Republic of the Philippines
Supreme Court
Manila

EN BANC

EMILIO A. GONZALES III, **G.R. No. 196231**
Petitioner,

- versus -

OFFICE OF THE PRESIDENT OF THE PHILIPPINES, acting through and represented by EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., SENIOR DEPUTY EXECUTIVE SECRETARY JOSE AMOR M. AMORANDO, Officer in Charge, Office of the Deputy Executive Secretary for Legal Affairs, ATTY. RONALDO A. GERON, DIR. ROWENA TURINGAN-SANCHEZ, and ATTY. CARLITO D. CATAYONG,
Respondents.
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WENDELL BARRERAS-SULIT, **G.R. No. 196232**
Petitioner,

- versus -

ATTY. PAQUITO N. OCHOA, JR., in his capacity as EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT,

ATTY. DENNIS F. ORTIZ, ATTY. CARLO D. SULAY and ATTY. FROILAN D. MONTALBAN, JR., in their capacities as CHAIRMAN and MEMBERS of the OFFICE OF MALACAÑANG LEGAL AFFAIRS,

Respondents.

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

Promulgated:

September 4, 2012

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DECISION

PERLAS-BERNABE, *J.*:

The Cases

These two petitions have been consolidated not because they stem from the same factual milieu but because they raise a common thread of issues relating to the President's exercise of the power to remove from office herein petitioners who claim the protective cloak of independence of the constitutionally-created office to which they belong – the Office of the Ombudsman.

The first case, docketed as **G.R. No. 196231**, is a Petition for Certiorari (with application for issuance of temporary restraining order or status quo order) which assails on jurisdictional grounds the Decision[1] dated March 31, 2011 rendered by the Office of the President in OP Case No. 10-J-460 dismissing petitioner Emilio A. Gonzales III, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), upon a finding of guilt on the administrative charges of *Gross Neglect of Duty* and *Grave Misconduct* constituting a *Betrayal of Public Trust*. The petition primarily seeks to declare as unconstitutional **Section 8(2) of Republic Act (R.A.) No. 6770**, otherwise known as the Ombudsman Act of 1989, which gives the President the power to dismiss a Deputy Ombudsman of the Office of the Ombudsman.

The second case, docketed as **G.R. No. 196232**, is a Petition for Certiorari and Prohibition (with application for issuance of a temporary restraining order or status quo order) seeking to annul, reverse and set aside (1) the undated Order[2] requiring petitioner Wendell Barreras-Sulit to submit a written explanation with respect to alleged acts or omissions constituting serious/grave offenses in relation to the Plea Bargaining Agreement (PLEBARA) entered into with Major General Carlos F. Garcia; and (2) the April 7, 2011 Notice of Preliminary Investigation,[3] both issued by the Office of the President in OP-DC-Case No. 11-B-003, the administrative case initiated against petitioner as a Special Prosecutor of the Office of the Ombudsman. The petition likewise seeks to declare as unconstitutional Section 8(2) of R.A. No. 6770 giving the President the power to dismiss a Special Prosecutor of the Office of the Ombudsman.

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1 Annex "A," *rollo* (G.R. No. 196231), pp. 72-86.
2 Annex "A," *rollo* (G.R. No. 196232), p. 26.
3 Annex "C," id. at 33.

The facts from which these two cases separately took root are neither complicated nor unfamiliar.

In the morning of August 23, 2010, news media scampered for a minute-by-minute coverage of a hostage drama that had slowly unfolded right at the very heart of the City of Manila. While initial news accounts were fragmented it was not difficult to piece together the story on the hostage-taker, Police Senior Inspector Rolando Mendoza. He was a disgruntled former police officer attempting to secure his reinstatement in the police force and to restore the benefits of a life-long, and erstwhile bemedaled, service. The following day, broadsheets and tabloids were replete with stories not just of the deceased hostage-taker but also of the hostage victims, eight of whom died during the bungled police operation to rescue the hapless innocents. Their tragic deaths triggered word wars of foreign relation proportions. One newspaper headline ran the story in detail, as follows:

> MANILA, Philippines - A dismissed policeman armed with an assault rifle hijacked a bus packed with tourists, and killed most of its passengers in a 10 hour-hostage drama shown live on national television until last night.
>
> Former police senior inspector Rolando Mendoza was shot dead by a sniper at past 9 p.m.
>
> Mendoza hijacked the bus and took 21 Chinese tourists hostage, demanding his reinstatement to the police force.
>
> The hostage drama dragged on even after the driver of the bus managed to escape and told police that all the remaining passengers had been killed.
>
> Late into the night assault forces surrounded the bus and tried to gain entry, but a pair of dead hostages hand-cuffed to the door made it difficult for them. Police said they fired at the wheels of the bus to immobilize it.
>
> Police used hammers to smash windows, door and wind-shield but were met with intermittent fire from the hos-tage taker.
>
> Police also used tear gas in an effort to confirm if the remaining hostages were all dead or alive. When the

standoff ended at nearly 9 p.m., some four hostages were rescued alive while Mendoza was killed by a sniper.

Initial reports said some 30 policemen stormed the bus. Shots also rang out, sending bystanders scampering for safety.

It took the policemen almost two hours to assault the bus because gunfire reportedly rang out from inside the bus.

Mendoza hijacked the tourist bus in the morning and took the tourists hostage.

Mendoza, who claimed he was illegally dismissed from the police service, initially released nine of the hostages during the drama that began at 10 a.m. and played out live on national television.

Live television footage showed Mendoza asking for food for those remaining in the bus, which was delivered, and fuel to keep the air-conditioning going.

The disgruntled former police officer was reportedly armed with an M-16 rifle, a 9 mm pistol and two hand grenades.

Mendoza posted a handwritten note on the windows of the bus, saying "big deal will start after 3 p.m. today." Another sign stuck to another window said "3 p.m. today deadlock."

Stressing his demand, Mendoza stuck a piece of paper with a handwritten message: "Big mistake to correct a big wrong decision." A larger piece of paper on the front windshield was headed, "Release final decision," apparently referring to the case that led to his dismissal from the police force.

Negotiations dragged on even after Mendoza's self-imposed deadline.

Senior Police Officer 2 Gregorio Mendoza said his brother was upset over his dismissal from the police force. "His problem was he was unjustly removed from service. There was no due process, no hearing, no complaint," Gregorio said.

Last night, Gregorio was arrested by his colleagues on suspicions of being an accessory to his brother's action. Tensions rose as relatives tried to prevent lawmen from arresting Gregorio in front of national television. This triggered the crisis that eventually forced Mendoza to carry out his threat and kill the remaining hostages.

Negotiators led by Superintendent Orlando Yebra and Chief Inspector Romeo Salvador tried to talk Mendoza into surrendering and releasing the 21 hostages, mostly children and three Filipinos, including the driver, the tourist guide and a photographer. Yebra reportedly lent a cellphone to allow communications with Mendoza inside the bus, which was parked in front of the Quirino Grandstand.

> Children could be seen peeking from the drawn curtains of the bus while police negotiators hovered near the scene.
>
> Manila Police District (MPD) director Chief Superintendent Rodolfo Magtibay ordered the deployment of crack police teams and snipers near the scene. A crisis management committee had been activated with Manila Vice Mayor Isko Moreno coordinating the actions with the MPD.
>
> Earlier last night, Ombudsman Merceditas Gutierrez had a meeting with Moreno to discuss Mendoza's case that led to his dismissal from the service. Ombudsman spokesman Jose de Jesus said Gutierrez gave a "sealed letter" to Moreno to be delivered to Mendoza. De Jesus did not elaborate on the contents of the letter but said Moreno was tasked to personally deliver the letter to Mendoza.
>
> MPD spokesman Chief Inspector Edwin Margarejo said Mendoza was apparently distraught by the slow process of the Ombudsman in deciding his motion for reconsideration. He said the PNP-Internal Affairs Service and the Manila Regional Trial Court had already dismissed criminal cases against him.
>
> The hostage drama began when Mendoza flagged down the Hong Thai Travel Tourist bus (TVU-799), pretending to hitch a ride. Margarejo said the bus had just left Fort Santiago in Intramuros when Mendoza asked the driver to let him get on and ride to Quirino Grandstand. Upon reaching the Quirino Grandstand, Mendoza announced to the passengers that they would be taken hostage. "Having worn his (police) uniform, of course there is no doubt that he already planned the hostage taking," Margarejo said. – Sandy Araneta, Nestor Etolle, Delon Porcalla, Amanda Fisher, Cecille Suerte Felipe, Christina Mendez, AP [Grandstand Carnage, The Philippine Star, Updated August 24, 2010 12:00 AM, Val Rodriguez].[4]

In a completely separate incident much earlier in time, more particularly in December of 2003, 28-year-old Juan Paolo Garcia and 23-year-old Ian Carl Garcia were caught in the United States smuggling $100,000 from Manila by concealing the cash in their luggage and making false statements to US Customs Officers. The Garcia brothers pleaded guilty to bulk cash smuggling and agreed to forfeit the amount in favor of the US

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[4] Val Rodriguez, *Grandstand Carnage*, The Philippine Star, August 24, 2010 <http://www.philstar.com/Article.aspx?articleId=605631&publicationSubCategoryId=63> (visited January 5, 2011).

Government in exchange for the dismissal of the rest of the charges against them and for being sentenced to time served. Inevitably, however, an investigation into the source of the smuggled currency conducted by US Federal Agents and the Philippine Government unraveled a scandal of military corruption and amassed wealth -- the boys' father, Retired Major General Carlos F. Garcia, former Chief Procurement Officer of the Armed Forces, had accumulated more than ₱300 Million during his active military service. Plunder and Anti-Money Laundering cases were eventually filed against Major General Garcia, his wife and their two sons before the Sandiganbayan.

G.R. No. 196231

Sometime in 2008, a formal charge[5] for *Grave Misconduct* (robbery, grave threats, robbery extortion and physical injuries) was filed before the Philippine National Police-National Capital Region (PNP-NCR) against Manila Police District Senior Inspector (P/S Insp.) Rolando Mendoza, and four others, namely, Police Inspector Nelson Lagasca, Senior Police Inspector I Nestor David, Police Officer III Wilson Gavino, and Police Officer II Roderick Lopena. A similar charge was filed by the private complainant, Christian M. Kalaw, before the Office of the City Prosecutor, Manila, docketed as I.S. No. 08E-09512.

On July 24, 2008, while said cases were still pending, the Office of the Regional Director of the National Police Commission (NPC) turned over, upon the request of petitioner Emilio A. Gonzales III, all relevant documents and evidence in relation to said case to the Office of the Deputy Ombudsman

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5 Charge Sheet, *rollo* (G.R. No. 196231), p. 87.

for appropriate administrative adjudication.[6] Subsequently, Case No. OMB-P-A-08-0670-H for *Grave Misconduct* was lodged against P/S Insp. Rolando Mendoza and his fellow police officers, who filed their respective verified position papers as directed.

Meanwhile, on August 26, 2008, I.S. No. 08E-09512 was dismissed[7] upon a finding that the material allegations made by the complainant had not been substantiated "by any evidence at all to warrant the indictment of respondents of the offenses charged." Similarly, the Internal Affairs Service of the PNP issued a Resolution[8] dated October 17, 2008 recommending the dismissal *without prejudice* of the administrative case against the same police officers, for failure of the complainant to appear in three (3) consecutive hearings despite due notice.

However, on February 16, 2009, upon the recommendation of petitioner Emilio Gonzales III, a Decision[9] in Case No. OMB-P-A-08-0670-H finding P/S Insp. Rolando Mendoza and his fellow police officers guilty of *Grave Misconduct* was approved by the Ombudsman. The dispositive portion of said Decision reads:

> **WHEREFORE**, it is respectfully recommended that respondents **P/S Insp. ROLANDO DEL ROSARIO MENDOZA and PO3 WILSON MATIC GAVINO** of PRO-ARMM, Camp Brig. Gen. Salipada K. Pendatun, Parang, Shariff Kabunsuan; **P/INSP. NELSON URBANO LAGASCA, SPO1 NESTOR REYES DAVID and PO2 RODERICK SALVA LOPEÑA** of Manila Police District, Headquarters, United Nations Avenue, Manila, be meted the penalty of **DISMISSAL** from the Service, pursuant to Section 52 (A), Rule IV, Uniform Rules on Administrative Cases in the Civil Service, with the accessory penalties of forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service pursuant to Section 58, Rule IV of the same

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6 Id. at 231.
7 Resolution dated August 26, 2008, id. at 233-235.
8 Id. at 128.
9 Id. at 153-158.

Uniform Rules of Administrative Cases in the Civil Service, for having committed **GRAVE MISCONDUCT.**

On November 5, 2009, they filed a Motion for Reconsideration[10] of the foregoing Decision, followed by a Supplement to the Motion for Reconsideration[11] on November 19, 2009. On December 14, 2009, the pleadings mentioned and the records of the case were assigned for review and recommendation to Graft Investigation and Prosecutor Officer Dennis L. Garcia, who released a draft Order[12] on April 5, 2010 for appropriate action by his immediate superior, Director Eulogio S. Cecilio, who, in turn, signed and forwarded said Order to petitioner Gonzalez's office on April 27, 2010. Not more than ten (10) days after, more particularly on May 6, 2010, petitioner endorsed the Order, together with the case records, for final approval by Ombudsman Merceditas N. Gutierrez, in whose office it remained pending for final review and action when P/S Insp. Mendoza hijacked a bus-load of foreign tourists on that fateful day of August 23, 2010 in a desperate attempt to have himself reinstated in the police service.

In the aftermath of the hostage-taking incident, which ended in the tragic murder of eight HongKong Chinese nationals, the injury of seven others and the death of P/S Insp. Rolando Mendoza, a public outcry against the blundering of government officials prompted the creation of the Incident Investigation and Review Committee (IIRC),[13] chaired by Justice Secretary Leila de Lima and vice-chaired by Interior and Local Government Secretary Jesus Robredo. It was tasked to determine accountability for the incident through the conduct of public hearings and executive sessions. However, petitioner, as well as the Ombudsman herself, refused to participate in the IIRC proceedings on the assertion that the Office of the Ombudsman is an

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[10] Id. at 203-216.
[11] Annex “F,” id. at 132-136.
[12] Annex “N,” id. at 244-249.
[13] The President issued Joint Department Order No. 01-2010 creating the IIRC.

independent constitutional body.

Sifting through testimonial and documentary evidence, the IIRC eventually identified petitioner Gonzales to be among those in whom culpability must lie. In its Report,[14] the IIRC made the following findings:

> Deputy Ombudsman Gonzales committed serious and inexcusable negligence and gross violation of their own rules of procedure by allowing Mendoza's motion for reconsideration to languish for more than nine (9) months without any justification, in violation of the Ombudsman prescribed rules to resolve motions for reconsideration in administrative disciplinary cases within five (5) days from submission. The inaction is gross, considering there is no opposition [t]hereto. The prolonged inaction precipitated the desperate resort to hostage-taking.
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> More so, Mendoza's demand for immediate resolution of his motion for reconsideration is not without legal and compelling bases considering the following:
>
> (a) PSI Mendoza and four policemen were investigated by the Ombudsman involving a case for alleged robbery (extortion), grave threats and physical injuries amounting to grave misconduct allegedly committed against a certain Christian Kalaw. The same case, however, was previously dismissed by the Manila City Prosecutors Office for lack of probable cause and by the PNP-NCR Internal Affairs Service for failure of the complainant (Christian Kalaw) to submit evidence and prosecute the case. On the other hand, the case which was filed much ahead by Mendoza et al. against Christian Kalaw involving the same incident, was given due course by the City Prosecutors Office.
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> (b) The Ombudsman exercised jurisdiction over the case based on a letter issued *motu proprio* for Deputy Ombudsman Emilio A. Gonzalez III, directing the PNP-NCR - without citing any reason - to endorse the case against Mendoza and the arresting policemen to his office for administrative adjudication, thereby showing undue interest on the case. He also caused the docketing of the case and named Atty. Clarence

[14] As quoted in the Petition in G.R. No. 196231, *rollo*, pp. 17-20.

V. Guinto of the PNP-CIDG-NCR, who indorsed the case records, as the nominal complainant, in lieu of Christian Kalaw. During the proceedings, Christian Kalaw did not also affirm his complaint-affidavit with the Ombudsman or submit any position paper as required.

(c) Subsequently, Mendoza, after serving preventive suspension, was adjudged liable for grave misconduct by Deputy Ombudsman Gonzales (duly approved on May 21, 2009) based on the sole and uncorroborated complaint-affidavit of Christian Kalaw, which was not previously sustained by the City Prosecutor's Office and the PNP Internal Affairs Service. From the said Resolution, Mendoza interposed a timely motion for reconsideration (dated and filed November 5, 2009) as well as a supplement thereto. No opposition or comment was filed thereto.

(d) Despite the pending and unresolved motion for reconsideration, the judgment of dismissal was enforced, thereby abruptly ending Mendoza's 30 years of service in the PNP with forfeiture of all his benefits. As a result, Mendoza sought urgent relief by sending several hand-written letter-requests to the Ombudsman for immediate resolution of his motion for reconsideration. But his requests fell on deaf ears.

x x x x

By allowing Mendoza's motion for reconsideration to languish for nine long (9) months without any justification, Ombudsman Gutierrez and Deputy Ombudsman Gonzales committed complete and wanton violation of the Ombudsman prescribed rule to resolve motions for reconsideration in administrative disciplinary cases within five (5) days from submission (Sec. 8, Ombudsman Rules of Procedure). The inaction is gross, there being no opposition to the motion for reconsideration. Besides, the Ombudsman, without first resolving the motion for reconsideration, arbitrarily enforced the judgment of dismissal and ignored the intervening requests for immediate resolution, thereby rendering the inaction even more inexcusable and unjust as to amount to gross negligence and grave misconduct.

SECOND, Ombudsman Gutierrez and Deputy Ombudsman Gonzales committed serious disregard of due process, manifest injustice and oppression in failing to provisionally suspend the further implementation of the judgment of dismissal against Mendoza pending disposition

of his unresolved motion for reconsideration.

By enforcing the judgment of dismissal without resolving the motion for reconsideration for over nine months, the two Ombudsman officials acted with arbitrariness and without regard to due process and the constitutional right of an accused to the speedy disposition of his case. As long as his motion for reconsideration remained pending and unresolved, Mendoza was also effectively deprived of the right to avail of the ordinary course of appeal or review to challenge the judgment of dismissal before the higher courts and seek a temporary restraining order to prevent the further execution thereof.

As such, if the Ombudsman cannot resolve with dispatch the motion for reconsideration, it should have provisionally suspended the further enforcement of the judgment of dismissal without prejudice to its re-implementation if the reconsideration is eventually denied. Otherwise, the Ombudsman will benefit from its own inaction. Besides, the litigant is entitled to a stay of the execution pending resolution of his motion for reconsideration. Until the motion for reconsideration is denied, the adjudication process before the Ombudsman cannot be considered as completely finished and, hence, the judgment is not yet ripe for execution.

x x x x

When the two Ombudsman officials received Mendoza's demand for the release of the final order resolving his motion for reconsideration, they should have performed their duty by resolving the reconsideration that same day since it was already pending for nine months and the prescribed period for its resolution is only five days. Or if they cannot resolve it that same day, then they should have acted decisively by issuing an order provisionally suspending the further enforcement of the judgment of dismissal subject to revocation once the reconsideration is denied and without prejudice to the arrest and prosecution of Mendoza for the hostage-taking. Had they done so, the crisis may have ended peacefully, without necessarily compromising the integrity of the institution. After all, as relayed to the negotiators, Mendoza did express willingness to take full responsibility for the hostage-taking if his demand for release of the final decision or reinstatement was met.

But instead of acting decisively, the two Ombudsman officials merely offered to review a pending motion for review of the case, thereby prolonging their inaction and aggravating the situation. As expected, Mendoza – who previously berated Deputy Gonzales for allegedly demanding Php150,000 in exchange for favorably resolving the motion for reconsideration – rejected and

> branded as trash ("basura") the Ombudsman [*sic*] letter promising review, triggering the collapse of the negotiations. To prevent the situation from getting out of hand, the negotiators sought the alternative option of securing before the PNP-NCRPO an order for Mendoza's provisional reinstatement pending resolution of the motion for reconsideration. Unfortunately, it was already too late. But had the Ombudsman officials performed their duty under the law and acted decisively, the entire crisis may have ended differently.

The IIRC recommended that its findings with respect to petitioner Gonzales be referred to the Office of the President (OP) for further determination of possible administrative offenses and for the initiation of the proper administrative proceedings.

On October 15, 2010, the OP instituted a Formal Charge[15] against petitioner Gonzales for *Gross Neglect of Duty* and/or *Inefficiency in the Performance of Official Duty* under Rule XIV, Section 22 of the Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent Civil Service Laws, rules and regulations, and for *Misconduct in Office* under Section 3 of the Anti-Graft and Corrupt Practices Act.[16] Petitioner filed his Answer[17] thereto in due time.

Shortly after the filing by the OP of the administrative case against petitioner, a complaint dated October 29, 2010 was filed by Acting Assistant Ombudsman Joselito P. Fangon before the Internal Affairs Board of the Office of the Ombudsman charging petitioner with *"directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public*

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15 Annex "Q," id. at 322.
16 R. A. No. 3019.
17 *Rollo* (G.R. No. 196231), pp. 324-346.

officer in his official capacity has to intervene under the law" under Section 3(b) of the Anti-Graft and Corrupt Practices Act, and also, with *solicitation or acceptance of gifts* under Section 7(d) of the Code of Conduct and Ethical Standards.[18] In a Joint Resolution[19] dated February 17, 2011, which was approved by Ombudsman Ma. Merceditas N. Gutierrez, the complaint was dismissed, as follows:

> **WHEREFORE**, premises considered, finding no probable cause to indict respondent Emilio A. Gonzales III for violations of Section 3(b) of R.A. No. 3019 and Section 7(d) of R.A. No. 6713, the complaint is hereby be [sic] **DISMISSED**.
>
> Further, finding no sufficient evidence to hold respondent administratively liable for Misconduct, the same is likewise **DISMISSED**.

Meanwhile, the OP notified[20] petitioner that a Preliminary Clarificatory Conference relative to the administrative charge against him was to be conducted at the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) on February 8, 2011. Petitioner Gonzales alleged,[21] however, that on February 4, 2011, he heard the news that the OP had announced his suspension for one year due to his delay in the disposition of P/S Insp. Mendoza's motion for reconsideration. Hence, believing that the OP had already prejudged his case and that any proceeding before it would simply be a charade, petitioner no longer attended the scheduled clarificatory conference. Instead, he filed an Objection to Proceedings[22] on February 7, 2011. Despite petitioner's absence, however, the OP pushed through with the proceedings and, on March 31, 2011, rendered the assailed Decision,[23] the dispositive portion of which reads:

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18 R.A. No. 6713.
19 Annex "W," *rollo* (G.R. No. 196231), pp. 386-408.
20 Annex "S," id. at 377.
21 Petition, id. at 8.
22 Annex "V," id. at 380-383.
23 Annex "A," id. at 72-86.

> **WHEREFORE**, in view of the foregoing, this Office finds Deputy Ombudsman Emilio A. Gonzales III guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust, and hereby meted out the penalty of **DISMISSAL** from service.
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> **SO ORDERED**.

Hence, the petition.

G.R. No. 196232

In April of 2005, the Acting Deputy Special Prosecutor of the Office of the Ombudsman charged Major General Carlos F. Garcia, his wife Clarita D. Garcia, their sons Ian Carl Garcia, Juan Paulo Garcia and Timothy Mark Garcia and several unknown persons with *Plunder* (Criminal Case No. 28107) and *Money Laundering* (Criminal Case No. SB09CRM0194) before the Sandiganbayan.

On January 7, 2010, the Sandiganbayan denied Major General Garcia's urgent petition for bail holding that strong prosecution evidence militated against the grant of bail. On March 16, 2010, however, the government, represented by petitioner, Special Prosecutor Wendell Barreras-Sulit ("Barreras-Sulit") and her prosecutorial staff sought the Sandiganbayan’s approval of a Plea Bargaining Agreement (hereinafter referred to as “PLEBARA”) entered into with the accused. On May 4, 2010, the Sandiganbayan issued a Resolution finding the change of plea warranted and the PLEBARA compliant with jurisprudential guidelines.

Outraged by the backroom deal that could allow Major General Garcia to get off the hook with nothing but a slap on the hand notwithstanding the prosecution's apparently strong evidence of his culpability for serious public offenses, the House of Representatives' Committee on Justice conducted public hearings on the PLEBARA. At the conclusion of these public hearings, the Committee on Justice passed and adopted Committee Resolution No. 3,[24] recommending to the President the dismissal of petitioner Barreras-Sulit from the service and the filing of appropriate charges against her Deputies and Assistants before the appropriate government office for having committed acts and/or omissions tantamount to *culpable violations of the Constitution* and *betrayal of public trust*, which are violations under the Anti-Graft and Corrupt Practices Act and grounds for removal from office under the Ombudsman Act.

The Office of the President initiated OP-DC-Case No. 11-B-003 against petitioner Barreras-Sulit. In her written explanation, petitioner raised the defenses of prematurity and the lack of jurisdiction of the OP with respect to the administrative disciplinary proceeding against her. The OP, however, still proceeded with the case, setting it for preliminary investigation on April 15, 2011.

Hence, the petition.

The Issues

In **G.R. No. 196231**, petitioner Gonzales raises the following grounds, to wit:

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[24] Annex "B," *rollo* (G.R. No. 196232), pp. 27-30.

(A)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE OTHER INDIVIDUAL RESPONDENTS, HAS NO CONSTITUTIONAL OR VALID STATUTORY AUTHORITY TO SUBJECT PETITIONER TO AN ADMINISTRATIVE INVESTIGATION AND TO THEREAFTER ORDER HIS REMOVAL AS DEPUTY OMBUDSMAN.

(B)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE OTHER INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CONDUCTED ITS INVESTIGATION AND RENDERED ITS DECISION IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

(C)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONER COMMITTED DELAY IN THE DISPOSITION OF MENDOZA'S MOTION FOR RECONSIDERATION.

(D)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONER TOOK UNDUE INTEREST IN MENDOZA'S CASE.

(E)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAULTING PETITIONER FOR NOT RELEASING THE RESOLUTION ON MENDOZA'S MOTION FOR RECONSIDERATION OR FOR NOT SUSPENDING MENDOZA'S DISMISSAL FROM SERVICE DURING

THE HOSTAGE CRISIS.

(F)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THERE WAS SUBSTANTIAL EVIDENCE TO SHOW THAT PETITIONER DEMANDED A BRIBE FROM MENDOZA.[25]

On the other hand, in **G.R. No. 196232**, petitioner Barreras-Sulit poses for the Court the question –

AS OF THIS POINT IN TIME, WOULD TAKING AND CONTINUING TO TAKE ADMINISTRATIVE DISCIPLINARY PROCEEDING AGAINST PETITIONER BE LAWFUL AND JUSTIFIABLE?[26]

Re-stated, the primordial question in these two petitions is whether the Office of the President has jurisdiction to exercise administrative disciplinary power over a Deputy Ombudsman and a Special Prosecutor who belong to the constitutionally-created Office of the Ombudsman.

The Court's Ruling

Short of claiming themselves immune from the ordinary means of removal, petitioners asseverate that the President has no disciplinary jurisdiction over them considering that the Office of the Ombudsman to which they belong is clothed with constitutional independence and that they, as Deputy Ombudsman and Special Prosecutor therein, necessarily bear the

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[25] Petition, *rollo* (G.R. No. 196231), pp. 23-24.
[26] Petition, *rollo* (G.R. No. 196232), p. 10.

constitutional attributes of said office.

The Court is not convinced.

The Ombudsman's administrative disciplinary power over a Deputy Ombudsman and Special Prosecutor is not exclusive.

It is true that the authority of the Office of the Ombudsman to conduct administrative investigations proceeds from its constitutional mandate to be an effective protector of the people against inept and corrupt government officers and employees,[27] and is subsumed under the broad powers "explicitly conferred" upon it by the 1987 Constitution and R.A. No. 6770.[28]

The ombudsman traces its origins to the primitive legal order of Germanic tribes. The Swedish term, which literally means "agent" or "representative," communicates the concept that has been carried on into the creation of the modern-day ombudsman, that is, someone who acts as a neutral representative of ordinary citizens against government abuses.[29] This idea of a people's protector was first institutionalized in the Philippines under the 1973 Constitution with the creation of the *Tanodbayan*, which wielded the twin powers of investigation and prosecution. Section 6, Article XIII of the 1973 Constitution provided thus:

> Sec. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate

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[27] *Ledesma v. Court of Appeals*, 503 Phil. 396 (2005).
[28] *Office of the Ombudsman v. Masing and Tayactac*, G.R. No. 165416, January 22, 2008, 542 SCRA 253.
[29] De Leon, 2 *Philippine Constitutional Law Principles and Cases*, 855 (2004).

> recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

The framers of the 1987 Constitution later envisioned a more effective ombudsman vested with authority to "act in a quick, inexpensive and effective manner on complaints against administrative officials", and to function purely with the "prestige and persuasive powers of his office" in correcting improprieties, inefficiencies and corruption in government freed from the hampering effects of prosecutorial duties.[30] Accordingly, Section 13, Article XI of the 1987 Constitution enumerates the following powers, functions, and duties of the Office of the Ombudsman, *viz*:

> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
>
> (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
>
> (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
>
> (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
>
> (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
>
> (6) Publicize matters covered by its investigation when

[30] Bernas, S.J., The Intent of the 1986 Constitution Writers, 771 (1995).

> circumstances so warrant and with due prudence.
>
> (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
>
> (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.[31]

Congress thereafter passed, on November 17, 1989, Republic Act No. 6770, the *Ombudsman Act of 1989*, to shore up the Ombudsman's institutional strength by granting it "full administrative disciplinary power over public officials and employees,"[32] as follows:

> Sec. *21. Officials Subject to Disciplinary Authority; Exceptions*. - The Office of the Ombudsman shall have disciplinary authority over ***all elective and appointive officials*** of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, ***except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary***.(Emphasis supplied)

In the exercise of such full administrative disciplinary authority, the Office of the Ombudsman was explicitly conferred the statutory power to conduct administrative investigations under Section 19 of the same law, thus:

> Sec. 19. *Administrative complaints*. - The Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which:
>
> 1. Are contrary to law or regulation;
> 2. Are unreasonable, unfair, oppressive or discriminatory;
> 3. Are inconsistent with the general course of an agency's functions, though in accordance with law;

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[31] Id. at 143-144.

[32] *Office of the Ombudsman v. Delijero, Jr.*, G.R. No. 172635, October 20, 2010, 634 SCRA 135.

> 4. Proceed from a mistake of law or an arbitrary ascertainment of facts;
> 5. Are in the exercise of discretionary powers but for an improper purpose; or
> 6. Are otherwise irregular, immoral or devoid of justification.

While the Ombudsman's authority to discipline administratively is extensive and covers all government officials, whether appointive or elective, with the exception only of those officials removable by impeachment, the members of congress and the judiciary, such authority is by no means exclusive. Petitioners cannot insist that they should be solely and directly subject to the disciplinary authority of the Ombudsman. For, while Section 21 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor. Thus:

> Section 8. *Removal; Filling of Vacancy*. —
>
> x x x x
>
> (2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. A construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole.[33] Otherwise stated, the law must not be read in truncated

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[33] *Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Executive Secretary Romulo*, G.R. No. 160093, July 31, 2007, 528 SCRA 673, 682

parts. Every part thereof must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[34]

A harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively. This sharing of authority goes into the wisdom of the legislature, which prerogative falls beyond the pale of judicial inquiry. The Congressional deliberations on this matter are quite insightful, *viz*:

> x x x Senator Angara explained that the phrase was added to highlight the fact that the Deputy Tanodbayan may only be removed for cause and after due process. He added that **the President alone has the power to remove the Deputy Tanodbayan.**
>
> Reacting thereto, Senator Guingona observed that this might impair the independence of the Tanodbayan and suggested that the procedural removal of the Deputy Tanodbayan...; and that he can be removed not by the President but by the Ombudsman.
>
> However, the Chair expressed apprehension that the Ombudsman and the Deputy Ombudsman may try to protect one another. The Chair suggested the substitution of the phrase "after due process" with the words **after due notice and hearing with the President as the ultimate authority**.
>
> Senator Guingona contended, however, that the Constitution provides for an independent Office of the [T]anodbayan[,] and to allow the Executive to have disciplinary powers over the Tanodbayan Deputies would be an encroachment on the independence of the Tanodbayan.
>
> Replying thereto, Senator Angara stated that originally, he was not averse to the proposal, however, considering the Chair's observation that **vesting such authority upon the Tanodbayan itself could result in mutual protection, it is necessary that an outside official**

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[34] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 621 SCRA 461, citing *Land Bank of the Philippines v. AMS Farming Corporation*, 569 SCRA 154, 183 (2008) and *Mactan-Cebu International Airport Authority v. Urgello*, 520 SCRA 515, 535 (2007).

> **should be vested with such authority to effect a check and balance.**[35]

Indubitably, the manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

This would not be the first instance that the Office of the President has locked horns with the Ombudsman on the matter of disciplinary jurisdiction. An earlier conflict had been settled in favor of shared authority in *Hagad v. Gozo Dadole*.[36] In said case, the Mayor and Vice-Mayor of Mandaue City, and a member of the Sangguniang Panlungsod, were charged before the Office of the Deputy Ombudsman for the Visayas with violations of R.A. No. 3019, R.A. No. 6713, and the Revised Penal Code. The pivotal issue raised therein was whether the Ombudsman had been divested of his authority to conduct administrative investigations over said local elective officials by virtue of the subsequent enactment of the Local Government Code of 1991 (R.A. No. 7160), the pertinent provision of which states:

> Sec. 61. *Form and Filing of Administrative Complaints.* — A verified complaint against any erring local elective official shall be prepared as follows:
>
> (a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or

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[35] *See* Comment of the Office of the Solicitor General, *rollo* (G.R. No. 196231), pp. 709-710.
[36] 321 Phil. 604 (1995).

> component city shall be filed before the Office of the President.

The Court resolved said issue in the negative, upholding the ratiocination of the Solicitor General that R.A. No. 7160 should be viewed as having conferred on the Office of the President, *but not on an exclusive basis*, disciplinary authority over local elective officials. Despite the fact that R.A. No. 7160 was the more recent expression of legislative will, no repeal of pertinent provisions in the Ombudsman Act was inferred therefrom. Thus said the Court:

> Indeed, there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent, let alone irreconcilable, as to compel us to only uphold one and strike down the other. Well settled is the rule that repeals of laws by implication are not favored, and that courts must generally assume their congruent application. The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretendi*, i.e., every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not to have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.[37]

While *Hagad v. Gozo Dadole*[38] upheld the plenary power of the Office of the Ombudsman to discipline elective officials over the same disciplinary authority of the President under R.A. No. 7160, the more recent case of the *Office of the Ombudsman v. Delijero*[39] tempered the exercise by the

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[37] Id. at 613-614
[38] Id.
[39] Supra note 31.

Ombudsman of such plenary power invoking Section 23(2)[40] of R.A. No. 6770, which gives the Ombudsman the option to "refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees." The Court underscored therein the clear legislative intent of imposing "a standard and a separate set of procedural requirements in connection with administrative proceedings involving public school teachers"[41] with the enactment of R.A. No. 4670, otherwise known as "*The Magna Carta for Public School Teachers.*" It thus declared that, while the Ombudsman's administrative disciplinary authority over a public school teacher is concurrent with the proper investigating committee of the Department of Education, it would have been more prudent under the circumstances for the Ombudsman to have referred to the DECS the complaint against the public school teacher.

Unquestionably, the Ombudsman is possessed of jurisdiction to discipline his own people and mete out administrative sanctions upon them, including the extreme penalty of dismissal from the service. However, it is equally without question that the President has concurrent authority with respect to removal from office of the Deputy Ombudsman and Special Prosecutor, albeit under specified conditions. Considering the principles attending concurrence of jurisdiction where the Office of the President was the first to initiate a case against petitioner Gonzales, prudence should have prompted the Ombudsman to desist from proceeding separately against petitioner through its Internal Affairs Board, and to defer instead to the President's assumption of authority, especially when the administrative

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[40] Section 23. *Formal Investigation*. —
x x x x

(2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be determined within the period prescribed in the civil service law. x x x

[41] Supra note 31, at 146.

charge involved "demanding and soliciting a sum of money" which constitutes either *graft and corruption* or *bribery*, both of which are grounds reserved for the President's exercise of his authority to remove a Deputy Ombudsman.

In any case, assuming that the Ombudsman's Internal Affairs Board properly conducted a subsequent and parallel administrative action against petitioner, its earlier dismissal of the charge of graft and corruption against petitioner could not have the effect of preventing the Office of the President from proceeding against petitioner upon the same ground of graft and corruption. After all, the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers.[42] In *Montemayor v. Bundalian*,[43] the Court sustained the President's dismissal from service of a Regional Director of the Department of Public Works and Highways (DPWH) who was found liable for unexplained wealth upon investigation by the now defunct Philippine Commission Against Graft and Corruption (PCAGC). The Court categorically ruled therein that the prior dismissal by the Ombudsman of similar charges against said official did not operate as *res judicata* in the PCAGC case.

By granting express statutory power to the President to remove a Deputy Ombudsman and a Special Prosecutor, Congress merely filled an obvious gap in the law.

Section 9, Article XI of the 1987 Constitution confers upon the President the power to appoint the Ombudsman and his Deputies, *viz*:

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[42] *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264.
[43] Id.

> Section 9. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.

While the removal of the Ombudsman himself is also expressly provided for in the Constitution, which is by impeachment under Section 244 of the same Article, there is, however, no constitutional provision similarly dealing with the removal from office of a Deputy Ombudsman, or a Special Prosecutor, for that matter. By enacting Section 8(2) of R.A. 6770, Congress simply filled a gap in the law without running afoul of any provision in the Constitution or existing statutes. In fact, the Constitution itself, under Section 2, authorizes Congress to provide for the removal of all other public officers, including the Deputy Ombudsman and Special Prosecutor, who are not subject to impeachment.

That the Deputies of the Ombudsman were intentionally excluded from the enumeration of impeachable officials is clear from the following deliberations[45] of the Constitutional Commission, thus:

> MR. REGALADO. Yes, thank you. On Section 10, regarding the Ombudsman, there has been concern aired by Commissioner Rodrigo about who will see to it that the Ombudsman will perform his duties because he is something like a guardian of the government. This recalls the statement of Juvenal that while the Ombudsman is the guardian of the people, "Quis custodiet ipsos custodies", who will guard the guardians? ***I understand here that the Ombudsman who has the rank of a chairman of a constitutional commission is also removable only by***

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[44] Sec.2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the **Ombudsman** may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[45] As quoted in *Office of the Ombudsman v. Court of Appeals*, G.R. No. 146486, 493 Phil. 63, 77-80 (2005).

impeachment.

MR. ROMULO. ***That is the intention, Madam President.***

MR. REGALADO. ***Only the Ombudsman?***

MR. MONSOD. ***Only the Ombudsman.***
MR. REGALADO. ***So not his deputies***, because I am concerned with the phrase "have the rank of". We know, for instance, that the City Fiscal of Manila has the rank of a justice of the Intermediate Appellate Court, and yet he is not a part of the judiciary. So I think we should clarify that also and read our discussions into the Record for purposes of the Commission and the Committee.[46]

x x x

THE PRESIDENT. ***The purpose of the amendment of Commissioner Davide is not just to include the Ombudsman among those officials who have to be removed from office only on impeachment.*** Is that right?

MR. DAVIDE. ***Yes, Madam President.***

MR. RODRIGO. Before we vote on the amendment, may I ask a question?

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. ***The Ombudsman, is this only one man?***

MR. DAVIDE. ***Only one man.***

MR. RODRIGO. ***Not including his deputies.***

MR. MONSOD. ***No.***[47]
(Emphasis supplied)

The Power of the President to Remove a Deputy Ombudsman and a Special Prosecutor is Implied from his Power to Appoint.

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[46] Records of the 1986 Constitutional Commission, Vol. II, July 26, 1986, pp. 273-274.
[47] Records of the 1986 Constitutional Commission, Vol. II, July 26, 1986, p. 305.

Under the doctrine of implication, the power to appoint carries with it the power to remove.[48] As a general rule, therefore, all officers appointed by the President are also removable by him.[49] The exception to this is when the law expressly provides otherwise – that is, when the power to remove is expressly vested in an office or authority other than the appointing power. In some cases, the Constitution expressly separates the power to remove from the President's power to appoint. Under Section 9, Article VIII of the 1987 Constitution, the Members of the Supreme Court and judges of lower courts shall be appointed by the President. However, Members of the Supreme Court may be removed after impeachment proceedings initiated by Congress (Section 2, Article XI), while judges of lower courts may be removed only by the Supreme Court by virtue of its administrative supervision over all its personnel (Sections 6 and 11, Article VIII). The Chairpersons and Commissioners of the Civil Service Commission [Section 1(2), Article IX(B)], the Commission on Elections [Section 1(2), Article IX(C)], and the Commission on Audit [Section 1(2), Article IX(D)] shall likewise be appointed by the President, but they may be removed only by impeachment (Section 2, Article XI). As priorly stated, the Ombudsman himself shall be appointed by the President (Section 9, Article XI) but may also be removed only by impeachment (Section 2, Article XI).

In giving the President the power to remove a Deputy Ombudsman and Special Prosecutor, Congress simply laid down in express terms an authority that is already implied from the President's constitutional authority to appoint the aforesaid officials in the Office of the Ombudsman.

The Office of the Ombudsman is charged with monumental tasks that

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[48] *Aguirre, Jr. v. De Castro*, 378 Phil. 714 (1999).
[49] Cruz, Carlo L., *The Law of Public Officers*, 154-155 (1992).

have been generally categorized into investigatory power, prosecutorial power, public assistance, authority to inquire and obtain information and the function to adopt, institute and implement preventive measures.[50] In order to ensure the effectiveness of his constitutional role, the Ombudsman was provided with an over-all deputy as well as a deputy each for Luzon, Visayas and Mindanao. However, well into the deliberations of the Constitutional Commission, a provision for the appointment of a *separate deputy for the military establishment* was necessitated by Commissioner Ople's lament against the rise within the armed forces of "fraternal associations outside the chain of command" which have become the common soldiers' "informal grievance machinery" against injustice, corruption and neglect in the uniformed service,[51] thus:

> In our own Philippine Armed Forces, there has arisen in recent years a type of fraternal association outside the chain of command proposing reformist objectives. They constitute, in fact, an informal grievance machinery against injustices to the rank and file soldiery and perceive graft in higher rank and neglect of the needs of troops in combat zones. The Reform the Armed Forces Movement of RAM has kept precincts for pushing logistics to the field, the implied accusation being that most of the resources are used up in Manila instead of sent to soldiers in the field. The Guardians, the El Diablo and other organizations dominated by enlisted men function, more or less, as grievance collectors and as mutual aid societies.
>
> This proposed amendment merely seeks to extend the office of the Ombudsman to the military establishment, just as it champions the common people against bureaucratic indifference. The Ombudsman can designate a deputy to help the ordinary foot soldier get through with his grievance to higher authorities. This deputy will, of course work in close cooperation with the Minister of National Defense because of the necessity to maintain the integrity of the chain of command. Ordinary soldiers, when they know they can turn to a military Ombudsman for their complaints, may not have to fall back on their own informal devices to obtain redress for their grievances. The Ombudsman will help raise troop morale in accordance with a major professed goal of the President and the military authorities themselves. x x x

The add-on now forms part of Section 5, Article XI which reads as

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[50] Sec. 13, Article XI; De Leon, Hector, 2 *Philippine Constitutional Law*, 860 (2004), citing *Concerned Officials of the MWSS v. Velasquez,* 310 Phil. 549 (1995) and *Garcia-Rueda v. Pascasio,* 344 Phil. 323 (1997).

[51] Bernas, S.J., The Intent of the 1986 Constitution Writers, 773-774 (1995).

follows:

> Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one over-all Deputy and at least one Deputy each for Luzon, Visayas and Mindanao. ***A separate deputy for the military establishment shall likewise be appointed.*** (Emphasis supplied)

The integrity and effectiveness of the Deputy Ombudsman for the MOLEO as a military watchdog looking into abuses and irregularities that affect the general morale and professionalism in the military is certainly of primordial importance in relation to the President's own role as Commander-in-Chief of the Armed Forces. It would not be incongruous for Congress, therefore, to grant the President concurrent disciplinary authority over the Deputy Ombudsman for the military and other law enforcement offices.

Granting the President the Power to Remove a Deputy Ombudsman does not Diminish the Independence of the Office of the Ombudsman.

The claim that Section 8(2) of R.A. No. 6770 granting the President the power to remove a Deputy Ombudsman from office totally frustrates, if not resultantly negates the independence of the Office of the Ombudsman is tenuous. The independence which the Office of the Ombudsman is vested with was intended to free it from political considerations in pursuing its constitutional mandate to be a protector of the people. What the Constitution secures for the Office of the Ombudsman is, essentially, political independence. This means nothing more than that "the terms of office, the salary, the appointments and discipline of all persons under the office" are "reasonably insulated from the whims of politicians."[52] And so it

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[52] De Leon, 2 *Philippine Constitutional Law Principles and Cases*, 857 (2004), citing Del. R.D. ROBLES, The Ombudsman, in C.R. Montejo, On the 1973 Constitution, 232.

was that Section 5, Article XI of the 1987 Constitution had declared the creation of the independent Office of the Ombudsman, composed of the Ombudsman and his Deputies, who are described as "protectors of the people" and constitutionally mandated to act promptly on complaints filed in any form or manner against public officials or employees of the Government [Section 12, Article XI]. Pertinent provisions under Article XI prescribes a term of office of seven years without reappointment [Section 11], prohibits a decrease in salaries during the term of office [Section 10], provides strict qualifications for the office [Section 8], grants fiscal autonomy [Section 14] and ensures the exercise of constitutional functions [Section 12 and 13]. The cloak of independence is meant to build up the Office of the Ombudsman's institutional strength to effectively function as official critic, mobilizer of government, constitutional watchdog[53] and protector of the people. It certainly cannot be made to extend to wrongdoings and permit the unbridled acts of its officials to escape administrative discipline.

Being aware of the constitutional imperative of shielding the Office of the Ombudsman from political influences and the discretionary acts of the executive, Congress laid down two restrictions on the President's exercise of such power of removal over a Deputy Ombudsman, namely: (1) that the removal of the Deputy Ombudsman must be for any of the grounds provided for the removal of the Ombudsman and (2) that there must be observance of due process. Reiterating the grounds for impeachment laid down in Section 2, Article XI of the 1987 Constitution, paragraph 1 of Section 8 of R.A. No. 6770 states that the Deputy Ombudsman may be removed from office for the same grounds that the Ombudsman may be removed through impeachment, namely, "*culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.*" Thus, it cannot be rightly said that giving the President the power to remove a Deputy Ombudsman, or a Special Prosecutor for that matter, would diminish or

[53] Id. at 859-860.

compromise the constitutional independence of the Office of the Ombudsman. It is, precisely, a measure of protection of the independence of the Ombudsman's Deputies and Special Prosecutor in the discharge of their duties that their removal can only be had on grounds provided by law.

In *Espinosa v. Office of the Ombudsman*,[54] the Court elucidated on the nature of the Ombudsman's independence in this wise –

> The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as RA 6770 has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judicial intervention. This Court consistently refrains from interfering with the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who, 'beholden to no one, acts as the champion of the people and the preserver of the integrity of public service.

Petitioner Gonzales may not be removed from office where the questioned acts, falling short of constitutional standards, do not constitute betrayal of public trust.

Having now settled the question concerning the validity of the President's power to remove the Deputy Ombudsman and Special Prosecutor, we now go to the substance of the administrative findings in OP Case No. 10-J-460 which led to the dismissal of herein petitioner, Deputy Ombudsman Emilio A. Gonzales, III.

At the outset, the Court finds no cause for petitioner Gonzales to complain simply because the OP proceeded with the administrative case

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[54] 397 Phil. 829, 831 (2000), cited in *Angeles v. Desierto*, 532 Phil. 647, 656 (2006).

against him despite his non-attendance thereat. Petitioner was admittedly able to file an Answer in which he had interposed his defenses to the formal charge against him. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[55] Due process is simply having the opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[56]

The essence of due process is that a party is afforded reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[57] Mere opportunity to be heard is sufficient. As long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard.[58] Besides, petitioner only has himself to blame for limiting his defense through the filing of an Answer. He had squandered a subsequent opportunity to elucidate upon his pleaded defenses by adamantly refusing to attend the scheduled Clarificatory Conference despite notice. The OP recounted as follows –

> It bears noting that respondent Deputy Ombudsman Gonzalez was given two separate opportunities to explain his side and answer the Formal Charge against him.
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> In the first instance, respondent was given the opportunity to submit his answer together with his documentary evidence, which opportunity respondent actually availed of. In the second instance, this Office called a Clarificatory Conference on 8 February 2011 pursuant to respondent's express election of a formal

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55 *Cayago v. Lina*, 489 Phil. 735 (2005).
56 *Libres v. NLRC*, 367 Phil. 180 (1999).
57 *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 (1995).
58 *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 654 citing *Casimiro v. Tandog*, 498 Phil. 660, 666 (2005).

> investigation. Despite due notice, however, respondent Deputy Ombudsman refused to appear for said conference, interposing an objection based on the unfounded notion that this Office has prejudged the instant case. Respondent having been given actual and reasonable opportunity to explain or defend himself in due course, the requirement of due process has been satisfied.[59]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence,[60] which is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[61] The fact, therefore, that petitioner later refused to participate in the hearings before the OP is not a hindrance to a finding of his culpability based on substantial evidence, which only requires that a decision must "have something upon which it is based."[62]

Factual findings of administrative bodies are controlling when supported by substantial evidence.[63] The OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of removal from office was based on the finding of gross neglect of duty and grave misconduct in office amounting to a *betrayal of public trust*, which is a constitutional ground for the removal by impeachment of the Ombudsman (Section 2, Article XI, 1987 Constitution), and a statutory ground for the President to remove from office a Deputy Ombudsman and a Special Prosecutor [Section 8(2) of the Ombudsman Act].

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59 OP Decision, p. 7, *rollo* (G.R. No. 196231), p. 78.

60 Funa, Dennis B., *The Law on the Administrative Accountability of Public Officers*, 509 (2010), citing *Office of the Court Administrator v. Bucoy*, A.M. No. P-93-953, August 25, 1994, 235 SCRA 588; *Tolentino v. CA*, 234 Phil. 28 (1987), *Biak na Bato Mining Co. v. Tanco*, 271 Phil. 339 (1991).

61 Rules of Court, Rule 133, Sec.5; *Nicolas v. Desierto*, 488 Phil. 158 (2004); *Ang Tibay v. Court of Industrial Relations*, 69 Phil 635 (1940).

62 Supra note 60, at 511.

63 *Dadubo v. CSC*, G.R. No. 106498, June 28, 1993, 223 SCRA 747.

The OP held that petitioner's want of care and wrongful conduct consisted of his unexplained action in directing the PNP-NCR to elevate P/S Insp. Mendoza's case records to his office; his failure to verify the basis for requesting the Ombudsman to take over the case; his pronouncement of administrative liability and imposition of the extreme penalty of dismissal on P/S Insp. Mendoza based upon an unverified complaint-affidavit; his inordinate haste in implementing P/S Insp. Mendoza's dismissal notwithstanding the latter's non-receipt of his copy of the Decision and the subsequent filing of a motion for reconsideration; and his apparent unconcern that the pendency of the motion for reconsideration for more than five months had deprived P/S Insp. Mendoza of available remedies against the immediate implementation of the Decision dismissing him from the service.

Thus, taking into consideration the factual determinations of the IIRC, the allegations and evidence of petitioner in his Answer as well as other documentary evidence, the OP concluded that: (1) petitioner failed to supervise his subordinates to act with dispatch on the draft resolution of P/S Insp. Mendoza's motion for reconsideration and thereby caused undue prejudice to P/S Insp. Mendoza by effectively depriving the latter of the right to challenge the dismissal before the courts and prevent its immediate execution, and (2) petitioner showed undue interest by having P/S Insp. Mendoza's case endorsed to the Office of the Ombudsman and resolving the same against P/S Insp. Mendoza on the basis of the unverified complaint-affidavit of the alleged victim Christian Kalaw.

The invariable rule is that administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of

discretion, fraud, or error of law.[64] In the instant case, while the evidence may show some amount of wrongdoing on the part of petitioner, the Court seriously doubts the correctness of the OP's conclusion that the imputed acts amount to gross neglect of duty and grave misconduct constitutive of *betrayal of public trust*. To say that petitioner's offenses, as they factually appear, weigh heavily enough to constitute *betrayal of public trust* would be to ignore the significance of the legislature's intent in prescribing the removal of the Deputy Ombudsman or the Special Prosecutor for causes that, theretofore, had been reserved only for the most serious violations that justify the removal by impeachment of the highest officials of the land.

Would every negligent act or misconduct in the performance of a Deputy Ombudsman's duties constitute *betrayal of public trust* warranting immediate removal from office? The question calls for a deeper, circumspective look at the nature of the grounds for the removal of a Deputy Ombudsman and a Special Prosecutor *vis-a-vis* common administrative offenses.

Betrayal of public trust is a new ground for impeachment under the 1987 Constitution added to the existing grounds of *culpable violation of the Constitution*, *treason*, *bribery*, *graft and corruption* and *other high crimes*. While it was deemed broad enough to cover any violation of the oath of office,[65] the impreciseness of its definition also created apprehension that "such an overarching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature."[66] Indeed, the catch-all phrase *betrayal of public trust* that referred to "all acts not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in

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[64] *Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals*, 251 Phil. 26 (1989), citing *Lovina v. Moreno*, 118 Phil. 1401 (1963).
[65] Joaquin G. Bernas, The 1987 Constitution of the Philippines: A Commentary, 992 (1996).
[66] Records of the 1986 Constitutional Commission, Vol. II, p. 286.

office"[67] could be easily utilized for every conceivable misconduct or negligence in office. However, deliberating on some workable standard by which the ground could be reasonably interpreted, the Constitutional Commission recognized that human error and good faith precluded an adverse conclusion.

> MR. VILLACORTA: x x x One last matter with respect to the use of the words "betrayal of public trust" as embodying a ground for impeachment that has been raised by the Honorable Regalado. I am not a lawyer so I can anticipate the difficulties that a layman may encounter in understanding this provision and also the possible abuses that the legislature can commit in interpreting this phrase. It is to be noted that this ground was also suggested in the 1971 Constitutional Convention. A review of the Journals of that Convention will show that it was not included; it was construed as encompassing acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers. I understand from the earlier discussions that these constitute violations of the oath of office, and also I heard the Honorable Davide say that even the criminal acts that were enumerated in the earlier 1973 provision on this matter constitute betrayal of public trust as well. In order to avoid confusion, would it not be clearer to stick to the wording of Section 2 which reads: "may be removed from office on impeachment for and conviction of, culpable violation of the Constitution, treason, bribery, and other high crimes, graft and corruption or VIOLATION OF HIS OATH OF OFFICE", because if betrayal of public trust encompasses the earlier acts that were enumerated, then it would behoove us to be equally clear about this last provision or phrase.
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> MR. NOLLEDO: x x x I think we will miss a golden opportunity if we fail to adopt the words "betrayal of public trust" in the 1986 Constitution. But I would like him to know that we are amenable to any possible amendment. Besides, I think **plain error of judgment, where circumstances may indicate that there is good faith, to my mind, will not constitute betrayal of public trust** if that statement will allay the fears of difficulty in interpreting the term."[68] (Emphasis supplied)

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[67] Supra note at 65.

[68] Records of the 1986 Constitutional Commission, Vol. II, pp. 283-284.

The Constitutional Commission eventually found it reasonably acceptable for the phrase *betrayal of public trust* to refer to "[a]cts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers."[69] In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.

A Deputy Ombudsman and a Special Prosecutor are not impeachable officers. However, by providing for their removal from office on the same grounds as removal by impeachment, the legislature could not have intended to redefine constitutional standards of *culpable violation of the Constitution*, *treason*, *bribery*, *graft and corruption*, *other high crimes*, as well as *betrayal of public trust,* and apply them less stringently. Hence, where *betrayal of public trust,* for purposes of impeachment, was not intended to cover all kinds of official wrongdoing and plain errors of judgment, this should remain true even for purposes of removing a Deputy Ombudsman and Special Prosecutor from office. Hence, the fact that the grounds for impeachment have been made statutory grounds for the removal by the President of a Deputy Ombudsman and Special Prosecutor cannot diminish the seriousness of their nature nor the acuity of their scope. Betrayal of public trust could not suddenly "overreach" to cover acts that are not vicious or malevolent on the same level as the other grounds for impeachment.

The tragic hostage-taking incident was the result of a confluence of several unfortunate events including system failure of government response. It cannot be solely attributed then to what petitioner Gonzales may have

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[69] Id. at 286.

negligently failed to do for the quick, fair and complete resolution of the case, or to his error of judgment in the disposition thereof. Neither should petitioner's official acts in the resolution of P/S Insp. Mendoza's case be judged based upon the resulting deaths at the Quirino Grandstand. The failure to immediately act upon a party's requests for an early resolution of his case is not, by itself, gross neglect of duty amounting to *betrayal of public trust*. Records show that petitioner took considerably less time to act upon the draft resolution after the same was submitted for his appropriate action compared to the length of time that said draft remained pending and unacted upon in the Office of Ombudsman Merceditas N. Gutierrez. He reviewed and denied P/S Insp. Mendoza's motion for reconsideration within nine (9) calendar days reckoned from the time the draft resolution was submitted to him on April 27, 2010 until he forwarded his recommendation to the Office of Ombudsman Gutierrez on May 6, 2010 for the latter's final action. Clearly, the release of any final order on the case was no longer in his hands.

Even if there was inordinate delay in the resolution of P/S Insp. Mendoza's motion and an unexplained failure on petitioner's part to supervise his subordinates in its prompt disposition, the same cannot be considered a vicious and malevolent act warranting his removal for *betrayal of public trust*. More so because the neglect imputed upon petitioner appears to be an isolated case.

Similarly, petitioner's act of directing the PNP-IAS to endorse P/S Insp. Mendoza's case to the Ombudsman without citing any reason therefor cannot, by itself, be considered a manifestation of his undue interest in the case that would amount to wrongful or unlawful conduct. After all, taking cognizance of cases upon the request of concerned agencies or private parties is part and parcel of the constitutional mandate of the Office of the

Ombudsman to be the "champion of the people." The factual circumstances that the case was turned over to the Office of the Ombudsman upon petitioner's request; that administrative liability was pronounced against P/S Insp. Mendoza even without the private complainant verifying the truth of his statements; that the decision was immediately implemented; or that the motion for reconsideration thereof remained pending for more than nine months cannot be simply taken as evidence of petitioner's undue interest in the case considering the lack of evidence of any personal grudge, social ties or business affiliation with any of the parties to the case that could have impelled him to act as he did. There was likewise no evidence at all of any bribery that took place, or of any corrupt intention or questionable motivation.

Accordingly, the OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of dismissal must be reversed and set aside, as the findings of neglect of duty or misconduct in office do not amount to a *betrayal of public trust*. Hence, the President, while he may be vested with authority, cannot order the removal of petitioner as Deputy Ombudsman, there being no intentional wrongdoing of the grave and serious kind amounting to a *betrayal of public trust*.

This is not to say, however, that petitioner is relieved of all liability for his acts showing less than diligent performance of official duties. Although the administrative acts imputed to petitioner fall short of the constitutional standard of *betrayal of public trust*, considering the OP's factual findings of negligence and misconduct against petitioner, the Court deems it appropriate to refer the case to the Office of the Ombudsman for further investigation of the charges in OP Case No. 10-J-460 and the imposition

of the corresponding administrative sanctions, if any.

Inasmuch as there is as yet no existing ground justifying his removal from office, petitioner is entitled to reinstatement to his former position as Deputy Ombudsman and to the payment of backwages and benefits corresponding to the period of his suspension.

The Office of the President is vested with statutory authority to proceed administratively against petitioner Barreras-Sulit to determine the existence of any of the grounds for her removal from office as provided for under the Constitution and the Ombudsman Act.

Petitioner Barreras-Sulit, on the other hand, has been resisting the President's authority to remove her from office upon the averment that without the Sandiganbayan's final approval and judgment on the basis of the PLEBARA, it would be premature to charge her with acts and/or omissions "tantamount to culpable violations of the Constitution and betrayal of public trust," which are grounds for removal from office under Section 8, paragraph (2) of the Ombudsman Act of 1989; and which also constitute a violation of Section 3, paragraph (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) – causing undue injury to the Government or giving any private party any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence. With reference to the doctrine of prejudicial procedural antecedent, petitioner Barreras-Sulit asserts that the propriety of taking and continuing to take administrative disciplinary proceeding against her must depend on the final disposition by the Sandiganbayan of the PLEBARA, explaining that if the

Sandiganbayan would uphold the PLEBARA, there would no longer be any cause of complaint against her; if not, then the situation becomes ripe for the determination of her failings.

The argument will not hold water. The incidents that have taken place subsequent to the submission in court of the PLEBARA shows that the PLEBARA has been practically approved, and that the only thing which remains to be done by the Sandiganbayan is to promulgate a judgment imposing the proper sentence on the accused Major General Garcia based on his new pleas to lesser offenses. On May 4, 2010, the Sandiganbayan issued a resolution declaring that the change of plea under the PLEBARA was warranted and that it complied with jurisprudential guidelines. The Sandiganbayan, thereafter, directed the accused Major General Garcia to immediately convey in favor of the State all the properties, both real and personal, enumerated therein. On August 11, 2010, the Sandiganbayan issued a resolution, which, in order to put into effect the reversion of Major General Garcia's ill-gotten properties, ordered the corresponding government agencies to cause the transfer of ownership of said properties to the Republic of the Philippines. In the meantime, the Office of the Special Prosecutor (OSP) informed the Sandiganbayan that an Order[70] had been issued by the Regional Trial Court of Manila, Branch 21 on November 5, 2010 allowing the transfer of the accused's frozen accounts to the Republic of the Philippines pursuant to the terms of the PLEBARA as approved by the Sandiganbayan. Immediately after the OSP informed the Sandiganbayan that its May 4, 2010 Resolution had been substantially complied with, Major General Garcia manifested[71] to the Sandiganbayan on November 19, 2010 his readiness for sentencing and for the withdrawal of the criminal information against his wife and two sons. Major General Garcia's Motion

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[70] Annex “2” of the Supplemental Comment on the Petition, *rollo* (G.R. No. 196232), p. 212.
[71] Annex “1,” id. at 210-211.

to Dismiss,[72] dated December 16, 2010 and filed with the Sandiganbayan, reads:

> 1.0 The Co-Accused were impleaded under the theory of conspiracy with the Principal Accused MGen. Carlos F. Garcia (AFP Ret.), (Principal Accused) with the allegation that the act of one is the act of the others. Therefore, with the approval by the Honorable Court of the Plea Bargaining Agreement executed by the Principal Accused, the charges against the Co-Accused should likewise be dismissed since the charges against them are anchored on the same charges against the Principal Accused.

On December 16, 2010, the Sandiganbayan allowed accused Major General Garcia to plead guilty to the lesser offenses of direct bribery and violation of Section 4(b), R.A. No. 9160, as amended. Upon Major General Garcia's motion, and with the express conformity of the OSP, the Sandiganbayan allowed him to post bail in both cases, each at a measly amount of ₱30,000.00.

The approval or disapproval of the PLEBARA by the Sandiganbayan is of no consequence to an administrative finding of liability against petitioner Barreras-Sulit. While the court's determination of the propriety of a plea bargain is on the basis of the existing prosecution evidence on record, the disciplinary authority's determination of the prosecutor's administrative liability is based on whether the plea bargain is consistent with the conscientious consideration of the government's best interest and the diligent and efficient performance by the prosecution of its public duty to prosecute crimes against the State. Consequently, the disciplining authority's finding of ineptitude, neglect or willfulness on the part of the prosecution, more particularly petitioner Special Prosecutor Barreras-Sulit, in failing to pursue or build a strong case for the government or, in this case, entering into an agreement which the government finds “grossly disadvantageous,” could

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[72] Annex “3,” id. at 213-215.

result in administrative liability, notwithstanding court approval of the plea bargaining agreement entered into.

Plea bargaining is a process in criminal cases whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.[73] The essence of a plea bargaining agreement is the allowance of an accused to plead guilty to a lesser offense than that charged against him. Section 2, Rule 116 of the Revised Rules of Criminal Procedure provides the procedure therefor, to wit:

> SEC. 2. *Plea of guilty to a lesser offense.* -- At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, Cir. 38-98)

Plea bargaining is allowable when the prosecution does not have sufficient evidence to establish the guilt of the accused of the crime charged.[74] However, if the basis for the allowance of a plea bargain in this case is the evidence on record, then it is significant to state that in its earlier Resolution[75] promulgated on January 7, 2010, the Sandiganbayan had evaluated the testimonies of twenty (20) prosecution witnesses and declared that "the conglomeration of evidence presented by the prosecution is viewed by the Court to be of strong character that militates against the grant of bail."

Notwithstanding this earlier ruling by the Sandiganbayan, the OSP,

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[73] *Daan v. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, citing *People v. Villarama, Jr.*, 210 SCRA 246, 251-252 (1992).

[74] *People v. Villarama, Jr.*, G.R. No. 99287, June 23, 1992, 210 SCRA 246; *People v. Parohinog*, 185 Phil. 266 (1980); *People v. Kayanan*, 172 Phil. 728 (1978).

[75] Annex "7" of the Supplemental Comment on the Petition, *rollo* (G.R. No. 196232), pp. 225-268.

unexplainably, chose to plea bargain with the accused Major General Garcia as if its evidence were suddenly insufficient to secure a conviction. At this juncture, it is not amiss to emphasize that the "standard of strong evidence of guilt which is sufficient to deny bail to an accused is markedly higher than the standard of judicial probable cause which is sufficient to initiate a criminal case."[76] Hence, in light of the apparently strong case against accused Major General Garcia, the disciplining authority would be hard-pressed not to look into the whys and wherefores of the prosecution's turnabout in the case.

The Court need not touch further upon the substantial matters that are the subject of the pending administrative proceeding against petitioner Barreras-Sulit and are, thus, better left to the complete and effective resolution of the administrative case before the Office of the President.

The challenge to the constitutionality of Section 8(2) of the Ombudsman Act has, nonetheless, failed to obtain the necessary votes to invalidate the law, thus, keeping said provision part of the law of the land. To recall, these cases involve two distinct issues: (a) the constitutionality of Section 8(2) of the Ombudsman Act; and (b) the validity of the administrative action of removal taken against petitioner Gonzales. While the Court voted unanimously to reverse the decision of the OP removing petitioner Gonzales from office, it was equally divided in its opinion on the constitutionality of the assailed statutory provision in its two deliberations held on April 17, 2012 and September 4, 2012. There being no majority vote to invalidate the law, the Court, therefore, dismisses the challenge to the constitutionality of Section 8(2) of the Ombudsman Act in accordance with Section 2(d), Rule 12 of the Internal Rules of the Court.

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[76] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 608; *Cabrera v. Marcelo*, 487 Phil. 427 (2004).

Indeed, Section 4(2), Article VIII of the 1987 Constitution requires the vote of the majority of the Members of the Court actually taking part in the deliberations to sustain any challenge to the constitutionality or validity of a statute or any of its provisions.

WHEREFORE, in **G.R. No. 196231**, the decision of the Office of the President in OP Case No. 10-J-460 is **REVERSED** and **SET ASIDE**. Petitioner Emilio A. Gonzales III is ordered **REINSTATED** with payment of backwages corresponding to the period of suspension effective immediately, even as the Office of the Ombudsman is directed to proceed with the investigation in connection with the above case against petitioner. In **G.R. No. 196232**, We **AFFIRM** the continuation of OP-DC Case No. 11-B-003 against Special Prosecutor Wendell Barreras-Sulit for alleged acts and omissions tantamount to culpable violation of the Constitution and a betrayal of public trust, in accordance with Section 8(2) of the Ombudsman Act of 1989.

The challenge to the constitutionality of Section 8(2) of the Ombudsman Act is hereby **DENIED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

See Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

I join dissent of J. Brion.

PRESBITERO J. VELASCO, JR.
Associate Justice

I join the dissent of Justice Brion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See my Dissent

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Brion and J. Abad

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

See my dissenting opinion.

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

I join dissent of J. Brion

JOSE PORTUGAL PEREZ
Associate Justice

*I join Justice Brion

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. LOURDES P. A. SERENO
Chief Justice