Providing the Standards to Implement Academic Freedom in the Context of Free Speech and Expression and the Campus Journalism Act

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I. INTRODUCTION

It is in the "college publication that the first news stories are written, the first sources cultivated, the first taste of editorial politics savored."[1] College students are under the tutelage of institutions which not only train them in many aspects of professional life, but also future citizens who will later on begin to fully exercise their constitutionally protected rights. Some of these rights are embodied in the constitutionally protected freedom of speech and of expression.

Freedom to express is a double-edged sword that can stir a citizenry or, to be more particular, a studentry to move forward and make progress intellectually; yet at the same time destroy the old awareness or status quo mental state of the now informed individuals.

In the Philippines, the *Campus Journalism Act*[2] exists as a manifestation that the State recognizes the power that underlies the principles of freedom of speech and expression in the *academia.* Taking the cue from the Campus Journalism Act, there are newspaper accounts which report the seemingly unstoppable power of students to publish.[3]

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1. Ted Aldwin Ong, *Ong: Campus Journalists Must Close Ranks*, (Nov. 29, 2005), *available at* http://www.sunstar.com.ph/static/ilo/2004/11/29/oped/ted.aldwin.ong.html (last accessed Dec. 8, 2005).

2. An Act Providing for the Development and Promotion of Campus Journalism and Other Purposes [CAMPUS JOURNALISM ACT] Republic Act No. 7079 (1991).

3. *See Role of Campus Journalists Tackled in Sun.Star Iloilo Writers' Summit*, (Nov. 30, 2004), *available at* http://www.sunstar.com.ph/static/ilo/2004/11/30/life/role.of.campus.journalists.tackled.in.sun.star.iloilo.writers.summit.html (last accessed Dec. 8, 2005) reporting:

   See also Fil v. Enfante, *From the News Room, More Questions than Answers*, (July 4, 2004), *available at* http://www.manilatimes.net/national/2004/jul/04/yehey/opinion/20040704opi4.html (last accessed Dec. 8, 2005) reporting:

   > The PLM statement clearly admits that the AP staff was punished for what they published in their paper. 'They [the students] were held liable for the malicious statements and publication against the university president and the administration,' the PLM statement said. The AP staff was found guilty after a 'fair' hearing conducted by PLM officials.
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   > 'These malicious statements [published by the AP] became a personal attack against university officials,' according to the PLM statement.

As these young journalists move and act in the public sphere, collisions with the rights of the other members of the community, like the school and other students, become inevitable. In such dialectical clash of rights, the question is: how would the Courts balance a student's right to speak and express against the individual rights of the members of the academic community?

The introductory part of the Note starts with a definition of the concept of *academic freedom.* This author also takes a pragmatic approach to facilitate clarity of presentation. Subsequently, this Note will offer a plausible answer to the balancing query by summarizing the rarely litigated[4] concept of academic freedom as it exists in Philippine law and then by extrapolating how courts will rule when the rights of an institution of higher learning and a campus journalist begin to intersect.

II. ACADEMIC FREEDOM

Academic freedom is textually located in Section 5, paragraph (2) Article XIV of the 1987 Constitution. It reads: "Academic freedom shall be enjoyed in all institutions of higher learning."

The provision itself is not very helpful, since the concept of academic freedom is not clearly defined in the Constitution. Furthermore, an examination of the deliberations of the 1986 Constitutional Commissioners strengthens the hypothesis that the status of the concept is fragmented. The report of the deliberations shows that the committee accepted the conclusion of Commissioner Azcuna saying that it is best for the courts to further develop the concept of academic freedom.[5]

> I see this as a violation of the spirit of the Campus Journalism Act, which PLM officials also used as a basis to punish the AP staff.
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> The Campus Journalism Act, as I understand it, was enacted to prevent schools and universities from directly punishing student journalists. The law is meant to give student journalists the freedom to write what they think and eventually teach them to stand for what they publish.

4. *See* JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1244 (2003 ed.)[hereinafter BERNAS COMMENTARY] (The reasons could be: (1) because of the happy state of unimpaired freedom enjoyed by the academic world; (2) due the general ignorance or unconcern about the purpose, the need, and the importance of academic freedom; (3) because the freedom had been invoked by, or on behalf of a *persona non grata* or some *causa non grata*; and (4) the belief of the academic community that litigation is not an effective mechanism to protect such value).

5. JOAQUIN G. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1099 (1995 ed.)[hereinafter BERNAS INTENT] (Since academic freedom is a

To this, constitutionalist Fr. Joaquin Bernas, S.J. wrote that:

> After some more discussion and taking into consideration Philippine jurisprudence already existing on the subject, the Azcuna proposal was approved. Thus, the discussions left the meaning of academic freedom where it had began — as a dynamic concept whose full legal meaning still had to be elaborated by jurisprudence.[6]

This part of the Note defines the concept by narrating the landmark decision *Garcia v. Loyola School of Theology*[7] and by identifying those who possess such right, citing Supreme Court decisions explaining how the concept is exercised, the deliberations of the 1987 Constitution writers, and finally comparing the Philippine concept of academic freedom and comparing and contrasting it with the two concepts of academic freedom from which it was derived.

The case of *Loyola School of Theology* is an effective springboard for a discussion of the Philippine definition of academic freedom. This case was decided in 1975, a time where the concept of academic freedom already existed in Philippine law, first gaining expression in the 1935 Constitution[8] and thereafter, in the 1973 Constitution.[9] This is the first case that discussed the concept of academic freedom to resolve a conflict between a student and a school.

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dynamic concept and we want to expand the frontiers of freedom, specially in education, therefore, we will leave it to the courts to develop further the parameters of academic freedom.).

6. *Id.* at 1099.

7. Garcia v. Loyola School of Theology, 68 SCRA 277 (1975).

8. 1935 PHIL. CONST., art. XIV, § 5 (superseded by the 1973 PHIL. CONST.); it was provided that:

> Section 5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens.

9. 1973 PHIL. CONST. art. XV, § 8 ¶ 2 ("All institutions of higher learning shall enjoy academic freedom."). The 1973 Constitution superseded the 1935 Constitution and was ratified on Jan. 17, 1973 in accordance with Presidential Proclamation No. 1102 issued by President Ferdinand E. Marcos.

In this case, Epicharis T. Garcia (hereinafter, Ms. Garcia) sought the aid of the court to issue a mandamus order compelling the Loyola School of Theology to abandon its decision to bar her from pursuing further studies for a Masteral Degree in Theology.

In the written petition submitted to the court, Ms. Garcia stated that the director of Loyola School of Theology suggested that it was better for her to complete her studies at the University of Santo Tomas (UST) Graduate School. In UST however, she was still required to finish a Baccalaureate in Philosophy before being allowed to take a graduate course in Theology. The added number of subjects would entail about four to five years more of study, whereas in Loyola School of Theology, where she was refused admission, she could complete her masteral degree in two years. To bolster her claim of unlawful refusal by the Loyola School of Theology, she included in her allegations a letter from the President of the School saying that: (a) the President could not help her because of an engagement abroad; (b) the Secretary of Education could also not help her because it was the busiest time of the year; and (c) the representative of the Faculty Admission Committee of the Loyola School of Theology wrote her a letter essentially saying that her attitude, which included asking impertinent questions which slowed down the class discussions, was incompatible with the school faculty's orientation and made the advisability of her completing the program very questionable.

The Loyola School of Theology responded, in its defense, that the school only allowed Ms. Garcia to take credit courses, and in fact, did not accept her to a degree program. It also contended that her admission to the program was subject to the discretion of the school after an assessment of her intellectual abilities, personality traits, and character orientation. The School of Theology claimed that it had no duty to accept Ms. Garcia to a program in a seminary, a school for those intending to go into the priesthood, since she was "a lay person and a woman." The School of Theology further argued that even if, for the sake of argument, Ms. Garcia was qualified to study for the priesthood, the school still had the discretion to turn down qualified applicants due to certain limitations like space, facilities, and number of faculty.

The Supreme Court, after noting that Ms. Garcia was not aided by counsel commented:

> In a rather comprehensive memorandum of petitioner, who unfortunately did not have counsel, an attempt was mad to dispute the contention of the respondent [Loyola School of Theology]. There was a labored effort to sustain her stand, but it was not sufficiently persuasive. It is understandable why. It was the skill of a lay person rather than a practitioner that was

> evident. While she expressed her points with vigor, she was unable to demonstrate the existence of the clear legal right that must exist to justify the grant of this writ.[10]

The Court then discussed academic freedom as recognized by the Constitution, which includes: (a) the right of the faculty to conduct research in his or her field of expertise and publish the same; (b) the institutional autonomy from outside coercion or interference; and (c) the autonomy to choose its students.[11] The Court then quoted a most popular tag line crafted by former Harvard Law School professor Justice Frankfurter that academic freedom "... is an atmosphere in which there prevail 'the four essential freedoms' of a university — to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."[12]

Without trying to deduce unnecessary implications with respect to the Court's finding as to the inability of Ms. Garcia to craft a persuasive argument, *Garcia v. Loyola School of Theology* was a settlement of a school versus student admission controversy which is but one of the four aspects of academic freedom mentioned by Justice Frankfurter.

The value of *Garcia v. Loyola School of Theology* is that it shows that the school versus student admission controversy can be resolved from the perspective of the theory of academic freedom and that it admits that other relations such as: (1) school and state, (2) school and faculty selection, (3) school and faculty direction, and (4) school and student research, is capable of being regulated by the concept of academic freedom.

III. WHO CAN EXERCISE ACADEMIC FREEDOM?

The pertinent provision of the 1987 Constitution cited above, and the Committee deliberations,[13] clearly prove that "all institutions of higher learning" can exercise academic freedom.

The deliberations of the Commissioners show that the framers of the 1987 Constitution agreed that academic freedom can be exercised by both

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10. *Garcia*, 68 SCRA at 283.

11. *Id.* at 283–85.

12. *Id.* at 285.

13. *See also* BERNAS INTENT *supra* note 5; (as will be noted, Philippine jurisprudence, in the case of Garcia v. Loyola School of Theology, 68 SCRA 277 (1975), already acknowledged the concept of institutional academic freedom, or academic freedom of institutions of higher learning even before the 1987 Constitution).

the members of the faculty and the student population.[14] Noting this acknowledgment, and the fact that the concept of academic freedom is expressly provided in law, we can deduce that academic freedom lies within the relation between: (1) the State and the academic institution; (2) the academic institution and the faculty; and (3) the academic institution and the student. Although there is a lack of Philippine jurisprudence on the matter, it is possible to conceive a fourth implication that academic freedom is also significant in a student and faculty relation.

A. Relation Between State and Academic Institution and the "All or Nothing" State of Academic Freedom

The case of *Lupangco v. Court of Appeals*[15] shows that when an academic institution, which includes in its definition review centers, has adopted a method of instruction to aid its students in passing the Certified Public Accountant's Board Examination, the State should take a conservative approach and not interfere with the academic institution's methodology.

In *Lupangco,* the Professional Regulations Commission (PRC), a state agent that regulates the accountancy profession, issued Resolution No. 105 that prevented the student reviewees from attending "any review class, briefing conferences or the like, or receive any hand-out, review material, or any tip from any school, college or university, or any review center or the like or any reviewer, instructor, official or employee of any of the aforementioned or similar institutions."[16] Although the purpose of the regulation, as admitted by the Supreme Court to "preserve the integrity and purity of the licensure examinations"[17] was commendable, Resolution No. 105 was declared unconstitutional because it was inconceivable to implement and it violated the academic freedom of the schools concerned.

Adopting the dicta in *Garcia v. Loyola School of Theology*, the Court reiterated that courts may not generally interfere in a school's academic methodologies, and may only interfere in cases of "overriding public welfare."[18] *Lupangco* spelled out the terms more clearly by saying that "unless

14. *Id.* at 1098; Fr. Bernas wrote:

> During the period of amendment, Commissioner Monsod proposed the deletion [of] the reference to "faculty members and students thereof." He argued that "institutions of higher learning" already included them.

15. Lupangco v. Court of Appeals, 160 SCRA 848 (1988).

16. *Id.* at 858.

17. *Id.*

18. Garcia v. Loyola School of Theology, 68 SCRA 277, 284 (1975).

the means or methods of instruction are clearly found insufficient, impractical, or riddled with corruption, review schools and centers may not be stopped from helping out their students."[19]

In *Board of Medical Education v. Alfonso*,[20] the Secretary of Education, Culture and Sports, through the assistance of the Board of Medical Education, determined that the medical school involved failed to comply with the minimum standards set in the "Essentials and Requirements for Medical Schools"[21] and thus ordered its closure. After proper investigation, when a state agent has determined that a school is "insufficient," or falls below the minimum standards set by law to maintain a school,[22] then the decision of such state agent to have the school closed is generally not interfered with by the courts.

In *Lupangco*, the order of closure issued by the Secretary of Education was accorded great weight and respect by the Court and it determined that the study conducted was regular or in accordance with the concept of due process,[23] when it made this startling remark:

> Yet even in these extreme instances, where a Court finds that there has been abuse of powers by the Secretary and consequently nullifies and/or forbids such an abuse of power, or commands whatever is needful to keep its exercise within bounds, the Court, absent any compelling reason to do otherwise, should still leave the ultimate determination of the issues to the satisfaction or fulfillment by an educational institution of the standards set down for its legitimate operation, as to which it should not ordinarily substitute its own judgment for that of said office.[24]

This statement completes the spectrum of the power of the academic institution to exercise academic freedom in relation to the state, and vice versa. Academic freedom therefore within the school and state concept

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19. Lupangco v. Court of Appeals, 160 SCRA 848, 859 (1988).

20. Board of Medical Education v. Alfonso, 176 SCRA 305 (1989).

21. DECS Order No. 5, Series of 1986 *cited in* Board of Medical Education v. Alfonso, 176 SCRA 305, 306 (1989).

22. In this case, the medical school which seeks to "emancipate Muslim citizens from age-old attitudes on health," among others, (1) did not even have a base training hospital and courses relating to the Muslim culture and welfare (2) more that 60% of its faculty did not teach full time — resulting in shortened, irregular class hours, overloading, and poor quality teaching.

23. *Alfonso*, 176 SCRA at 311 (the court held that in any case, the recorded facts quite clearly fail to support the College's claim of grave abuse of discretion tainting the order of closure, and on the contrary, convincingly show the challenged decision to be correct.).

24. *Id.*

means that when the school complies with the state standards, albeit imperfect, the state cannot meddle in the school's academic affairs. On the other hand, if the schools' imperfect compliance can be classified as falling below the minimum standards, then the state agent's just determination of fact is conclusive.

The reason behind this spectrum, as explained by the Harvard Law Review Association[25] is based on the pragmatic reasons that pursuit of knowledge can be attained only in the absence of intellectual coercion[26] and that the courts lack institutional competence on matters of academic policy such as curriculum.[27]

We see these justifications reflected in the cases of *Garcia* and in *Board of Medical Education*.

In *Garcia v. Loyola School of Theology*, the Court remarked: "This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint."[28] Likewise, in *Board of Medical Education v. Alfonso,* the Court placed a high regard on the decision of the Secretary of Education, Culture and Sports — an expert State representative in the field of education, to order the closure of the medical school for not complying with the minimum standards set by it. The Court said:

> Resort to the Courts to obtain a reversal of the determination by the Secretary of Education, Culture and Sports that the College is unfit to continue its operations is in this case clearly unavailing... It is not the function of this Court or any other Court to review the decisions and

25. Harvard Law Review Association, *Developments in the Law: Academic Freedom, I. Introduction, The Evolution of the Legal Concept*, 81 HARV. L. REV. 1048 (1968).

26. *Id.* (academic freedom is that aspect of intellectual liberty concerned with the peculiar institutional needs of the academic community. The claim that scholars are entitled to particular immunity from ideological coercion is premised on a conception of the university as a community of scholars engaged in the pursuit of knowledge, collectively and individually, both within the classroom and without, and on the pragmatic conviction that the invaluable service rendered by the university to society can be performed only in an atmosphere entirely free from administrative, political, or ecclesiastical constraints on thought and expression.).

27. *Id.* at 1051 (ordinarily only extreme cases reach the courts -- those involving a serious individual injury or a compelling claim for judicial relief. The courts have at best only a limited competence in matters of academic policy such as curriculum.).

28. Garcia v. Loyola School of Theology, 68 SCRA 277, 284 (1975).

> orders of the Secretary on the issue of whether or not an educational institution meets the norms and standards required for permission to operate and to continue operating as such. On this question, no Court has the power or prerogative to substitute its opinion for that of the Secretary. Indeed, it is obviously not expected that any Court would have the competence to do so.
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> The only power reposed in the Courts in the matter is the determination of whether or not the Secretary of Education, Culture and Sports has acted within the scope of powers granted by him by law and the Constitution. As long as it appears that he has done so, any decision rendered by him should not and will not be subject to review and reversal by any court.
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> Of course, it should be made to appear to the Court that those powers were in a case exercised so whimsically, oppressively…[29]

B. *Relation Between School and Faculty*

The 19th Century German concept of academic freedom is *Lehrfreiheit*[30] or the freedom of the "educator to do independent research, to report his findings to his students, and even win adherents to his theories."[31] In an authoritarian[32] German society, the concept of intellectual autonomy was a door to escape the strict and overbearing rules of the state. Professor Freidrich Paulsen of the University of Berlin explained that:

> It is no longer, as formerly, the function of the university teacher to hand down a body of truth established by authorities, but to search after scientific knowledge by investigation, and to teach his hearers to do the same… For the academic teacher and his hearers there can be no prescribed and no proscribed thoughts. There is only one rule for instruction: to justify the truth of one's teaching by reason and the facts.[33]

The metaphor that "academic freedom is an unrestricted passport to travel the world of ideas and an authority to tell stories of such expedition", can be aptly described as the freedom "not only in… scholarly research, but also in… [the] choice of what to discuss in the classroom."[34]

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29. *Board of Medical Education*, 176 SCRA at 310-11.

30. *See Lernfreiheit*, or academic freedom of students — the other prong in the two pronged definition of academic freedom under the discussion RELATION BETWEEN SCHOOL AND STUDENTS.

31. BERNAS COMMENTARY, *supra* note 4, at 1245.

32. *Id.* at 1246.

33. *Id.* at 1246 (citing FUCHS, *Academic Freedom — Its Basic Philosophy, Function and History*, 28 LAW AND CONTEMPORARY PROBLEMS 431, 435 (1963)).

34. Harvard Law Review Assoc., *supra* note 25, at 1051.

Another concept of academic freedom was heavily borrowed from American theory. When the Philippines adopted the American concept of academic freedom in the 1935 Constitution, the Philippines likewise borrowed the American theory that limited the passport providing unrestricted access to the world of ideas.[35] The 1940 Statement of Principles of the American Association of University Professors clearly spelled out that:

> (a) the freedom to conduct research is subject to the adequate performance of other academic duties; (b) the freedom to discuss the subject in the classroom must be coupled with the circumspection not to introduce controversial matters that are not related to the subject; (c) the freedom from institutional censorship or discipline can not justify inaccuracy, lack of restraint, disrespect to the opinion of others; and (d) the freedom from institutional censorship or discipline does not make the professor an institutional spokesperson.[36]

It can be seen in the committee deliberations of the 1986 Constitutional Convention that the Commissioners were aware of the existence of the concept of institutional academic freedom enunciated in *Garcia v. Loyola School of Theology*, which among others meant "the right of the institution to decide on academic grounds: (1) what should be taught, (2) how it should be taught, and (3) who may teach."[37] Still, when the discussion veered into tenure issues, all that was agreed upon was that "[t]he answer given was not very clear. It was simply said that tenure for faculty members would be "as provided by law and not necessarily labor laws." In other words, "the rules may or may not be the same as for labor in general."[38]

Although the corollary of the American concept of academic freedom — security of tenure,[39] is mentioned in *Garcia v. Loyola School of Theology*[40]

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35. *Id.* (it is accepted that "[a]lthough American educational theorists assimilated the notion of academic freedom of academic inquiry without modification, they subjected the notion of academic freedom in the classroom to the limitation that the university may prescribe in general terms, the subject matter discussed by the professor.").

36. *See generally* BERNAS COMMENTARY, *supra* note 4, at 1246-47.

37. BERNAS INTENT, *supra* note 5, at 1094–95.

38. *Id.* at 1095.

39. Harvard Law Review Assoc., *supra* note 25, at 1049 ("The American concept of academic freedom is reflected not only in the recognition of substantive areas of intellectual liberty, but also in certain institutional arrangements designed to protect that freedom. The principal device of this sort is the system of tenure. Once a professor has successfully demonstrated his competence during a probationary period, the system of tenure protects him against arbitrary dismissal by forbidding dismissals without specified cause… In this way tenure promotes academic freedom by protecting the individual professor against dismissal for

and in *Montemayor v. Araneta University Foundation*, [41] Philippine jurisprudence on tenure issues dealing with professors in relation to their exercise of academic freedom is lacking. Review of jurisprudence will show that tenure issues usually discussed the interpretation of labor laws on regularization[42] and immoral behavior[43] as a ground for involuntary cessation of the professor's service to the school. We have yet to see school related litigation where the tenure of the professor has been threatened because of a professor's instruction to the student which relates to the assignment of a project, reading material or the giving of a grade.

C. Relation Between School and Students

To begin the discussion on academic freedom in the context of school and student relations, it is necessary to state that the American theory adopted by the Philippines is at odds with the German concept of *Lernfreiheit.* The progenitor, or the German concept of academic freedom of students includes[44]: (a) the "free[dom] to roam from place to place, sampling academic wares," (b) the "free[dom] to determine the choice and sequence of courses," (c) the freedom from "responsib[ility] to no one for regular attendance," and (d) "exempt[ion] from all tests save the final examinations,"[45]

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undisclosed or disguised ideologically repressive motives and, more generally, y providing for the entire faculty the economic security thought necessary to the realization of complete intellectual freedom.").

40. *See generally* Garcia v. Loyola School of Theology, 68 SCRA 277,283-84 (1975).

41. *See generally* Montemayor v. Araneta University Foundation, 77 SCRA 321, 327 (1977).

42. Cagayan Capitol College v. National Labor Relations Commission, 189 SCRA 658 (1990) (the issue was whether the professors successfully passed their probationary status.).

43. Montemayor v. Araneta University Foundation, 77 SCRA 321 (1977) (the issue was whether the professor was accorded due process in the determination of the truth as to the charge of homosexual advances by the student against the professor.).

44. BERNAS INTENT, *supra* note 5, at 1096 (it is reported that Commissioner Villacorta included in his quotation, the phrase "of course, for the purpose of the students in the gallery, they are reminded that Commissioner Bernas was referring to the German university tradition. So, we request them to attend their classes still and take the tests.").

45. BERNAS COMMENTARY, *supra* note 4, at 1245 (citing Metzger, *quoting* COMMENT: ACADEMIC FREEDOM — ITS CONSTITUTIONAL CONTEXT, 40 U. OF COLORADO L. J. 600 (1968)).

According to the Committee deliberations of the 1986 Constitutional Convention, the academic freedom of students includes the right of the student to research and publish the same and the right of the student to be consulted about school policies.[46] The committee likewise adhered to the concept of institutional academic freedom as enunciated in *Garcia v. Loyola School of Theology* which discussed the "right of the institution to decide on academic grounds… who may be taught."[47]

To answer such question, we begin by giving both ends of the spectrum of the relation between school and student.

On one end, we have *Lupangco v. Court of Appeals*, a case dealing with the school and state relationship. When the Court determined that Resolution No. 105, issued by the Professional Regulations Commission unnecessarily impeded the academic freedom of the school and review center sought to be barred from conducting lectures — because their credentials did not fall below the minimum standards set by the regulating state agent, the Court went further and said that Resolution No. 105 infringed the constitutionally granted liberties of the students. The Court said:

> Resolution No. 105 is not only unreasonable and arbitrary, it also infringes on the examinee's right to liberty guaranteed by the Constitution. Respondent PRC has no authority to dictate on the reviewees as to how they should prepare themselves for the licensure examinations. They cannot be restrained from taking all the lawful steps needed to assure the fulfillment of their ambition to become public accountants. They have every right to make use of their faculties in attaining success in their endeavors. They should be allowed to enjoy their freedom to acquire useful knowledge that will promote their personal growth.[48]

This case shows that a student's pursuit of education, falls within the constitutionally protected concept of freedom. This is but one aspect of a school and student relation.

The case of *Lupangco,* however, did not expressly state that the student must be qualified. The court used the word "reviewees" which is a status or a qualification. This is because the other end of the spectrum says that the student must be qualified. The Constitution itself recognizes this exception. It is written that "[e]very citizen has a right to select a profession or course of

46. BERNAS INTENT, *supra* note 5, at 1097-98.

47. *Id.* at 1095.

48. Lupangco v. Court of Appeals, 160 SCRA 848, 859 (1988).

study, subject to fair, reasonable, and equitable admission and academic requirements."[49]

The Education Act of 1982[50] implements this constitutional provision and even quotes *Garcia v. School of Theology* by providing that "[i]n addition to other rights provided for by law, schools shall enjoy… [t]he right for institutions for higher learning to determine on academic grounds who shall be admitted to study, who may teach, and what shall be the subjects of the study and research."[51]

The Education Act however broadened the constitutional right to select a course of study by providing that "[i]n addition to other rights, and subject to the limitations prescribed by law and regulations, students and pupils in all schools shall enjoy… [t]he right to freely choose their field of study subject to existing curricula and to continue their course therein up to graduation, except in cases of academic deficiency, or violation of disciplinary regulations."[52] The broadened constitutional limitation, from subjecting the right of the student to educational pursuits, admission and academic requirements including disciplinary rules, was however upheld by the Courts. *Ateneo de Manila University v. Capulong*[53] and *Miriam College Foundation v. Court of Appeals*[54] eloquently explain:

> [S]ince *Garcia v. Loyola School of Theology*, we have consistently upheld the salutary proposition that admission to an institution of higher learning is discretionary upon a school, the same being a privilege on the part of the student rather than a right. While under the Education Act of 1982, students have a right 'to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation,' such right is subject, as all rights are, to the established academic and disciplinary standards laid down by the academic institution.
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> For private schools have the right to establish reasonable rules and regulations for the admission, discipline and promotion of students. This right… extends as well to parents… as parents under a social and moral (if not legal) obligation, individually and collectively, to assist and cooperate with the schools.

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49. 1987 PHIL CONST, art. XIV, § 5 ¶ 3.

50. An Act Providing for the Establishment and Maintenance of an Integrated System of Education [EDUCATION ACT OF 1982], Batas Pambansa Blg. 232 (1982).

51. EDUCATION ACT OF 1982, § 13, ¶ 2.

52. *Id.* §. 9, ¶ 2.

53. Ateneo de Manila University v. Capulong, 222 SCRA 644 (1993).

54. Miriam College Foundation v. Court of Appeals, 348 SCRA 265 (2000).

> Such rules are 'incident to the very object of incorporation and indispensable to the successful management of the college. The rules may include those governing student discipline.' Going a step further, the establishment of the rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.
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> It must be borne in mind that universities are established, not merely to develop the intellect and skills of the studentry, but to inculcate lofty values, ideals and attitudes; may, the development, or flowering if you will, of the total man.[55]

Moreover:

> Section 5 (2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds:
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> (1) Who may teach,
>
> (2) What may be taught,
>
> (3) How it shall be taught, and
>
> (4) Who may be admitted to study.
>
> The right of the school to discipline its students is at once apparent in the third freedom, i.e., 'how it shall be taught.' A school certainly cannot function in an atmosphere of anarchy.
>
> Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property.
>
> Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom 'what to teach.'
>
> Incidentally, the school not only has the right but the *duty* to develop discipline in its students. The Constitution no less imposes such duty.

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55. *Capulong*, 222 SCRA at 663-64 (1993) (citations omitted).

> [All educational institutions] shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, *develop moral character and personal discipline*, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.
>
> In *Angeles v. Sison*, we also said that discipline was a means for the school to carry out its responsibility to help its students 'grow and develop into mature, responsible, effective and worthy citizens of the community.'
>
> Finally, nowhere in the above formulation is the right to discipline more evident than in 'who may be admitted to study.' If a school has the freedom to determine whom to admit, logic dictates that it also has the right to determine whom to exclude or expel, as well as upon whom to impose lesser sanctions such as suspension and the withholding of graduation privileges.[56]

Ateneo de Manila v. Capulong,[57] dealt with the subject of student expulsion. In this case, a student was expelled for "violating Rule No. 3 of the Ateneo Law School Rules on discipline which prohibits participation in hazing activities." The case of *Miriam College Foundation Inc. v. Court of Appeals*, on the other hand, was a case of suspension, dismissal, and expulsion due to the publication of *Chi-Rio*, the Miriam College school paper which was allegedly "obscene, vulgar, indecent, gross, sexually explicit, injurious to young readers, and devoid of all moral values."

Although both cases upheld the academic freedom of schools to impose disciplinary rules and standards, the nature of the case of in *Miriam College Foundation Inc.* provides an avenue for further deliberation. Unlike *Ateneo de Manila*, where the cause for exclusion — infliction of violence — is logically and legally explainable as punishable for being both *mala in se* and *mala prohibita*, the nature of the student publication *Chi-Rio* in *Miriam College Foundation Inc.* cuts across other legal concepts and involves specifically the constitutionally protected right of freedom of expression.

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56. *Miriam College Foundation Inc.*, 348 SCRA at 285-86 (citations omitted).

57. *Capulong*, 222 SCRA at 644.

IV. FREEDOM OF SPEECH AND OF EXPRESSION

A. Freedom of Expression in Schools as Defined by Miriam College Foundation Inc. v. Court of Appeals

In *Miriam College Foundation Inc. v. Court of Appeals*,[58] student-contributors to the September-October 1994 issue of the school paper *Chi-Rio* were suspended and expelled for the publication of what the Discipline Board, Discipline Committee, and "some members of the [private catholic] college community" as "obscene, vulgar, indecent, gross, sexually explicit, injurious to young readers, and devoid of all moral values." Without agreeing on whether or not the publication was indeed "obscene, vulgar, indecent, gross, sexually explicit, injurious to young readers, and devoid of all moral values," the foreword of the said issue seemed to have clearly admitted that the issue was sexuality oriented. The Court even recognized this and remarked:

> [I]n his foreword which Jerome Gomez entitled 'Foreplay', Jerome wrote: '*Alam ko, nakakagulat ang aming pamagat.*' (I know that the title of this issue is surprising) Jerome then proceeded to write about previous reactions of readers to women-writers writing about matters erotic and to gay literature. He justified the Magazine's erotic theme on the ground that many of the poems passed on to the editors were about '*sekswalidad at iba't ibang karanasan nito.*' (sexuality and experiences of sexuality) *Nakakagulat ang tapang ng mga manunulat… tungkol sa maselang usaping ito xxx at sa isang institusyon pang katulad ng Miriam*! (The boldness of the authors on the sensitive issues of sexuality is surprising, especially in an institution like Miriam!).[59]

The question of law that was brought before the Supreme Court was for the determination of who can impose sanctions since the controversy involved an interpretation of a Department of Education, Culture and Sports (DECS) order, specifically, DECS Order No. 92, series of 1992, providing for the implementing rules of the Campus Journalism Act.[60] The students

58. *Id.*

59. *Id.* at 269 (author's translations).

60. CAMPUS JOURNALISM ACT, Republic Act No. 7079 (1991)

> [t]he law contains provisions for the selection of the editorial board and publication adviser, the funding of the school publication, and the grant of exemption to donations used actually, directly and exclusively for the promotion of campus journalism from donor's or gift tax.
>
> Noteworthy are provisions clearly intended to provide autonomy to the editorial board and its members. Thus, the second paragraph of Section 4 states that "[o]nce the publication is established, its editorial board shall freely determine its editorial policies and manage the publication's funds." *cited in* Miriam College Foundation v. Court of Appeals, 348 SCRA 265, 281 (2000).

claimed that under Rule XII of the DECS Order,[61] the DECS regional office shall have original jurisdiction over cases in relation to the actions of a school editorial board. Thus the students claimed that it was wrong for the Miriam College Discipline Board to impose disciplinary sanctions on the students.

The Court, contrary to Rule XII of the DECS Order, ruled that the Miriam College Discipline Board had jurisdiction to investigate and impose sanctions. This according to the Court, is inherent in the academic freedom in institutions of higher learning. The Court said:

> [f]rom the foregoing, the answer to the question of who has jurisdiction over the cases filed against respondent students becomes self-evident. The power of a school to investigate is an adjunct of its power to suspend or expel. It is a necessary corollary to the enforcement of the rules and regulations and the maintenance of a safe and orderly educational environment conducive to learning. That power, like the power to suspend or expel, is an inherent part of the academic freedom of institutions of higher learning guaranteed by the Constitution.[62]

In making this ruling, the Court cited section 7 of the Campus Journalism Act. The provision states that: "[a] student shall not be expelled or suspended solely on the basis of articles he or she has written, or on the basis of the performance of his or her duties in the student publication." The Court however fine-tuned this provision of law by interpreting that the right of the student to be free from penalties for his or her student publication contributions must not impinge the right of the school to discipline its students. The court said:

> [i]t is in the light of this standard that we read Section 7 of the Campus Journalism Act. Provisions of law should be construed in harmony with those of the Constitution; acts of the legislature should be construed, wherever possible, in a manner that would avoid their conflicting with the fundamental law. A statute should not be given a broad construction if its

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61. The particular provision states:

> GENERAL PROVISIONS
>
> Section 1. The Department of Education, Culture and Sports (DECS) shall help ensure and facilitate the proper carrying out of the Implementing Rules and Regulations of Republic Act No. 7079. It shall also act on cases on appeal brought before it.
>
> The DECS regional office shall have the original jurisdiction over cases as a result of the decisions, actions and policies of the editorial board of a school within its area of administrative responsibility. It shall conduct investigations and hearings on these cases within fifteen (15) days after the completion of the resolution of each case.

62. Miriam College Foundation v. Court of Appeals, 348 SCRA 265, 291 (2000).

> validity can be saved by a narrower one. Thus, Section 7 should be read in a manner as not to infringe upon the school's right to discipline its students. At the same time, however, we should not construe said provision as to unduly restrict the right of the students to free speech. Consistent with jurisprudence, *we read Section 7 of the Campus Journalism Act to mean that the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such articles materially disrupt class work or involve substantial disorder or invasion of the rights of others.*[63]

To this author, the case of *Miriam College Foundation Inc.* strengthened the jurisprudential theory that a school has power to provide disciplinary regulations over its students and impose sanctions for the breach. At this point, it becomes worthy to note that the Court did not delve into the determination of the reasonableness of the standards used by the Miriam College Discipline Board in its determination of the obscenity of the publication, the propriety of the sanctions, and manner of imposition of the penalties. As to this issue, the Court said "these issues, though touched upon were not fully ventilated." The Court however seemed to have given guidelines to follow when the school exercises its power to provide disciplinary regulations in relation to the interpretation of the Campus Journalism Act and the free speech provisions of the Bill of Rights by quoting phrases such as "unduly restrict the right of the students to free speech" and "except such articles materially disrupt class work or involve substantial disorder or invasion of the rights of others."

What could these phrases mean in relation to the Campus Journalism Act? One thing is for sure; the phrase "materially disrupts class work or involve substantial disorder or invasion of the rights of others" was copied verbatim from cases[64] where the intensity of student demonstrations and rallies reached a level where the student rally permits issued by the school were violated. The phrase "unduly restrict the right of the students to free speech" however looks like a seed from which will bear more colorful jurisprudence.

What could have been in the minds of the court when it ruled that academic freedom should not "unduly restrict the right of the students to free speech?"

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63. *Id.* at 291 (emphasis supplied).

64. *See generally* Malabanan v. Ramento, 129 SCRA 359 (1984); Villar v. Technological Institute of the Philippines, 135 SCRA 706 (1985); Arreza v. Gregorio Araneta University Foundation, 137 SCRA 94 (1985); Non v. Dames II, 185 SCRA 523 (1990).

B. Freedom of Speech in the Context of Academic Freedom

Due to the relatively rich Philippine jurisprudence on the freedom of speech provision of the Bill of Rights, the answer to the question above can be that in the school setting, the concept of freedom of speech and of expression is limited in a manner that changes the principle of prohibition from prior restraint, and most probably, the principle of prohibition from subsequent punishment.

Briefly and in the context of this article, the freedom of speech guaranteed in the Bill of Rights[65] means prohibiting press censorship and prohibiting punishment for uttered speech unless: (1) a clear and present danger of a substantive evil which (the State or the school) must guard against exists; or (2) when after balancing competing interests censorship and/or punishment is required.

The rigidity of the standards for prior restraint and subsequent punishment highlight the importance of, and the reasons why freedom of expression is guaranteed by the fundamental law. Three reasons for protecting speech are: (a) to ensure that the system of democracy works properly; (b) to ensure that the truth of the thoughts and ideas of the citizens are brought before, and tested in the marketplace of ideas; and (c) to promote individual self-realization and self-determination.[66] We see reasons (a) and (b) cited in Philippine jurisprudence.

1. Bases for Protecting Speech

To ensure that democracy works, the battle cry — freedom of speech — was written in the Malolos Constitution, a product of the Philippine-Spanish revolution.[67] In upholding this concept, the Court as early as 1918 in *U.S. v. Bustos*[68] highlighted that:

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65. 1987 PHIL. CONST. art. III, § 4 ("No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances.").

66. BERNAS COMMENTARY, *supra* note 4, at 223.

67. *See Id.* at 223-24 (citing United States. v. Bustos, 37 Phil. 731, 739-40 (1918):

> Freedom of expression was a concept unknown to Philippine jurisprudence prior to 1900. It was one of the burning issues during the Filipino campaign against Spain, first, in the writings of the Filipino propagandists, and, finally, in the armed revolt against the mother country. Spain's refusal to recognize this was, in fact a prime cause for the revolution.).

68. U.S. v. Bustos, 37 Phil. 731 (1918).

> The interest of society and the maintenance good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom... The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism.[69]

We likewise see the Court quote the theory of promoting the market place of ideas in *Borjal v. Court of Appeals*.[70]

2. Protection of Speech in the Academe

Jurisprudence however shows that the concept of prior restraint in the school setting is not only less rigid compared to the public sphere, but also tilted in favor of the school. This we can see in the case of *Laxamana v. Borlaza*.[71] From this and the *Miriam Foundation Inc.* ruling, we could infer that the same, most likely, holds true for the concept of subsequent punishment.

Before reporting the case *Laxamana v. Borlaza*, it becomes necessary to note that the existence of this case in Philippine jurisprudence strengthens the abovementioned pronouncement that the circa 1975 case *Garcia v. Loyola School of Theology* was a landmark. It can be noticed that even if the concept of academic freedom already found its way in the 1935 Constitution and was even slightly mentioned[72] in the arguments of one of the parties, *Laxamana* did not delve in the resolution of the controversy via the academic freedom perspective.

In the case of *Laxamana*, the President of the Philippine Normal Colleges (PNC) issued a memorandum directed to Felicitas P. Laxamana, the Director of Publications. The memorandum was essentially: (1) a means upon which the PNC president reminded Laxamana that he previously laid guidelines "aimed at impressing upon the members of the editorial staff [of the school papers *The Torch* and *The Torch Newsette* the need for propriety, justice and decency in the discharge of their tasks;"[73] (2) a suggestion that the representative of the President of PNC and the Director of Publications review the page proofs of *The Torch* and *Torch Newsette* before publication; and (3) a means to empower the representative of the President of PNC to

69. *Id.* at 740-41.

70. Borjal v. Court of Appeals, 301 SCRA 1, 31 (1999).

71. Laxamana v. Borlaza, 47 SCRA 29 (1972).

72. *Id.* at 33.

73. *Id.* at 32.

make "suggestions [which the Office of the President] may find necessary"[74] On 14 October 1964, another memorandum was issued, this time convening the Board of Management to "restudy the policies of *The Torch* affecting its editorial and reportorial practices and business management."[75] A reading of the 31 August 1964 memorandum shows that the thrust of the PNC President's actions were aimed at: (a) helping the students to develop their English proficiency; (b) promoting the student's character development; (c) showing that the articles in the publication tended to humor the professors who have become old maids in their efforts to devote their lives to the teaching profession; and (d) helping the students learn the means of exercising their right to free expression within the bounds of propriety, justice and decency.

The Director of Publications filed with the Court of First Instance of Manila a complaint against the PNC President seeking the annulment of the memoranda on the ground that they abridge, among others, the freedom of speech. The CFI upheld the memoranda. When the case was appealed to the Supreme Court, the appointment of the representative of the PNC President, as mentioned in the 27 August 1964 memorandum had been recalled. The Supreme Court, now ruling on the 14 October 1964 memorandum remarked that the directive of the PNC President to convene the Board of Management to restudy the editorial, reportorial, and business management of *The Torch* did not amount to a constitutional violation, or even a threat of violation of the protected liberty. In its final analysis, the Supreme Court viewed the controversy from the perspective of managerial differences and ruled that:

> Evidently the differences between the plaintiff, as Director of Publications, and the administration of the Philippine Normal College, through its President and Board of Trustees, involved a question of policy in respect of the student publications in said college. On this score, it appearing that such differences were nigh irreconcilable, the policy-determining body must prevail.[76]

Although the Court in this case did not expressly mention academic freedom as a reason for considering the issue from a policy-determination perspective, a reading of the decision seemed so. This is because the issue was not resolved using the principle of prohibition from prior restraint even if the argument that the constitutional liberty of free speech was threatened. The Court merely said that the Board of Management's tasks did not amount to a violation, or even a threat to such liberty.

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74. *Id.*

75. *Id.* at 33.

76. *Id.* at 39.

C. Laxamana, the Campus Journalism Act and Miriam Colleges Foundation Incorporated.

Eleven years later or in 1991, the Campus Journalism Act[77] was enacted. The law seemed to have had *Laxamana* in mind. Section 4 of the Act provides that "[o]nce the publication is established, its editorial board shall freely determine its editorial policies." Furthermore, the law, in section 9 seems to fortify one of the thrusts of the law — to promote the development and growth of campus journalism, by mandating that "[a] student shall not be expelled or suspended on the basis of articles he or she has written, or on the basis of his or her duties in the student publication." These sections look as if they were based on the constitutional philosophy of prohibition from prior restraint and subsequent punishment.

Nine years later, *Miriam College Foundation Inc.* seemed to have given the Campus Journalism Act a different shade of color that tends to tilt the balance in favor of the school to impose disciplinary standards, as opposed to the student's unbridled right to publish. The principle of prohibition from subsequent punishment as contrasted to adhering to disciplinary rules of the school seems to be of a weaker kind of protection.

These developments tend to show the primacy of academic freedom. It seems quite logical for this author to say that if a controversy similar to that in *Laxamana* would arise today, then the courts would uphold the school's academic freedom of "how to teach."

Having this in mind, this part of the article extrapolates as to how the Supreme Court may rule when an institution of higher learning exercises academic freedom in relation student publications that fall within the regulating power of the Campus Journalism Act. To cut across the multifaceted status of the journalism profession, standards will be distilled from the principles of the law on libel not only because it is claimed that "this is the most common crime encountered by the newspaperman at the newspublishing (sic) stage"[78] but also because the libel law incorporates in it the theory of truth telling.

77. CAMPUS JOURNALISM ACT, Republic Act No. 7079 (1991).

78. RESSURECTION S. SAVILLA, ET AL. PRESS FREEDOM AND THE RISK OF LIBEL 27 (1991).

V. INTERSECTING THEORIES

A. Distilling the Principles of Libel Law to Determine How the Courts May Regulate Student Publications in Relation to the Campus Journalism Act

The standards posed by the law on libel should definitely not be used in totality to provide the disciplinary guidelines for institutions of higher learning. The standards of libel law, being penal in nature, are tilted in favor of human freedom as against the State which is interested in preventing libel. If such standards are compared with the lofty objective of schools to approximate the status of theory, then the thrust of a learning institution — which among others seeks to "foster love of humanity, respect for human rights... strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking"[79] might be compromised. Moreover, the previous discussions show that the academic freedom of institutions of higher learning allow the imposition of stringent standards[80] which statutes — in this case criminal laws, fail to consider.

To prove the hypothesis, we look at the status of Philippine law and jurisprudence on libel.

"For an imputation to be libelous, the following requisites must concur: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identifiable."[81] We will look at the conditions that a statement must be "defamatory," "malicious," and "must identify the victim" from the perspective of a school's vision to rear its students to become responsible and morally upright members of society.

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79. 1987 PHIL. CONST. art XIV, § 3, ¶ 2; also *cited in* Miriam College Foundation v. Court of Appeals, 348 SCRA 265, 286 (2000).

80. *See* BERNAS COMMENTARY, *supra* note 4 at, 1255 (it should also be noted that the allowable grounds for disciplinary action are not independent of the nature of the educational institution. A school founded for religious goals, for instance, and attendance at which is purely voluntary, can set disciplinary rules intended to reinforce its religious or moral goals. The standards for decency and sexual morality in such a school can be more strict than what are allowable within the larger society and a student may be disciplined on moral grounds for acts or speech within the school which when done outside are protected by the norms of freedom of speech.).

81. Novicio v. Aggabao, 418 SCRA 138, 143 (2003).

3. Defamatory Character of Publication

To fall within the category of being defamatory, the publication must have "cast aspersion on the character... integrity and reputation"[82] of the victim "who may even be a dead person or a juridical person"[83] by imputing a "crime, vice, [real or imaginary] defect... act, omission, condition, status or circumstance [which] tends to cause the dishonor, discredit or contempt."[84]

In *Bulletin Publishing Corp. v. Noel*,[85] the family of the late Amir Mindalanao filed a complaint for libel for a 22 June 1986 article *Changing of the Guard* that appeared in the *Philippine Panorama* published by Bulletin Publishing Corporation.

According to the complainants, the statement in the article which claimed that the late Amir Mindalanao was not of a royal family and that he had the chance to live with an American family, was defamatory because it was not true.

Denying the relief sought by the complainants, the Court ruled that even if the statement was "inaccurate" the statements are not defamatory because of the republican character and egalitarian inspired Philippine community and because of the fact that many Filipino Muslims have been going abroad to study and have had the experience of staying with foreign families, then to an average person, it could not have cast aspersion.[86] The Court continued that "community standards — and not personal or family standards" must be the benchmark in determining whether the remarks were defamatory; otherwise, the regulation might produce a "chilling effect" upon the constitutionally protected freedom of the press.

Even if such shortcomings are not criminally actionable, it can be seen that these fall short of section I of the Philippine Journalist's Code of Ethics[87] which says "I shall scrupulously report... the news."

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82. *Id.*

83. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE] art. 353.

84. *Id.*

85. Bulletin Publishing Corp. v. Noel, 167 SCRA 255 (1988).

86. *Id.* at 264.

87. The Journalist's Code of Ethics *available at* http://nujp.org/?page_id=7 (last accessed Dec. 8, 2005) (this Journalist's Code of Ethics was unanimously adopted during the founding congress of the National Union of Journalists of the Philippines on July 30, 1988. NUJP members must agree to this covenant, violation of which could mean expulsion from the union. The NUJP's by-laws provide an arbitration mechanism to try violations of this code).

4. Malicious Intent

For a report to fall within the category of being malicious, the reporting must have been prompted by "personal ill will or spite and speaks not in response to a duty but merely to injure the reputation."[88] Thus, even if the report is true, "if no good intention or justifiable motive for making it is shown,"[89] unless such report was a "private communication [arising from a] performance of any legal, moral or social duty or a fair and true report, made in good faith, without comments or remarks of a [public or official] proceeding,[90] then it will still be classified as malicious.

In *Borjal v. Court of Appeals*,[91] Arturo Borjal, in his capacity as columnist in the daily newspaper *The Philippine Star*, wrote in the 21 June 1989 issue:

> The first information says that the 'organizer' [allegedly referring to the person who filed the libel case] tried to mulct half a million pesos from a garment producer and exporter who was being investigated for violation of... [t]he organizer got the shock of his life when the exporter told him: 'If I have that amount, I will hire the best lawyers, not you.' The organizer left in a huff, his thick face very pale.[92]

In ruling that such a statement was not malicious, the court said that the columnist acted in good faith, was moved by a sense of civic duty, and prodded by his responsibility as a newspaperman that the columnist published such information after conducting personal interviews and considering varied documentary evidence.[93]

Thus, we see in this case that the courts consider only the reason of publishing and not the "how." Provided that there is good and justifiable motive, the courts will adhere to the theory that speech must be open and robust. The court ruled further that:

> Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving

88. Novicio v. Aggabao, 418 SCRA 138, 143 (2003).

89. THE REVISED PENAL CODE, art. 354.

90. *Id.*

91. Borjal v. Court of Appeals, 301 SCRA 1 (1999).

92. *Id.* at 13.

93. *Id.* at 28-29.

> them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy.[94]

This principle falls short of what the court in *Ateneo de Manila v. Capulong*[95] said that: "It must be borne in mind that universities are established, not merely to develop the intellect and skills of the studentry, but to inculcate lofty values, ideals and attitudes; may, the development, or flowering if you will, of the total man."[96]

5. Identification of Victim

In *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*,[97] MVRS was sued by the federation of Muslim organizations for having published in the daily tabloid Bulgar, an article which claims to profess that the Muslims do not eat pork, and even worship the pig especially during Ramadan because of its divine status. The translated article reads:

> Do you know that:
>
> Pigs or any kind of animal are not eaten in Mindanao by the Muslims?
>
> To the Muslims, pigs are sacred items. They do not eat these animals even if they are hungry or do not have any viand during meal time. They treat these animals as Gods and even worship them especially during '*Ramadan.*'[98]

The Islamic Da'wah Council claimed that the item was published not only "out of sheer ignorance but with intent to hurt their feelings, cast insult and disparage the Muslims and Islam." MVRS argued that their statement was merely an expression of their opinion and was not published with malice or with intent to cause damage, prejudice or injury.

The Supreme Court, in a seven-five decision ruled that the statement was not actionable because it did not specifically point or alluded to a member of a class. The Court further remarked that making such statement criminally actionable would impair the constitutionally protected freedom of speech.[99] In support of its ruling that the statement was not actionable, the Court cited American jurisprudence saying that if a libelous statement is

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94. *Id.* at 30.

95. Ateneo de Manila v. Capulong, 222 SCRA 644 (1993) (citations omitted).

96. *Id.* at 664.

97. MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., 396 SCRA 210 (2003).

98. *Id.* at 217 (*see* original Filipino text).

99. *Id.* at 219.

posed to a very large group, then the "statement is not considered to have no application to anyone in particular since one might as well defame all of mankind."[100] The Court explained that:

> [t]he word Muslim is descriptive of those who are believers of Islam, a religion divided into varying sects, such as Sunnites, the Shiites, the Kharijites, the Sufis and others based upon political and theological distinctions. 'Muslim' is a name which describes only a general segment of the Philippine population, comprising a heterogeneous body whose construction is not so well defined as to render it impossible for any representative identification.[101]

Quoting the views of Mr. Justice Puno, the Court cited that "[s]ome authorities have noted that in cases permitting recovery, the group has generally twenty five or fewer members. However, there is usually no articulated limit on size. A prime consideration, therefore, is the public perception of the size of the group and whether a statement will be interpreted to refer to every member."[102]

The Court further adhered to the theory which provided that "American courts which are reluctant to adopt a rule of recovery for emotional harm that would 'open up a wide vista of litigation in the field of bad manners,' and in an area in which a 'toughening of the mental hide' was thought to be a more appropriate remedy... [Furthermore, the Court remarked that] American courts no longer accept the view that speech may be proscribed because it is 'lewd,' 'profane,' 'insulting' or otherwise vulgar or offensive,"[103] because it was protected by the right to free speech. Approving American jurisprudence, the Philippine Supreme Court quoted the philosophy in *Cohen v. California*[104] which protects vulgar speech:

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100. *Id.* at 222.

101. *Id.* at 223.

102. *Id.* at 225-26.

103. MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., 396 SCRA 210, 230-31 (2003).

104. Cohen v. California, 403 U.S. 15 (1971) (the United States Supreme Court nullified the act of the California Supreme Court when it penalized Cohen for violating a California Statute prohibiting the disturbance of peace by offensive conduct. Cohen was wearing a jacket that bore the inscription "Fuck the Draft" (referring to a legislative action.); the United States Supreme Court said that (a)the message was not directed against a person who was likely to retaliate for being insulted (b) protecting the sensibilities of the onlookers was not a sufficiently compelling interest to restrain speech.); *see generally*, report in MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc. 396 SCRA 210, 232 (2003).

> [N]o objective distinction can be made between vulgar and non-vulgar speech, and that the emotive elements of speech are just as essential in the exercise o this right as the purely cognitive. As Mr. Justice Harlan so eloquently wrote: "[O]ne man's vulgarity is another man's lyric… words are often chosen as much for their emotive as their cognitive force."[105]

Thereafter the Court concluded "[w]ith Cohen, the U.S. Supreme Court finally laid the Constitutional foundation for judicial protection of provocative and potentially offensive speech."[106] This ruling may be inconsistent with the task of an educational institution to "teach the rights and duties of citizenship, strengthen ethical and spiritual values, [and] develop moral character."[107]

VI. CONCLUSION

The discussion shows that even if the Campus Journalism Act provides that:

> Sec. 4. Student Publication. — A student publication is published by the student body through an editorial board and publication staff composed of students selected but fair and competitive examinations. Once the publication is established, its editorial board shall freely determine its editorial policies and manage the publication's funds.
>
> x x x
>
> Sec. 7. Security of Tenure. — A member of the publication staff must maintain his or her status as student in order to retain membership in the publication staff. A student shall not be expelled or suspended solely on the basis of articles he or she has written, or on the basis of the performance of his or her duties in the student publication.

Jurisprudence on academic freedom may still be anathema to the grafting of freedom of speech in the national context to the school context. This position cannot even be said to be classified as judicial legislation because the phrase in section 4 — "shall freely determine its *editorial policies*," is qualified by the definition of "editorial policies" to mean guidelines which include school policies. Section 3(e) of the Campus Journalism Act provides:

> Editorial Policies. — A set of guidelines by which a student publication is operated and managed, taking into account pertinent laws as well as the school administration's policies. Said guidelines shall determine the

105. *MVRS Publications, Inc.*, 396 SCRA 210, 232.

106. *Id.*

107. Miriam College Foundation v. Court of Appeals, 348 SCRA 265, 286 (2000) (citing PHIL. CONST. art XIV, § 3, ¶ 2).

> frequency of the publication, the manner of selecting articles and features and other similar matters. [108]

It seems that *too much* faith is placed by the Courts in the corporations which the State certifies as universities. This faith is of course subject to the assumption that a school imposes standards that are reasonable and equitable. It was in *Miriam College Foundation Inc.* where the Court laid the standard "the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when... [they] involve (a) substantial disorder or invasion of the rights of others."[109] But when is a standard fair? When is it equitable?

This author proposes that the acts (which do not amount to *mala in se* or *mala prohibita*) or writings of a student should be classified as creating a substantial disorder or an invasion to the rights of other students only after the following standards are met: (1) the violated disciplinary rule of the school is reviewed by a competent body in the context of the particular mission-vision of the school vis-à-vis the rules of society in general. Such body must be composed of members whose thoughts will provide a collaborative definition of the principles behind the violated rule which reflects the mission-vision of the school. This principle necessarily means that there will be differing standards from school to school. A school run by Jesuits, La Salle Brothers, Benedictine Sisters, Assumption Sisters, may have different standards. This also means that a school must ensure that its members have been well impressed of the particular educational thrust of the academic institution vis-à-vis the thrust of tolerance in the general populace. (2) The acts of the violators must be examined in the context of the violated disciplinary rules in compliance with the principles of due process as laid down by Philippine law.

It is only when the first standard is not followed then the Courts should (1) declare that the rule that had been violated has no philosophical basis, thus unfair and equitable because it is not founded on a theory that is peculiar to the educational institution; and (2) intervene and use the standards applicable to society in general because the academic institution has failed to propose a standard peculiar to the school.

With these in mind, then a case similar to that of *Laxamana v. Borlaza*, absent a showing as to what policies peculiar to the mission-vision or philosophy of the school will be used in editing or evaluating the school paper, should be considered by the court as a prior restraint. When a case

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108. *See also* Rule III (e), Implementing Rules of the Campus Journalism Act copying this provision verbatim.

109. *Miriam College Foundation Inc.*, 348 SCRA at 291.

similar to that of *Miriam College Foundation Inc. v. Court of Appeals* occurs, then absent a school determination as to what is "obscene, vulgar, indecent, gross, sexually explicit, injurious to young readers, and devoid of all moral values" in the context of the school mission-vision or philosophy, the courts should intervene and use contemporary social standards to determine the fact of the existence of such status. If the court, now applying contemporary standards, finds that such actions are acceptable by society in general, then the act of the school will be considered by the courts as subsequent punishment. In both cases, the courts will have to rule that such acts are violative of the student's constitutionally protected rights.

The implications of these standards are (1) it will help the Courts in defining, with little judicial costs, trivial standards such as decency, obscenity, or good moral character (2) will pass to the schools the burden of proving the propriety of proposing standards higher than those prescribed for society in general and (3) will prevent school abuses in the guise of academic freedom.

VII. AFTERWORD ON FREEDOM OF SPEECH IN THE CONTEXT OF ACADEMIC FREEDOM

The freedom of speech and of expression is not protected by the Constitution for no reason. Harsh or painful as the words may sound, those same words, or daggers as they may be called, are cherished because they have positive social values. But if a school trains students who can not use words as daggers, then the positive social values of words will definitely be lessened. If the students have not been trained, or had been punished, for putting fire or "emotive force" in their words, then the burning flame of democracy will generate less heat to incinerate the existing social wrongs or false ideas. In a sense, caring or training a student who will become the guardian of democracy will be useless when this "guardian" does not have proper tools or weapons that can protect society against the intruding oppressors of democracy or proponents of falsity. On the other hand, if the school cannot punish students who will grow into social menaces, then a world that is "nasty and brutish" is what Philippine society will soon become.