records of the proceedings taken against Cadet Cudia, including the video footage and audio recordings of the deliberations and voting, for the purpose of allowing the CRAB to conduct intelligent review of the case of Cadet Cudia;
5. direct the PMA's CRAB to conduct a review *de novo* of all the records **without requiring** Cadet Cudia to submit new evidence if it was physically impossible to do so;
6. direct the PMA's CRAB to take into account the certification signed by Dr. Costales, the new evidence consisting of the affidavit of a military officer declaring under oath that the cadet who voted "not guilty" revealed to this officer that this cadet was coerced into changing his vote, and other new evidence if there is any;
7. direct the PMA's CRAB to give Cadet Cudia the right to a counsel who is allowed to participate actively in the proceedings as well as in the cross-examinations during the exercise of the right to confront witnesses against him; and
8. direct the Honor Committee in case of remand of the case by the CRAB to allow Cadet Cudia a representation of a counsel.<sup>62</sup>

Similarly, petitioner-intervenor seeks for the following reliefs:

A. x x x

- B. a Writ of Mandamus be issued commanding:
- a.) The PMA, Honor Committee, and CRAB to respect and uphold the 8 Guilty - 1 Not Guilty vote;
  - b.) The PMA, Honor Committee, and CRAB to officially pronounce Cadet Cudia as Not Guilty of the charge filed against him before the Honor Committee;
  - c.) The PMA to restore Cadet Cudia's rights and entitlements as a full-fledged graduating cadet, including his diploma and awards.<sup>63</sup>

Anent the plea to direct the PMA to include Cadet 1CL Cudia in the list of graduates of *Siklab Diwa* Class of 2014 and to allow him to take part in the commencement exercises, the same was rendered moot and academic when the graduation ceremonies pushed through on March 16, 2014 without including Cadet 1CL Cudia in the roll of graduates.

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<sup>62</sup> *Rollo*, p. 27.

<sup>63</sup> *Id.* at 110-111, 446-447.

With respect to the prayer directing the PMA to restore Cadet 1CL Cudia's rights and entitlements as a full-fledged graduating cadet, including his diploma, awards, and commission as a new Philippine Navy ensign, the same cannot be granted in a petition for mandamus on the basis of academic freedom, which We shall discuss in more detail below. Suffice it to say at this point that these matters are within the ambit of or encompassed by the right of academic freedom; therefore, beyond the province of the Court to decide.<sup>64</sup> The powers to confer degrees at the PMA, grant awards, and commission officers in the military service are discretionary acts on the part of the President as the AFP Commander-in-Chief. Borrowing the words of *Garcia*:

There are standards that must be met. There are policies to be pursued. Discretion appears to be of the essence. In terms of Hohfeld's terminology, what a student in the position of petitioner possesses is a privilege rather than a right. She [in this case, Cadet 1CL Cudia] cannot therefore satisfy the prime and indispensable requisite of a *mandamus* proceeding.<sup>65</sup>

Certainly, mandamus is never issued in doubtful cases. It cannot be availed against an official or government agency whose duty requires the exercise of discretion or judgment.<sup>66</sup> For a writ to issue, petitioners should have a clear legal right to the thing demanded, and there should be an imperative duty on the part of respondents to perform the act sought to be mandated.<sup>67</sup>

The same reasons can be said as regards the other reliefs being sought by petitioners, which pertain to the HC and the CRAB proceedings. In the absence of a clear and unmistakable provision of a law, a mandamus petition does not lie to require anyone to a specific course of conduct or to control or review the exercise of discretion; it will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do or give to the applicant anything to which he is not entitled by law.<sup>68</sup>

The foregoing notwithstanding, the resolution of the case must proceed since, as argued by petitioners, the Court is empowered to settle via petition for *certiorari* whether there is grave abuse of discretion on the part of respondents in dismissing Cadet 1CL Cudia from the PMA.

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<sup>64</sup> *University of the Philippines Board of Regents v. Ligot-Telan*, G.R. No. 110280, October 21, 1993, 227 SCRA 342, 356.

<sup>65</sup> *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, *supra* note 59, at 942.

<sup>66</sup> *University of the Philippines Board of Regents v. Ligot-Telan*, *supra* note 64, at 361-362.

<sup>67</sup> See *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*, G.R. No. 103142, November 8, 1993, 227 SCRA 591, 597.

<sup>68</sup> *University of San Agustin, Inc. v. Court of Appeals*, *supra* note 60, at 771.

*Factual nature of the issues*

According to respondents, the petition raises issues that actually require the Court to make findings of fact because it sets forth several factual disputes which include, among others: the tardiness of Cadet 1CL Cudia in his ENG412 class and his explanation thereto, the circumstances that transpired in the investigation of his Honor Code violation, the proceedings before the HC, and the allegation that Cadet 1CL Lagura was forced to change his vote during the executive session/“chambering.”

In opposition, petitioners claim that the instant controversy presents legal issues. Rather than determining which between the two conflicting versions of the parties is true, the case allegedly centers on the application, appreciation, and interpretation of a person’s rights to due process, to education, and to property; the interpretation of the PMA Honor Code and Honor System; and the conclusion on whether Cadet 1CL Cudia’s explanation constitutes lying. Even if the instant case involves questions of fact, petitioners still hold that the Court is empowered to settle mixed questions of fact and law.

Petitioners are correct.

There is a question of law when the issue does not call for an examination of the probative value of evidence presented, the truth or falsehood of facts being admitted and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. When there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law.<sup>69</sup>

The petition does not exclusively present factual matters for the Court to decide. As pointed out, the all-encompassing issue of more importance is the determination of whether a PMA cadet has rights to due process, to education, and to property in the context of the Honor Code and the Honor System, and, if in the affirmative, the extent or limit thereof. Notably, even respondents themselves raise substantive grounds that We have to resolve. In support of their contention that the Court must exercise careful restraint and should refrain from unduly or prematurely interfering in legitimate military matters, they argue that Cadet 1CL Cudia has necessarily and voluntarily relinquished certain civil liberties by virtue of his entry into the PMA, and that the Academy enjoys academic freedom authorizing the imposition of disciplinary measures and punishment as it deems fit and consistent with the peculiar needs of the PMA. These issues, aside from being purely legal

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<sup>69</sup> *Morales v. The Board of Regents of the UP*, 487 Phil. 449, 464 (2004).



questions, are of first impression; hence, the Court must not hesitate to make a categorical ruling.

*Exhaustion of administrative remedies*

Respondents assert that the Court must decline jurisdiction over the petition pending President Aquino's resolution of Cadet 1CL Cudia' appeal. They say that there is an obvious non-exhaustion of the full administrative process. While Cadet 1CL Cudia underwent the review procedures of his guilty verdict at the Academy level – the determination by the SJA of whether the HC acted according to the established procedures of the Honor System, the assessment by the Commandant of Cadets of the procedural and legal correctness of the guilty verdict, the evaluation of the PMA Superintendent to warrant the administrative separation of the guilty cadet, and the appellate review proceedings before the CRAB – he still appealed to the President, who has the utmost latitude in making decisions affecting the military. It is contended that the President's power over the persons and actions of the members of the armed forces is recognized in *B/Gen. (Ret.) Gudani v. Lt./Gen. Senga*<sup>70</sup> and in Section 31<sup>71</sup> of Commonwealth Act (C.A.) No. 1 (*also known as "The National Defense Act"*). As such, the President could still overturn the decision of the PMA. In respondents' view, the filing of this petition while the case is pending resolution of the President is an irresponsible defiance, if not a personal affront. For them, comity dictates that courts of justice should shy away from a dispute until the system of administrative redress has been completed.

From the unfolding of events, petitioners, however, consider that President Aquino effectively denied the appeal of Cadet 1CL Cudia. They

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<sup>70</sup> 530 Phil. 398 (2006).

<sup>71</sup> SEC. 31. The President is authorized to appoint to the Military Academy annually, subject to such physical and examinations as he may prescribe, the number of examinations, cadets necessary to maintain the Cadet Corps at a strength of not to exceed three hundred and fifty. Cadets shall be selected from among qualified candidates as hereinafter provided. Candidates for admission shall be single, in good physical condition, not less than seventeen nor more twenty-two years of age, and shall be nominated by the Members of the National Assembly, each of whom may nominate any number of candidates. The President shall appoint from among those who pass the physical and mental examinations with the highest ratings the number or numbers necessary to fill the existing vacancies: Provided, That a quota of three members of the Cadet Corps shall be allotted to each Assembly district: Provided, further, That in case no candidates from a given Assembly district attain the required minimum ratings, a second examination shall be given during the same year to nominees from that district. If on the second examination no candidate shall attain the required minimum rating, the vacancies in the district quota shall be filled by the President from successful candidates at large.

The pay and allowances of students at the Military Academy shall be fixed by the President.

Any student who shall, after entrance to the Academy and before completion of the prescribed course of training, be found to be physically unfit for military duty by reason of injury or disease incident to the service, shall be retired with the rank of cadet and shall be entitled to the retired pay and allowances of a third lieutenant of the Regular Force.

Upon satisfactory completion of the course of instruction at the Military Academy candidates shall be commissioned third lieutenants in the Regular or Reserve Forces with relative rank in the order of final general standing<sup>1</sup> as determined by the Faculty Board and Commandant of the Academy, and approved by the Chief of Staff.

claim that his family exerted insurmountable efforts to seek reconsideration of the HC recommendation from the AFP officials and the President, but was in vain. The circumstances prior to, during, and after the PMA 2014 graduation rites, which was attended by President Aquino after he talked to Cadet 1CL Cudia's family the night before, foreclose the possibility that the challenged findings would still be overturned. In any case, petitioners insist that the rule on exhaustion of administrative remedies is not absolute based on the *Corsiga v. Defensor*<sup>72</sup> and *Verceles v. BLR-DOLE*<sup>73</sup> rulings.

We rule for petitioners.

In general, no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. The rationale behind the doctrine of exhaustion of administrative remedies is that "courts, for reasons of law, comity, and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities, who are competent to act upon the matter complained of, have been given the appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum."<sup>74</sup> In the U.S. case of *Ringgold v. United States*,<sup>75</sup> which was cited by respondents, it was specifically held that in a typical case involving a decision by military authorities, the plaintiff must exhaust his remedies within the military before appealing to the court, the doctrine being designed both to preserve the balance between military and civilian authorities and to conserve judicial resources.

Nonetheless, there are exceptions to the rule. In this jurisdiction, a party may directly resort to judicial remedies if any of the following is present:

1. when there is a violation of due process;
2. when the issue involved is purely a legal question;
3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
4. when there is estoppel on the part of the administrative agency concerned;
5. when there is irreparable injury;
6. when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter;
7. when to require exhaustion of administrative remedies would be unreasonable;
8. when it would amount to a nullification of a claim;
9. when the subject matter is a private land in land case proceedings;
10. when the rule does not provide a plain, speedy and adequate remedy; and
11. when there are circumstances indicating the urgency of judicial intervention.<sup>76</sup>

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<sup>72</sup> 439 Phil. 875 (2002).

<sup>73</sup> 491 Phil. 520 (2005).

<sup>74</sup> *Regino v. Pangasinan Colleges of Science and Technology*, 485 Phil. 446, 454-455 (2004).

<sup>75</sup> 420 F. Supp. 698 (1976).

<sup>76</sup> *Supra* note 61.

Petitioners essentially raise the lack of due process in the dismissal of Cadet 1CL Cudia from the PMA. Thus, it may be a ground to give due course to the petition despite the non-exhaustion of administrative remedies. Yet more significant is the fact that during the pendency of this case, particularly on June 11, 2014, the Office of the President finally issued its ruling, which sustained the findings of the AFP Chief and the CRAB. Hence, the occurrence of this supervening event bars any objection to the petition based on failure to exhaust administrative remedies.

*Court's interference within military affairs*

Respondents cite the U.S. cases of *Bois v. Marsh*<sup>77</sup> and *Schlesinger v. Councilman*<sup>78</sup> to support their contention that judicial intervention would pose substantial threat to military discipline and that there should be a deferential review of military statutes and regulations since political branches have particular expertise and competence in assessing military needs. Likewise, in *Orloff v. Willoughby*<sup>79</sup> and *Parker v. Levy*,<sup>80</sup> it was allegedly opined by the U.S. Supreme Court that the military constitutes a specialized community governed by a separate discipline from that of the civilian. According to respondents, the U.S. courts' respect to the military recognizes that constitutional rights may apply differently in the military context than in civilian society as a whole. Such military deference is exercised either by refusing to apply due process and equal protection doctrines in military cases or applying them but with leniency.

In respondents' view, although Philippine courts have the power of judicial review in cases attended with grave abuse of discretion amounting to lack or excess of jurisdiction, policy considerations call for the widest latitude of deference to military affairs. Such respect is exercised by the court where the issues to be resolved entail a substantial consideration of legitimate governmental interest. They suppose that allowing Cadet 1CL Cudia's case to prosper will set an institutionally dangerous precedent, opening a Pandora's box of other challenges against the specialized system of discipline of the PMA. They state that with the PMA's mandate to train cadets for permanent commission in the AFP, its disciplinary rules and procedure necessarily must impose a different standard of conduct compared with civilian institutions.

Petitioners, on the other hand, consider that this Court is part of the State's check-and-balance machinery, specifically mandated by Article VIII of the 1987 Constitution to ensure that no branch of the government or any

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<sup>77</sup> 801 F.2d 462 (1986).

<sup>78</sup> 420 U.S. 738 (1975).

<sup>79</sup> 345 U.S. 83 (1953).

<sup>80</sup> 417 U.S. 733 (1974).

of its officials acts without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. They assert that judicial non-interference in military affairs is not deemed as absolute even in the U.S. They cite *Schlesinger* and *Parker*, which were invoked by respondents, as well as *Burns v. Wilson*<sup>81</sup> and *Harmon v. Brucker*,<sup>82</sup> wherein the U.S. Supreme Court reviewed the proceedings of military tribunals on account of issues posed concerning due process and violations of constitutional rights. Also, in *Magno v. De Villa*<sup>83</sup> decided by this Court, petitioners note that We, in fact, exercised the judicial power to determine whether the AFP and the members of the court martial acted with grave abuse of discretion in their military investigation.

Petitioners' contentions are tenable.

Admittedly, the Constitution entrusts the political branches of the government, not the courts, with superintendence and control over the military because the courts generally lack the competence and expertise necessary to evaluate military decisions and they are ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have.<sup>84</sup> Nevertheless, for the sake of brevity, We rule that the facts as well as the legal issues in the U.S. cases cited by respondents are not on all fours with the case of Cadet 1CL Cudia. Instead, what applies is the 1975 U.S. case of *Andrews v. Knowlton*,<sup>85</sup> which similarly involved cadets who were separated from the United States Military Academy due to Honor Code violations. Following *Wasson v. Trowbridge*<sup>86</sup> and *Hagopian v. Knowlton*,<sup>87</sup> *Andrews* re-affirmed the power of the district courts to review procedures used at the service academies in the separation or dismissal of cadets and midshipmen. While it recognized the "constitutional permissibility of the military to set and enforce uncommonly high standards of conduct and ethics," it said that the courts "have expanded at an accelerated pace the scope of judicial access for review of military determinations." Later, in *Kolesa v. Lehman*,<sup>88</sup> it was opined that it has been well settled that federal courts have jurisdiction "where there is a substantial claim that prescribed military procedures violates one's constitutional rights." By 1983, the U.S. Congress eventually

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<sup>81</sup> 346 U.S. 137 (1953).

<sup>82</sup> 355 U.S. 579 (1958).

<sup>83</sup> G.R. No. 92606, July 26, 1991, 199 SCRA 663.

<sup>84</sup> See Major Richard D. Rosen, *Thinking About Due Process*, the Army Lawyer, March, 1988 (1988 Army Law. 3), citing U.S. Const. art. I, § 8, cls. 13-15; art. II, § 2, cl. 1; *Goldman v. Weinberger*, 475 U.S. 503 (1986); *Chappell v. Wallace*, 462 U.S. 296, 301 (1983); *Rostker v. Goldberg*, 453 U.S. 57, 64-65 (1981); *Schlesinger v. Ballard*, 419 U.S. 498, 510 (1975); *Gilligan v. Morgan*, 413 U.S. 1, 6-8 (1973); *Orloff v. Willoughby*, 345 U.S. 83, 93 (1953); and Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. Rev. 181, 187 (1962).

<sup>85</sup> 509 F.2d 898 (1975). The U.S. Supreme Court denied the writ of certiorari (423 U.S. 873, 96 S. Ct. 142, 46 L. Ed. 2d 105, 1975 U.S. LEXIS 2844 [1975]).

<sup>86</sup> 382 F.2d 807 (1967).

<sup>87</sup> 470 F.2d 201 (1972).

<sup>88</sup> 534 F. Supp. 590 (1982).

made major revisions to the Uniform Code of Military Justice (UCMJ) by expressly providing, among others, for a direct review by the U.S. Supreme Court of decisions by the military's highest appellate authority.<sup>89</sup>

Even without referring to U.S. cases, the position of petitioners is still formidable. In this jurisdiction, Section 1 Article VIII of the 1987 Constitution expanded the scope of judicial power by mandating that the duty of the courts of justice includes not only "to settle actual controversies involving rights which are legally demandable and enforceable" but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" even if the latter does not exercise judicial, quasi-judicial or ministerial functions.<sup>90</sup> Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, which must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>91</sup>

The proceedings of the Cadet Honor Committee can, for purposes of the Due Process Clause, be considered a governmental activity. As ruled in *Andrews*:

The relationship between the Cadet Honor Committee and the separation process at the Academy has been sufficiently formalized, and is sufficiently interdependent, so as to bring that committee's activities within the definition of governmental activity for the purposes of our review. While the Academy has long had the informal practice of referring all alleged violations to the Cadet Honor Committee, the relationship between that committee and the separation process has to a degree been formalized. x x x

Regardless of whether the relationship be deemed formal or informal, the Honor Committee under its own procedures provides that a single "not guilty" vote by a member ends the matter, while a "guilty" finding confronts a cadet with the hard choice of either resigning or electing to go before a Board of Officers. An adverse finding there results not only in formal separation from the Academy but also in a damaging record that will follow the cadet through life. Accordingly, we conclude that the Cadet Honor Committee, acting not unlike a grand jury, is clearly part of the process whereby a cadet can ultimately be adjudged to have violated the Cadet Honor Code and be separated from the Academy. Therefore, the effect of the committee's procedures and determinations on the separation process is sufficiently intertwined with the formal

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<sup>89</sup> 36 Cap. U.L. Rev. 635, citing *DAVID A. SCHLUETER, MILITARY CRIMINAL JUSTICE: PRACTICE AND PROCEDURE* § 1-6(C) (6th ed. 2004 & Supp. 2006).

<sup>90</sup> *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014, citing *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014.

<sup>91</sup> *Morales v. The Board of Regents of the UP*, *supra* note 69.

governmental activity which may follow as to bring it properly under judicial review.<sup>92</sup>

No one is above the law, including the military. In fact, the present Constitution declares it as a matter of principle that civilian authority is, at all times, supreme over the military.<sup>93</sup> Consistent with the republican system of checks and balances, the Court has been entrusted, expressly or by necessary implication, with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action.<sup>94</sup>

## SUBSTANTIVE GROUNDS

### *Cadet's relinquishment of certain civil liberties*

Respondents assert that the standard of rights applicable to a cadet is not the same as that of a civilian because the former's rights have already been recalibrated to best serve the military purpose and necessity. They claim that both *Gudani* and *Lt. Col. Kapunan, Jr. v. Gen. De Villa*<sup>95</sup> recognized that, to a certain degree, individual rights of persons in the military service may be curtailed by the rules of military discipline in order to ensure its effectiveness in fulfilling the duties required to be discharged under the law. Respondents remind that, as a military student aspiring to a commissioned post in the military service, Cadet 1CL Cudia voluntarily gave up certain civil and political rights which the rest of the civilian population enjoys. The deliberate surrender of certain freedoms on his part is embodied in the cadets' Honor Code Handbook. It is noted that at the beginning of their academic life in the PMA, Cadet 1CL Cudia, along with the rest of Cadet Corps, took an oath and undertaking to stand by the Honor Code and the Honor System.

To say that a PMA cadet surrenders his fundamental human rights, including the right to due process, is, for petitioners, contrary to the provisions of Section 3, Article II of the 1987 Constitution,<sup>96</sup> Executive Order (E.O.) No. 178<sup>97</sup> (as amended by E.O. No. 1005<sup>98</sup>), AFP Code of Ethics, Oath of Cadet Corps to the Honor Code and the Honor System,

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<sup>92</sup> *Supra* note 85, at 20-22.

<sup>93</sup> CONSTITUTION (1987), Art. II Sec. 3.

<sup>94</sup> *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, citing *Planas v. Gil*, 67 Phil. 62, 73-74 (1939).

<sup>95</sup> 250 Phil. 270 (1988).

<sup>96</sup> Section 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

<sup>97</sup> Dated December 17, 1938, otherwise known as the "Manual for Courts-Martial, Armed Forces of the Philippines."

<sup>98</sup> Dated January 28, 1985 (Amending Chapter XXIV Section 105 thru 109).

military professionalism, and, in general, military culture. They maintain that the HC, the CRAB, and the PMA, grossly and in bad faith misapplied the Honor Code and the Honor System in deciding Cadet 1CL Cudia's case considering that these should not be implemented at the expense of human rights, due process, and fair play. Further, under the doctrine of constitutional supremacy, they can never overpower or defy the 1987 Constitution since the former should yield to the latter. Petitioners stress that the statement that "*a cadet can be compelled to surrender some civil rights and liberties in order for the Code and System to be implemented*" simply pertains to what cadets have to sacrifice in order to prove that they are men or women of integrity and honor, such as the right to entertain vices and the right to freely choose what they want to say or do. In the context of disciplinary investigation, it does not contemplate a surrender of the right to due process but, at most, refers to the cadets' rights to privacy and to remain silent.

We concur with the stand of petitioners.

Of course, a student at a military academy must be prepared to subordinate his private interests for the proper functioning of the educational institution he attends to, one that is with a greater degree than a student at a civilian public school.<sup>99</sup> In fact, the Honor Code and Honor System Handbook of the PMA expresses that, "[as] a training environment, the Cadet Corps is a society which has its own norms. Each member binds himself to what is good for him, his subordinates, and his peers. To be part of the Cadet Corps requires the surrender of some basic rights and liberties for the good of the group."<sup>100</sup>

It is clear, however, from the teachings of *Wasson* and *Hagopian*, which were adopted by *Andrews*, that a cadet facing dismissal from the military academy for misconduct has constitutionally protected private interests (life, liberty, or property); hence, disciplinary proceedings conducted within the bounds of procedural due process is a must.<sup>101</sup> For that reason, the PMA is not immune from the strictures of due process. Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the due process clause must be satisfied.<sup>102</sup> Likewise, the cadet faces far more severe sanctions of being expelled from a course of college instruction which he or

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<sup>99</sup> See *Hagopian v. Knowlton*, *supra* note 87.

<sup>100</sup> The Honor Code and Honor System Handbook, Series 2011, p. 4 (*Rollo*, p. 155).

<sup>101</sup> *Andrews v. Knowlton*, *supra* note 85. See also *Roberts v. Knowlton*, 377 F. Supp. 1381 (1974); *Birdwell v. Schlesinger*, 403 F. Supp. 710 (1975); *Tully v. Orr, Secretary of the Air Force*, 608 F. Supp. 1222 (1985); *Cody v. Scott*, 565 F. Supp. 1031 (1983); *Crowley v. United States Merchant Marine Academy*, 985 F. Supp. 292 (1997); and *Lebrun v. England*, 212 F. Supp. 2d 5 (2002).

<sup>102</sup> *Lightsey v. King*, 567 F. Supp. 645 (1983).

she has pursued with a view to becoming a career officer and of probably being forever denied that career.<sup>103</sup>

The cases of *Gudani* and *Kapunan, Jr.* are inapplicable as they do not specifically pertain to dismissal proceedings of a cadet in a military academy due to honor violation. In *Gudani*, the Court denied the petition that sought to annul the directive from then President Gloria Macapagal-Arroyo, which enjoined petitioners from testifying before the Congress without her consent. We ruled that petitioners may be subjected to military discipline for their defiance of a direct order of the AFP Chief of Staff. On the other hand, in *Kapunan, Jr.*, this Court upheld the restriction imposed on petitioner since the conditions for his “house arrest” (particularly, that he may not issue any press statements or give any press conference during the period of his detention) are justified by the requirements of military discipline. In these two cases, the constitutional rights to information, transparency in matters of public concern, and to free speech – not to due process clause – were restricted to better serve the greater military purpose.

#### *Academic freedom of the PMA*

Petitioners posit that there is no law providing that a guilty finding by the HC may be used by the PMA to dismiss or recommend the dismissal of a cadet from the PMA. They argue that Honor Code violation is not among those listed as justifications for the attrition of cadets considering that the Honor Code and the Honor System do not state that a guilty cadet is automatically terminated or dismissed from service. To them, the Honor Code and Honor System are “gentleman’s agreement” that cannot take precedence over public interest – in the defense of the nation and in view of the taxpayer’s money spent for each cadet. Petitioners contend that, based on the Civil Code, all written or verbal agreements are null and void if they violate the law, good morals, good customs, public policy, and public safety.

In opposition, respondents claim that the PMA may impose disciplinary measures and punishment as it deems fit and consistent with the peculiar needs of the Academy. Even without express provision of a law, the PMA has regulatory authority to administratively dismiss erring cadets since it is deemed reasonably written into C.A. No. 1. Moreover, although said law grants to the President the authority of terminating a cadet’s appointment, such power may be delegated to the PMA Superintendent, who may exercise direct supervision and control over the cadets.

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<sup>103</sup> See *Hagopian v. Knowlton*, 470 F.2d 201 (1972).



Respondents likewise contend that, as an academic institution, the PMA has the inherent right to promulgate reasonable norms, rules and regulations that it may deem necessary for the maintenance of school discipline, which is specifically mandated by Section 3 (2),<sup>104</sup> Article XIV of the 1987 Constitution. As the premiere military educational institution of the AFP in accordance with Section 30,<sup>105</sup> Article III of C.A. No. 1 and Sections 58 and 59,<sup>106</sup> Chapter 9, Subtitle II, Title VIII, Book IV of E.O. No. 292 ("Administrative Code of 1987"), the PMA is an institution that enjoys academic freedom guaranteed by Section 5 (2),<sup>107</sup> Article XIV of the 1987 Constitution. In *Miriam College Foundation, Inc. v. Court of Appeals*,<sup>108</sup> it was held that concomitant with such freedom is the right and duty to instill and impose discipline upon its students. Also, consistent with *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*<sup>109</sup> and *Ateneo de Manila University v. Capulong*,<sup>110</sup> the PMA has the freedom on who to admit (and, conversely, to expel) given the high degree of discipline and honor expected from its students who are to form part of the AFP.

For respondents, Cadet 1CL Cudia cannot, therefore, belatedly assail the Honor Code as basis of the HC's decision to recommend his dismissal from the PMA. When he enlisted for enrolment and studied in the PMA for four years, he knew or should have been fully aware of the standards of discipline imposed on all cadets and the corresponding penalty for failing to abide by these standards.

<sup>104</sup> Section 3. (2) They shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.

<sup>105</sup> Sec. 30. There shall be established a military training school to be named the Philippine Military Academy, for the training of selected candidates for permanent commission in the Regular Force. The student body in the Military Academy shall be known as the Cadet Corps of the Army of the Philippines.

<sup>106</sup> SECTION 58. Organization.—(1) The Philippine Military Academy is the primary training and educational institution of the AFP. It shall be the primary source of regular officers of the Standing Force.

(2) The Academy shall be organized as prescribed by the Secretary of National Defense, upon recommendation of the Chief of Staff, AFP.

(3) The student body of the Academy shall be known as the Cadet Corps of the Armed Forces of the Philippines (CCAFP) and shall have such strength as the Secretary of National Defense shall determine upon the recommendation of the Chief of Staff, and within the strength limited by the annual Appropriation Act.

(4) There shall be an Academic Board organized by the Chief of Staff, which shall be composed of not more than fifteen (15) members selected from the officers of the Academy upon recommendation of the Superintendent. The Board shall, in accordance with the rules and regulations prescribed by the Chief of Staff, have the power to confer baccalaureate degrees upon the cadets who satisfactorily complete the approved course of study.

SECTION 59. Functions.—The Academy shall prepare the candidates for commission in the regular force of the AFP and shall instruct, train and develop cadets so that each graduate shall possess the character, the broad and basic military skills and the education essential to the successful pursuit of a progressive military career.

<sup>107</sup> Section 5. (2) Academic freedom shall be enjoyed in all institutions of higher learning.

<sup>108</sup> 401 Phil. 431 (2000).

<sup>109</sup> *Supra* note 67.

<sup>110</sup> G.R. No. 99327, May 27, 1993, 222 SCRA 644.

In their Reply, petitioners counter that, as shown in *Isabelo, Jr.* and *Ateneo*, academic freedom is not absolute and cannot be exercised in blatant disregard of the right to due process and the 1987 Constitution. Although schools have the prerogative to choose what to teach, how to teach, and who to teach, the same does not go so far as to deprive a student of the right to graduate when there is clear evidence that he is entitled to the same since, in such a case, the right to graduate becomes a vested right which takes precedence over the limited and restricted right of the educational institution.

While both parties have valid points to consider, the arguments of respondents are more in line with the facts of this case.

We have ruled that the school-student relationship is contractual in nature. Once admitted, a student's enrolment is not only semestral in duration but for the entire period he or she is expected to complete it.<sup>111</sup> An institution of learning has an obligation to afford its students a fair opportunity to complete the course they seek to pursue.<sup>112</sup> Such contract is imbued with public interest because of the high priority given by the Constitution to education and the grant to the State of supervisory and regulatory powers over all educational institutions.<sup>113</sup>

The school-student relationship has also been held as reciprocal. "[It] has consequences appurtenant to and inherent in all contracts of such kind – it gives rise to bilateral or reciprocal rights and obligations. The school undertakes to provide students with education sufficient to enable them to pursue higher education or a profession. On the other hand, the students agree to abide by the academic requirements of the school and to observe its rules and regulations."<sup>114</sup>

Academic freedom or, to be precise, the institutional autonomy of universities and institutions of higher learning,<sup>115</sup> has been enshrined in our

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<sup>111</sup> *Regino v. Pangasinan Colleges of Science and Technology*, supra note 74, at 459, citing *Non v. Dames II*, 264 Phil. 98, 121 (1990). See also *Phil. School of Business Administration v. Court of Appeals*, G.R. No. 84698, February 4, 1992, 205 SCRA 729, 733 and *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*, supra note 67, at 596.

<sup>112</sup> *Magtibay v. Garcia*, G.R. No. L-28971, January 28, 1983, 120 SCRA 370, 374; *Licup v. University of San Carlos (USC)*, G.R. No. 85839, October 19, 1989, 178 SCRA 637; *Non v. Dames II*, supra at 123; *San Sebastian College v. Court of Appeals*, 274 Phil. 414, 427 (1991); *University of San Agustin, Inc. v. Court of Appeals*, supra note 60, at 775; and *Regino v. Pangasinan Colleges of Science and Technology*, supra note 74, at 461.

<sup>113</sup> *Regino v. Pangasinan Colleges of Science and Technology*, supra note 74, at 459, citing *Non v. Dames II*, supra note 111, at 120. See also *Phil. School of Business Administration v. Court of Appeals*, supra note 111, at 733, and *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*, supra note 67, at 596.

<sup>114</sup> *Regino v. Pangasinan Colleges of Science and Technology*, supra note 74, at 459-460, citing *Phil. School of Business Administration v. Court of Appeals*, supra note 111, at 733; and *University of San Agustin, Inc. v. Court of Appeals*, supra note 60, at 775.

<sup>115</sup> *University of the Phils. Board of Regents v. Court of Appeals*, 372 Phil. 287, 306 (1999).

Constitutions of 1935, 1973, and 1987.<sup>116</sup> In *Garcia*, this Court espoused the concurring opinion of U.S. Supreme Court Justice Felix Frankfurter in *Sweezy v. New Hampshire*,<sup>117</sup> which enumerated “the four essential freedoms” of a university: To determine for itself on academic grounds (1) who may teach, (2) what may be taught, (3) how it shall be taught, and (4) who may be admitted to study.<sup>118</sup> An educational institution has the power to adopt and enforce such rules as may be deemed expedient for its government, this being incident to the very object of incorporation, and indispensable to the successful management of the college.<sup>119</sup> It can decide for itself its aims and objectives and how best to attain them, free from outside coercion or interference except when there is an overriding public welfare which would call for some restraint.<sup>120</sup> Indeed, “academic freedom has never been meant to be an unabridged license. It is a privilege that assumes a correlative duty to exercise it responsibly. An equally telling precept is a long recognized mandate, so well expressed in Article 19 of the Civil Code, that every ‘person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.’”<sup>121</sup>

The schools’ power to instill discipline in their students is subsumed in their academic freedom and that “the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.”<sup>122</sup> As a Bohemian proverb puts it: "A school without discipline is like a mill without water." Insofar as the water turns the mill, so does the school's disciplinary power assure its right to survive and continue operating.<sup>123</sup> In this regard, the Court has always recognized the right of schools to impose disciplinary sanctions, which includes the power to dismiss or expel, on students who violate

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<sup>116</sup> *De La Salle University, Inc. v. Court of Appeals*, 565 Phil. 330, 361 (2007), citing *Ateneo de Manila University v. Capulong*, *supra* note 110, at 660. See also *University of the Phils. Board of Regents v. Court of Appeals*, *supra*.

<sup>117</sup> 354 U.S. 234 (1957).

<sup>118</sup> See also the subsequent cases of *Ateneo de Manila University v. Capulong*, *supra* note 110, at 660; *Miriam College Foundation, Inc. v. Court of Appeals*, *supra* note 108, at 456; *Regino v. Pangasinan Colleges of Science and Technology*, *supra* note 74, at 464; and *De La Salle University, Inc. v. Court of Appeals*, *supra* note 116, at 359.

<sup>119</sup> *Guzman v. National University*, 226 Phil. 596, 603-604 (1986).

<sup>120</sup> See *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, *supra* note 59, at 943; *Tangonan v. Paño*, G.R. No. L-45157, June 27, 1985, 137 SCRA 245, 257; *Alcuaz v. Philippine School of Business Administration*, 244 Phil. 8, 23 (1988); *University of the Philippines Board of Regents v. Ligot-Telan*, G.R. No. 110280, October 21, 1993, 227 SCRA 342, 360; *Miriam College Foundation, Inc. v. Court of Appeals*, *supra* note 108, at 455-456; *Morales v. The Board of Regents of the UP*, 487 Phil. 449, 474 (2004); *De La Salle University, Inc. v. Court of Appeals*, *supra* note 116, at 359; *Parents-Teachers Association (PTA) of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co.*, G.R. No. 176518, March 2, 2010, 614 SCRA 41, 54; and *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA.

<sup>121</sup> *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*, *supra* note 67, at 595-596

<sup>122</sup> *De La Salle University, Inc. v. Court of Appeals*, *supra* note 116, at 363, citing *Ateneo de Manila University v. Capulong*, *supra* note 110, at 663-664.

<sup>123</sup> *University of the Philippines Board of Regents v. Ligot-Telan*, G.R. No. 110280, October 21, 1993, 227 SCRA 342, 360.

disciplinary rules.<sup>124</sup> In *Miriam College Foundation, Inc. v. Court of Appeals*,<sup>125</sup> this Court elucidated:

The right of the school to discipline its students is at once apparent in the third freedom, i.e., "how it shall be taught." A school certainly cannot function in an atmosphere of anarchy.

Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property.

Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom "what to teach."

Incidentally, the school not only has the right but the *duty* to develop discipline in its students. The Constitution no less imposes such duty.

[All educational institutions] shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, *develop moral character and personal discipline*, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.

In *Angeles vs. Sison*, we also said that discipline was a means for the school to carry out its responsibility to help its students "grow and develop into mature, responsible, effective and worthy citizens of the community."

Finally, nowhere in the above formulation is the right to discipline more evident than in "who may be admitted to study." If a school has the freedom to determine whom to admit, logic dictates that it also has the right to determine whom to exclude or expel, as well as upon whom to impose lesser sanctions such as suspension and the withholding of graduation privileges.<sup>126</sup>

The power of the school to impose disciplinary measures extends even after graduation for any act done by the student prior thereto. In *University of the Phils. Board of Regents v. Court of Appeals*,<sup>127</sup> We upheld the university's withdrawal of a doctorate degree already conferred on a student who was found to have committed intellectual dishonesty in her dissertation. Thus:

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<sup>124</sup> *Go v. Colegio De San Juan De Letran*, G.R. No. 169391, October 10, 2012, 683 SCRA 358, 372.

<sup>125</sup> *Supra* note 108.

<sup>126</sup> *Miriam College Foundation, Inc. v. Court of Appeals*, *supra* note 108, at 456-457.

<sup>127</sup> *Supra* note 115.

Art. XIV, §5 (2) of the Constitution provides that "[a]cademic freedom shall be enjoyed in all institutions of higher learning." This is nothing new. The 1935 Constitution and the 1973 Constitution likewise provided for the academic freedom or, more precisely, for the institutional autonomy of universities and institutions of higher learning. As pointed out by this Court in *Garcia v. Faculty Admission Committee, Loyola School of Theology*, it is a freedom granted to "institutions of higher learning" which is thus given "a wide sphere of authority certainly extending to the choice of students." If such institution of higher learning can decide who can and who cannot study in it, it certainly can also determine on whom it can confer the honor and distinction of being its graduates.

Where it is shown that the conferment of an honor or distinction was obtained through fraud, a university has the right to revoke or withdraw the honor or distinction it has thus conferred. This freedom of a university does not terminate upon the "graduation" of a student, as the Court of Appeals held. For it is precisely the "graduation" of such a student that is in question. It is noteworthy that the investigation of private respondent's case began before her graduation. If she was able to join the graduation ceremonies on April 24, 1993, it was because of too many investigations conducted before the Board of Regents finally decided she should not have been allowed to graduate.

Wide indeed is the sphere of autonomy granted to institutions of higher learning, for the constitutional grant of academic freedom, to quote again from *Garcia v. Faculty Admission Committee, Loyola School of Theology*, "is not to be construed in a niggardly manner or in a grudging fashion."

Under the U.P. Charter, the Board of Regents is the highest governing body of the University of the Philippines. It has the power to confer degrees upon the recommendation of the University Council. It follows that if the conferment of a degree is founded on error or fraud, the Board of Regents is also empowered, subject to the observance of due process, to withdraw what it has granted without violating a student's rights. An institution of higher learning cannot be powerless if it discovers that an academic degree it has conferred is not rightfully deserved. Nothing can be more objectionable than bestowing a university's highest academic degree upon an individual who has obtained the same through fraud or deceit. The pursuit of academic excellence is the university's concern. It should be empowered, as an act of self-defense, to take measures to protect itself from serious threats to its integrity.

While it is true that the students are entitled to the right to pursue their education, the USC as an educational institution is also entitled to pursue its academic freedom and in the process has the concomitant right to see to it that this freedom is not jeopardized.<sup>128</sup>

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<sup>128</sup> *University of the Phils. Board of Regents v. Court of Appeals*, *supra* note 115, at 306-308. (Citations omitted)

It must be borne in mind that schools are established, not merely to develop the intellect and skills of the studentry, but to inculcate lofty values, ideals and attitudes; nay, the development, or flowering if you will, of the total man.<sup>129</sup> Essentially, education must ultimately be religious, *i.e.*, one which inculcates duty and reverence.<sup>130</sup> Under the rubric of "right to education," students have a concomitant duty to learn under the rules laid down by the school.<sup>131</sup> Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.<sup>132</sup>

The PMA is not different. As the primary training and educational institution of the AFP, it certainly has the right to invoke academic freedom in the enforcement of its internal rules and regulations, which are the Honor Code and the Honor System in particular.

The Honor Code is a set of basic and fundamental ethical and moral principle. It is the minimum standard for cadet behavior and serves as the guiding spirit behind each cadet's action. It is the cadet's responsibility to maintain the highest standard of honor. Throughout a cadet's stay in the PMA, he or she is absolutely bound thereto. It binds as well the members of the Cadet Corps from its alumni or the member of the so-called "Long Gray Line."

Likewise, the Honor Code constitutes the foundation for the cadets' character development. It defines the desirable values they must possess to remain part of the Corps; it develops the atmosphere of trust so essential in a military organization; and it makes them professional military soldiers.<sup>133</sup> As it is for character building, it should not only be kept within the society of cadets. It is best adopted by the Cadet Corps with the end view of applying it outside as an officer of the AFP and as a product of the PMA.<sup>134</sup>

The Honor Code and System could be justified as the primary means of achieving the cadets' character development and as ways by which the Academy has chosen to identify those who are deficient in conduct.<sup>135</sup> Upon the Code rests the ethical standards of the Cadet Corps and it is also an institutional goal, ensuring that graduates have strong character, unimpeachable integrity, and moral standards of the highest order.<sup>136</sup> To

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<sup>129</sup> *De La Salle University, Inc. v. Court of Appeals*, *supra* note 116, at 362, citing *Ateneo de Manila University v. Capulong*, *supra* note 110, at 664..

<sup>130</sup> *Ateneo de Manila University v. Capulong*, *supra* note 110, at 664.

<sup>131</sup> *Id.*

<sup>132</sup> CONSTITUTION (1987), Art. XIV Sec. 5 (3).

<sup>133</sup> The Honor Code and Honor System Handbook, Series 2011, p. 5 (*Rollo*, p. 155).

<sup>134</sup> *Id.*

<sup>135</sup> See *Ringgold v. United States*, *supra* note 75 and John H. Beasley, *The USMA Honor System – A Due Process Hybrid*, 118 Mil. L. Rev. 187 (198).

<sup>136</sup> See John H. Beasley, *The USMA Honor System – A Due Process Hybrid*, *id.*

emphasize, the Academy's disciplinary system as a whole is characterized as "correctional and educational in nature rather than being legalistic and punitive." Its purpose is to teach the cadets "to be prepared to accept full responsibility for all that they do or fail to do and to place loyalty to the service above self-interest or loyalty to friends or associates."<sup>137</sup>

*Procedural safeguards in a student disciplinary case*

Respondents stress that *Guzman v. National University*<sup>138</sup> is more appropriate in determining the minimum standards for the imposition of disciplinary sanctions in academic institutions. Similarly, with the guideposts set in *Andrews*, they believe that Cadet 1CL Cudia was accorded due process.

On the other hand, petitioners argue that the HC, the CRAB and the PMA fell short in observing the important safeguards laid down in *Ang Tibay v. CIR*<sup>139</sup> and *Non v. Judge Dames II*,<sup>140</sup> which set the minimum standards to satisfy the demands of procedural due process in the imposition of disciplinary sanctions. For them, *Guzman* did not entirely do away with the due process requirements outlined in *Ang Tibay* as the Court merely stated that the minimum requirements in the *Guzman* case are more *apropos*.

Respondents rightly argued.

*Ateneo de Manila University v. Capulong*<sup>141</sup> already settled the issue as it held that although both *Ang Tibay* and *Guzman* essentially deal with the requirements of due process, the latter case is more *apropos* since it specifically deals with the minimum standards to be satisfied in the imposition of disciplinary sanctions in academic institutions. That *Guzman* is the authority on the procedural rights of students in disciplinary cases was reaffirmed by the Court in the fairly recent case of *Go v. Colegio De San Juan De Letran*.<sup>142</sup>

In *Guzman*, the Court held that there are minimum standards which must be met to satisfy the demands of procedural due process, to wit:

- (1) the students must be informed in writing of the nature and cause of any accusation against them;
- (2) they shall have the right to answer the charges

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<sup>137</sup> See *Hagopian v. Knowlton*, *supra* note 87.

<sup>138</sup> *Supra* note 119.

<sup>139</sup> 69 Phil. 635 (1940).

<sup>140</sup> *Supra* note 111.

<sup>141</sup> *Supra* note 110, at 656.

<sup>142</sup> *Supra* note 124, at 374.

against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.<sup>143</sup>

We have been consistent in reminding that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice;<sup>144</sup> that the proceedings may be summary;<sup>145</sup> that cross-examination is not an essential part of the investigation or hearing;<sup>146</sup> and that the required proof in a student disciplinary action, which is an administrative case, is neither proof beyond reasonable doubt nor preponderance of evidence but only substantial evidence or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>147</sup>

What is crucial is that official action must meet minimum standards of fairness to the individual, which generally encompass the right of adequate notice and a meaningful opportunity to be heard.<sup>148</sup> As held in *De La Salle University, Inc. v. Court of Appeals*:<sup>149</sup>

Notice and hearing is the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one’s side or an opportunity to seek reconsideration of the action or ruling complained of. So long as the party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process.

A formal trial-type hearing is not, at all times and in all instances, essential to due process – it is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. “To be heard” does not only mean presentation of testimonial evidence in court – one may also be heard through pleadings and where

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<sup>143</sup> *Guzman v. National University*, *supra* note 119, at 603-604. See also *Alcuaz v. Philippine School of Business Administration*, 244 Phil. 8, 21 (1988) and *De La Salle University, Inc. v. Court of Appeals*, *supra* note 116, at 357.

<sup>144</sup> *Guzman v. National University*, *supra* note 119, at 603; *Alcuaz v. Philippine School of Business Administration*, 244 Phil. 8, 21 (1988); and *Ateneo de Manila University v. Capulong*, *supra* note 110, at 658-659.

<sup>145</sup> *Guzman v. National University*, *supra* note 119, at 603; *Alcuaz v. Philippine School of Business Administration*, 244 Phil. 8, 21 (1988); *Ateneo de Manila University v. Capulong*, *supra* note 124, at 658; and *Go v. Colegio De San Juan De Letran*, *supra* note 124, at 375.

<sup>146</sup> *Guzman v. National University*, *supra* note 119, at 603; *Alcuaz v. Philippine School of Business Administration*, 244 Phil. 8, 21 (1988); *Ateneo de Manila University v. Capulong*, *supra* note 110, at 658; and *University of the Philippines Board of Regents v. Court of Appeals*, *supra* note 115.

<sup>147</sup> See *University of the Philippines Board of Regents v. Ligot-Telan*, G.R. No. 110280, October 21, 1993, 227 SCRA 342, 359 and *De La Salle University, Inc. v. Court of Appeals*, 565 Phil. 330, 361 (2007).

<sup>148</sup> John H. Beasley, *The USMA Honor System – A Due Process Hybrid*, *supra* note 135.

<sup>149</sup> *Supra* note 116.



the opportunity to be heard through pleadings is accorded, there is no denial of due process.<sup>150</sup>

The PMA Honor Code explicitly recognizes that an administrative proceeding conducted to investigate a cadet's honor violation need not be clothed with the attributes of a judicial proceeding. It articulates that –

The Spirit of the Honor Code guides the Corps in identifying and assessing misconduct. While cadets are interested in legal precedents in cases involving Honor violations, those who hold the Spirit of the Honor Code dare not look into these precedents for loopholes to justify questionable acts and they are not to interpret the system to their own advantage.

The Spirit of the Honor Code is a way for the cadets to internalize Honor in a substantive way. Technical and procedural misgivings of the legal systems may avert the true essence of imparting the Spirit of the Code for the reason that it can be used to make unlawful attempt to get into the truth of matters especially when a cadet can be compelled to surrender some civil rights and liberties in order for the Code and System to be implemented. By virtue of being a cadet, a member of the CCAFP becomes a subject of the Honor Code and System. Cadet's actions are bound by the existing norms that are logically applied through the Code and System in order to realize the Academy's mission to produce leaders of character – men of integrity and honor.<sup>151</sup>

One of the fundamental principles of the Honor System also states:

2. The Honor System correlates with legal procedures of the state's Justice System but it does not demean its Spirit by reducing the Code to a systematic list of externally observed rules. Where misinterpretations and loopholes arise through legalism and its technicalities, the objective of building the character of the cadets becomes futile. While, generally, Public Law penalizes only the faulty acts, the Honor System tries to examine both the action and the intention.<sup>152</sup>

Like in other institutions of higher learning, there is aversion towards undue judicialization of an administrative hearing in the military academy. It has been said that the mission of the military is unique in the sense that its primary business is to fight or be ready to fight wars should the occasion arise, and that over-proceduralizing military determinations necessarily gives soldiers less time to accomplish this task.<sup>153</sup> Extensive cadet investigations and complex due process hearing could sacrifice simplicity, practicality, and timeliness. Investigations that last for several days or

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<sup>150</sup> *De La Salle University, Inc. v. Court of Appeals*, *id.* 357-358. (Citations omitted). See also *University of the Phils. Board of Regents v. Court of Appeals*, *supra* note 115, at 304-305.

<sup>151</sup> The Honor Code and Honor System Handbook, Series 2011, pp. 6-7 (*Rollo*, p. 156).

<sup>152</sup> *Id.* at 21 (*Id.*).

<sup>153</sup> Richard D. Rosen, *Thinking About Due Process*, Army Law. 3 (March, 1988).

weeks, sessions that become increasingly involved with legal and procedural points, and legal motions and evidentiary objections that are irrelevant and inconsequential tend to disrupt, delay, and confuse the dismissal proceedings and make them unmanageable. Excessive delays cannot be tolerated since it is unfair to the accused, to his or her fellow cadets, to the Academy, and, generally, to the Armed Forces. A good balance should, therefore, be struck to achieve fairness, thoroughness, and efficiency.<sup>154</sup>

Considering that the case of Cadet 1CL Cudia is one of first impression in the sense that this Court has not previously dealt with the particular issue of a dismissed cadet's right to due process, it is necessary for Us to refer to U.S. jurisprudence for some guidance. Notably, our armed forces have been patterned after the U.S. Army and the U.S. military code produced a salutary effect in the military justice system of the Philippines.<sup>155</sup> Hence, pertinent case laws interpreting the U.S. military code and practices have persuasive, if not the same, effect in this jurisdiction.

We begin by stating that U.S. courts have uniformly viewed that “due process” is a flexible concept, requiring consideration in each case of a variety of circumstances and calling for such procedural protections as the particular situation demands.<sup>156</sup> *Hagopian* opined:

In approaching the question of what process is due before governmental action adversely affecting private interests may properly be taken, it must be recognized that due process is not a rigid formula or simple rule of thumb to be applied undeviatingly to any given set of facts. On the contrary, it is a flexible concept which depends upon the **balancing of various factors, including the nature of the private right or interest that is threatened, the extent to which the proceeding is adversarial in character, the severity and consequences of any action that might be taken, the burden that would be imposed by requiring use of all or part of the full panoply of trial-type procedures, and the existence of other overriding interests, such as the necessity for prompt action in the conduct of crucial military operations. The full context must therefore be considered in each case.**<sup>157</sup> (Emphasis supplied)

*Wasson*, which was cited by *Hagopian*, broadly outlined the minimum standards of due process required in the dismissal of a cadet. Thus:

[W]hen the government affects the private interests of individuals, it may not proceed arbitrarily but must observe due process of law. x x x Nevertheless, the flexibility which is inherent in the concept of due

<sup>154</sup> See John H. Beasley, *The USMA Honor System – A Due Process Hybrid*, supra note 135.

<sup>155</sup> Claro C. Gloria, *Philippine Military Law*, p. 9 (1973), Capitol Publishing House, Inc. Q.C.

<sup>156</sup> See *Hagopian v. Knowlton*, supra note 87; *Wimmer v. Lehman*, 705 F.2d 1402 (1983); *Cody v. Scott*, supra note 101; and *Lebrun v. England*, supra note 101.

<sup>157</sup> *Hagopian v. Knowlton*, supra note 87.

process of law precludes the dogmatic application of specific rules developed in one context to entirely distinct forms of government action. "For, though 'due process of law' generally implies and includes *actor*, *reus*, *judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, \* \* \* yet, this is not universally true." x x x Thus, to determine in any given case what procedures due process requires, the court must carefully determine and balance the nature of the private interest affected and of the government interest involved, taking account of history and the precise circumstances surrounding the case at hand.

While the government must always have a legitimate concern with the subject matter before it may validly affect private interests, in particularly vital and sensitive areas of government concern such as national security and military affairs, the private interest must yield to a greater degree to the governmental. x x x Few decisions properly rest so exclusively within the discretion of the appropriate government officials than the selection, training, discipline and dismissal of the future officers of the military and Merchant Marine. Instilling and maintaining discipline and morale in these young men who will be required to bear weighty responsibility in the face of adversity -- at times extreme -- is a matter of substantial national importance scarcely within the competence of the judiciary. And it cannot be doubted that because of these factors historically the military has been permitted greater freedom to fashion its disciplinary procedures than the civilian authorities.

We conclude, therefore, that due process only requires for the dismissal of a Cadet from the Merchant Marine Academy that he be given **a fair hearing at which he is apprised of the charges against him and permitted a defense.** x x x For the guidance of the parties x x x the rudiments of a fair hearing in broad outline are plain. **The Cadet must be apprised of the specific charges against him. He must be given an adequate opportunity to present his defense both from the point of view of time and the use of witnesses and other evidence.** We do not suggest, however, that the Cadet must be given this opportunity both when demerits are awarded and when dismissal is considered. **The hearing may be procedurally informal and need not be adversarial.**<sup>158</sup> (Emphasis supplied)

In *Andrews*, the U.S. Court of Appeals held that *Wasson* and *Hagopian* are equally controlling in cases where cadets were separated from the military academy for violation of the Honor Code. Following the two previous cases, it was ruled that in order to be proper and immune from constitutional infirmity, a cadet who is sought to be dismissed or separated from the academy must be afforded a hearing, be apprised of the specific charges against him, and be given an adequate opportunity to present his or her defense both from the point of view of time and the use of witnesses and other evidence.<sup>159</sup> Conspicuously, these vital conditions are not too far from what We have already set in *Guzman* and the subsequent rulings in *Alcuaz v.*

<sup>158</sup> *Wasson v. Trowbridge*, *supra* note 86, at 811-812.

<sup>159</sup> *Andrews v. Knowlton*, *supra* note 85. See also *Kolesa v. Lehman*, *supra* note 88; *Crowley v. United States Merchant Marine Academy*, *supra* note 101; and *Lebrun v. England*, *supra* note 101.

*Philippine School of Business Administration*<sup>160</sup> and *De La Salle University, Inc. v. Court of Appeals*.<sup>161</sup>

In this case, the investigation of Cadet 1CL Cudia's Honor Code violation followed the prescribed procedure and existing practices in the PMA. He was notified of the Honor Report from Maj. Hindang. He was then given the opportunity to explain the report against him. He was informed about his options and the entire process that the case would undergo. The preliminary investigation immediately followed after he replied and submitted a written explanation. Upon its completion, the investigating team submitted a written report together with its recommendation to the HC Chairman. The HC thereafter reviewed the findings and recommendations. When the honor case was submitted for formal investigation, a new team was assigned to conduct the hearing. During the formal investigation/hearing, he was informed of the charge against him and given the right to enter his plea. He had the chance to explain his side, confront the witnesses against him, and present evidence in his behalf. After a thorough discussion of the HC voting members, he was found to have violated the Honor Code. Thereafter, the guilty verdict underwent the review process at the Academy level – from the OIC of the HC, to the SJA, to the Commandant of Cadets, and to the PMA Superintendent. A separate investigation was also conducted by the HTG. Then, upon the directive of the AFP-GHQ to reinvestigate the case, a review was conducted by the CRAB. Further, a Fact-Finding Board/Investigation Body composed of the CRAB members and the PMA senior officers was constituted to conduct a deliberate investigation of the case. Finally, he had the opportunity to appeal to the President. Sadly for him, all had issued unfavorable rulings.

It is well settled that by reason of their special knowledge and expertise gained from the handling of specific matters falling under their respective jurisdictions, the factual findings of administrative tribunals are ordinarily accorded respect if not finality by the Court, unless such findings are not supported by evidence or vitiated by fraud, imposition or collusion; where the procedure which led to the findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.<sup>162</sup> In the case of Cadet 1CL Cudia, We find no reason to deviate from the general rule. The grounds therefor are discussed below *seriatim*:

As to the right to be represented by a counsel –

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<sup>160</sup> *Supra* note 120, at 21.

<sup>161</sup> *Supra* note 116, at 357.

<sup>162</sup> *Alcuaz v. Philippine School of Business Administration*, *supra* note 120, at 24.

For petitioners, respondents must be compelled to give Cadet 1CL Cudia the right to be represented by a counsel who could actively participate in the proceedings like in the cross-examination of the witnesses against him before the CRAB or HC, if remanded. This is because while the CRAB allowed him to be represented by a PAO lawyer, the counsel was only made an observer without any right to intervene and demand respect of Cadet 1CL Cudia's rights.<sup>163</sup> According to them, he was not sufficiently given the opportunity to seek a counsel and was not even asked if he would like to have one. He was only properly represented when it was already nearing graduation day after his family sought the assistance of the PAO. Petitioners assert that *Guzman* is specific in stating that the erring student has the right to answer the charges against him or her with the assistance of counsel, if desired.

On the other hand, respondents cited *Lumiqued v. Exevea*<sup>164</sup> and *Nera v. The Auditor General*<sup>165</sup> in asserting that the right to a counsel is not imperative in administrative investigations or non-criminal proceedings. Also, based on Cadet 1CL Cudia's academic standing, he is said to be obviously not untutored to fully understand his rights and express himself. Moreover, the confidentiality of the HC proceedings worked against his right to be represented by a counsel. In any event, respondents claim that Cadet 1CL Cudia was not precluded from seeking a counsel's advice in preparing his defense prior to the HC hearing.

Essentially, petitioners claim that Cadet 1CL Cudia is guaranteed the right to have his counsel not just in assisting him in the preparation for the investigative hearing before the HC and the CRAB but in participating fully in said hearings. The Court disagrees.

Consistent with *Lumiqued* and *Nera*, there is nothing in the 1987 Constitution stating that a party in a non-litigation proceeding is entitled to be represented by counsel. The assistance of a lawyer, while desirable, is not indispensable. Further, in *Remolona v. Civil Service Commission*,<sup>166</sup> the Court held that "a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such body to furnish the person being investigated with counsel." Hence, the administrative body is under no duty to provide the person with counsel because assistance of counsel is not an absolute requirement.

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<sup>163</sup> *Rollo*, p. 18.

<sup>164</sup> 346 Phil. 807 (1997).

<sup>165</sup> 247 Phil. 1 (1988).

<sup>166</sup> 414 Phil. 590, 599 (2001); *See also Philcomsat Holdings Corporation v. Senate of the Republic of the Philippines*, June 19, 2012, 673 SCRA 611.

More in point is the opinion in *Wasson*, which We adopt. Thus:

The requirement of counsel as an ingredient of fairness is a function of all of the other aspects of the hearing. Where the proceeding is non-criminal in nature, where the hearing is investigative and not adversarial and the government does not proceed through counsel, where the individual concerned is mature and educated, where his knowledge of the events x x x should enable him to develop the facts adequately through available sources, and where the other aspects of the hearing taken as a whole are fair, due process does not require representation by counsel.<sup>167</sup>

To note, U.S. courts, in general, have declined to recognize a right to representation by counsel, as a function of due process, in military academy disciplinary proceedings.<sup>168</sup> This rule is principally motivated by the policy of "treading lightly on the military domain, with scrupulous regard for the power and authority of the military establishment to govern its own affairs within the broad confines of constitutional due process" and the courts' views that disciplinary proceedings are not judicial in nature and should be kept informal, and that literate and educated cadets should be able to defend themselves.<sup>169</sup> In *Hagopian*, it was ruled that the importance of informality in the proceeding militates against a requirement that the cadet be accorded the right to representation by counsel before the Academic Board and that unlike the welfare recipient who lacks the training and education needed to understand his rights and express himself, the cadet should be capable of doing so.<sup>170</sup> In the subsequent case of *Wimmer v. Lehman*,<sup>171</sup> the issue was not access to counsel but the opportunity to have counsel, instead of oneself, examine and cross-examine witnesses, make objections, and argue the case during the hearing. Disposing of the case, the U.S. Court of Appeals for the Fourth Circuit was not persuaded by the argument that an individual of a midshipman's presumed intelligence, selected because he is expected to be able to care for himself and others, often under difficult circumstances, and who has full awareness of what he is facing, with counsel's advice, was deprived of due process by being required to present his defense in person at an investigatory hearing.

In the case before Us, while the records are bereft of evidence that Cadet 1CL Cudia was given the option or was able to seek legal advice prior to and/or during the HC hearing, it is indubitable that he was assisted by a counsel, a PAO lawyer to be exact, when the CRAB reviewed and

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<sup>167</sup> *Wasson v. Trowbridge*, *supra* note 86 at 812. See also *Kolesa v. Lehman*, *supra* note 88, and *Wimmer v. Lehman*, *supra* note 156.

<sup>168</sup> See *Wasson v. Trowbridge*, *supra* note 86; *Andrews v. Knowlton*, *supra* note 85; *Birdwell v. Schlesinger*, *supra* note 101; *Kolesa v. Lehman*, *supra* note 88; *Wimmer v. Lehman*, *supra* note 156; *Cody v. Scott*, *supra* note 101; *Rustad v. United States Air Force*, 718 F.2d 348 (1983); *Tully v. Orr, Secretary of the Air Force*, *supra* note 101; and *Crowley v. United States Merchant Marine Academy*, *supra* note 101.

<sup>169</sup> *Crowley v. United States Merchant Marine Academy*, *supra* note 101.

<sup>170</sup> 470 F.2d 201 (1972). See also *Cody v. Scott*, *supra* note 101.

<sup>171</sup> *Supra* note 156.

reinvestigated the case. The requirement of due process is already satisfied since, at the very least, the counsel aided him in the drafting and filing of the Appeal Memorandum and even acted as an observer who had no right to actively participate in the proceedings (such as conducting the cross-examination). Moreover, not to be missed out are the facts that the offense committed by Cadet 1CL Cudia is not criminal in nature; that the hearings before the HC and the CRAB were investigative and not adversarial; and that Cadet 1CL Cudia's excellent academic standing puts him in the best position to look after his own vested interest in the Academy.

As to the confidentiality of records of the proceedings –

Petitioners allege that when Maj. Gen. Lopez denied in his March 11, 2014 letter Cadet 1CL Cudia's request for documents, footages, and recordings relevant to the HC hearings, the vital evidence negating the regularity of the HC trial and supporting his defense have been surely overlooked by the CRAB in its case review. Indeed, for them, the answers on whether Cadet 1CL Cudia was deprived of due process and whether he lied could easily be unearthed from the video and other records of the HC investigation. Respondents did not deny their existence but they refused to present them for the parties and the Court to peruse. In particular, they note that the Minutes of the HC dated January 21, 2014 and the HC Formal Investigation Report dated January 20, 2014 were considered by the CRAB but were not furnished to petitioners and the Court; hence, there is no way to confirm the truth of the alleged statements therein. In their view, failure to furnish these documents could only mean that it would be adverse if produced pursuant to Section 3 (e), Rule 131 of the Rules of Court.<sup>172</sup>

For lack of legal basis on PMA's claim of confidentiality of records, petitioners contend that it is the ministerial duty of the HC to submit to the CRAB, for the conduct of intelligent review of the case, all its records of the proceedings, including video footages of the deliberations and voting. They likewise argue that PMA's refusal to release relevant documents to Cadet 1CL Cudia under the guise of confidentiality reveals another misapplication of the Honor Code, which merely provides: "*A cadet who becomes part of any investigation is subject to the existing regulations pertaining to rules of confidentiality and, therefore, must abide to the creed of secrecy. Nothing shall be disclosed without proper guidance from those with authority*" (IV. The Honor System, Honor Committee, Cadet Observer). This provision, they say, does not deprive Cadet 1CL Cudia of his right to obtain copies and examine relevant documents pertaining to his case.

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<sup>172</sup> Sec. 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(e) That evidence willfully suppressed would be adverse if produced;

x x x x

Basically, petitioners want Us to assume that the documents, footages, and recordings relevant to the HC hearings are favorable to Cadet 1CL Cudia's cause, and, consequently, to rule that respondents' refusal to produce and have them examined is tantamount to the denial of his right to procedural due process. They are mistaken.

In this case, petitioners have not particularly identified any documents, witness testimony, or oral or written presentation of facts submitted at the hearing that would support Cadet 1CL Cudia's defense. The Court may require that an administrative record be supplemented, but only "where there is a 'strong showing of bad faith or improper behavior' on the part of the agency,"<sup>173</sup> both of which are not present here. Petitioners have not specifically indicated the nature of the concealed evidence, if any, and the reason for withholding it. What they did was simply supposing that Cadet 1CL Cudia's guilty verdict would be overturned with the production and examination of such documents, footages, and recordings. As will be further shown in the discussions below, the requested matters, even if denied, would not relieve Cadet 1CL Cudia's predicament. If at all, such denial was a harmless procedural error since he was not seriously prejudiced thereby.

As to the ostracism in the PMA –

To petitioners, the CRAB considered only biased testimonies and evidence because Special Order No. 1 issued on February 21, 2014, which directed the ostracism of Cadet 1CL Cudia, left him without any opportunity to secure statements of his own witnesses. He could not have access to or approach the cadets who were present during the trial and who saw the 8-1 voting result. It is argued that the Order directing Cadet 1CL Cudia's ostracism is of doubtful legal validity because the Honor Code unequivocally announced: "*x x x But by wholeheartedly dismissing the cruel method of ostracizing Honor Code violators, PMA will not have to resort to other humiliating means and shall only have the option to make known among its alumni the names of those who have not sincerely felt remorse for violating the Honor Code.*"

On their part, respondents assert that neither the petition nor the petition-in-intervention attached a full text copy of the alleged Special Order No. 1. In any case, attributing its issuance to PMA is improper and misplaced because of petitioners' admission that ostracism has been absolutely dismissed as an Academy-sanctioned activity consistent with the trend in International Humanitarian Law that the PMA has included in its curriculum. Assuming that said Order was issued, respondents contend that

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<sup>173</sup> See *Stainback v. Secretary of the Navy*, 520 F. Supp. 2d 181 (2007).



it purely originated from the cadets themselves, the sole purpose of which was to give a strong voice to the Cadet Corps by declaring that they did not tolerate Cadet 1CL Cudia's honor violation and breach of confidentiality of the HC proceedings.

More importantly, respondents add that it is highly improbable and unlikely that Cadet 1CL Cudia was ostracized by his fellow cadets. They manifest that as early as January 22, 2014, he was already transferred to the Holding Center. The practice of billeting an accused cadet at the Holding Center is provided for in the Honor Code Handbook. Although within the PMA compound, the Holding Center is off-limits to cadets who do not have any business to conduct therein. The cadets could not also ostracize him during mess times since Cadet 1CL Cudia opted to take his meals at the Holding Center. The circumstances obtaining when Special Order No. 1 was issued clearly foreclose the possibility that he was ostracized in common areas accessible to other cadets. He remained in the Holding Center until March 16, 2014 when he voluntarily left the PMA. Contrary to his claim, guests were also free to visit him in the Holding Center.

However, petitioners swear that Cadet 1CL Cudia suffered from ostracism in the PMA. The practice was somehow recognized by respondents in their *Consolidated Comment* and by PMA Spokesperson Maj. Flores in a news report. The CHR likewise confirmed the same in its Resolution dated May 22, 2014. For them, it does not matter where the ostracism order originated from because the PMA appeared to sanction it even if it came from the cadets themselves. There was a tacit approval of an illegal act. If not, those cadets responsible for ostracism would have been charged by the PMA officials. Finally, it is claimed that Cadet 1CL Cudia did not choose to take his meals at the Holding Center as he was not allowed to leave the place. Petitioners opine that placing the accused cadet in the Holding Center is inconsistent with his or her presumed innocence and certainly gives the implication of ostracism.

We agree with respondents. Neither the petition nor the petition-in-intervention attached a full text copy or even a pertinent portion of the alleged Special Order No. 1, which authorized the ostracism of Cadet 1CL Cudia. Being hearsay, its existence and contents are of doubtful veracity. Hence, a definite ruling on the matter can never be granted in this case.

The Court cannot close its eyes though on what appears to be an admission of Cadet 1CL Mogol during the CHR hearing that, upon consultation with the entire class, the baron, and the Cadet Conduct Policy Board, they issued an ostracism order against Cadet 1CL Cudia.<sup>174</sup> While

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<sup>174</sup> *Rollo*, p. 466.

not something new in a military academy,<sup>175</sup> ostracism's continued existence in the modern times should no longer be countenanced. There are those who argue that the "silence" is a punishment resulting in the loss of private interests, primarily that of reputation, and that such penalty may render illusory the possibility of vindication by the reviewing body once found guilty by the HC.<sup>176</sup> Furthermore, in Our mind, ostracism practically denies the accused cadet's protected rights to present witnesses or evidence in his or her behalf and to be presumed innocent until finally proven otherwise in a proper proceeding.

As to Cadet 1CL Cudia's stay in the Holding Center, the Court upholds the same. The Honor Code and Honor System Handbook provides that, in case a cadet has been found guilty by the HC of violating the Honor Code and has opted not to resign, he or she may stay and wait for the disposition of the case. In such event, the cadet is not on full-duty status and shall be billeted at the HTG Holding Center.<sup>177</sup> Similarly, in the U.S., the purpose of "Boarders Ward" is to quarter those cadets who are undergoing separation actions. Permitted to attend classes, the cadet is sequestered therein until final disposition of the case. In *Andrews*, it was opined that the segregation of cadets in the Ward was a proper exercise of the discretionary authority of Academy officials. It relied on the traditional doctrine that "with respect to decisions made by Army authorities, 'orderly government requires us to tread lightly on the military domain, with scrupulous regard for the power and authority of the military establishment to govern its own affairs within the broad confines of constitutional due process.'" Also, in *Birdwell v. Schlesinger*,<sup>178</sup> the "administrative segregation" was held to be a reasonable

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<sup>175</sup> In his article "*The USMA Honor System – A Due Process Hybrid*" (118 Mil. L. Rev. 187), Major John H. Beasley wrote on the experience of a cadet in the U.S. military academy, thus:

[A] cadet found not guilty by the board of officers or superintendent was returned to the Corps, but was usually "cut" or "silenced," meaning that he was treated as if he did not exist. The "silenced" cadet lived in a separate room, ate alone at a table in the Cadet mess, was not spoken to by any other cadet except for official purposes, and was otherwise completely ignored. The "silence" was not something new, but had originated long before the formalization of the Honor Committee in the early 1920's. The Academy and even some honor committees attempted to do away with the "silence," but all attempts were unsuccessful. The 1928 honor chairman was quite blunt in his statement to the Corps that "This action [the silence] established a wrongful precedent. This, in a few words, means that you have no right to "silence." There is no such thing as "silence." Forget about it." Just how vigorously the Academy attempted to do away with the "silence" is a matter of speculation. The cadets were told by Academy officials that they had no authority to punish, yet the practice of the "silence" continued.

Most "silenced" cadets could not endure the punishment and resigned after a short period. A cadet who was silenced in 1971, however, remained at the Academy until his graduation and commissioning in 1973. This much-celebrated case of Cadet Pelosi stirred public demand for an end to the "silence." During this controversy, the official Academy position was in support of the "silence," an unusual stand considering the completely unsanctioned nature of the punishment. Nonetheless, the Corps itself voted to end the punishment of the "silence" in 1973 and the issue was finally laid to rest.

<sup>176</sup> See John H. Beasley, *The USMA Honor System – A Due Process Hybrid*, 118 Mil. L. Rev. 187, (1987).

<sup>177</sup> The Honor Code and Honor System Handbook, Series 2011, p. 28 (*Rollo*, p. 167).

<sup>178</sup> *Supra* note 101.

exercise of military discipline and could not be considered an invasion of the rights to freedom of speech and freedom of association.

Late and vague decisions –

It is claimed that Cadet 1CL Cudia was kept in the dark as to the charge against him and the decisions arrived at by the HC, the CRAB, and the PMA. No written decision was furnished to him, and if any, the information was unjustly belated and the justifications for the decisions were vague. He had to constantly seek clarification and queries just to be apprised of what he was confronted with.

Petitioners relate that upon being informed of the “guilty” verdict, Cadet 1CL Cudia immediately inquired as to the grounds therefor, but Cadet 1CL Mogol answered that it is confidential since he would still appeal the same. By March 11, 2014, Maj. Gen. Lopez informed Cadet 1CL Cudia that the CRAB already forwarded their recommendation for his dismissal to the General Headquarters sometime in February-March 2014. Even then, he received no decision/recommendation on his case, verbally or in writing. The PMA commencement exercises pushed through with no written decision from the CRAB or the PMA on his appeal. The letter from the Office of the Adjutant General of the AFP was suspiciously delayed when the Cudia family received the same only on March 20, 2014. Moreover, it fell short in laying down with specificity the factual and legal bases used by the CRAB and even by the Office of the Adjutant General. There remains no proof that the CRAB and the PMA considered the evidence presented by Cadet 1CL Cudia, it being uncertain as to what evidence was weighed by the CRAB, whether the same is substantial, and whether the new evidence submitted by him was ever taken into account.

In refutation, respondents allege the existence of PMA’s practice of orally declaring the HC finding, not putting it in a written document so as to protect the integrity of the erring cadet and guard the confidentiality of the HC proceedings pursuant to the Honor System. Further, they aver that a copy of the report of the CRAB, dated March 10, 2014, was not furnished to Cadet 1CL Cudia because it was his parents who filed the appeal, hence, were the ones who were given a copy thereof.

Petitioners’ contentions have no leg to stand on. While there is a constitutional mandate stating that “[no] decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based,”<sup>179</sup> such provision does not apply in Cadet 1CL Cudia’s case. Neither *Guzman* nor *Andrews* require a specific form and content of a

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<sup>179</sup> CONSTITUTION, Art. VIII, Sec. 14.

decision issued in disciplinary proceedings. The Honor Code and Honor System Handbook also has no written rule on the matter. Even if the provision applies, nowhere does it demand that a point-by-point consideration and resolution of the issues raised by the parties are necessary.<sup>180</sup> What counts is that, albeit furnished to him late, Cadet 1CL Cudia was informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the reviewing body, assuring that it went through the processes of legal reasoning. He was not left in the dark as to how it was reached and he knows exactly the reasons why he lost, and is able to pinpoint the possible errors for review.

*As to the blind adoption of the HC findings –*

Petitioners assert that, conformably with Sections 30 and 31 of C.A. No. 1, only President Aquino as the Commander-in-Chief has the power to appoint and remove a cadet for a valid/legal cause. The law gives no authority to the HC as the sole body to determine the guilt or innocence of a cadet. It also does not empower the PMA to adopt the guilty findings of the HC as a basis for recommending the cadet's dismissal. In the case of Cadet 1CL Cudia, it is claimed that the PMA blindly followed the HC's finding of guilt in terminating his military service.

Further, it is the ministerial duty of the CRAB to conduct a review *de novo* of all records without requiring Cadet 1CL Cudia to submit new evidence if it is physically impossible for him to do so. In their minds, respondents cannot claim that the CRAB and the PMA thoroughly reviewed the HC recommendation and heard Cadet 1CL Cudia's side. As clearly stated in the letter from the Office of the AFP Adjutant General, "[in] its report dated March 10, 2014, PMA CRAB sustained the findings and recommendations of the Honor Committee x x x It also resolved the appeal filed by the subject Cadet." However, the Final Investigation Report of the CRAB was dated March 23, 2014. While such report states that a report was submitted to the AFP General Headquarters on March 10, 2014 and that it was only on March 12, 2014 that it was designated as a Fact-Finding Board/Investigating Body, it is unusual that the CRAB would do the same things twice. This raised a valid and well-grounded suspicion that the CRAB never undertook an in-depth investigation/review the first time it came out with its report, and the Final Investigation Report was drafted merely as an afterthought when the lack of written decision was pointed out by petitioners so as to remedy the apparent lack of due process during the CRAB investigation and review.

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<sup>180</sup> *Re: Verified Complaint of Engr. Oscar L. Ongjoco, Chairman of the Board/CEO of FH-GYMN Multi-Purpose and Transport Service Cooperative, Against Hon. Juan Q. Enriquez, Jr., Hon. Ramon M. Bato, Jr. and Hon. Florito S. Macalino, Associate Justices, Court of Appeals, A.M. OCA IPI No. 11-184-CA-J, January 31, 2012, 664 SCRA 465, 469.*

Despite the arguments, respondents assure that there was a proper assessment of the procedural and legal correctness of the guilty verdict against Cadet 1CL Cudia. They assert that the higher authorities of the PMA did not merely rely on the findings of the HC, noting that there was also a separate investigation conducted by the HTG from January 25 to February 7, 2014. Likewise, contrary to the contention of petitioners that the CRAB continued with the review of the case despite the absence of necessary documents, the CRAB conducted its own review of the case and even conducted another investigation by constituting the Fact-Finding Board/Investigating Body. For respondents, petitioners failed to discharge the burden of proof in showing bad faith on the part of the PMA. In the absence of evidence to the contrary and considering further that petitioners' allegations are merely self-serving and baseless, good faith on the part of the PMA's higher authorities is presumed and should, therefore, prevail.

We agree with respondents.

The Honor Committee, acting on behalf of the Cadet Corps, has a limited role of investigating and determining whether or not the alleged offender has actually violated the Honor Code.<sup>181</sup> It is given the responsibility of administering the Honor Code and, in case of breach, its task is entirely investigative, examining in the first instance a suspected violation. As a means of encouraging self-discipline, without ceding to it any authority to make final adjudications, the Academy has assigned it the function of identifying suspected violators.<sup>182</sup> Contrary to petitioners' assertion, the HC does not have the authority to order the separation of a cadet from the Academy. The results of its proceedings are purely recommendatory and have no binding effect. The HC determination is somewhat like an indictment, an allegation, which, in Cadet 1CL Cudia's case, the PMA-CRAB investigated *de novo*.<sup>183</sup> In the U.S., it was even opined that due process safeguards do not actually apply at the Honor Committee level because it is only a "charging body whose decisions had no effect other than to initiate *de novo* proceedings before a Board of Officers."<sup>184</sup>

Granting, for argument's sake, that the HC is covered by the due process clause and that irregularities in its proceedings were in fact committed, still, We cannot rule for petitioners. It is not required that procedural due process be afforded at every stage of developing disciplinary action. What is required is that an adequate hearing be held before the final act of dismissing a cadet from the military academy.<sup>185</sup> In the case of Cadet

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<sup>181</sup> The Honor Code and Honor System Handbook, Series 2011, p. 23 (*Rollo*, p. 164).

<sup>182</sup> See *Ringgold v. United States*, *supra* note 75.

<sup>183</sup> See *Roberts v. Knowlton*, *supra* note 101.

<sup>184</sup> See *Ringgold v. United States*, *supra* note 75, citing *Andrews v. Knowlton*, *supra* note 85.

<sup>185</sup> See *Birdwell v. Schlesinger*, *supra* note 101, citing *Andrews v. Knowlton*, *supra* note 85.

1CL Cudia, the OIC of HC, the SJA, the Commandant of Cadets, and the PMA Superintendent reviewed the HC findings. A separate investigation was also conducted by the HTG. Then, upon the directive of the AFP-GHQ to reinvestigate the case, a review was conducted by the CRAB. Finally, a Fact-Finding Board/Investigating Body composed of the CRAB members and the PMA senior officers was constituted to conduct a deliberate investigation of the case. The Board/Body actually held hearings on March 12, 13, 14 and 20, 2014. Instead of commendation, petitioners find it “unusual” that the CRAB would do the same things twice and suspect that it never undertook an in-depth investigation/review the first time it came out with its report. Such assertion is mere conjecture that deserves scant consideration.

*As to the dismissal proceedings as sham trial –*

According to petitioners, the proceedings before the HC were a sham. The people behind Cadet 1CL Cudia’s charge, investigation, and conviction were actually the ones who had the intent to deceive and who took advantage of the situation. Cadet 1CL Raguindin, who was a senior HC member and was the second in rank to Cadet 1CL Cudia in the Navy cadet 1CL, was part of the team which conducted the preliminary investigation. Also, Cadet 1CL Mogol, the HC Chairman, previously charged Cadet 1CL Cudia with honor violation allegedly for cheating (particularly, conniving with and tutoring his fellow cadets on a difficult topic by giving solutions to a retake exam) but the charge was dismissed for lack of merit. Even if he was a non-voting member, he was in a position of influence and authority. Thus, it would be a futile exercise for Cadet 1CL Cudia to resort to the procedure for the removal of HC members.<sup>186</sup>

Further, no sufficient prior notice of the scheduled CRAB hearing was given to Cadet 1CL Cudia, his family, or his PAO counsel. During one of her visits to him in the Holding Center, petitioner-intervenor was advised to convince his son to resign and immediately leave the PMA. Brig. Gen. Costales, who later became the CRAB Head, also categorically uttered to Annavee: “*Your brother, he lied!*” The CRAB conferences were merely used to formalize his dismissal and the PMA never really intended to hear his side. For petitioners, these are manifestations of PMA’s clear resolve to dismiss him no matter what.

For their part, respondents contend that the CHR’s allegation that Maj. Hindang acted in obvious bad faith and that he failed to discharge his duty to

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<sup>186</sup> Any cadet who loses confidence from any Honor Committee member may address the matter to the Honor Committee Chairman. The Chairman then calls for a deliberation of the case and submits the said representative to a loss of confidence vote of at least 2/3 of the Honor Committee representative seated en banc (See The Honor Code and Honor System Handbook, Series 2011, p. 34 [*Rollo*, p. 170]).

be a good father of cadets when he “paved the road to [Cadet 1CL Cudia’s] sham trial by the Honor Committee” is an unfounded accusation. They note that when Maj. Hindang was given the DR of Cadet 1CL Cudia, he revoked the penalty awarded because of his explanation. However, all revocations of awarded penalties are subject to the review of the STO. Therefore, it was at the instance of Maj. Leander and the established procedure followed at the PMA that Maj. Hindang was prompted to investigate the circumstances surrounding Cadet 1 CL Cudia’s tardiness. Respondents add that bad faith cannot likewise be imputed against Maj. Hindang by referring to the actions taken by Maj. Jekyll Dulawan, the CTO of Cadets 1CL Narciso and Arcangel who also arrived late for their next class. Unlike the other cadets, Cadet 1CL Cudia did not admit his being late and effectively evaded responsibility by ascribing his tardiness to Dr. Costales.

As to the CHR’s finding that Cadet 1CL Mogol was likewise “in bad faith and determined to destroy [Cadet 1CL] Cudia, for reasons of his own” because the former previously reported the latter for an honor violation in November 2013, respondents argue that the bias ascribed against him is groundless as there is failure to note that Cadet 1CL Mogol was a non-voting member of the HC. Further, he cannot be faulted for reporting a possible honor violation since he is the HC Chairman and nothing less is expected of him. Respondents emphasize that the representatives of the HC are elected from each company, while the HC Chairman is elected by secret ballot from the incoming first class representatives. Thus, if Cadet 1CL Cudia believed that there was bias against him, he should have resorted to the procedure for the removal of HC members provided for in the Honor Code Handbook.

Finally, respondents declare that there is no reason or ill-motive on the part of the PMA to prevent Cadet 1CL Cudia from graduating because the Academy does not stand to gain anything from his dismissal. On the contrary, in view of his academic standing, the separation militates against PMA’s mission to produce outstanding, honorable, and exceptional cadets.

The Court differs with petitioners.

Partiality, like fraudulent intent, can never be presumed. Absent some showing of actual bias, petitioners’ allegations do not hold water. The mere imputation of ill-motive *without proof* is *speculative* at best. *Kolesa* teaches us that to sustain the challenge, specific evidence must be presented to overcome

a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weaknesses, conferring investigative and adjudicative powers on the same individual poses such a risk of actual bias

or prejudgment that the practice must be forbidden if the guarantee of due process is to be implemented.<sup>187</sup>

Although a CTO like Maj. Hindang must decide whether demerits are to be awarded, he is not an adversary of the cadet but an educator who shares an identity of interest with the cadet, whom he counsels from time to time as a future leader.<sup>188</sup> When the occasion calls for it, cadets may be questioned as to the accuracy or completeness of a submitted work. A particular point or issue may be clarified. In this case, the question asked of Cadet 1CL Cudia concerning his being late in class is proper, since there is evidence indicating that a breach of regulation may have occurred and there is reasonable cause to believe that he was involved in the breach of regulations.<sup>189</sup>

For lack of actual proof of bad faith or ill-motive, the Court shall rely on the non-toleration clause of the Honor Code, *i.e.*, “*We do not tolerate those who violate the Code.*” Cadets are reminded that they are charged with a tremendous duty far more superior to their personal feeling or friendship.<sup>190</sup> They must learn to help others by guiding them to accept the truth and do what is right, rather than tolerating actions against truth and justice.<sup>191</sup> Likewise, cadets are presumed to be characteristically honorable; they cannot overlook or arbitrarily ignore the dishonorable action of their peers, seniors, or subordinates.<sup>192</sup> These are what Cadet 1CL Mogol exactly did, although he was later proven to have erred in his accusation. Note that even the Honor Code and Honor System Handbook recognizes that interpretation of one’s honor is generally subjective.<sup>193</sup>

Moreover, assuming, for the sake of argument, that Cadets 1CL Raguindin and Mogol as well as Brig. Gen. Costales have an axe to grind against Cadet 1CL Cudia and were bent on causing, no matter what, the latter’s downfall, their nefarious conduct would still be insignificant. This is so since the HC (both the preliminary and formal investigation), the CRAB, and the Fact-Finding Board/Investigating Body are collegial bodies. Hence, the claim that the proceedings/hearings conducted were merely a farce because the three personalities participated therein is tantamount to implying the existence of a conspiracy, distrusting the competence, independence, and integrity of the other members who constituted the majority. Again, in the absence of specifics and substantial evidence, the Court cannot easily give credence to this baseless insinuation.

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<sup>187</sup> *Kolesa v. Lehman*, *supra* note 88 at 594.

<sup>188</sup> See *Hagopian v. Knowlton*, *supra* note 87, at 210, citing *Menechino v. Oswald*, 430 F.2d 403 (1970).

<sup>189</sup> See The Honor Code and Honor System Handbook, Series 2011, p. 12-13 (*Rollo*, p. 159).

<sup>190</sup> The Honor Code and Honor System Handbook, Series 2011, p. 19 (*Rollo*, p. 162).

<sup>191</sup> *Id.* at 20 (*Id.* at 163).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 7 (*Id.* at 156).



As to the HC executive session/chambering –

Petitioners narrate that there was an irregular administrative hearing in the case of Cadet 1CL Cudia because two voting rounds took place. After the result of the secret balloting, Cadet 1CL Mogol ordered the voting members to go to a room without the cadet recorders. Therein, the lone dissenter, Cadet 1CL Lagura, was asked to explain his “not guilty” vote. Pressured to change his vote, he was made to cast a new one finding Cadet 1CL Cudia guilty. The original ballot was discarded and replaced. There was no record of the change in vote from 8-1 to 9-0 that was mentioned in the HC formal report.

The Affidavit of Commander Junjie B. Tabuada executed on March 6, 2014 was submitted by petitioners since he purportedly recalled Cadet 1CL Lagura telling him that he was pressured to change his “not guilty” vote after the voting members were “chambered.” In the sworn statement, Commander Tabuada said:

1. That after **CDT 1CL CUDIA** [was] convicted for honor violation, I [cannot] remember exactly the date but sometime in the morning of 23<sup>rd</sup> or 24<sup>th</sup> of January 2014, I was in my office filling up forms for the renewal of my passport, **CDT 1CL LAGURA** entered and had business with my staff;
2. When he was about to leave I called him. *“Lags, halika muna dito,”* and he approached me and I let him sit down on the chair in front of my table. I told and asked him, *“Talagang nadali si Cudia ah... ano ba ang nangyari? Mag-Tagalog or mag-Bisaya ka.”* He replied, *“Talagang NOT GUILTY ang vote ko sa kanya sir,”* and I asked him, *“Oh, bakit naging guilty di ba pag may isang nag NOT GUILTY, absuelto na? He replied “Chinamber ako sir, bale pinapa-justify kung bakit NOT GUILTY vote ko, at na-pressure din ako sir kaya binago ko, sir.”* So, I told him, *“Sayang sya, matalino at mabait pa naman”* and he replied *“oo nga sir”*. After that conversation, I let him go.<sup>194</sup>

It is claimed that the HC gravely abused its discretion when it committed voting manipulation since, under the rules, it is required to have a unanimous nine (9) votes finding an accused cadet guilty. There is nothing in the procedure that permits the HC Chairman to order the “chambering” of a member who voted contrary to the majority and subjects him or her to reconsider in order to reflect a unanimous vote. Neither is there an order from the Chief of Staff or the President sanctioning the HC procedure or approving any change therein pursuant to Sections 30 and 31 of C.A. No. 1. The HC, the CRAB, and the PMA violated their own rules and principles as

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<sup>194</sup> Rollo, pp. 45, 147, 151.

embodied in the Honor Code. Being a clear deviation from the established procedures, the second deliberation should be considered null and void.

Petitioners further contend that the requirement of unanimous vote involves a substantive right which cannot be unceremoniously changed without a corresponding amendment/revision in the Honor Code and Honor System Handbook. In their view, “chambering” totally defeats the purpose of voting by secret ballot as it glaringly destroys the very essence and philosophy behind the provisions of the Honor System, which is to ensure that the voting member is free to vote what is in his or her heart and mind and that no one can pressure or persuade another to change his or her vote. They suggest that if one voting member acquits an accused cadet who is obviously guilty of the offense, the solution is to remove him or her from the HC through the vote of non-confidence as provided for in the Honor Code.<sup>195</sup>

Anent the above arguments, respondents contend that a distinction must be made between the concepts of the Honor Code and the Honor System. According to them, the former sets the standard for a cadet’s minimum ethical and moral behavior and does not change, while the latter is a set of rules for the conduct of the observance and implementation of the Honor Code and may undergo necessary adjustments as may be warranted by the incumbent members of the HC in order to be more responsive to the moral training and character development of the cadets. The HC may provide guidelines when the Honor System can be used to supplement regulations. This being so, the voting process is continuously subject to change.

Respondents note that, historically, a non-unanimous guilty verdict automatically acquits a cadet from the charge of Honor violation. The voting members only write either “guilty” or “not guilty” in the voting sheets without stating their name or their justification. However, this situation drew criticisms since there were instances where a reported cadet already admitted his honor violation but was acquitted due to the lone vote of a sympathetic voting member.

In the case of Cadet 1CL Cudia, the HC adopted an existing practice that should the voting result in 7-2 or 8-1 the HC would automatically sanction a jury type of discussion called “executive session” or “chambering,” which is intended to elicit the explanation and insights of the voting member/s. This prevents the tyranny of the minority or lone dissenter

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<sup>195</sup> The Honor Committee may withdraw its confidence from any Honor Committee member and officer by: (1) at least 2/3 vote of all its members; (2) voluntary resignation of the member; or (3) turned back/discharged disposition. (See The Honor Code and Honor System Handbook, Series 2011, p. 34 [*Rollo*, p. 170]).

from prevailing over the manifest proof of guilt. The assailed voting practice has been adopted and widely accepted by the PMA *Siklab Diwa* Class of 2014 since their first year in the Academy. The allegations of conspiracy and sham trial are, therefore, negated by the fact that such practice was in place and applied to all cases of honor violations, not solely to the case of Cadet 1CL Cudia.

It is emphasized by respondents that any decision to change vote rests solely on the personal conviction of the dissenter/s, without any compulsion from the other voting members. There can also be no pressuring to change one's vote to speak of since a vote may only be considered as final when the Presiding Officer has affixed his signature.

To debunk Commander Tabuada's statements, respondents raise the argument that the Fact-Finding Board/Investigating Body summoned Cadet 1CL Lagura for inquiry. Aside from his oral testimony made under oath, he submitted to the Board/Body an affidavit explaining that:

11. Sometime on 23<sup>rd</sup> or 24<sup>th</sup> of January 2014, I went to the Department of Naval Warfare to ask permission if it is possible not to attend the Navy duty for the reason that I will be attending our baseball game outside the Academy.

12. After I was permitted not to attend my Navy Duty and when I was about to exit out of the Office, CDR JUNJIE B TABUADA PN, our Head Department Naval Warfare Officer, called my attention. I approached him and he said: "Talagang nadali si Cudia ah. Ano ba talaga ang nangyari?" At first, I was hesitant to answer because of the confidentiality of the Honor Committee proceedings. He again said: "Wag kang mag-alala, atin, atin lang ito, alam ko naman na bawal magsabi." Then I answered: "Ako yung isang not guilty Sir. Kaya [yung] Presiding Officer nagsabi na pumunta muna kami sa Chamber. Nung nasa chamber kami, nagsalita [yung] mga nagvote ng Guilty tapos isa-isa nagsabi kung bakit ang boto nila Guilty. Nung pakinggan ko, eh naliwanagan ako. Pinalitan ko yung boto ko from Not Guilty to Guilty Sir." He replied: "Sayang si Cudia ano?" And I said: "Oo nga sir, [s]ayang si Cudia, mabait pa naman at matalino."<sup>196</sup>

Cadet 1CL Lagura restated the above in the Counter-Affidavit executed on March 12, 2014, which he submitted before the CHR wherein he attested to the following:

3. I was chosen to be a voting member of the Honor Committee for Honor Code violation committed by Cadet Cudia, for "lying". As a voting member, we are the one who assess or investigate the case whether the reported Cadet is Guilty for his actions or not.

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<sup>196</sup>

Rollo, pp. 326-327, 342.

4. I was the only one who INITIALLY voted "NOT GUILTY" among the nine (9) voting members of the Honor Committee in the case of Cdt Cudia for Lying.

5. I initially voted "NOT GUILTY" for the reason that after the proceedings and before the presiding Officer told the members to vote, I was confused of the case of Cadet Cudia. I have gathered some facts from the investigation to make my decision but for me it is not yet enough to give my verdict of guilty to Cdt Cudia so I decided to vote "NOT GUILTY" with a reservation in my mind that we will still be discussing our verdicts if we will arrive at 8-1 or 7-2. Thus, I can still change my vote if I may be enlightened with the other's justifications.

6. After the votes were collected, the Presiding Officer told us that the vote is 8 for guilty and 1 for not guilty. By way of practice and as I predicted, we were told to go inside the anteroom for executive meeting and to discuss our respective justifications. I have been a member for two (2) years and the voting committee will always go for executive meeting whenever it will meet 8-1 or 7-2 votes.

7. I listened to them and they listened to me, then I saw things that enlightened my confusions that time. I gave a thumbs-up sign and asked for another sheet of voting paper. I then changed my vote from "NOT GUILTY" to "GUILTY" and the voting members of the Honor Committee came up with the final vote of nine (9) votes for guilty and zero (0) votes for not guilty.

9. Cdt Cudia was called inside the courtroom and told that the verdict was GUILTY of LYING. After that, all persons inside the courtroom went back to barracks.

10. Right after I changed to sleeping uniform, I was approached by Cdt Jocson and Cdt Cudia, inquiring and said: "*Bakit ka naman nagpalit ng boto?*" I answered: "*Nasa process yan, may mali talaga sa rason mo.*" They also asked who were inside the Chamber and I mentioned only Cdt Arlegui and Cdt Mogol. That was the last time that Cdt Cudia and Cdt Jocson talked to me.

11. Sometime on 23<sup>rd</sup> or 24<sup>th</sup> of January 2014, I went to the Department of Naval Warfare to asked (*sic*) permission if it is possible not to attend the Navy duty for the reason that I will be attending our baseball game outside the Academy.

12. After I was permitted not to attend my Navy Duty and when I was about to exit out of the Office, CDR JUNJIE B TABUADA PN, our Head Department Naval Warfare Officer, called my attention. I approached him and he said: "*Talagang nadali si Cudia ah. Ano ba talaga ang nangyari?*" At first, I was hesitant to answer because of the confidentiality of the Honor Committee proceedings. He again said: "*Wag kang mag-alala, atin, atin lang ito, alam ko naman na bawal magsabi.*" Then I answered: "*Ako yung isang not guilty Sir. Kaya [yung] Presiding Officer nagsabi na pumunta muna kami sa Chamber. Nung nasa chamber kami, nagsalita [yung] mga nagvote ng Guilty tapos isa-isa nagsabi kung bakit ang boto nila Guilty. Nung pakinggan ko, eh naliwanagan ako. Pinalitan ko yung boto ko from Not Guilty to Guilty Sir.*" He replied: "*Sayang si Cudia*

*ano?” And I said: “Oo nga sir, [s]ayang si Cudia, mabait pa naman at matalino.”<sup>197</sup>*

Still not to be outdone, petitioners argue that the very fact that Cadet 1CL Lagura, as the lone dissenter, was made to explain in the presence of other HC members, who were in disagreement with him, gives a semblance of intimidation, force, or pressure. For them, the records of the HC proceedings, which were not presented assuming they actually exist, could have been the best way to ensure that he was free to express his views, reject the opinion of the majority, and stick to his decision. Also, it was pointed out that Cadet 1CL Lagura failed to clearly explain in his affidavit why he initially found Cadet 1CL Cudia “not guilty” and what made him change his mind. His use of general statements like he “*was confused of the case*” and “*saw things that enlightened my confusions*” could hardly suffice to establish why he changed his vote. Finally, petitioners note the admission of Cadet 1CL Lagura during the CHR investigation that he was the only one who was given another ballot sheet while in the chamber and that he accomplished it in the barracks which he only submitted the following day. However, as the CHR found, the announcement of the 9-0 vote was done immediately after the HC came out from the chamber and before Cadet 1CL Lagura submitted his accomplished ballot sheet.

We rule for respondents.

As to the manner of voting by the HC members, the Honor Code tersely provides:

After a thorough discussion and deliberation, the presiding member of the Board will call for the members to vote whether the accused is GUILTY or NOT GUILTY. A unanimous vote (9 votes) of GUILTY decides that a cadet is found guilty of violating the Honor Code.<sup>198</sup>

From the above-quoted provision, it readily appears that the HC practice of conducting “executive session” or “chambering” is not at all prohibited. The HC is given leeway on the voting procedures in actual cases taking into account the exigency of the times. What is important is that, in the end, there must be a unanimous nine votes in order to hold a cadet guilty of violating the Honor Code.

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<sup>197</sup> *Rollo*, pp. 361-362.

<sup>198</sup> The Honor Code and Honor System Handbook, Series 2011, p. 25 (*Rollo*, p. 165).

Granting, for argument's sake, that the HC violated its written procedure,<sup>199</sup> We still rule that there is nothing inherently wrong with the practice of "chambering" considering that the presence of intimidation or force cannot automatically be inferred therefrom. The essence of secret balloting and the freedom to vote based on what is in the heart and mind of the voting member is not necessarily diluted by the fact that a second/final voting was conducted. As explained by Cadet 1CL Mogol before the CRAB:

13. x x x [The] dissenting voter would have to explain his side and insights regarding the case at hand. The other members, on the other hand, would be given the chance to explain their votes as well as their insights to the dissenting voter. The decision to change the vote of the dissenting voter rests solely on his personal conviction. Thus, if he [or she] opted not to change his/her vote despite the discussion, his [or her] vote is accorded respect by the Honor Committee.<sup>200</sup>

It is elementary that intimidation or force is never presumed. Mere allegation is definitely not evidence. It must be substantiated and proved because a person is presumed to be innocent of a crime or wrong and that official duty has been regularly performed.<sup>201</sup>

The oral and written statements of Cadet 1CL Lagura should settle the issue. Before the Fact-Finding Board/Investigating Body and the CHR, he consistently denied that he was pressured by the other voting members of the HC. His representation must be accepted as it is regardless of whether he has satisfactorily elaborated his decision to change his vote. Being the one who was "chambered," he is more credible to clarify the issue. In case of doubt, We have to rely on the faith that Cadet 1CL Lagura observed the Honor Code, which clearly states that every cadet must be his or her own Final Authority in honor; that he or she should not let other cadets dictate on him or her their sense of honor.<sup>202</sup> Moreover, the Code implies that any person can have confidence that a cadet and any graduate of the PMA will be fair

<sup>199</sup> During the CHR hearing, the "Procedure During Formal Investigation," which was said to be a supplement to the Honor Code and Honor System Handbook, was presented and considered. It provides as follows:

*"DELIBERATION*

*Here, the Committee engages in an open and thorough discussion of the merits and demerits of the case. The presiding officer then aligns the different circumstances, mitigating and aggravating and once again present the evidences to the voting members for examination. After which, the Presiding Officer will ask the Voting Members if all of them are ready satisfied and are ready to vote. Just one member (not) ready to vote will postpone the voting and continue the deliberation until all doubts are cleared."*

Further,

*"Voting is done by secret ballots. After deliberation, the blank ballot sheets are distributed to each of the voting members who then signify his vote by writing 'Guilty' or 'Not Guilty' and justify why he write the said vote. The Presiding Officer counts the ballots and announces the result to the Committee."* (Rollo, pp. 485-486)

<sup>200</sup> Rollo, pp. 344-345.

<sup>201</sup> RULES OF COURT, Rule 131, Sec. 3 (a) and (m).

<sup>202</sup> The Honor Code and Honor System Handbook, Series 2011, p. 4 (Rollo, p. 155).

and just in dealing with him; that his actions, words and ways are sincere and true.<sup>203</sup>

As to the other alleged “irregularities” committed such as not putting on record the initial/first voting and Cadet 1CL Lagura’s bringing of his ballot sheet to and accomplishing it in the barracks, the Court shall no longer dwell on the same for being harmless procedural errors that do not materially affect the validity of the HC proceedings.

*Cadet 1CL Cudia’s alleged untruthful statements*

Petitioners insist that Cadet 1CL Cudia did not lie. According to them, there is no clear time reference as to when was the actual dismissal or what was the exact time of dismissal – whether it should be the dismissal inside the room or the dismissal after the section grade was given by Dr. Costales – in the minds of Cadet 1CL Cudia, Maj. Hindang, and the HC investigators and voting members. They claim that during long examinations, the time of dismissal was usually five minutes before the class was set to end and the protocol of dismissing the class 15 minutes earlier was not observed. When Maj. Hindang stated in accusatory language that Cadet 1CL Cudia perverted the truth by stating that OR432 class ended at 1500H, he did not state what was the true time of dismissal. He did not mention whether the truth he was relying on was 5 or 15 minutes before the scheduled end of class.

It is also averred that Cadet 1CL Cudia’s only business was to ask Dr. Costales a query such that his business was already finished as soon as she gave an answer. However, a new business was initiated by Dr. Costales, which is, Cadet 1CL Cudia must stay and wait for the section grade. At that point in time, he was no longer in control of the circumstances. Petitioners claim that Dr. Costales never categorically stated that Cadet 1CL Cudia was lying. She recognized the confusion. Her text messages to him clarified his alleged violation. Also, the CHR noted during its investigation that she could not exactly recall what happened in her class on November 14, 2013.

Furthermore, petitioners reasoned out that when respondents stated that ENG412 class started at 3:05 p.m., it proves that Cadet 1CL Cudia was obviously not late. If, as indicated in his Delinquency Report, he was late two (2) minutes in his 1500-1600H class in ENG 412, he must have arrived 3:02 p.m. Respondents, however, claim that the class started at 3:05 p.m. Thus, Cadet 1CL Cudia was not late.

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<sup>203</sup>

*Id.* at 5 (*Id.* at 155).

Relative to his explanation to the delinquency report, petitioners were of the view that what appears to have caused confusion in the minds of respondents is just a matter of semantics; that the entire incident was a product of inaccuracy, not lying. It is malicious for them to insinuate that Cadet 1CL Cudia purposely used incorrect language to hide the truth. Citing Merriam Webster's Dictionary, petitioners argue that "dismiss" means to permit or cause to leave, while "class" refers to a body of students meeting regularly to study the same subject. According to them, these two words do not have definite and precise meanings but are generic terms. Other than the words "class" and "dismiss" used by Cadet 1CL Cudia, which may actually be used in their generic sense, there is nothing deceiving about what he said. Thus, the answer he chose might be wrong or not correct, but it is not false or not true.

For petitioners, Cadet 1CL Cudia's explanations are evidently truthful and with no intent to deceive or mislead. He did not manipulate any fact and was truthful of his explanation. His statements were clear and unambiguous but were given a narrow-minded interpretation. Even the Honor Code acknowledges that "[e]xperience demonstrates that human communication is imperfect at best, and some actions are often misinterpreted."

Lastly, petitioners contend that Cadet 1CL Cudia's transcript of records reflects not only his outstanding academic performance but proves his good conduct during his four-year stay in the Academy. He has above-average grades in Conduct, with grades ranging from 96 to 100 in Conduct I to XI. His propensity to lie is, therefore, far from the truth.

On the other hand, respondents were equally adamant to contend that Cadet 1CL Cudia was obviously quibbling, which, in the military parlance, is tantamount to lying. He fell short in telling a simple truth. He lied by making untruthful statements in his written explanation. Respondents want Us to consider the following:

*First*, their OR432 class was not dismissed late. During the formal investigation, Dr. Costales testified that a class is dismissed as long as the instructor is not there and the bell has rung. In cases of lesson examinations (LE), cadets are dismissed from the time they have answered their respective LEs. Here, as Cadet Cudia stated in his Request for Reconsideration of Meted Punishment, "*We had an LE that day (14 November 2013) in OR432 class. When the first bell rang (1455), I stood up, reviewed my paper and submitted it to my instructor, Ms. Costales. xxx*" Clearly, at the time Cadet Cudia submitted his papers, he was already considered dismissed. Thus, he cannot claim that his [OR432] class ended at 3:00 in the afternoon (1500H) or "a bit late."

*Second*, Cadet Cudia was in control of the circumstances leading to his tardiness. After submitting his paper, Cadet Cudia is free to leave and



attend his next class. However, he initiated a conversation with Dr. Costales regarding their grades. He was not under instruction by Dr. Costales to stay beyond the period of her class.

Furthermore, during the investigation of the Fact-Finding Board/Investigating Body, Dr. Costales clarified her statements in her written explanation. She explained that the “instruction to wait” is a response to Cadet Cudia’s request and that it was not her initiated instruction. Clearly, there was no directive from Dr. Costales for Cadet Cudia and the other cadets to stay. On the contrary, it was them who wanted to meet with the instructor.

*Third*, contrary to Cadet Cudia’s explanation, his subsequent class, ENG412, did not exactly start at 3:00 in the afternoon (1500H). In the informal review conducted by the HTG to check the findings of the HC, Professor Berong confirmed that her English class started as scheduled (3:05 in the afternoon, or 1505H) and not earlier. Cadet 1 CL Barrowed, the acting class marcher of ENG412 also testified that their class started as scheduled (3:05 in the afternoon, or 1505) and not earlier.<sup>204</sup>

Respondents were unimpressed with the excuse that Cadet 1CL Cudia had no intention to mislead or deceive but merely used wrong and unfitting words in his explanations. For them, considering his academic standing, it is highly improbable that he used incorrect language to justify his mistake.

Respondents’ arguments are tenable.

The issue of whether Cadet 1CL Cudia committed lying is an issue of fact. Unfortunately for petitioners, the Court, not being a trier of facts, cannot pass upon factual matters as it is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. Moreover, We reiterate the long standing rule that factual findings of administrative tribunals are ordinarily accorded respect if not finality by the Court. In this case, as shown in the previous discussions, there is no evidence that the findings of the investigating and reviewing bodies below are not supported by evidence or vitiated by fraud, imposition or collusion; that the procedure which led to the findings is irregular; that palpable errors were committed; or that a grave abuse of discretion, arbitrariness, or capriciousness is manifest. With respect to the core issue of whether lying is present in this case, all investigating and reviewing bodies are in consonance in holding that Cadet 1CL Cudia in truth and in fact lied.

For purposes of emphasis though, We shall supplement some points.

As succinctly worded, the Honor Code of the Cadet Corps Armed Forces of the Philippines (CCAFP) states: “*We, the Cadets, do not lie, cheat, steal, nor tolerate among us those who do.*”

The First Tenet of the Honor Code is “*We do not lie.*” Cadets violate the Honor Code by lying if they make an oral or written statement which is contrary to what is true or use doubtful information with the intent to deceive or mislead.<sup>205</sup> It is expected that every cadet’s word is accepted without challenge on its truthfulness; that it is true without qualification; and that the cadets must answer directly, completely and truthfully even though the answer may result in punitive action under the CCPB and CCAFPR.<sup>206</sup>

To refresh, in his Explanation of Report dated December 8, 2013, Cadet 1CL Cudia justified that: “*I came directly from OR432 Class. We were dismissed a bit late by our instructor Sir.*” Subsequently, in his Request for Reconsideration of Meted Punishment to Maj. Leander, he reasoned out as follows:

I strongly believe that I am not in control of the circumstances, our 4<sup>th</sup> period class ended 1500H and our 5<sup>th</sup> period class, which is ENG412, started 1500H also. Immediately after 4<sup>th</sup> period class, I went to my next class without any intention of being late Sir.<sup>207</sup>

In this case, the Court agrees with respondents that Cadet 1CL Cudia committed quibbling; hence, he lied in violation of the Honor Code.

Following an Honor Reference Handbook, the term “Quibbling” has been defined in one U.S. case as follows:

A person can easily create a false impression in the mind of his listener by cleverly wording what he says, omitting relevant facts, or telling a partial truth. When he knowingly does so with the intent to deceive or mislead, he is quibbling. Because it is an intentional deception, quibbling is a form of lying.<sup>208</sup>

The above definition can be applied in the instant case. Here, instead of directly and completely telling the cause of his being late in the ENG412 class of Prof. Berong, Cadet 1CL Cudia chose to omit relevant facts, thereby, telling a half-truth.

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<sup>205</sup> The Honor Code and Honor System Handbook, Series 2011, p. 9 (*Rollo*, p. 157).

<sup>206</sup> *Id.* at 9, 12 (*Id.* at 157, 159).

<sup>207</sup> *Rollo*, pp. 34, 139.

<sup>208</sup> *Birdwell v. Schlesinger*, *supra* note 101, at 714.

The two elements that must be presented for a cadet to have committed an honor violation are:

1. The act and/or omission, and
2. The intent pertinent to it.

Intent does not only refer to the intent to violate the Honor Code, but intent to commit or omit the act itself.<sup>209</sup>

The basic questions a cadet must always seek to answer unequivocally are:

1. Do I intend to deceive?
2. Do I intend to take undue advantage?

If a cadet can answer NO to BOTH questions, he or she is doing the honorable thing.<sup>210</sup>

Intent, being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore, can only be proved by unguarded expressions, conduct and circumstances generally.<sup>211</sup> In this case, Cadet 1CL Cudia's intent to deceive is manifested from the very act of capitalizing on the use of the words "*dismiss*" and "*class*." The truth of the matter is that the ordinary usage of these two terms, in the context of an educational institution, does not correspond to what Cadet 1CL Cudia is trying to make it appear. In that sense, the words are not generic and have definite and precise meaning.

By no stretch of the imagination can Cadets 1CL Cudia, Miranda, Arcangel, and Narciso already constitute a "*class*." The Court cannot agree that such term includes "every transaction and communication a teacher does with her students." Clearly, it does not take too much intelligence to conclude that Cadet 1CL Cudia should have been accurate by pinpointing who were with him when he was late in the next class. His deceptive explanation is made more obvious when compared with what Cadets 1CL Archangel and Narciso wrote in their DR explanation, which was: "*We approached our instructor after our class.*"<sup>212</sup>

Further, it is unimportant whether the time of dismissal on November 14, 2013 was five or fifteen minutes ahead of the scheduled end of class.

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<sup>209</sup> The Honor Code and Honor System Handbook, Series 2011, p. 24 (*Rollo*, p. 165).

<sup>210</sup> *Id.* at 22 (*Id.* at 164).

<sup>211</sup> *Feeder Int'l. Line, Pte., Ltd. v. Court of Appeals*, 274 Phil. 1143, 1152-1153 (1991).

<sup>212</sup> *Rollo*, p. 472.

Worth noting is that even Dr. Costales, who stood as a witness for Cadet 1CL Cudia, consistently admitted before the HC, the Fact-Finding Board/Investigating Body, and the CHR that he was already dismissed when he passed his LE paper.<sup>213</sup> During the hearing of the Board/Body, she also declared that she merely responded to his request to see the results of the UE1 and that she had reservations on the phrases “*under my instruction*” and “*dismissed a bit late*” used in his letter of explanation to the HC. In addition, Dr. Costales manifested her view before the CHR that the act of Cadet 1CL Cudia of inquiring about his grade outside their classroom after he submitted his LE paper is not part of the class time because the consultation, being cadet-initiated, is voluntary.<sup>214</sup>

Assuming, for the sake of argument, that a new business was initiated by Dr. Costales when Cadet 1CL Cudia was asked to stay and wait for the section grade, still, this does not acquit him. Given such situation, a responsible cadet who is fully aware of the time constraint has the last say, that is, to politely decline the invitation and immediately go to the next class. This was not done by Cadet 1CL Cudia. Thus, it cannot be said that he already lost control over the circumstances.

It is apparent, therefore, that Cadet 1CL Cudia cunningly chose words which led to confusion in the minds of respondents and eventually commenced the HC inquiry. His case is not just a matter of semantics and a product of plain and simple inaccuracy. There is manipulation of facts and presentation of untruthful explanation constitutive of Honor Code violation.

Evidence of prior good conduct cannot clear Cadet 1CL Cudia. While his Transcript of Records (*TOR*) may reflect not only his outstanding academic performance but his excellent grade in subjects on Conduct during his four-year stay in the PMA,<sup>215</sup> it does not necessarily follow that he is innocent of the offense charged. It is enough to say that “evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time.”<sup>216</sup> While the *TOR* may be received to prove his identity or habit as an exceptional PMA student, it does not show his specific intent, plan, or scheme as cadet accused of committing a specific Honor Code violation.

*Dismissal from the PMA as unjust and cruel punishment*

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<sup>213</sup> *Id.* at 353, 356, 465.

<sup>214</sup> *Id.* at 465.

<sup>215</sup> Cadet 1CL Cudia obtained the following final grades in his subjects on Conduct: Conduct I - 97; Conduct II - 97; Conduct III - 100; Conduct IV - 100; Conduct V - 100; Conduct VI - 100; Conduct VII - 100; Conduct VIII - 99; Conduct IX - 100; Conduct X - 99; and Conduct XI - 96 (*Rollo*, pp. 197-199).

<sup>216</sup> RULES OF COURT, Rule 130, Sec. 34.

Respondents insist that violation of the Honor Code warrants separation of the guilty cadet from the cadet corps. Under the Cadet Corps Armed Forces of the Philippines Regulation (CCAFPR), a violation of the Cadet Honor Code is considered Grave (Class 1) delinquency which merits a recommendation for a cadet's dismissal from the PMA Superintendent. The same is likewise clear from the Honor Code and Honor System Handbook. Cadet 1CL Cudia is, therefore, presumed to know that the Honor Code does not accommodate a gradation or degree of offenses. There is no difference between a little lie and a huge falsehood. Respondents emphasize that the Honor Code has always been considered as an absolute yardstick against which cadets have measured themselves ever since the PMA began and that the Honor Code and System seek to assure that only those who are able to meet the high standards of integrity and honor are produced by the PMA. As held in *Andrews*, it is constitutionally permissible for the military “to set and enforce uncommonly high standards of conduct and ethics.” Thus, in violating the Honor Code, Cadet 1CL Cudia forfeits his privilege to graduate from the PMA.

On their part, petitioners concede that if it is proven that a cadet breached the Honor Code, the offense warrants his or her dismissal since such a policy may be the only means to maintain and uphold the spirit of integrity in the military.<sup>217</sup> They maintain though that in Cadet 1CL Cudia's case there is no need to distinguish between a “little lie” and a “huge falsehood” since he did not lie at all. Absent any intent to deceive and to take undue advantage, the penalty imposed on him is considered as unjust and cruel. Under the circumstances obtaining in this case, the penalty of dismissal is not commensurate to the fact that he is a graduating cadet with honors and what he allegedly committed does not amount to an academic deficiency or an intentional and flagrant violation of the PMA non-academic rules and regulations. Citing *Non*, petitioners argue that the penalty imposed must be proportionate to the offense. Further, *Isabelo, Jr.* is squarely applicable to the facts of the case. Cadet 1CL Cudia was deprived of his right to education, the only means by which he may have a secure life and future.

Considering Our finding that Cadet 1CL Cudia in truth and in fact lied and his acceptance that violation of the Honor Code warrants the ultimate penalty of dismissal from the PMA, there is actually no more dispute to resolve. Indeed, the sanction is clearly set forth and Cadet 1CL Cudia, by contract, risked this when he entered the Academy.<sup>218</sup> We adopt the ruling in *Andrews*<sup>219</sup> wherein it was held that, while the penalty is severe, it is nevertheless reasonable and not arbitrary, and, therefore, not in violation of due process. It quoted the disposition of the district court, thus:

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<sup>217</sup> *Rollo*, p. 424.

<sup>218</sup> See *Cody v. Scott*, *supra* note 101, at 1035.

<sup>219</sup> Cited in the subsequent case of *Ringgold v. United States*, *supra* note 175, at 703.

The fact that a cadet will be separated from the Academy upon a finding that he has violated the Honor Code is known to all cadets even prior to the beginning of their careers there. The finding of a Code violation by hypothesis includes a finding of scienter on the part of the offender. While separation is admittedly a drastic and tragic consequence of a cadet's transgression, it is not an unconstitutionally arbitrary one, but rather a reasonable albeit severe method of preventing men who have suffered ethical lapses from becoming career officers. That a policy of admonitions or lesser penalties for single violations might be more compassionate -- or even more effective in achieving the intended result -- is quite immaterial to the question of whether the harsher penalty violates due process.<sup>220</sup>

### *Nature of the CHR Findings*

Petitioners contend that the PMA turned a blind eye on the CHR's recommendations. The CHR, they note, is a constitutional body mandated by the 1987 Constitution to investigate all forms of human rights violations involving civil and political rights, and to conduct investigative monitoring of economic, social, and cultural rights, particularly of vulnerable sectors of society. Further, it was contended that the results of CHR's investigation and recommendations are so persuasive that this Court, on several occasions like in the cases of *Cruz v. Sec. of Environment & Natural Resources*<sup>221</sup> and *Ang Ladlad LGBT Party v. Commission on Elections*,<sup>222</sup> gave its findings serious consideration. It is not, therefore, too late for the Court to hear what an independent and unbiased fact-finding body has to say on the case.

In opposition, respondents assert that *Simon, Jr. v. Commission on Human Rights*<sup>223</sup> ruled that the CHR is merely a recommendatory body that is not empowered to arrive at a conclusive determination of any controversy.

We are in accord with respondents.

The findings of fact and the conclusions of law of the CHR are merely recommendatory and, therefore, not binding to this Court. The reason is that the CHR's constitutional mandate extends only to the investigation of all forms of human rights violations involving civil and political rights.<sup>224</sup> As held in *Cariño v. Commission on Human Rights*<sup>225</sup> and a number of subsequent cases,<sup>226</sup> the CHR is only a fact-finding body, not a court of

<sup>220</sup> *Andrews v. Knowlton*, *supra* note 85, at 908, citing *White v. Knowlton*, 361 F. Supp. 445, 449.

<sup>221</sup> 400 Phil. 904 (2000).

<sup>222</sup> G.R. No. 190582, April 8, 2010, 618 SCRA 32.

<sup>223</sup> G.R. No. 100150, January 5, 1994, 229 SCRA 117.

<sup>224</sup> CONSTITUTION, Art. XIII, Sec. 18 (1).

<sup>225</sup> G.R. No. 96681, December 2, 1991, 204 SCRA 483.

<sup>226</sup> *Southern Cross Cement Corp. v. The Phil. Cement Manufacturers Corp.*, 478 Phil. 85 (2004); and *Export Processing Zone Authority v. Commission on Human Rights*, G.R. No. 101476, April 14, 1972, 208 SCRA 125.

justice or a quasi-judicial agency. It is not empowered to adjudicate claims on the merits or settle actual case or controversies. The power to investigate is not the same as adjudication:

The most that may be conceded to the Commission in the way of adjudicative power is that it may *investigate*, i.e., receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights. But fact-finding is not adjudication, and cannot be likened to the *judicial function* of a court of justice, or even a quasi-judicial agency or official. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function, properly speaking. To be considered such, the faculty of receiving evidence and making factual conclusions in a controversy must be accompanied by the authority of *applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law*. This function, to repeat, the Commission does not have.

x x x x

[i]t cannot try and decide cases (or hear and determine causes) as courts of justice, or even quasi-judicial bodies do. To investigate is not to adjudicate or adjudge. Whether in the popular or the technical sense, these terms have well understood and quite distinct meanings.

"*Investigate*," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely: inquire into systematically: to search or inquire into: x x x to subject to an official probe x x x: to conduct an official inquiry;" The purpose of investigation, of course, is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."


"*Adjudicate*," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of the parties to a court case) on the merits of issues raised: xx to pass judgment on: settle judicially: x x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: xx to award or grant judicially in a case of controversy x x x."


In the legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle or decree, or to sentence or condemn. xx Implies a judicial determination of a fact, and the entry of a judgment."<sup>226</sup>

All told, petitioners are not entitled to moral and exemplary damages in accordance with Articles 19, 2217, 2219 and 2229 of the Civil Code. The dismissal of Cadet 1CL Cudia from the PMA did not effectively deprive him of a future. Cliché though it may sound, being a PMA graduate is not the "be-all and end-all" of his existence. A cadet separated from the PMA may still continue to pursue military or civilian career elsewhere without suffering the stigma attached to his or her dismissal. For one, as suggested by respondents, DND-AFP Circular No. 13, dated July 15, 1991, on the enlistment and reenlistment in the AFP Regular Force, provides under Section 14 (b) thereof that priority shall be given to, among others, the ex-PMA or PAFFFS cadets.<sup>227</sup> If the positions open does not appeal to his interest for being way below the rank he could have achieved as a PMA graduate, Cadet 1CL Cudia could still practice other equally noble profession or calling that is best suited to his credentials, competence, and potential. Definitely, nobody can deprive him of that choice.

**WHEREFORE**, the Petition is **DENIED**. The dismissal of Cadet First Class Aldrin Jeff P. Cudia from the Philippine Military Academy is hereby **AFFIRMED**. No costs.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

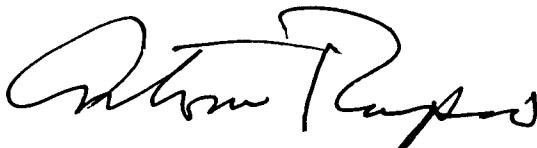
<sup>226</sup>

*Cariño v. Commission on Human Rights*, *supra* note 222, at 495-496.

<sup>227</sup>

*Rollo*, pp. 367-375.






**ANTONIO T. CARPIO**  
Associate Justice

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

On leave  
**ARTURO D. BRION**  
Associate Justice



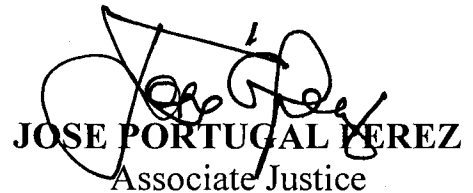
**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice




**MARTIN S. VILLARAMA, JR.**  
Associate Justice



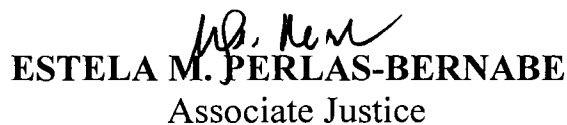
**JOSE PORTUGAL PEREZ**  
Associate Justice



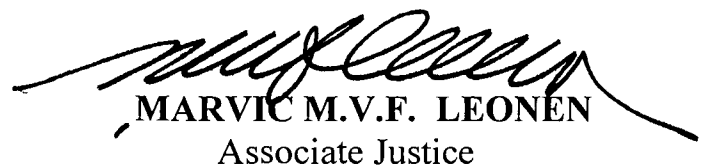
**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice

No Part  
**FRANCIS H. JARDELEZA**  
Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**



**ENRIQUETA ESGUERRA-VIDAL**

Clerk of Court

OCC-En Banc

Supreme Court