CROSSING BOUNDARIES:
A GROUNDED THEORY OF THE CONCURRENCE OF JURISDICTION BETWEEN THE OFFICE OF THE OMBUDSMAN-MOLEO AND OTHER ADMINISTRATIVE TRIBUNALS IN THE ADJUDICATION OF ADMINISTRATIVE CASES

by

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LIST OF ABBREVIATIONS

CSC	Civil Service Commission
CIPAAB	Criminal Investigation, Prosecution and Administrative Adjudication Bureau
CNFS	Certification of Non-Forum Shopping
DRP	Disciplinary Rules of Procedure
GIPO	Graft Investigation and Prosecution Officer
IAS	Internal Affairs Service
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
OMB	Office of the Ombudsman
OMB-MOLEO	Office of the Ombudsman for the Military and Other Law Enforcement Offices
PNP	Philippine National Police
RA	Republic Act
RRACCS	Revised Rules on Administrative Cases in the Civil Service

ABSTRACT

This study aimed to understand the issues surrounding the concurrence of jurisdiction between the Office of the Ombudsman for the Military and Other Law Enforcement Offices with the administrative tribunals of other law enforcement offices in the adjudication of administrative cases. By exploring the perceptions of Graft Investigation and Prosecution Officers who handle administrative cases, the character and quality of the phenomenon is discerned.

As the research design, this study employed the blueprints of ground theory. The study involved information gathering through five focused interviews with Graft Investigation and Prosecution Officers of the OMB-MOLEO. The findings were conceptualized and coded. The information they have provided were analyzed through constant comparative analysis, where three theoretical categories: monitoring, coordination, and consistency, were developed around the core theoretical variable of crossing boundaries.

The first theoretical category of monitoring posits that there is no active measure to ascertain the observance and execution of the decisions issued by the OMB-MOLEO in administrative cases. The second theoretical category of coordination postulates that the coordination of actions and the steps taken to ensure the timeliness of administrative proceedings enhances the sustainability and constancy of decisions being issued in these administrative processes. The third theoretical category suggests that the incongruous decisions from different

adjudicating bodies and within the organization itself, where the likeliness of its occurrence must not be ignored, can nevertheless be prevented.

This study finds that the theory of crossing boundaries attempts to protect the integrity of individual institutions while at the same time, realizing the unity and oneness of policies, processes and procedures.

DECLARATION

I, DUMPILO Eric Anthony Ateniao, hereby declare that this thesis is my own work and has not been submitted in any form for the award of another degree or diploma at any university or other institute of tertiary education. Information derived from the published or unpublished work of others has been cited or acknowledged appropriately.

September 2014

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CHAPTER 1

INTRODUCTION

This introduction explains the raison d'être and the extent to which the study would examine the efficiency of the procedure on administrative adjudication by and between the Office of the Ombudsman for the Military and Other Law Enforcement Offices and the other administrative tribunals exercising adjudications on administrative cases with respect to the concurrence in their jurisdiction.

Over the past few years, the OMB-MOLEO and the other administrative adjudicating bodies, with particular reference to the Internal Affairs Service of the Philippine National Police, have been experiencing a continued increase of administrative suits being initiated against officers and employees of the different law enforcement offices. This ongoing surge of legal actions necessitates the demand for speedy, constant and sustainable decisions, coupled with the need to explicate on the venue for initiating these legal actions. Since variations in the dispensation of decisions ultimately develop from the concurrence of jurisdiction to hear and decide these cases, there is a need to revisit the effectiveness of the regulations defining the relationship between the OMB-MOLEO and the adjudicating bodies of law enforcement offices.

Prompted by the aspiration to mold a modern administrative system that could provide citizens with an institution which enjoys their confidence and to which they can have easy access for the redress of their grievances (Jha, n.d.),

many countries in recent decades adopted the institution of the Ombudsman. In the Philippines, the Ombudsman, otherwise known as the *Tanodbayan,* is a constitutional authority created under the mandate of the Philippine Constitution of 1987. It is the main governmental agency that fights corruption in public services (The Ombudsman Act, 1989). It provides the people with better and dependable public services by liberating them from injustices and maladministration. Under its corruption enforcement strategy, the main objective of the Office of the Ombudsman is to ensure that both the general laws of the state and its corruption laws are enforced throughout the country.

To implement its objectives, the Office of the Ombudsman has been divided into sectors to properly define its jurisdiction (Office of the Ombudsman, 2011). One of these sectoral offices is the Office of the Ombudsman for the Military and Other Law Enforcement Offices, which has jurisdiction over officials and personnel of the Armed Forces of the Philippines, Philippine National Police, Bureau of Fire Protection, Bureau of Jail Management and Penology, Bureau of Corrections, and the other agencies of the government that are involved in law enforcement (MC No. 02, 2003). Of the two main functions of each sector, the adjudication of administrative cases (AO No. 07, 1990) is the primordial subject of this study. It is a key feature to note, however, that the law enforcement offices under the Ombudsman's jurisdiction, the PNP for example, has also established their own adjudicating body that concurs with the OMB-MOLEO's administrative disciplinary jurisdiction (Philippine National Police, 2007). This doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject

matter. This doctrine is further strengthened by the settled rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others (Department of Justice et al., vs. Liwag, et al., 2005).

It is from the nexus of this concomitant interaction that policy statements on inter-agency relations, more particularly that of concurrence of jurisdiction, have been devised. These policies are implemented to control and monitor the collective acts of the OMB-MOLEO and the different adjudicating bodies of law enforcement offices. These individual governmental institutions work together to restrict the prevalence of graft and corrupt practices in the system of government by imposing sanctions to erring public officers and employees, thereby saving the people from injustices, maladministration and providing them with better and accountable public services.

To this end, there is a need to look into the competency of the collective efforts of the OMB-MOLEO and the other adjudicating bodies, with particular reference to the PNP-IAS, and determine the effectiveness of the regulations defining their relationship, thus, this thesis explores concurrence of jurisdiction of the Office of the Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) with other administrative tribunals in the adjudication of administrative cases.

This research draws on the approaches designed in grounded theory to discover the influences and dynamics that are in play with regard to the concurrence of jurisdiction in the adjudication of administrative cases. As it stands in the case of a grounded theory research, the orientation of this research is toward

building a theory. This study proposes theory that is rooted in facts and data based on the arguments and premises that emerged from discussions with Graft Investigation and Prosecution Officers (GIPOs) of the OMB-MOLEO.

A historical overview of the Ombudsman as an institution and a primer on the Office of the Ombudsman in the Philippines is provided in chapter two. The background is meant to acquaint the reader to the nature and functions of the Office of the Ombudsman. The research question and objectives of the research are presented after the history and brief introduction of the Office of the Ombudsman so that the contexts from which the questions have stemmed from would be better understood.

Primed from the outline presented in the second chapter, the third chapter unveils the research objectives. The third chapter also delivers a synopsis of grounded theory as a research method. The chapter likewise demonstrates that the three general standards in grounded theory are satisfied. First, that the theory 'fitted' closely with the topic and the area of the study's discipline; second, the theory is both explicable and functional to the actors in the field of study; and third, that the theory is multifaceted that it pairs off largely with the adaptations in the area of study.

Chapter four offers samples and specimens of the data that has accrued for the duration of the research. The fourth chapter correspondingly reveals the theoretical categories that have emerged. Through inductive and deductive reasoning, the creation of theoretical categories was made possible by the constant comparative approach within grounded theory. This process is central to the

attempt of the researcher to move toward the sphere of theory development from the world of practice. Three theoretical categories became apparent in the course of analyzing the data through the employment of the constant comparative approach. The theoretical categories are: monitoring, coordination and consistency.

The nodes that link the theoretical categories in the study and what is attendant in the available bodies of research literature are created in the fifth chapter. Establishing the review of literature following the completion of the information-gathering in grounded theory is meant to keep the researcher from deriving suppositions, inferences and assumptions regarding the answers to the research questions or objectives in advance.

The sixth chapter presents the substantial theory or the core theoretical variable regarding the concurrence of jurisdiction in the adjudication of administrative cases. The theory suggests that the crossing of boundaries means the alignment of certain aspects of procedures between and among the players in the field of administrative adjudication. The configurations, patterns and designs defining the relationship of the different adjudicating bodies form bridges that conjoin one tribunal to another in terms of policies and guidelines.

The seventh chapter culminates the study by ruminating over the limitations to the research, the inferences of the study, and the promising prospective directions for research in this area.

CHAPTER 2

BACKGROUND

2.1 Ombudsman, defined

Broadly, the term Ombudsman is described as an official of the government who is tasked to investigate the complaints against the government or its functionaries. The Ombudsman has also been labeled – on the basis of his functions – as a public defender, a grievance man, a watchman over the law's watchmen, voice of the citizen, and citizen's counselor. Essentially, the Ombudsman protects citizens against injustices committed by civil officials (Office of the Ombudsman). Originally, the ombudsman was a public official who investigated, and in some instances, even prosecuted allegations of misfeasance or malfeasance by other governmental officials (Howard, 2010).

2.2 History of the Ombudsman

In order to be acquainted with and recognize the distinct features of present day ombudsman institutions, that of the Philippines in particular, there is a need to review the history of the ombudsman.

The chronicles established in 16th century Sweden points out that the early beginnings of the ombudsman as an institution can be credited to King Charles XII. It was said that King Charles XII has created a body to oversee his kingdom while he was away fighting wars for the country. An official with the title of *Hogsta Ombudsman* or “Supreme Royal Ombudsman” was appointed in the year 1713 (Office of the Ombudsman). The *Hogsta Ombudsman* was assigned to "keep

an eye" on royal officials and supervise observance of the laws (Osorio & Vicente, 2002). Sometimes the *Hogsta Ombudsman* was even commissioned to represent the king in some official functions (Office of the Ombudsman).

Although some author-historians differ on the idea that the founding of the Ombudsman institution by the King Charles XII in 1713 is considered to be the grandsire of the Ombudsman institutions – apparently because of its intimate association with the executive branch of government and not being as self-governing as it is designed to be – the ombudsman founded in the year 1713 undeniably played a momentous role to the evolution of the Ombudsman concept (Orton, 2001). The strong monarchy under the leadership of King Charles became vulnerable after his death in November 1718. The parliament, on the other hand, grew congruently strong. As a result of this escalation, in the year 1917, the *Hogsta Ombudsman* was rechristened the Chancellor of Justice or Justitiekanslern. As an institution of Parliament, the Chancellor of Justice was extricated from the King's influence. However, the King again became absolute ruler in the latter part of the 18th century and as such, the ombudsman reverted to its being associated with the executive branch of government.

In the Swedish constitutional reform of 1809, the 'High Ombudsman' was established. He is a high legal officer elected by the Parliament. His duty is to oversee the legitimacy and lawfulness of the Government's activities (Soderman, 1996). This Parliamentary Ombudsman of Sweden called Justitieombudsmannen, a designation which lightly translates as 'representative of the people' or 'citizen's defender,' is a new independent institution of Parliament. It is remarkable to note

that even after more than 200 years, this 1809 institution is still an active and well-functioning institution in Swedish society. Hardly ever applying its initial function as a prosecutor and conveying offenders before the courts, the Parliamentary Ombudsman of Sweden now keeps public servants organized and aligned through assessments and its critique in particularized cases, assisting other agencies and institutions with valuable guidance and exemplifications of good governance (Orton, 2001).

Since 1809, this institution has been espoused in many governments around the world. Private industries, like banking and insurance, have similarly adopted the concept of the Ombudsman. It can be observed, however, that the role of the Ombudsman has considerably changed. The contemporary Ombudsman's function is not to represent the agency or governmental entity being complained of, nor does the present-day Ombudsman act on any person's behalf just like a conventional attorney would do, rather, an Ombudsman acts in an impartial and independent way. This is true in the case of the Philippines.

2.3 The Philippine Ombudsman, beginnings

The present Office of the Ombudsman may be considered to have succeeded the Permanent Commission that was established in the Philippines' Revolutionary Government of 1898. The Revolutionary Government of the Philippines was instated in the Decree of June 23, 1898. The Decree likewise, under Article 21, provided for the creation of a Permanent Commission that would decide, in an appellate authority, petitions for the review of criminal case

judgments issued by provincial councils. The Vice President of the Republic presides over this Permanent Commission. The cases decided by the Permanent Commission were those that were filed against the Secretaries of the different Departments, including the officials of the provincial and municipal governments.

After the ratification of the Constitution of 1899, popularly known as the Malolos Constitution, not only had the Permanent Commission continued its existence, but its authorities had also been magnified. Spreading the span of the Permanent Commission's powers, the Malolos Constitution, in No. 1, Article 55, provides that the Permanent Commission is given the power to "declare if there is sufficient cause to proceed against the President of the Republic, the Representatives, Department Secretaries, the Chief Justice of the Supreme Court and the Solicitor General in the cases provided by the Constitution (Office of the Ombudsman)."

By the same token, the creation of agencies to handle cases of corruption in the government service has been provided for by succeeding administrations. In the year 1950, for instance, President Quirino created an Integrity Board. In the year 1957, immediately upon assumption to office, President Magsaysay created the Presidential Complaints and Action Commission. In the year 1958, President Garcia introduced the Presidential Committee on Administration Performance Efficiency. In the year 1962, President Macapagal inducted a Presidential Anti-Graft Committee. A Presidential Agency on Reforms and Government Operations was initiated by President Marcos in the year 1966.

The enactment of Republic Act No. 6028 in the year 1969 created the Office of the Citizen's Counselor. However, like the previous corruption prevention agencies established by past administrations, the Office of the Citizen's Counselor mainly conducts fact-finding investigations and issues recommendatory assessments to the legislature and the executive. Unfortunately, the provisions of RA No. 6028 were not at all implemented. Consequently, in the year 1970 President Marcos pioneered a Complaints and Investigation Office and in the following year, the Presidential Administrative Assistance Committee.

Sections 5 and 6 of Article XIII of the 1973 Constitution provided for the creation of a special court known as the Sandiganbayan and an Office of the Ombudsman, known as the Tanodbayan. To effectively carry out these provisions, the head of state issued Presidential Decree Nos. 1486 and 1487 on June 11, 1978 which formally created the Sandiganbayan and Tanodbayan, respectively (Office of the Ombudsman).

To demarcate the powers and functions of the Tanodbayan, Presidential Decree No. 1487 and its subsequent amendments provided that the Tanodbayan shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in appropriate cases, file and prosecute criminal, civil or administrative cases before the proper court or body. On the other hand, the Sandiganbayan shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers

and employees, including those in government-owned or controlled corporations (Office of the Ombudsman).

After the People Power Revolution, the framers of the 1987 Constitution envisioned the Ombudsman as an official critic who studies the laws, procedures and practices in government, a mobilizer who ensures that the steady flow of services is accorded to the citizens, and a watchdog who looks at the general and specific performance of all government officials and employees (Journal No. 40, July 26, 1986, p. 432). To further strengthen and insulate the Office of the Ombudsman from politics and pressure forces, the Constitution made it a fiscally autonomous body (Sec. 14, Art. XI, 1987 Constitution), independent from any other branch of government, and headed by an Ombudsman with a fixed term of seven years, who could be removed from office only by way of impeachment (Sec. 2, Art. XI, 1987 Constitution). The Ombudsman and his Deputies enjoy the rank of Chairman and members, respectively, of a Constitutional Commission whose appointments require no Congressional confirmation (Secs. 9 and 10, Art. XI, 1987 Constitution) (Office of the Ombudsman).

The clear intent is to give full and unimpeded play to the exercise by said Office of its extraordinary range of oversight and investigative authority over the actions of all public officials and employees, offices and agencies. Not only can it investigate on its own or on complaint any official act or omission that appears to be illegal, unjust, improper or inefficient; it can prod officials into performing or expediting any act or duty required by law; stop, prevent and control any abuse or impropriety in the performance of such duties; require the submission of

documents relative to contracts, disbursements, and financial transactions of government officials for the purpose of ferreting out any irregularities therein (Sec. 13, Art. XI, 1987 Constitution). The conferment of this extensive authority is prefaced in the Constitution with the bestowal upon the Ombudsman and his deputies of the appealing title of "Protectors of the People" (Sec. 12, Art. XI) (Office of the Ombudsman).

On July 24, 1987, Executive Order No. 243 was issued by President Corazon C. Aquino declaring the effectivity of the creation of the Office and restating its composition, powers and functions. On May 12, 1988, the Office of the Ombudsman became operational upon the appointment of the Ombudsman and his Overall Deputy Ombudsman. Immediately thereafter, one Deputy Ombudsman each for Luzon, Visayas and Mindanao were likewise appointed by the President. This date became the basis for celebrating the anniversary of the Office of the Ombudsman (Office of the Ombudsman).

The Congress enacted on November 17, 1989, Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, providing for the functional and structural organization of the Office of the Ombudsman and delineating its powers, functions and duties. Indeed, Congress, in enacting Republic Act 6770, sought to have an Ombudsman who would be an effective and an activist watchman vesting the Ombudsman with adequate authority that would prevent the Ombudsman from being a "toothless tiger" (Journal, Session No. 15, August 17, 1988) (Office of the Ombudsman).

2.4 The Office of the Ombudsman, a briefer

> "A public office is a public trust. Public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice and live modest lives."
>
> (Section 1, Article XI of the 1987 Philippine Constitution)

As provided for under Article XI, Section 12, of the 1987 Philippine Constitution, the Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Further, under Section XI, Article 13 of the same Constitution, the Office of the Ombudsman is vested with the following powers, functions, and duties:

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 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.

From the foregoing provisions under the Philippine Constitution, and having been conferred with the authority and title as the protector of the people, the Office of the Ombudsman performs distinct roles in guarding against injustices or maladministration. These roles can be condensed into five (5) major genres to include, to wit:

- a Watchdog
- a Mobilizer
- an Official Critic
- a Dispenser of Justice; and
- an Equalizer

As a Watchdog, the Office of the Ombudsman superintends the performance of official functions, whether general or specific, to the end that laws are properly administered and observed. To be a Mobilizer means that the Office of the Ombudsman implements tactical measures to ensure the delivery of steady and efficient basic services. This role also encompasses the mobilization of citizen support activities to actively denounce graft and corrupt practices in the government. In its Official Critic role, the Office of the Ombudsman studies and evaluates existing laws, procedures and practices in the government with the end view of refining them. To faithfully carry out the role as a Dispenser of Justice, the Office of the Ombudsman imposes administrative sanctions on erring government officials and employees and prosecutes them in court for criminal offenses. Finally, in acting as an Equalizer, the Office of the Ombudsman recognizes and distinguishes the difference between the Rights of a Person and the Powers of the State.

To succeed in achieving the yields aimed by the roles accorded to the Office of the Ombudsman, the office is tasked to perform the following functions, to wit:

- Investigation
- Prosecution
- Administrative adjudication
- Public assistance; and
- Graft prevention

In its investigative function, the Office of the Ombudsman exercises unique prerogatives. Not only does the Office of the Ombudsman conduct preliminary investigation of cases filed before it, but also, it has the authority to initiate the conduct of fact-finding investigations and the gathering of evidence that is necessary for case build-up. The prosecutorial function of the Office of the Ombudsman is generally assigned to the Office of the Special Prosecutor which is delegated to prosecute cases that are filed before the special anti-graft court, the Sandiganbayan. For the regular courts, i.e. the Municipal Trial Court and Regional Trial Courts, the City Prosecutors are deputized by the Office of the Ombudsman to handle the prosecution. With regard to administrative adjudication, the imposition of administrative penalties against officers in the public service who are found guilty of an administrative offense is a power vested with the Office of the Ombudsman. These administrative sanctions may range from suspension to dismissal from the service. As a preventive measure against corruption, the Office of the Ombudsman extends public assistance to secure a smooth and satisfactory delivery of governmental services. Public assistance is intended to obviate the need for grease money and influence peddling for government actions. Graft prevention is a pro-active approach intended to eliminate opportunities to commit or pre-empt the commission of graft and corruption.

In order to operate effectively and having been commissioned to perform the roles and functions for the entire government force throughout the country, the Office of the Ombudsman has been divided into sectors based on strategic and functional geographical settings. Thus, the Office of the Ombudsman is

fragmented into six sectoral offices, namely, the Ombudsman Central Office, the Office of the Ombudsman for Luzon, The Office of the Ombudsman for the Visayas, The Office of the Ombudsman for Mindanao, The Office of the Special Prosecutor, and the Office of the Ombudsman for the Military and Other Law Enforcement Offices. Each of these specific offices perform the roles and functions that are detailed by the constitution and as reinforced in the Office of the Ombudsman's founding law, with the exception of the Office of the Special Prosecutor which is a specialized body composed by Prosecutors who appear in the anti-graft court in representation of the government and its interests. A simple organizational structure of the Office of the Ombudsman is presented below:

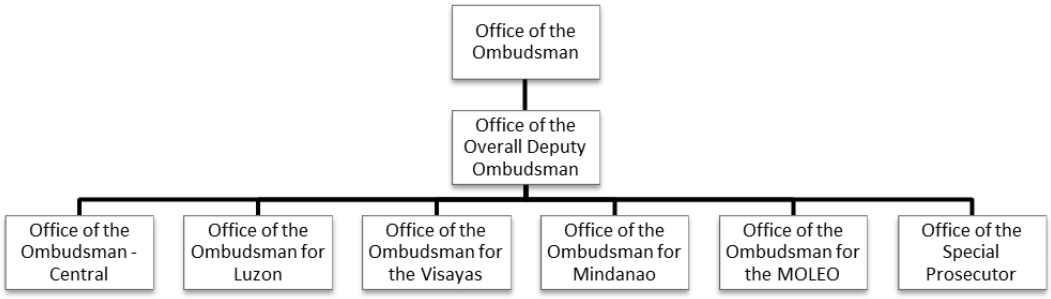

Figure 2.4 Organizational Structure of the Office of the Ombudsman

2.4.1 The Office of the Ombudsman for the Military and Other Law Enforcement Offices

The Office of the Ombudsman is charged with monumental tasks that have been generally categorized into investigatory power, prosecutorial power, authority to inquire and obtain information, public assistance, and the function to implement, institute and adopt preventive measures. 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, thus, in the words of Commissioner Ople:[1]

> "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 of 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

[1] Blas F. Ople was a member of the Constitutional Commission (Con Com) that drafted the 1987 Philippine Constitution.

> 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 of the 1987 Philippine Constitution which reads as 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 organizational structure of the Office of the Ombudsman for the Military and Other Law Enforcement Offices is presented below:

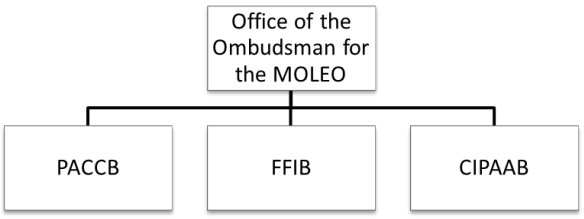

Figure 2.4.1 Organizational Structure of the Office of the Ombudsman - MOLEO

2.4.2 Administrative Adjudication

To better understand the terms and processes discussed in this research, let us begin with the basics. As a citizen of the Philippines, two liabilities attach for the commission or omission of any act affecting the rights, liberties and properties of people whether natural or juridical. These are the criminal and civil liabilities. As provided for under Article 100 of the Philippine Revised Penal Code, every person criminally liable for a felony is also civilly liable. Criminal liabilities arise from violations of the Revised Penal Code and Special Penal Laws – Acts enacted by the Philippine Legislature that punishes offenses or omissions, while civil liabilities arise from violations of the Civil Code of the Philippines.

For public officers or those that work for any of the government's institutions, another liability attaches. This liability is known as administrative liability. The allowance for an administrative liability is in consonance with the constitutional directive that a public official is reposed with public trust and accordingly, that they are obligated to be answerable to the people constantly. This 3-fold liability, i.e. criminal, civil, and administrative, is one of the peculiar characteristics of holding a public office.

A public officer's administrative liabilities are defined by and treated under Republic Act No. 6713 or otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees. Moreover, the Civil Service Commission, as a body constitutionally mandated to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the Philippine Civil Service, promulgated the Revised Rules on Administrative Cases in the Civil

Service on November 18, 2011. The Code of Conduct and the Revised Rules on Administrative Cases are the primary tools employed by the Office of the Ombudsman in the discharge of its Administrative Adjudicatory function.

Likewise, the administrative adjudicatory function of the Office of the Ombudsman is evident under Section 19 of RA 6713, which states that the Ombudsman shall act on any administrative complaint 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;
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.

In the adjudication of administrative cases, it is worthy to note that in these proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is a reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct. Be it noted that in finding for the presence of substantial evidence, there is neither a hard and fast rule nor a quantitative regulation in determining the degree or extent of evidence substantial enough to

produce an appropriate pronouncement. The determination of the manifestation and existence of substantial evidence rests solely at the discretion and sound judgment of the deciding body.

As a deciding body, the OMB-MOLEO has a total of 20 Graft Investigation and Prosecution Officers (GIPOs). The GIPOs are the OMB-MOLEO's functional arm in the conduct of its Administrative Adjudication function. As well, the GIPOs are performing their functions under the Criminal Investigation, Prosecution and Administrative Adjudication Bureau (CIPAAB).

The process of administrative adjudication in the OMB-MOLEO commences when a written complaint is filed against an officer of any of the government agencies and offices under the OMB-MOLEO's jurisdiction. The complaint must be sufficient in form – should be subscribed and sworn to before any person authorized to administer oath and must contain a Certificate Against Forum Shopping – for it to be assigned a case docket number, otherwise, the complaint is forwarded to the Fact-Finding and Investigation Bureau (FFIB) of the OMB-MOLEO so that the necessary arrangements could be prepared or that certain defects in the complaint may perhaps be settled. When the complaint has been assigned a case docket number, the complaint now formally becomes an "Ombudsman case" such that the details in the complaint, i.e. the names of the complainant (the person complaining) and the respondent (the person being complained of), the offense charged, the office and designation of the respondent, and the case docket number, are entered into the office database. As an Ombudsman case, the same is assigned to a handling lawyer, the GIPO, through a

process called “raffle.” The raffling of cases is as literal as the term can be. A GIPO cannot choose to handle a specific case, nor can a GIPO inhibit himself from handling a case, save for the exceptional circumstances of filial affiliation or personal association with any of the parties to the controversy.

Once a case has been raffled and delegated, the handling lawyer assigned to the case issues an Order for the respondent to file his counter-affidavit and the statements of his witnesses, if there be any, within the reglementary period as provided for by the rules. The Order further instructs the respondent to furnish the complainant of a copy of his counter-affidavit. At the election of the complainant, he may file his reply to the respondent’s counter-affidavit and the respondent is also not precluded from filing his rejoinder to the complainant’s reply should he wish to do so. These documents – the counter-affidavit, reply, and rejoinder – are also called collectively known as pleadings.

After the pleadings have been received, the handling lawyer once again issues an Order for the parties to file their respective Verified Position Papers. The position papers are required for the disposition of every administrative case in the OMB-MOLEO and the Office of the Ombudsman as a whole. The receipts by the handling lawyer of the position papers indicate that the case is already ‘ripe’ for decision.

Collating all the pleadings, the GIPO must now prepare a draft of the Decision. A Decision is the pronouncement issued in every administrative case. All Decisions must contain a recital of the facts, the parties’ arguments and defenses, a statement of the issue or issues involved, and finally, the decision. If a

GIPO finds that the allegations in the complaint together with its accompanying pieces of evidence is not substantial enough to procure a pronouncement of culpability, then the case is dismissed. However, once the GIPO determines that the allegations in the complaint, as against the defenses in the counter-affidavit, are supported by substantial evidence, then the respondent would be held guilty of the administrative offense charged and would therefore be meted with the appropriate penalty. The draft Decision has to be approved by higher authorities, and once concurred to and approved by the latter, a copy of the Decision is issued to the parties to the case. If a Decision is issued penalizing the respondent for the commission of an administrative offense, another copy of that Decision is issued to the implementing office or the agency where the respondent works under, for proper disposition and compliance.

The process of administrative adjudication could best be expressed through the figure below:

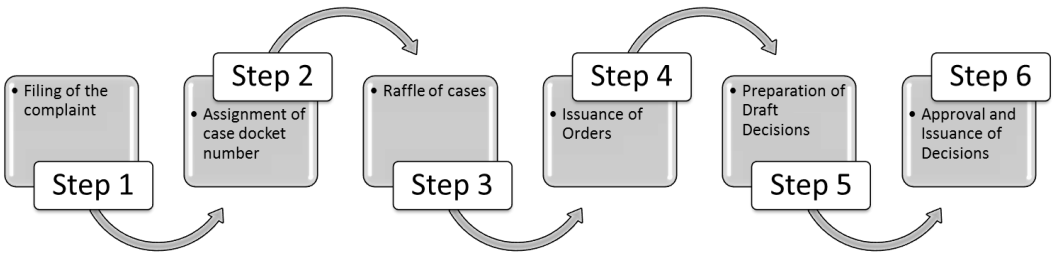

Figure 2.4.2 The process of Administrative Adjudication

2.4.3 Jurisdiction of the OMB-MOLEO

Ombudsman Memorandum Circular No. 02-03 issued on October 29, 2003, clarifies the scope of the OMB-MOLEO's jurisdiction. Under MC No. 02-03, officers and employees of the following government agencies and offices are under the jurisdiction of the OMB-MOLEO:

- Armed Forces of the Philippines (AFP) and its service units;
- Philippine National Police (PNP);
- Bureau of Fire Protection (BFP);
- Bureau of Jail Management and Penology (BJMP);
- Bureau of Corrections;
- Philippine Coast Guard; and
- All civilian employees of the above agencies

In addition to the above enumeration, the following officers and personnel who hold offices within the National Capital Region and Luzon shall likewise be under the jurisdiction of OMB-MOLEO:

1. Port and Airport Police;
2. Traffic enforcers (and other personnel with the same function) of the Department of Public Safety and Traffic Management (DPSTM) and other similar traffic offices of cities and municipalities;
3. Officials and employees of the National Police Commission (NAPOLCOM);
4. Custom Police/Customs Investigation Intelligence Service (CIIS);
5. Officers and personnel of City or Municipal jails;
6. Land Transportation Office (LTO) "Flying Squad";
7. Immigration Officers, Intelligence Officers/Agents/Aides, Investigation Agents, and Law Enforcement Evaluation Officers of the Bureau of Immigration and Deportation (BID); and

8. All other uniformed officers and personnel detailed at civilian offices.

Finally, OMB-MOLEO shall have jurisdiction over Metro Manila Development Authority (MMDA) Traffic Enforcers.

As can be noted from the above enumeration, the OMB-MOLEO exercises jurisdiction on all military and law enforcement officers irrespective of their location, where they are situated, or their area of assignment. This jurisdiction includes the seven thousand one hundred and seven islands of the Philippine Archipelago.

2.5 The Concurrence of Jurisdiction in Administrative Adjudication

Concurrence means equal jurisdiction to deal with the same subject matter. Jurisdiction, as used in this study, simply means the authority to hear and decide cases. The doctrine then of concurrence of jurisdiction means that two or more administrative adjudicating bodies have the ability to hear and decide administrative cases evenly or in equal footing. This does not mean however, that the adjudication of a single administrative case may be proceeded to at the same time by different adjudicating bodies. To contain this very wide exercise of administrative power, the Philippine Supreme Court has settled the rule that in the concurrence of jurisdiction in administrative adjudication, the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others. Otherwise stated, when a complaint is lodged before any one of the agencies concerned in administrative adjudication, the same complaint may not anymore be filed with the other agencies exercising concurrent jurisdiction.

Having settled that the OMB-MOLEO conducts administrative adjudication on cases against the officials and personnel of law enforcement offices that fall under its jurisdiction, it is a key feature to declare as well that the military and other law enforcement offices have their own adjudicating bodies established within and functions in the confines of their offices. The adjudicating bodies of these law enforcement offices maintain concurrent jurisdiction with the OMB-MOLEO. For instance, the Philippine National Police (PNP) has an administrative adjudicatory body known as the Internal Affairs Service (PNP-IAS). The PNP-IAS carries out its administrative adjudicatory function by virtue of Memorandum Circular No. 2007-001 or more popularly known as the 2007 PNP Disciplinary Rules of Procedure. Explicitly, MC No. 2007-001 acknowledges the OMB-MOLEO and PNP-IAS' concurrence of jurisdiction on administrative cases, thus on Section 3:

> "SEC. 3. Prohibition against Forum Shopping or Multiple Filing of Complaints. – To avoid multiplicity of cases for the same cause of action, the complainant shall certify under oath in his pleading, or in a sworn certification annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertaking:
>
> a. That the complainant has not filed or commenced any complaint involving the same cause of action in any other disciplinary authority, IAS or *Office of the Ombudsman*;
> b. That to the best of the complainant's knowledge, no such complaint is pending before any other disciplinary authority, IAS or *Office of the Ombudsman*;

c. That if there is any such complaint which is either pending or may have been terminated, the complainant must state the status thereof; and
d. That if the complainant shall thereafter learn that a similar action or proceeding has been filed or is pending before any other police disciplinary authority, IAS or *Office of the Ombudsman*, the complainant must report such fact within five days from knowledge." (Emphasis supplied)

But then again, it has been noted, even so by previous Philippine Ombudsmen, that with this type of system, the investigation of the errant actions of public officials has time and again taken such a long time to be resolved that the public's attention, involvement, and awareness vanishes over time and the cases are consequently reduce in importance so they turn out to be extraneous and trivial to the life of people (Marcelo, 2004). Moreover, critics view this concurrence of jurisdiction as having the attributes of redundancy, since by now, the line agencies have prevailing procedures and processes that regulate and control the qualification of persons to hold public office; and these prevailing processes are in accord with the policies and rules of the Civil Service Commission (Roque, 2010). With these thrusts come the issues on uniformity and workability of the decisions made on administrative cases.

The disapproving notions on the concurrence in jurisdiction by critics and bureaucrats alike, greatly deviate from the widely accepted wisdom that maladministration and corruption have the biggest impact on the quality of administration, and that an indifferent attitude in areas that concern people in their

day to day affairs results in non-delivery of public services and mediocre quality of decisions (Jha, n.d.). To this end, there is a need to look into the competency of the collective efforts of the OMB-MOLEO and the other administrative adjudicating tribunals and determine the effectiveness of the regulations defining their relationship.

Please refer to the figure below for an illustration of the concurrence in jurisdiction:

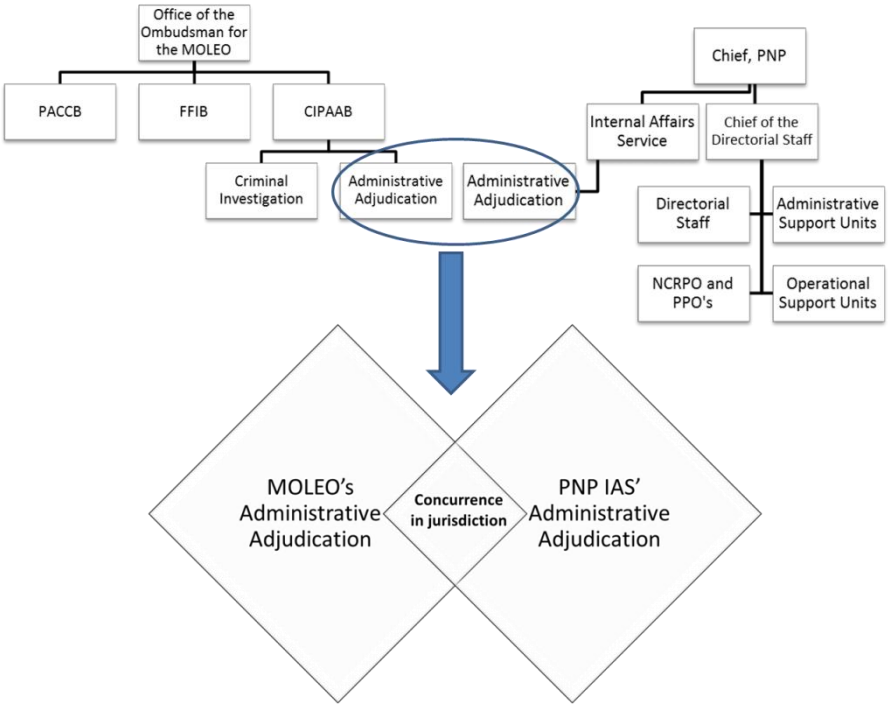

Figure 2.5 Concurrence in jurisdiction in the adjudication of administrative cases

2.5 Administrative Cases in the OMB-MOLEO, a status

Culled from the Annual Report of the OMB-MOLEO for the year 2012, a total of 922 administrative cases have been received for that calendar year. This

922 figure, when added to the previous year's (2011) 1,486 pending cases or those administrative cases that have still to be decided, add up to a total of 2,408 pendent administrative cases. For that same year, however, the GIPOs of CIPAAB has adjudicated a total of 1,266 administrative cases. This leaves a total of 1,182 administrative cases undecided as of the end of the year 2012. Please refer to the snapshots of OMB-MOLEO's 2012 Annual Report below:

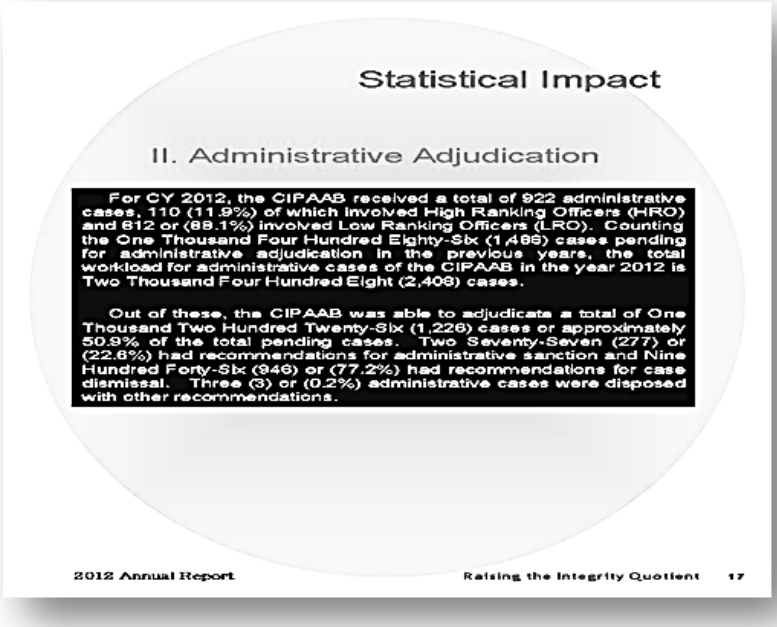

Figure 2.5.a Adminsitrative Adjudication in the OMB-MOLEO

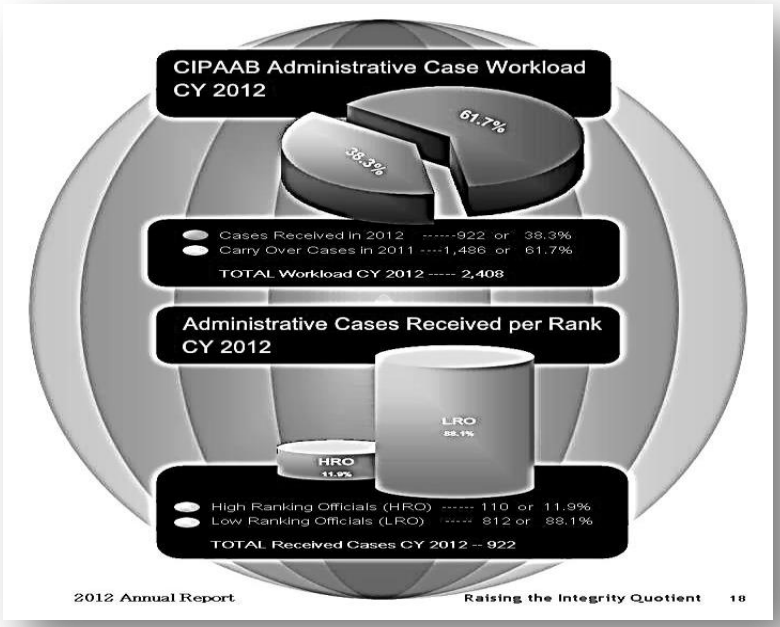

Figure 2.5.b CIPAAB Administrative Case Workload for CY 2012

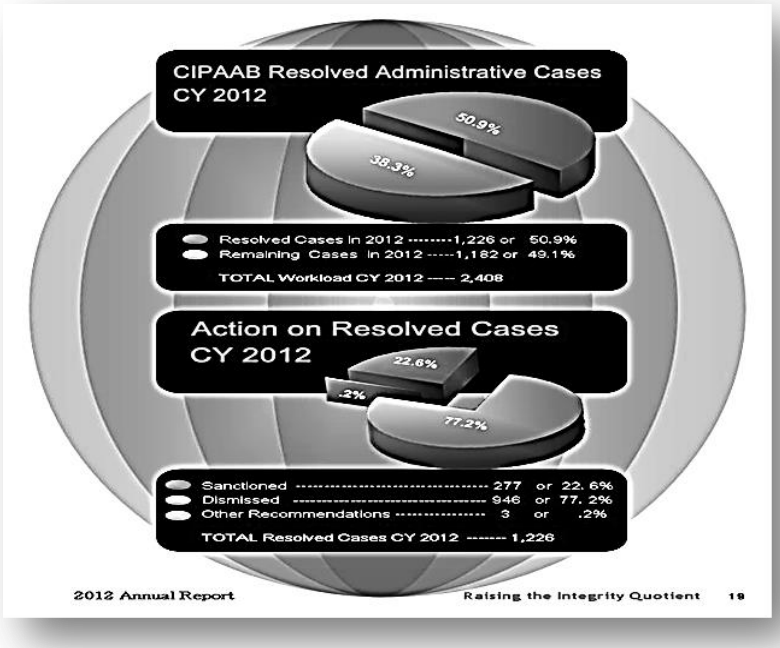

Figure 2.5.c Resolved Administrative Cases for CY 2012

2.6 Summary

The Office of the Ombudsman is the main governmental agency that fights corruption in public services. Its jurisdiction to investigate graft and corrupt practices is conferred by law and one of its primordial functions is the adjudication of administrative cases. The Office of the Ombudsman for the Military and Other Law Enforcement Offices is one of the five sectoral offices upon which the Office of the Ombudsman is subdivided into. In line with the onus of OMB-MOLEO as an administrative disciplinary body, concurrent jurisdiction over administrative cases is shared with other administrative adjudicatory entities of the offices functioning under its clout of authority.

CHAPTER 3

RESEARCH METHODOLOGY

3.1 Research Questions and Objectives

The specific research methodology employed in a study is primarily based on the physiognomies of the research question or research objective. The particular approach to be used in any branch of interpretative inquiry varies with the desired end product (Stern P. , 1992). As the guiding instrument in the conduct of this thesis and in order for this study to focus on the issues of greatest concern, the navigational research question was: what are the hallmarks influencing the jurisdictional dynamics between the OMB-MOLEO and the other administrative adjudicatory bodies in the adjudication of administrative cases? To this end, the general objectives were:

- To characterize the state of OMB-MOLEO's administrative adjudicatory functions.
- To describe the goals and objectives of the tribunals exercising concurrent jurisdiction in the adjudication of administrative cases.
- To identify vital issues concerning the decisions rendered or adjudications issued and delivered by the OMB-MOLEO on administrative cases under concurrent jurisdiction.
- To define and establish desirable policy amendments or modifications that would be essential for the OMB-MOLEO to enhance the effective dispensation of administrative decisions.

The research question and objectives were derived from the researcher's own familiarity, experience, knowledge, and involvement in the adjudication of

administrative cases. As a Graft Investigation and Prosecution Officer functioning under the Office of the Ombudsman for the Military and Other Law Enforcement Agencies, the researcher had ready access to data and materials, and the means to collaborate customarily with other GIPOs of the OMB-MOLEO. The researcher's personal experience within the sector has encouraged him to contribute to the generation and dissemination of ideas to other GIPOs within the OMB-MOLEO and to the Office of the Ombudsman in general.

As it would appear, and so as the public perceives, delays in the issuance of decisions in administrative cases and the redundancy in the exercise of jurisdiction have become the more common issues faced by GIPOs of OMB-MOLEO. Even though these issues are commonplace, there is no general construction about how the delay and redundancy issues were understood or what these concerns meant to those handling administrative cases. The researcher believes that the ways in which the GIPOs comprehend their specialized circumstances and conditions can be described and conceptualized through a grounded theory. As the theory would frame the conceptual elements that are tapped from the common perceptions, insights or acuities of the GIPOs of the OMB-MOLEO, such a theory would be of benefit to the Office of the Ombudsman.

Inquiries into the concurrence of jurisdiction in administrative cases involving the Office of the Ombudsman and other adjudicatory bodies have been extremely limited. An extensive literature base or theoretical framework regarding the concurrence of jurisdiction in administrative cases involving the Office of the

Ombudsman and other adjudicatory bodies does not exist. Grounded theory is an appropriate methodology for this study because it permits for the composition of theory in this grey area where a limited number of scholarly works exists from which to derive any bearing. What this lack of research suggests is that a sizeable scale of domains needs further exploration.

As has been perceived by political critics and observers, the hulking matters of delay in the issuance of Decisions and redundancy in jurisdiction remain unaddressed. Resolving these points at issue would necessitate one to be au fait with the disciplines covered by the literature and probing on the subjects would proceed beyond the impelling causes for the GIPOs to issue the decisions they have authored. The limited number of specific resources available validates the dearth of a literature base for the concurrence of jurisdiction in administrative adjudications by the OMB-MOLEO. Thus, it is an ideal approach to generate a theory on the concurrence of jurisdiction in administrative adjudications through a grounded theory inquiry. With this theory, this study aims to augment the body of knowledge in the matter of concurrence of jurisdiction in the adjudication of administrative cases in the Office of the Ombudsman for the MOLEO.

3.2 The Grounding of Theory in This Study

To better understand the social process (Bartell, 1995) affecting the decisions issued by the OMB-MOLEO in the adjudication of administrative cases, the grounding of theory should be tailored to the definition of the problem or research concentration, the process of the study with regard to data collection and

analysis, the researcher's role, and the research outcome and conclusions. Each of these four areas had a specific contribution to make in this research. The nexus between these research areas is presented in the following sections.

3.3 Concentration of the Study

An investigation into the factors affecting the GIPOs' decisions in the adjudication of administrative cases with particular emphasis on the concurrence of jurisdiction could best be conducted through grounded theory. Grounded theory offers an appropriate avenue to know how the GIPOs of the OMB-MOELO comprehend the realm of shared jurisdiction, and how they attune themselves in the sphere of administrative adjudication.

Strikingly, the researches and academic studies conducted that touches upon the Office of the Ombudsman emphasize on numerical assessments, empirical investigations that include case studies and surveys, the citation of legal precedents, comparative studies, and an assortment of other quantitative approaches. The main considerations of this body of literature are:

- corruption and anti-corruption measures (e.g. Bardhan, 1997; Moran, 1999; Quah, 1997; Villaroman, 2010; Angeles, 1999; Martinez, 2004; Batalla, 2001; Moratalla, 2000; Guerrero, 1987; Bhargava, 1999; Education, 2005; Mayo-Anda, 2010; Bolongaita, 2010; Nocos, 2010),
- ethics (e.g. Gilman & Lewis, 1996; Gonzales, 2011; Rodriguez, 1991),
- strengthening measures (e.g. Carmona, 2011),
- accountability (e.g. Carmona, 2001; Carmona, Brillantes & Tiu Sonco, 2012);
- performance measures (e.g. Marin & Jones, 2011; Pangalangan, 2007),

- human rights (e.g. Rief, 2004),
- comparative studies with Ombudsman institutions from other countries (e.g. Bolongaita, 2010; Quah, 2009; Quah, 2004; Quah, 2003).

These research concentrations are likely to be expected and relatively unsurprising since they form the groundwork of common concerns identified by decision makers or international organizations. Grounded theory offers an opportunity for a research that varies and steers past the expression of these issues and affairs in empirical ways. What is apparent from the previous research or academic studies conducted concerning the Office of the Ombudsman is that these studies concentrate on the panoramic characteristics of the Office of the Ombudsman. None of these studies have been directed on the intramural processes and activities of the Office of the Ombudsman, particularly those that involve the conduct of one of the corruption prevention measures, i.e. administrative adjudication. While it is true that the studies which put figures on performance measures and the papers that gauge the results of counter-corruption measures are indispensable, it is also worth noting that an exploration on the mechanisms that bring about these results should not to be neglected. The technicalities involved in the operations of the Office of the Ombudsman are as much important and needs to be probed.

In this light, grounded theory bids a very different research perspective and approach to the circumstances and conditions that are conventional and relatable to those performing authoritative and decisive functions such as in the adjudication of administrative cases.

3.4 The Process of the Study and the Researcher's Role

In grounded theory, the researcher can be regarded as an adjuvant, such that the researcher facilitates – thereby affecting – the research process and he himself is induced or affected by the interactions, exchanges, and associations proceeding from the research (Seel, 2006). Compared to some branches of interpretative research, the researcher acts more of a catalyst where "the researcher manipulates the circumstances, affects changes and then withdraws unchanged at the completion of the procedures" (Bartell, 1995). The social, organizational or psychological processes that are fundamental to social life are pursued by a grounded theory researcher in his role as an adjuvant (Charmaz, 1994). Intrinsically, the detection or observance of these fundamental social processes precipitates concerns about the naivety of researchers untrained in the facets of sociology (Piantanida, Tannis, & Grubs, 2004). Then again, Charmaz (1994) clinches these impressions by asserting that the processes being observed hinge on the researcher's trainings and interests. In essence, this denotes that the processes taking place at the socio-organizational level are viewed through the enlightening aperture of the researcher's training and research interests.

The execution and realization of the research process was guided by the researcher's day-to-day work, along with his involvement in the interviews and conversations throughout the progression of this research. The process also outstretched his knowledge and enriched his scholarly background as a researcher and as a GIPO in the OMB-MOLEO. The detection and identification of coherent categories and the carving of the emergent grounded theory by sculpting the

articulations and observations of the participants was made feasible by the researcher's background and awareness. Ultimately, submitting himself as a collaborator in this study heightened the researcher's own stance on how GIPOs discharge their duties and functions.

Considering that the dynamics of the phenomena being investigated and the research process itself are encountered concomitantly (Bartell, 1995), grounded theory's framework of continuous and simultaneous collecting, coding, and analysis espouses an across-the-board experience for the researcher. Both qualitative and quantitative methods of data gathering have been employed in this research. It was ensured however, that in the use of both methods, the focus was on the process rather than the unit (Bartell, 1995).

3.5 Data Sources

Data emanated from a number of sources during the research. The primary sources of data are constrained to the accounts and narratives in the focused interviews with GIPOs and the additional interviews conducted validating the saturation of theoretical conceptualizations. Certain fragments of ambiguity in the data collected from the focused interviews are elucidated by the secondary sources of data. The materials and information obtained from these sources aided and abetted the molding of the theoretical categories and warranted the criteria for a quality grounded theory.

In conducting grounded theory research as intended by Glaser and Strauss (1967), the researcher develops and blends into the conditions and contexts of the

study. This purports that in grounded theory, the researcher is duty-bound to be completely submersed in the area of inquiry. The development of a dynamic theory as well as theoretical concreteness springs from this submersion.

3.5.1 The Primary Data Sources

The information collected as primary data for the research were sourced from the following:

- Five profound and extensive focused interviews of key informants. These interviews were conducted with Graft Investigation and Prosecution Officers who are working for the OMB-MOLEO. Each interview began with general leading queries that were marginally reformed throughout the length and breadth of the research as concepts and categories started to come together. To permit for the spontaneity of discussion and an unhampered flow of ideas related to the concurrence of jurisdiction in administrative adjudications, the interview process departed from the stringency of a conventional structured interview procedure.
- To clarify any of the statements disclosed by the participants, follow-up calls with a combination of correspondences through email and social media instant messaging were used as needed.

3.5.2 The Secondary Data Sources

The secondary sources of data facilitated the formation of the theoretical categories through inductive and deductive ratiocination. These facts and particulars were gathered in the form of commentaries, appraisals, assessments, and discussions on the incipient theoretical categories. The data from these sources helped validate the theory formulated in this study. The secondary sources include:

- Formal and informal discussions with Investigators and other staff not only of the OMB-MOLEO, but of the whole Office of the Ombudsman.
- Observations of OMB-MOLEO staff and officials.

3.5.3 Focused Informant Interviews

Focused informant interviews were conducted with five senior Graft Investigation and Prosecution Officers. The selection of the key informants was guided by their familiarity with the processes and procedures in conducting adjudicatory work in administrative cases. The interviews and follow-up discussions were conducted over a two-month period starting on October of the year 2013. Allowing for geographical constraints, the interviews were conducted via Voice over IP (VoIP) or what is more commonly known as Internet Telephony. One interview was conducted over Skype, two on Facetime, and two via Viber. The dialogues were scheduled at the convenience of the interviewees, as such, one interview was accomplished after regular office hours (8:00 p.m.) on

a weekday, while the rest were carried out over the weekends, in sets of two and a week apart. Each of the interviews lasted for approximately 1.5 hours. Three separate supplemental discussions were rendered a week after the end of the initial interviews. These discussions were made through email correspondence as well as Facebook instant messages and Facetime calls.

The interviews were conducted in the language where the informants were most comfortable with, English and Filipino. The interviews started with an overview of what the study is about and what it aims to accomplish. The informants were then asked about their views, comments and experiences on the issue of concurrence of jurisdiction in the adjudication of administrative cases. This was a question broad enough for the informants to freely voice their thoughts and concerns while at the same time, limited enough to align their views and ideas to the details necessary for the research. The informants were given wide latitudes for free expression, the researcher interjecting a few probing questions only to keep the informants' responses on course. Notes of the interviews were logged and recorded to preserve the information. These notes form the basis for coding the data.

3.6 The Coding Process

The coding process involves the uncovering of concepts, pure and simple. The process of coding entailed an examination of the data and the drawing together of their similarities and semblances (Glaser & Strauss, 1967). As an iterative process, the coding and sorting of the data collected persisted all the way

through the course of the study. Essential to the process of grouping, categorizing, and coding of the data is a process called "memoing." Researchers in grounded theory should be able to interact contemplatively with the data. As such, Glaser (1978) accentuates the memoing process to buttress the inventive relationship between the researcher and the data:

> "The *core stage* in the process of generating theory, the bedrock of theory generation, and its true product is the writing of theoretical memos… *Memos are the theorizing write-up of ideas about codes and their relationships as they strike the analyst whilst coding…* Memo-writing continually captures the 'frontier of the analyst's thinking…" (p.83, emphasis in original)

Strauss and Corbin (1998) similarly underscored the significance and implication of the researcher's judgment in this iterative method:

> "We want readers to understand what we say, to understand why we are using certain activities, and to do so flexibly and creatively. We want them to question, to be able to easily move from what they see and hear and to raise that to the level of the abstract, and then turn around again and move back to the data level. We want them to learn to think comparatively and in terms of properties and dimensions, so that they can easily see what is the same and what is different. The importance of methodology is that it provides a

sense of *vision, where it is that the analyst wants to go with the research.*" (p.8, emphasis in original)

The rationale behind the employment of a focused interview process, as discussed by Merton & Kendall (1946), in the interviews conducted with the senior Graft Investigation and Prosecution Officers is the consideration for suitability and germaneness. Focused interviews contend with individuals who have participated, have been involved, and have actual experiences in a given situation or area. For this study, this signified that the selection of the GIPOs, whose responsibilities include the dispensation of administrative cases, was based on their firsthand and actual experience with the operational aspects of administrative adjudication. Also, the focused interview questions developed and have materialized from the circumstances that were considered prior to the interview. Taking into account the fact that the researcher has access to information that could influence the interview process, given the researcher's experience and functions as a member of OMB-MOLEO's administrative adjudicatory bureau, a reflection was had with the demand of grounded theory that the researcher's judgments and forethoughts ought to be deferred. It would also appear evident that for the GIPOs to consent to the interviews, the subject should be one that they themselves perceive as significant and valuable. For this reason, specific questions based on the operational areas of the OMB-MOLEO were avoided and broad areas for discussion were established instead. Broadening the areas for discussion allowed the interview to be focused and unrestricted. It is

focused since the subject of the inquiry had been ascertained and unrestricted since the participant can propound a wide range of commentaries and ideas. Further, an interview guide is used for the proceedings in the focused interview. The interviews radiated open-ended questions which urged the participants to completely explain their perspectives. Moreover, the involvements, mindsets, and sentiments of the participants are sought to be tapped in a focused interview. For this study, the research had taken advantage of the wealth of the participants' experiences.

What differentiates a focused interview from a more structured form of interview is the autonomy of the thought generating process. As a research method, grounded theory could be imperiled by an excessively scripted questioning. In the words of Glaser (2001):

> "this format for interview would stifle theoretical sampling and stop it dead in its tracks… especially with uniform coverage".

In a structured interview, the same set of questions is asked for every participant and like a scriptwriter, the interviewer directs the pace of the interview. Additionally, the interviewer never interjects his comments to the responses being articulated by the participants (Glaser B. , 2001). This is the foremost reason that a less structured interview style has been adopted.

The coding process is illustrated by the figure below:

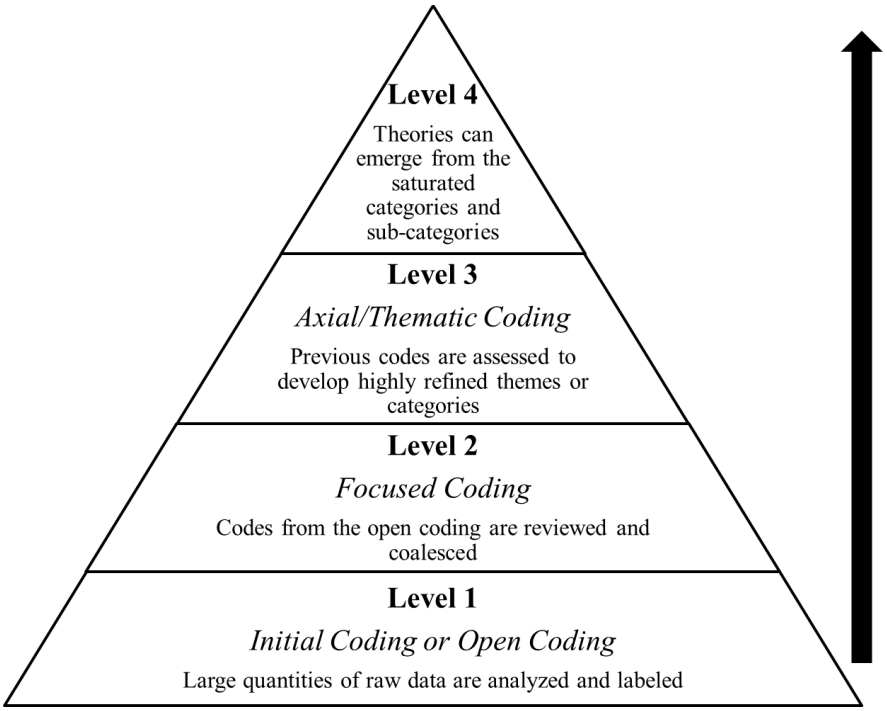

Figure 3.6 The Coding Process

3.7 Grounded Theory, a Discussion

Glaser and Strauss (1967) conceptualized grounded theory as a method to generate a theory from qualitative data. These data are accumulated by way of collecting information from people or groups of people who are involved with the social occurrence being studied. This being the case, there should be no differences of opinion about the term 'theory' in the method of grounding a theory as Weiner (1990) may have observed. As McNabb (2002) had succinctly stated:

> "The primary objective of grounded theory research is to *develop* theory out of the information gathered" (p.302, emphasis in the original).

The result or end-product of using the methodology is denoted as the 'grounded theory'. Grounded theory, when it was first intellectualized, was proposed as a study or a theory of the quality and foundations of knowledge in connection with the parameters and soundness of information grounded in the personal and distinctive events, incidents, and occurrences of everyday life. The procedures and methodology that have been established in grounded theory,

> "…are now among the most influential and widely used modes of carrying out qualitative research when generating theory is the researcher's principal aim. This mode of qualitative study has spread from its original use by sociologists to the other social sciences and to practitioner fields, including at least accounting, business management, education, nursing, public health, and social work." (Strauss & Corbin , 1997, p. vii)

Grounded theory is indicative of three processes or attributes, specifically, the modes of induction, deduction, and verification. The mode of induction implies that the researcher ventures into the research from square one. Building the research from scratch, the researcher must detach himself from his prejudices and biases. For the theory to develop from the gathered information, the

researcher is compelled to be impartial and adaptable (McCann & Clark, 2003). The effectiveness of grounded theory as a method is dependent on the degree precedence rendered to the data. The primacy of the integrity and significance of data is particularly triggered by the researcher's submersion in the area of investigation. Such deep-seated involvement leads to a conceptual density and 'thick description' of categories being constructed on the way towards generating a grounded theory (Seel, 2006). The saturation in data, to the extent that the data being collected no longer generates new concepts, marks the verification stage of the categories and concepts that are being fostered. The mode of deduction permits the deductive cross-examination of forecasts or extrapolations that may have surfaced during the course of the research against the resulting theory.

Grounded theory as a research method is, of course, not without any barriers or flaws. Founded from the initial work of Glaser and Strauss, there are two leading impediments to the use of grounded theory. To begin with, since the year 1967, Glaser and Strauss, in collaboration with Corbin, have taken different paths to explain what was meant in the first articulation of the approach (Seel, 2006). Secondly, there is a prevalence of technical doctrines and principles on how grounded theory is supposed to be performed (Piantanida, Tannis, & Grubs, 2004, p. 329). The fragmentation of the approaches to grounded theory, be it in accordance to Glaser (1978, 1992, 1994, 1998, 2001, 2002) or to Strauss & Corbin (1994, 1997, 1998), was recognized by Charmaz (2000) in her work which précised several studies asserting to be either 'Glaserian' or 'Straussian.'

Despite this complexity, however, neither Glaser nor Strauss & Corbin suppressed the idea that the procedures used in grounded theory are flexible, adaptable, and irresolute. In fact, both schools of thought underscore the solemnity of methodological flexibility. According to Glaser and Strauss (1967, pp. 8-9):

> "Our principal aim is to stimulate other theorists to codify and publish their *own* methods for generating theory… In our own attempt to discuss methods and processes for discovering grounded theory, we shall, for the most part, keep the discussion open-minded, to stimulate rather than freeze thinking about the topic."

The fundamental principle of flexibility was once more upheld by Strauss and Corbin (1998, p. xi):

> "This is *not* a recipe book to be applied to research in a step-by-step fashion. Our intent is to provide a set of useful tools for analyzing qualitative data. We hope that… readers will come to realize the fluid and flexible approach to data analysis provided by this method." (emphasis in original)

The crux of grounded theory, as stated by Charmaz (2000), steered the direction of this research:

> "The rigor of grounded theory approaches offers qualitative researchers a set of clear guidelines from which to build

> explanatory frameworks that specify relationships among concepts. Grounded theory methods do not detail data collection techniques; they move each step of the analytic process toward the development, refinement, and interrelation of concepts. The strategies of grounded theory include (a) simultaneous collection and analysis of data, (b) a two-step data coding process, (c) comparative methods, (d) memo writing aimed at the construction of conceptual analyses, (e) sampling to refine the researcher's emerging theoretical ideas, and (f) integration of the theoretical framework." (pp.510-511).

3.7.1 The Interpretive Method in Grounded Theory

The interaction of social responsibilities and demeanors among individuals – or symbolic interactionism (Blumer, 1969) – is brought into play in the grounding of theory. It is a symbolic or figurative interaction since the processes involved the use languages, interpretations, words and symbols (Denzin, 1989). These symbols are assimilated and streamlined into ideas, notions, and philosophies as communities of people associate and mingle with each another (Stern P. , 1992). Symbolic interactionism, being one of the many branches of interpretive research, strives to extract and decipher the manner in which meaning is drawn from social situations (Stern, 1994; Schwandt, 1994). Grounded theory postulates that 'people make sense of and order their social world even though, to the outsider, their world may appear irrational' (McCann & Clark, 2003, p. 8).

That is to say, it is imperative for the researcher to be skilled in bringing a receptive consciousness to the eccentricities and peculiarities of the different personalities and conditions that may be encountered for him to effectively theorize.

A researcher's responsiveness to a given social stimuli could be regarded as a significant influence of grounded theory on account of the fact that the theory cannot exist without the models conceptualized from the gathered data (Glaser & Strauss, 1967). Charmaz (2000), in her explication of grounded theory as a process, imparts researchers with a methodical stratagem for the formation of concepts from the data, to defining the links among these concepts, and followed by the drawing of a theory grounded from these concepts. As Piantanida, Tananis & Grubs (2004, p. 335) have succinctly noted:

> "It is the researcher's portrayals of these conceptual relationships that constitute a grounded theory… such grounded theories are recognized to be investigative or exploratory in nature, not predictive."

In essence, the situational and circumstantial gradations in a study that employs grounded theory are construed by the researcher harmoniously with the perception of other people.

3.7.2 Quality of the Grounded Theory

According to Glaser & Strauss (1967), the quality of a theory that had been grounded from data can be weighed by measuring the resultant theory against the benchmarks of fit, work, relevance, and modifiability. The concepts in each of these benchmarks are detailed as follows:

- *Fit* – the benchmark of 'fit' aims for the surfacing of theoretical categories from the data, in contrast to the categories being chosen from a predetermined academic view.
- *Work* – the concept of "work' intends that the sprouting theory is expected to be capable of explaining, predicting, and interpreting the phenomenon being researched.
- *Relevance* – the notion of 'relevance' seeks to render the bearing and applicability of the incipient theory to the hustles and bustles of the area being studied, with a concentration on the underlying plights and activities.
- *Modifiability* – the idea of 'modifiability' connotes the malleability or pliability of the engendered theory. The emerging theory could shift as additional information materializes.

These benchmarks are intended to be of the same epistemological degree by Glaser and Strauss. However, some authors argue that the benchmark of *fit* is paramount to the other three (Lomborg & Kirkevold, 2003, p. 191).

In the employment of grounded theory as a research methodology, it is suggested that a significant expanse of consideration should be afforded to the focus of the inquiry, the issues, and the outcome of the study (Annells, 1997). Further, Annells (1997) advocates the researcher's reflection on the notions of

reality, certainty, and legitimacy, not only in the research process, but also, of the theory that develops.

Enthused by the tenets of social constructivism, grounded theory can be perceived in either a postmodernist or poststructuralist point of view. The contemplation on the concepts of reality, truth, and validity can be commenced with an appraisal of the canons of social constructivism. Social constructivism, as it stands, has arisen from and remains influenced, by several ideologies. As such, to provide a specific description of social constructivism remains a challenge. One of the many prominent ideologies about social constructivism is that of Schwandt (2000). According to him, social constructivism is a scale of ranges amongst the outlooks that are tough or extreme and fragile or modest. Burr (1995), on the other hand, in observing the elements of cohesion along these series of events and occurrences, remarks that all standpoints on social constructivism share the following features:

1. A critical stance towards taken-for-granted knowledge;
2. Historical and cultural specificity;
3. Believing that knowledge is sustained by social processes; and
4. Believing that knowledge and social action go together (Lomborg & Kirkevold, 2003, p. 196).

In toto, the grips of social constructivism can be structured both on the echelons of individuality or collectivity. Essentially, the conviction of ‘truth’ is a matter that is conditional, reliant on a person’s sense of self, and provisional.

In contrasting reality against the truth, Charmaz (2000) broadened the perspective of constructivism. In her words:

> "constructivist approach does not seek truth – single, universal, and lasting. Still, it remains realist because it addresses human realities and assumes the existence of real worlds" (p.523).

Accordingly, it is safe to believe that the theory which develops from a grounded theory research is not an embodiment of the reality that may be true to the 'subject' engaged in the inquiry. Relatively, the theory that is generated from the texts of the interviews is swayed and persuaded by the researcher's interpretations, designations, and comprehensions of the circumstances within which the inquiry took place. Charmaz (2000, p. 523) clearly and distinctly clarified whatever confusion there may be when she said that, "a grounded theorist constructs an image of *a* reality, not *the* reality – that is, objective, true, and external." The preservation of the imagery that depicts the involvements of the participants, together with the consistency of the categories and the concepts that were established along the way of producing a grounded theory "composes a story" (Lomborg & Kirkevold, 2003, p. 195) – the sort of reality propounded by Charmaz.

3.7.3 The Indications for Fit

The central idea of *fit* in this research can be recognized on how the emergent theory grounded in the data parallels the social reality. From the discussions above, social reality is nothing but a representation of reality, a persona, and not a reality in its truest sense. The idea of *fit* as propounded by

Lomborg & Kirevold (2003) that *fit* should emanate from the data, which is also a preservation of the imagery that composes a story, is a refined balance from the initial sketch of Charmaz (2000).

The confirmation of meeting the criteria of *fit* in grounded theory can be obtained when the generated theory tends to be reasonable and practical to the individuals involved in the area of study, so that the theory echoes their own experiences and involvements. For this study, the litmus test in the social constructivist perspective is that the theory generated from the research rings true with the individual realities of other GIPOs not only in OMB-MOLEO but the whole Office of the Ombudsman. Furthermore, that the grounded theory produced in this research is considered a 'quality theory' since it complements the benchmarks of fit, work, relevance, and modifiability.

3.8 Summary

To understand the issues affecting the decisions in administrative cases by the OMB-MOLEO in concurrence with other administrative tribunals, grounded theory was chosen as the method of research. To commence the process of finding and labeling of categories data was collected and then coded. The generated theory grounded on these data are, at best, a description the activities, processes, and practices of the GIPOs of OMB-MOLEO in the adjudication of administrative cases. The researcher's backdrop in the OMB-MOLEO has been a fundamental aspect in the acquisition of information and the conduct of interviews with senior GIPOs of the OMB-MOLEO. Within the grounded theory approach, the

researcher's background and preconceptions were deferred so as to permit the conversations to remain open and unhindered, the senior GIPOs were at liberty to control the pace and direction of the interview.

CHAPTER 4

THEORETICAL CATEGORIES

4.1 Introduction

After reviewing the texts of the interviews with the senior GIPOs of the OMB-MOLEO who participated in the research, three theoretical categories emerged. It should be stressed that the memos and texts represented the raw impressions of the interviewees, such that these memos and texts were documented in the way that the GIPOs view the issues regardless of the researcher's own opinions on the matter. The proportions within which the perceptions of these senior GIPOs are to be understood create the framework within which the grounded theory is to be crafted. The three categories that emerged from the constant comparison of memos and text are:

1. Monitoring – as exemplified in lack of technical human resources; non-implementation; lack of data; and impact.
2. Coordination – as illustrated by clogging of case dockets; conflicting decisions; infringement of power; and verification.
3. Consistency – as characterized by borrowed rules of procedure and discretion.

Within each of these theoretical categories are their own individual subcategories. The subcategories are smaller scale clusters of related observations that were rolled up to craft the three theoretical categories. The categories are considered to be the conceptual elements of a theory, while the subcategories are the aspects or characteristics of that category. In reading through the excerpts

from the interviews, ideas and premises meander between each of the categories and their subcategories. The categories of monitoring and coordination, for example, blend at certain times such that one quotation contributes to the further understanding of the other.

Presented below are the theoretical categories and their sub-categories. For a detailed and graphical representation of the codes specifically selected to be used in this research, please refer to Appendix 1 to 14.

4.2 Monitoring

The monitoring aspect of administrative adjudications has been emphasized in almost all of the interviews conducted. Concerns about the lack of a monitoring board or body in terms of decisions issued in administrative cases by the OMB-MOLEO emerged as one of the most important factors affecting the concurrence of jurisdiction in administrative cases. Within the theoretical category of monitoring, the areas of concern are represented in the subcategories of lack of technical human resources, non-implementation, lack of data and impact.

4.2.1 Lack of Human Resources

Most of the GIPOs in the administrative adjudication bureau of the OMB-MOLEO do not perceive the concurrence of jurisdiction as a hindrance to the effective dispensation of administrative cases. In fact, most GIPOs welcome the idea of concurrence as compliments the limited technical human resources of the OMB-MOLEO. At present, there are twenty GIPOs functioning under the

Criminal Investigation, Prosecution and Administrative Adjudication Bureau (CIPAAB) of the OMB-MOLEO. The CIPAAB, as the name suggests, conducts preliminary investigations on criminal cases as well as the adjudication of administrative cases. Considering that the OMB-MOLEO has a very wide range of jurisdiction that spans the entirety of the law enforcement offices for the whole country, the concurrence of jurisdiction means a little less workload for the GIPOs.

Even with the slight decline of administrative cases being handled by the GIPOs of OMB-MOLEO because of the shared jurisdiction in adjudicating administrative cases, the lack of technical human resources still proves to be a burden in disposing administrative cases efficiently and speedily. Hence, the lack of human resources results to inadvertent delays in the adjudication of administrative cases. The weight of disposing or adjudicating one administrative case paralleled to the receipt of three new administrative cases may very well speak for itself. In simple terms, in the OMB-MOLEO, for every one administrative case disposed, three more are filed. By any statistical probability, there is a never ending influx of administrative cases, which cannot be handled by the small number of GIPOs working for the administrative adjudication bureau, who simultaneously are conducting preliminary investigations on criminal cases.

The constraint in the availability of human resources has, in due course, resulted to the inability of the OMB-MOLEO to institute a monitoring body. As the twenty GIPOs already have their hands full with the conduct of preliminary investigations on criminal cases as well as the adjudication of administrative

cases, there is no one left to oversee the monitoring of disposed administrative cases that carry with them the imposition of administrative penalties. Thence, this lack of monitoring of disposed cases results to the decisions not being implemented at all by the offices or agencies concerned. The following relevant statements were offered by the GIPOs:

- "*Kulang tayo sa tao."* (We lack manpower)
- "*Mabuti nga may concurrence, kahit papaano eh nababawasan ang workload*." (Concurrence is a good thing, our workload could at least be lessened)
- "I hope they expand our workforce soon."
- "*Kaya mabagal, kasi konti lang ang gumagawa sa trabaho*." (Only a handful of persons do the work, and that is one of the reasons for the delays)
- "*Kulang na nga tayo, yung iba huhugutin pa para mag monitor*." (Considering the shortage of lawyers conducting adjudication, there is no one to pull-out to conduct monitoring)
- "I don't personally know if the Decisions I have issued over the years have all been carried out."
- "*Simple lang naman, dagdagan nila ang tao*." (Just add more people, it's that simple)

4.2.2 Non-implementation

A handful of decisions are issued by the OMB-MOLEO every month. These decisions may either be for the dismissal of the cases filed or the imposition of sanctions in connection with the public officer's administrative liabilities. Handing out these decisions may well be considered as the last mechanical act that the OMB-MOLEO executes in the adjudication of administrative cases. However, it was noted that a lot of these decisions, especially those that have adverse pronouncements, are not being implemented by the affected agencies. This non-implementation of decisions not only undermines the power of the OMB-MOLEO to adjudicate on administrative cases, but also and more essentially, it necessitates the creation of a monitoring body, board or bureau that ensures the proper implementation and recognition of OMB-MOLEO decisions in administrative cases.

Some public officers and employees that are penalized by the OMB-MOLEO with suspension from the service or even dismissal from the service but have connections to some influential persons succeed in avoiding the implementation of such decisions. Some public officials also believe, and they are correct in so believing, that the OMB-MOLEO is not ensuring and confirming the proper implementation and execution of its decisions in administrative cases. In fact, one of the interviewees even recounted that in one of the lectures he conducted with the PNP, he was surprised to learn that among the audiences present during the lecture, one of them had been issued a decision in an administrative case in which he was suspended for six months from the service for

an administrative offense committed and despite this, he still was reporting for duty as a member of the PNP. The following opinions were articulated in the excerpts from the interviews:

- "I don't personally know if the Decisions I have issued over the years have all been carried out."
- "*Hindi ba't parang bale wala lahat ng ginagawa natin kung hindi naman sila pinapatupad?"*(Wouldn't it bother you if your Decisions are not being implemented?)
- "*Nalalaman ko lang kung natatanggap ng mga respondent yung Desisyon kung sakaling may MR*." (I would only learn of the respondent's receipt of the Decision once they file for an MR [Motion for Reconsideration])
- "*Kung minsan nababalitaan ko nalang sa mga kakilala ko sa PNP na hindi naman pala na suspend yung pinatawan ko ng suspension*." (I sometimes hear news from my friends in the PNP that orders for suspension are not being effected)
- "*Minsan nag lecture ako sa PNP, nagulat ako kasi yung isang nakausap ko may suspension pala, pero nagrereport pa sa trabaho*." (When I had a lecture at the PNP, I was shocked to know that one officer reports to work even after a decision was issued suspending him from the service)

4.2.3 Lack of Data

The absence of a body focused in the monitoring of decisions in administrative cases is obviously apparent in the 2012 Annual Report of OMB-

MOLEO. Reports had been generated and data have been collected in terms of the number of administrative complaints received and the number of disposed administrative cases. However, it is clear that OMB-MOLEO has no data as to the number of imposed administrative sanctions such as those warned, reprimanded, fined, suspended or dismissed public officers, or if these penalties were effected by the concerned implementing agencies.

The statistics and figures pertaining to the number of disposals with administrative sanctions with emphasis on the implementation of these administrative sanctions could definitely help in crafting informed procedural mechanisms that will strengthen the efficacy and expediency of administrative decisions issued by the OMB-MOLEO. The following are some perspectives of this subcategory:

- "*Parang dati merong ganyan, hindi ko lam kung bakit wala na ngayon*." (Data like that exists before, I just don't know why it was discontinued)
- "We have some statistics, but sometimes, our (OMB-MOLEO) figures don't match the figures of the Central Office."
- "The generation of data is a mechanical act; it is just a matter of adding up numbers. The problem is, no one is available to do it."

4.2.4 Impact

The drafting of a decision in an administrative case is both taxing and time-consuming. Efforts are wrested from the GIPOs in order to come up with decisions that are wise, proper and judicious. The issuance of a decision that can

have a positive impact in the public service is one of a GIPO's altruistic desires, and as such, a blatant disregard to any of the decisions issued by a GIPO does not sit well. As the decisions issued in administrative cases are the fruits of laborious efforts, these decisions should be recognized and the pronouncements therein should be respected and enforced. If not, all the toils wielded by the GIPOs would be efforts exercised in futility. It is by this sentiment that the GIPOs of the OMB-MOLEO hanker for a mechanism to ensure compliance with the orders and decisions of the office. The mechanism for checks and balances in the implementation of OMB-MOLEO issued decisions would not only ensure the effective administration of justice, but at the same time, also paves way for the establishment of a channel to assess the relevance and performance of the decisions issued in administrative cases.

Sometimes, the public's reluctance in filing cases against erring government officials and employees are deepened by their perception and misconception that the decisions of the OMB-MOLEO are anyway not going to be implemented. The public would feel more confident in their calculations on how effective the decisions of the OMB-MOLEO are if there were to be a mechanism to check the implementation of administrative decisions. Here is what the participants have to say:

- "*Hindi ba't parang bale wala lahat ng ginagawa natin kung hindi naman sila pinapatupad*?" (Wouldn't it bother you if your Decisions are not being implemented?)

- "*Mahirap din mag issue ng Decision, kasi iisipin mo, pamilya at kabuhayan nung tao ang apektado*." (When drafting decisions, you have to think about the effects that your Decision may have to the respondent's job and family)
- "*Madalas ako makarinig ng tanong mula sa mga nagpapa-subscribe, kung talaga ba daw napaparusahan ang mga nagkakasalang empleyado ng gobyerno*." (Often do you hear people asking if the persons found guilty of an offense are really and actually disciplined)
- "*Metikuloso ako sa pagsulat ng Desisyon, kaya kung minsan napapatagal*." (I think of every detail when I pen a Decision, and that consumes much of my time)

4.3 Coordination

Coordination plays a big role in the adjudication of administrative cases, especially so when the administrative cases are those falling under the concurrent jurisdiction of the OMB-MOLEO and other law enforcement offices. The coordination of actions and the steps taken to ensure the timeliness of administrative proceedings enhances the sustainability and constancy of decisions being issued in these administrative processes.

4.3.1 Clogging of Case Dockets

The senior GIPOs have had years of experience as prosecutors and adjudicators in the OMB-MOLEO, and none of them could say that they have

cleared their case dockets at any given timeframe. Case dockets refer to the control number assigned to a case that has been filed with the OMB-MOLEO. To be docketed as an Ombudsman case, the case should be complete in form and in substance.

The clogging of case dockets is an occurrence that happens when more cases are being docketed than those that are being disposed or terminated. For instance, a GIPO may be assigned ten to fifteen cases every month, half of which are administrative cases. The monthly disposal in administrative cases per GIPO is about five per month. This means that two or more administrative cases replace each disposal of an administrative case in any given month. This compounded growth of case dockets can be eased, to a certain extent, by the proper coordination of cases between the OMB-MOLEO and the other law enforcement agencies.

Most of the GIPOs interviewed felt that coordinated measures that impact the validity and verity of administrative cases filed with the OMB-MOLEO would guarantee a carefully selected receipt of complaints which would then lower, or at least limit administrative cases being catered to by the OMB-MOLEO. This screening of cases would ultimately lower the cases being docketed by the OMB-MOLEO, thus, declogging the case dockets of each and every GIPO. In this regard, here are what the participants had to say:

- "I still have a lot of cases to dispose."
- "*Ang daming pumapasok na kaso, eh iilan lang ang natatapos ko kada buwan*." (A lot more cases are being filed than those being disposed of)

- "*Sa una palang sana, tinitignan na kung kaso ba siya o halatang nanghaharass lang*." (If there could only be a way to screen cases and determine their authenticity; this could prevent harassment suits from being docketed)
- "*Yung evaluation ng mga kaso, dapat nakahiwalay sa CIPAAB*." (The evaluation of cases should be independent from and unattached to the CIPAAB)
- "I think the records divisions of both units need to communicate with one another."

4.3.2 Infringement of Power

It goes without saying that coordinated measures are being sought by the OMB-MOLEO to streamline the cases being brought before its office. So much so that sometime in the year 2012, the OMB-MOLEO and the PNP entered into a Memorandum of Agreement (MOA) that tried to draw a line between their respective administrative adjudication authority over members of the police force. The agreement was drafted so that administrative offenses arising from graft and corrupt practices shall be dealt with by the OMB-MOLEO while other forms of administrative offenses would be catered to by the PNP thru its PNP-IAS.

While this arrangement sounds very practical and favorable to both the OMB-MOLEO and the PNP, a great number of GIPOs in the OMB-MOLEO feel that such an agreement results to an infringement on the powers vested by law upon the OMB-MOLEO and the PNP-IAS. It is believed by the senior GIPOs in

the OMB-MOLEO that the provisions of the MOA amount to putting a limitation on the investigative powers of the OMB and PNP-IAS, when in fact, the enabling laws of each of these offices provide that they shall investigate on any complaint by any person, any act or omission of any public official, employee, office or agency, including the police force, when such act appears to be illegal, unjust, improper, or inefficient. The provision of law do not provide for any exception. The OMB-MOLEO and the PNP therefore, to the minds of the GIPOs, cannot, by mere agreement, limit the scope of each of their administrative jurisdiction. Moreover, such an agreement would be a violation of the lawful right of every complainant to choose which forum would speedily and properly address their grievances.

As agreements between the OMB-MOLEO and the other law enforcement agencies tend to infringe vested powers, a proper and systematic coordination is then opined to be the best solution to support the concurrence of jurisdiction over administrative cases. This is evidenced in the following statements:

- "To my mind, this would result to an infringement on the power vested upon the OMB and PNP by law."
- "*May MOA, pero kadalasan naman hindi din nasusunod*." (I know about the existence of the MOA [Memorandum of Agreement], but the provisions therein are hardly ever followed)
- "*Pwede sana, kaso hindi lang naman PNP and sakop ng jurisdiction natin, paano yung iba?*" (That is feasible, however, not only do we have

concurrent jurisdiction with the PNP, but also with other adjudicating bodies)

4.3.3 Conflicting Decisions

The concept of concurrence of jurisdiction over administrative cases necessarily carries with it the attribute that a complainant may seek redress for any actionable wrong committed by public officers or employees at any forum which the complainant believes would best give him/her a speedy and fair decision. This pursuit for justice and redress is of course subject to the rules and limitations on forum shopping, which would be discussed in the succeeding subcategory of verification.

There is no reason for alarm when a complainant files a case on the fora of his choosing, be it filed before the OMB-MOLEO or the PNP-IAS. A problem arises when a complainant files multiple complaints arising from the same incident and for the same cause of action, one before the OMB-MOLEO and another similar one before the PNP-IAS, with the intention of obtaining a judgment favorable to them from either forum. These instances of filing multiple suits of the same nature are not far from possible. Logistical constraints and a lack of coordination between and among the OMB-MOLEO and the other law enforcement agencies make it easy for complaints to slip by and be taken cognizance of by any of the adjudicating bodies.

In these cases of multiple filing of administrative complaints, the different adjudicating bodies independently carry on with the process of investigation and

adjudication. Proceeding from their own established rules of procedure, there is a big chance that in the end the findings of both fora may differ slightly or completely from each other. The differences in the decisions issued may be observed in terms of the penalties imposed, the duration of these penalties, or worse, the appreciation of the facts involved. At times, the decisions may even be completely contradictory, in that one adjudicating body may fully exonerate a respondent while the other adjudicating body may impose an administrative penalty.

The apparent lack of coordination between and among the different adjudicating bodies affect the proper dispensation of justice and could very well be considered as one of the challenges involved in trying to collectively work together under the umbrella of concurrent jurisdiction. The GIPOs' thoughts on this aspect are as follows:

- "*Yung ibang tao kasi, hindi nila alam na bawal pala kung mag file sila ng complaint dito at sa kabila*." (Some people are uninformed about the rule on forum shopping)
- "*Yung CNFS naman, parang formality lang*." (The CNFS seems more like a formality)
- "There are instances where the complainants sign a CNFS, but would tell you that a similar case is pending, and some even promise to withdraw the earlier complaint filed."

- "*May mga nagtatanong sa akin kung bakit daw parehong charge pero magkaiba ng pinataw na penalty*." (I often get asked why different penalties have been imposed to seemingly identical charges)
- "*Nakakatawa kung minsan kasi yung complainant, magtatanong sa iyo kung saan ba mas maganda mag file*." (It is quite funny to recall that complainants sometimes ask you which adjudicating body they could benefit more from)
- "*May marerecieve ka nalang na counter-affidavit na sinasabing meron nang nai-file na kaso sa kanila sa IAS*." (Oftentimes, a counter-affidavit would be filed, alleging that the same case had already been filed with the IAS)

4.3.4 Verification

Stemming from the subcategory of *Conflicting Decisions*, it could be said that one of the main arteries for the occurrence of this event is the lack of a proper and systematic verification practice on the existence or non-existence of similar complaints filed in any of the administrative adjudicating bodies which have concurrent jurisdiction. Many times, complaints received by the OMB-MOLEO from the public are docketed as formal complaints and investigations regarding the matter are initiated without properly verifying the existence of similar complaints arising from the same incident and against the same respondent with other adjudicating bodies like the PNP-IAS.

It is worth mentioning that the OMB-MOLEO only accepts complaints which are ‘complete in form.’ This means that each complaint must contain a Certification of Non-Forum Shopping (CNFS) or a Certification Against Forum Shopping. This CNFS certifies, among others, that the complainant has not filed any other complaint at any other forum against the same person, arising from the same acts and seeking redress for the same cause. Clearly, the intent of requiring a CNFS before a complaint may be accepted and docketed is the prevention of identical complaints being filed in different avenues with the purpose of obtaining the most favorable decision. A violation on this rule on non-forum shopping may cause for the dismissal of the complaint.

Despite the element of CNFS having been incorporated in the complaints filed, however, complaints with the same nature and reliefs sought are still being presented and filed with the different administrative adjudicating bodies. Regardless of the risks involved in the filing of multiple suits or complaints, the public are undeterred in violating this rule because to their mind, the chance of having their grievances acted upon and decided favorably is greater than the chance that their complaints may be found to have violated the rule against forum shopping. Unfortunately, they may be correct in so believing.

As previously touched upon in the earlier discussions in the previous subcategories, the OMB-MOLEO does not have the needed resources, much more, the luxury of time, in verifying the existence of similar complaints in the different adjudicating bodies with concurrent jurisdiction. Be that as it may, the tedious task of verification cannot and should not be dispensed with. The different

adjudicating bodies, the OMB-MOLEO included, must not solely rely on the CNFS attached to the complaints. The records division or any other division mandated to handle the receipt and docketing of complaints must have proper and systematic coordination procedures in order to alleviate the occurrence of filing of multiple complaints, without violating the confidentiality of records of cases pending before their respective offices. The following are some of the points considered for this subcategory:

- "*Yung CNFS naman, parang formality lang*." (The CNFS seems more like a formality)
- "*Hindi natatakot ang mga complainant kahit nag file sila sa multiple tribunals, kasi ang parusa lang naman, madidismiss yung mga nahuling nai-file*." (The aggressiveness of complainants in filing the same suits in different tribunals is not deterred by the rules since the only penalty for forum shopping is the dismissal of the subsequently filed cases)
- "*Hindi naman pwedeng kasuhan lahat ng nag va-violate ng rule, hindi praktikal*." (It is not practical to file suits for violation of the rule against forum shopping)
- "*Eh kung mayroon lang sanang magmamatiyag sa mga duplicate na cases*." (If there could only be a censoring body)

4.4 Consistency

The consistency of decisions issued by the different administrative adjudicating bodies with concurrent jurisdiction, that of the OMB-MOLEO in

particular, has been one of the constraints that are incessantly being sought to be addressed by the GIPOs of the OMB-MOLEO. Arising from the fact that the OMB-MOLEO, and even the Office of the Ombudsman itself, has yet to promulgate its own rules of procedure in the conduct of administrative adjudication, the procedures adhered to by the OMB-MOLEO are borrowed either from the Civil Service Rules or the PNP Rules of Procedure in Administrative Cases. More so, there is no hard and fast rule in the appreciation of facts or the finding of evidence substantial enough to produce a decision in the adjudication of administrative cases.

4.4.1 Borrowed Rules of Procedure

After nearly twenty-six years in operation, the Office of the Ombudsman has not yet established and promulgated its own rules of procedure in the conduct of adjudicatory proceedings in administrative cases. Let it be stressed nevertheless, that the Office of the Ombudsman has issued Administrative Order No. 7 on 10 April 1990 which prescribed and promulgated the rules to be followed in Administrative Cases. AO No. 7 has enumerated the grounds for the filing of a complaint and the procedures in the conduct of administrative adjudication, together with the corresponding penalties that may be imposed. What the procedures lack, then again, are the definitions of the offenses that may be charged, together with the schedule and duration of penalties.

Short of this more specific and detailed rules of procedure, the OMB-MOLEO, in the adjudication of administrative cases, derives its rules from the

Civil Service Commission (CSC) via the Revised Rules on Administrative Cases in the Civil Service (RRACCS) and the PNP through their PNP Disciplinary Rules of Procedure (DRP).

The OMB-MOLEO's concurrence of jurisdiction with the PNP-IAS in administrative cases naturally necessitates the adherence of the OMB-MOLEO to the rules of the PNP-IAS, given that the OMB-MOLEO does not have its own procedures as yet. However, GIPOs in the OMB-MOLEO are more inclined to base their decisions upon the rules set by the CSC. It is a pragmatic adoption of the rules as the entirety of the different sectoral adjudicating bureaus of the Office of the Ombudsman adheres to such rules. Moreover, several Supreme Court decisions founded on the RRACCS are utilized and cited by the GIPOs as their basis in coming up with their own decisions in the adjudication of administrative cases.

With the GIPOs of the OMB-MOLEO tending to stick to the RRACCS, instances such as the difference in the application of the proper penalties and the duration thereof arises. Concretely, both the RRACCS and the DRP treat, define, and provide the penalties for the administrative offense of, for example, simple misconduct. In the RRACCS however, the administrative offense of simple misconduct is treated as a less grave offense punishable by suspension from the service for a period of one month and one day to six months. Hence, the RRACCS provides on rule 10, Section 46:

> "Section 46. Classification of offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or

light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

xxx

D. The following less grave offenses are punishable by suspension of one month and one day suspension to six months for the first offense; and dismissal from the service for the second offense:

1. Simple Neglect of Duty;
2. *Simple Misconduct*;

xxx" (emphasis supplied)

The DRP on the other hand, treats the administrative offense of simple misconduct as a light offense punishable by suspension from the service from one day to thirty days. Hence, in Part III, Rule 21, Section 2 states:

"Section 2. Classification of offenses. – For purposes of determining jurisdiction and applying the appropriate penalty, administrative offenses are classified into light, less grave, and grave offenses.

A. Light Offenses:
    1. Simple Neglect of Duty
    2. Simple Irregularity in the Performance of Duty
    3. Slight or *Simple Misconduct*;

xxx" (emphasis supplied)

Further, Rule 22, Section 2 on the range of penalties provides:

"Section 2. Range of Penalties. – The penalties for light, less grave and grave offenses shall be made in accordance with the following ranges:

For Light Offenses:

1) Withholding of privileges, restriction to specified limits, restrictive custody, suspension or forfeiture of salary, or any combination thereof from one day to ten days (minimum period);
2) Withholding of privileges; restriction to specified limits; restrictive custody; suspension or forfeiture of salary; or any combination thereof from eleven days to twenty days (medium period);
3) Withholding of privileges, restriction to specified limits; restrictive custody; suspension or forfeiture of salary; or any combination thereof from twenty-one days to thirty days (maximum period)."

The GIPOs of the OMB-MOLEO are predisposed to follow their instincts and sound judgment in their appreciation of the facts surrounding the administrative case and the application of the proper penalties. What constitutes sound judgment is a matter of preference and discretion. Some comments were:

- "*Natanong ko na yan dati sa mga datihan na sa opisina, ang sabi kasalukyan daw na ginagawa. Pero ilang taon na eh wala pa*." (I have already asked that before, and they told me that the rules are under way, and that was years ago)

- "*Ang gamit ko yung sa CSC, madami kasing mahahanap sa SCRA*." (I use the CSC rules as there are a lot of cases available on SCRA [Supreme Court Reports Annotated])
- "*Ang tanong, bakit mas mababa ang penalty sa ROP ng PNP*?" (I often ask myself, why is the penalty lower in the PNP rules?)
- "*Depende. Kasi minsan, yung complainant mismo ang magsasabi na ito ang na-violate, sa rules ng PNP, yung iba naman, rules ng CSC*." (It depends. Sometimes, the complainant himself would designate the offense)
- "*Minsan magkakaiba talaga ang Desisyon ko kahit halos parang pareho ang offense, kasi depende yan sa facts ng kaso*." (I do come across issuing different Decisions for the same offense, as the decision is contingent upon the facts)
- "*Ginagamit ko minsan ang 'humanitarian consideration'*." (I sometimes take into account 'human considerations')
- "*Bakit iba*?" (Why is it different?)

4.4.2 Discretion

An adverse finding on decisions involving administrative cases requires and demands the existence of substantial evidence. Substantial evidence has been defined in a number of Supreme Court decisions as such relevant evidence that a reasonable mind may accept to justify or support a conclusion. The Supreme Court went on to state that the requirement of substantial evidence is satisfied

when there is reasonable ground to believe that the person complained of is guilty of the act or omission as charged, even if the evidence is not overwhelming or prodigious.

Given the wide latitude of discretion in ascertaining the existence of the quantum of evidence in administrative cases, GIPOs of the OMB-MOLEO and the other investigators and adjudicators of the administrative adjudication bodies of law enforcement offices, base their decisions on what they think is right and just. There is no quantifiable means to ascertain the substantiality of the evidence presented, just so long as the evidence is reasonable and acceptable. As to what constitutes reasonableness and acceptability, the same is left at the prudence and canniness of the adjudicator.

It must be understood that the extensive flexibility of discretion among adjudicators does not equate to an ill-advised and misguided verdict. Stringent measures are practiced to promote the insightfulness and acuity of the adjudicator's findings and pronouncements. The tricky aspect in finding for the substantiality of evidence in administrative adjudications is that no two minds think exactly alike. However collectively trained and jointly proficient adjudicators are, there are always issues and details that each of them perceive differently from the other. Some of the remarks from the GIPOs were:

- "*Nag attend ako ng training dati, kung paano gumawa ng Desisyon*." (I have previously attended trainings for the issuance of Decisions)
- "*Ang gamit ko kadalasan yung SCRA*." (I often cite the SCRA as my reference)

- "*Naririnig ko minsan sa usapan ng mga tao dito, bakit daw iba ang appreciation ko sa facts*." (I overheard some GIPOs talking once, they were discussing within themselves as to why my appreciation of the case is different)
- "*Di ba iba-iba naman tayo ng interpretasyon*?" (We all have differing interpretations)
- "*Halimbawa, may isang mansanas, kung ikaw ang tatanungin, maaaring sabihin mo, maliit na mansanas yan na hugis puso. Kung ako tatanungin, sasabihin ko, katamtaman lang ang laki nya at hugis ngipin*." (Here's the thing, if we both see an apple, you may say that the apple is small and heart-shaped, but for me, it is a medium sized apple that is tooth-shaped)

4.5 Summary

In summary, the concurrence of jurisdiction in the administrative cases handled by the OMB-MOLEO appears to be a composite collaboration between the different administrative adjudicating bodies that are multifocal in character. In utilizing the grounded theory data method, the conceptual elements or categories of the emergent theory were ascertained as: monitoring, coordination and consistency; whereas the subcategories or the specific attributes of these categories were determined to be: lack of technical human resources, non-implementation, lack of data, impact, clogging of case dockets, conflicting decisions, infringement of power, verification, borrowed rules of procedure and discretion. Not only do these categories and subcategories sustain the theoretical

elements of the framework, but they also facilitated in the conceptualization of the theory.

CHAPTER 5

LITERATURE

5.1 Introduction

The chapter on review of related literature is deferred in grounded theory in an attempt to have it drawn together subsequent to the conclusion of information-gathering and after constant comparison has engendered theoretical categories. The kinds of literature that need to be considered in grounded theory are indicated and suggested by the data and the emergent theoretical categories. The grounded theory approach incessantly extracts data from the texts to conceptualize the subcategories and theoretical categories and ultimately, a theory that has been grounded from these data. With a view of generating a grounded theory, the texts are continuously weighed against each other and the keynotes that develop from these texts are classified and marked as theoretical categories. Throughout the whole research process, the initially identified theoretical categories fused and melded with each other giving rise to three of the more prominent theoretical categories. When additional conversations fall short of adding any substance to the existing categories or when the existing categories become recurrent in supplementary interviews, the categories have reached their saturation and the segment of research in the field is now terminated. The residual task is to draw from the categories a predominant theory that revolves around the concurrence of jurisdiction in the adjudication of administrative cases. The recourse to the literature aims at working toward recognized theories or paradigms

that tackle the theoretical categories and the emergent theory. While it may be so that at the beginning of this study, the researcher was inclined to believe that the literature would be based on studies conducted involving 'delay' and 'redundancy' in relation to 'concurrence in jurisdiction,' the emerging theoretical categories proved otherwise. Instead, the study points out that the literature that needed to be discussed were those of monitoring, coordination and consistency – the theoretical categories. However, before going into the literature that addresses the different categories that emerged from this study, it is just fitting to present some literature about concurrence in jurisdiction.

5.2 Concurrence in Jurisdiction

Statutes that allocate authority or jurisdiction to multiple agencies may be the norm, rather than an exception. As has recently been noted, "we live in an age of overlapping and concurring regulatory jurisdiction" (Gerson, 2006). There are, however, many adaptations of shared jurisdiction systems, and all need not be treated identically by the law. Concurrence of jurisdiction evolves when a statute addresses a certain policy where authority is allocated to two governmental entities. Conceptually, the allocation of authority can be achieved in any number of ways and the two dimensions of variation must, nevertheless, be considered: *exclusivity* and *completeness* (Gerson, 2006). With regard to exclusivity, the grant authority might be to one agency alone or to two or more agencies, while in reference to completeness, the delegation of authority may be to act over the entire policy space or only subset of the space. If two or more agencies receive

concurrent authority to regulate in a field, there is jurisdictional overlap (Gerson, 2006).

The levers of completeness and exclusivity are two of many that could be adjusted to vary agency authority. The law might allocate overlapping jurisdiction, but give different policy tools to different agencies, possibly giving rulemaking authority to one agency and enforcement authority to another. Both agencies could act in the same policy area, but one could do so using rules and the other using adjudications. Alternatively, holding the type of policy tools constant, both agencies may possibly have overlapping authority, but one agency might be given dominant authority, either explicitly or implicitly. In the case of direct conflict between the two agencies on some legal question, one agency's decision might clearly control. For example, if one agency has rulemaking authority and another only enforcement authority, and the two agencies disagree on the meaning of a statutory term, the interpretation proffered by the agency with rulemaking authority might control or vice versa (Gerson, 2006).

An agency with rulemaking authority might be given preference because the process of making rules better incorporates both democratic and informational expertise, but enforcement proceedings allow agencies to incorporate more particularized insights, so perhaps the opposite inference is also as plausible. That is, the important ensuing query on whether authority is equal or hierarchical has been left unresolved by the mere fact of jurisdictional overlap (Meazell, 2012). In practice, jurisdictional boundaries between political institutions are also vague or ambiguous. The outcome in many jurisdictional cases depends on whether

agencies have jurisdiction and whether a specific agency views warrant deference. If defining jurisdictional borders is generally difficult, it will be even harder in shared jurisdiction regimes. If a statute clearly gives some jurisdiction to one agency to administer one portion of a statute, and clearly gives some jurisdiction to another agency to administer another portion of the statute, a dilemma arises on how to treat agency interpretations or assertions of authority with respect to a third portion of the statute, related to both other sections.

Overlapping jurisdiction in a world with indistinct borders is a practical mess for agencies, courts, and private parties. So why would legislature rely on shared jurisdiction schemes? Scholarship in political science and economics provides one answer. Delegation by legislature to other institutions creates agency problems such as the repression of information and cynical policy choices. Overlapping jurisdiction schemes can be understood as a partial response to these problems. More specifically, legislature might use overlapping jurisdiction as a mechanism for encouraging the development and accurate revelation of information by agencies, or as a means of controlling agency conduct and substantive policy choices. Jurisdictional overlap should be understood as additional tools for structuring the incentives of administrative agencies (Gerson, 2006).

As an instrument for handling agency problems, *competing agents* are depended upon when a statute apportions authority to several governmental institutions (Meazell, 2012). Giving authority to multiple agencies and allowing them to compete against each other can bring policy closer to the preferences of

legislature than would delegation to a single agent. To illustrate, consider the problem of agency expertise.

A potential justification for the use of complete and exclusive jurisdiction is to facilitate the use of relevant agency expertise in the implementation of a policy. If one agency has expertise in a field and a second agency in another, legislature should delegate to the most informed agency. The trouble with this view of expertise is that it is static and exogenous; but agency expertise is itself a function of many factors, including the degree of discretion given to the agency, the costliness of developing expertise, the degree of divergence between agency, and other political influences like interest groups. However, agency expertise should neither be static nor exogenous, but rather, a function of existing institutional arrangements (Gerson, 2006). Like other mechanisms for mitigating principal-agent problems, the creation of enticements for agencies to capitalize in the development and improvement of expertise can be achieved by the allocation and delegation of jurisdiction (Bamberger, 2008). If agencies prefer to increase jurisdiction rather than decrease it, assigning overlapping jurisdiction gives agencies an incentive to invest in information.

Jurisdictional overlap uses delegation to competing agents to control agency behavior. This scheme, however, can be sensibly understood as intentional mechanisms for mitigating agency problems inherent in delegation to other political institutions.

Redundancy can also increase the reliability of bureaucratic performance, and using multiple agents may also provide for monitoring and reporting of agent

behavior by competing agencies themselves. This is not to say that jurisdictional overlap is a silver bullet for agency problems. Overlapping jurisdiction also creates a risk of shirking both agencies when legislature observes only outcomes and not effort. Moreover, redundancy in the assignment of bureaucratic tasks can also create duplicative monitoring and enforcement costs. Overlapping jurisdiction, therefore, is not necessarily an ideal structure for delegation. But there is an implicit logic in the use of overlapping schemes that can itself be traced to an elaborate theoretical literature in economics and political science.

If manipulating jurisdiction is an effective tool for constraining agencies, then several conclusions might follow. First, courts might adopt interpretive practices that support rather than undermine these statutory schemes. For example, a common view is that courts owe no deference to agency views of shared jurisdiction statutes; Legislature would not want courts to defer to the view of one agency when the statute is administered by many agencies. The competing agents' framework suggests otherwise. Deference is a form of reward, which could encourage agencies to develop expertise and enter areas of ambiguous jurisdiction. Second, the same framework has implications for deference and preemption, though the implications are less clear. When a statute allocates overlapping jurisdiction to governmental entities, courts might endeavor to preserve concurrent jurisdiction, perhaps by refusing to defer to agency decisions to preempt state law (Gerson, 2006).

5.3 The Theoretical Categories

Since a pivot to the literature seeks to obtain established theories or paradigms that tackle the theoretical categories and the emergent theory, the different aspects associated with the theoretical categories in this research are exemplified in the succeeding sections.

5.3.1 Monitoring

Monitoring is a special analytical procedure used to produce information about the modes and, consequently, the results of the implementation of the work of institutions and/or policies. As such, monitoring is regarded as one of the crucial procedures with which it is possible to audit the work of public authorities, be it from the perspective of the institutional settings and jurisdictions, resources and processes (actions and activities), or the perceptions of the wider environment in which the audited institutions of public authorities operate. Since each institution is, according to the democratic governance standards, on one side subjected to the control and accountability of its making and on the other side strives to get feedback, the monitoring of its implementation (or making, performance) is one of the crucial tasks. This feedback represents the basis for the future attitudes and orientations of the monitored institution and its activities, as well as for the assessments, attitudes and orientations of the environment towards it. These reactions are the crucial ones for why public pursuit of the already existing and implemented practices and patterns in democratic societies and institutions is of fundamental importance (Lipicer & Lajh, 2013).

Based on the described broader mission, monitoring of the implementations performs four major functions: explanation, accounting, auditing and compliance (Dunn, 2004, pp. 355-356). Explanatory function of the monitoring yields information about the outcomes of the implementation, and it can help to explain why the outcomes differ or are such as they are. The accounting function of the monitoring process is important for delivering the information that can help in the accounting of various changes that follow the implementation of a process or policy. The auditing function or monitoring enables one to determine whether resources and services that have been targeted to the beneficiaries or certain target groups have actually reached them. Finally, monitoring in case of the function of compliance helps to determine if the process, activities and resources, staff and others involved are in compliance with the standards and procedures that are defined in advance, either by the institution itself or by the external environment.

Due to the functions described, a set of specific aims and expectations for monitoring the implementation of work of institutions and their policies can vary and, as such, can be a result of either internal needs or external environmental expectations, or both. But, regardless of that, monitoring concerns a very concrete, operational type of governance perspective, enabling the provision of a kind of operational, managerial procedure type of information and evidence about the selected aspects of performance of institutions and their activities, as well as potentially a preliminary assessment of the impacts of implementation for the past or future work. Although it seems that monitoring is predominantly concerned

with the micro, or specific type, of individual and concrete aspects of governance, it can also serve a broader function as a platform for policy learning and the potential introduction of policy changes on the basis of monitored data, and, in the long run, as a sort of evidence-based foundation (Pawson, 2006) for system-wide reconsiderations of general norms and values, such as democracy, transparency, cooperation, human rights and well-being.

Parallel to what has been described here, it is essential to observe that a set of fundamental issues, which need to be covered and monitored on the basis of the defined goals, motives, expectations, mission and applied procedures for data gathering, must be clearly set.

Today, a number of monitoring sources (i.e. contexts of the data) are already defined in practice through the "codes of conducts", as institutional/policy guidance, guidelines, standards etc. of governance. To measure them, some data already exist and can simply be extracted from the existing data sets, while other data are either being gathered for internal institutional purposes, are not publicly available or do not yet exist.

In other cases, especially those which have not yet established governance measurement practices and where data are not yet gathered, there is a need to conceptualize and further collect the data from scratch. In this regard, the data need to be conducted mostly by applying methods such as conducting a review of relevant existing documentation and data that have been primarily gathered for other purposes (e.g. statistics, financial, policy documents) and conducting surveys and interviews, as well as employing focus groups, panels and similar

methods for gathering information on the perceptions of implementation practices. On this basis, new data sets can be designed and applied.

5.3.2 Coordination

One of the crucial influences for a fruitful involvement in inter-agency relations is policy coordination (Metcalfe, 2004). The concept of coordination prevents agency division and detachment while enabling the entirety of all the units to perform soundly than the each of the fragments. Coordination can be defined in a number of ways and in as many different contexts as it may be used. Coordination, when used in the context of an inter-governmental process, means that the component of analysis is national government and the concentration is on coordination among agencies or ministries (Metcalfe, 2004).

An extensive study of the subject of coordination as one of the fundamental attributes of governance and public administration is provided by Peters (1998). According to him:

> "Studies have examined the incentives that lead government institutions and public servants to make efforts to work better horizontally, some of them being: reduction of financial expenditures through optimization of government procedures; proliferation of cross-cutting issues that require simultaneous actions by several institutions; internationalization of many policy areas; and participation in the work of various international fora."

Despite these incentives, however, a cloud of doubt lingers around the practicality and expediency of isolating the various dimensions of coordination and the segregation of coordination issues from other interdependently related matters of administration and policy. From these reservations, Peters (1998) observed a number of predicaments:

> "Should attention be focused more on policy coordination or on the coordination of administration? Should the coordination be imposed by the center of government or be developed and owned by the actual participants (i.e. the institutions that create or implement a specific policy measure)? What are the models and techniques for achieving coordination?"

As a final point, Peters (1998) has roused his concern in the correlation between coordination and accountability. Accordingly, the ability of bureaucrats and the general public to determine answerability for any blunder or mistake in any given project or undertaking is indicated by 'accountability;' and the capacity to impose this accountability is diminished by complex coordination programs (Saner & Yui, 1996).

Still, in the absence of strong interagency coordination, multiple agency delegations create the potential for considerable dysfunction. The challenge in managing such related authorities is the preservation of practices that causes agencies to neglect contradictory or discordant policies that undermines their common objective while allowing them to individually exhibit their relative proficiencies. For this, coordination is essential. Not only can formal coordination

efforts improve on the unofficial coordination measures that usually ensue in the administrative level, but it also can be superior to merely consolidating numerous agencies into a single bureaucracy, which does not guarantee that they will work together cooperatively (Freeman & Rossi, 2013).

Agencies could adopt reforms aimed at improving coordination. In addition to tracking and evaluating their coordination efforts, some additional targeted improvements could help render a more transparent and useful coordination tools. These include (Freeman & Rossi, 2013):

a) The development of coordination polices among agencies.

    Primarily, while agencies should have established and implemented their own procedures and policies to enable coordination with other agencies, a considerable number of agencies have still to do so. Agencies should be required to identify any areas of authority or jurisdiction that could implicate or gain from interagency coordination generally or with respect to specific sister agencies. Such policies should address, among other things, how to reduce duplication of effort in complying with the numerous diagnostic prerequisites imposed by law and how to resolve conflicts with other agencies over their application.

b) Disclosure of best practices.

    Means and methods for sharing best practices and provisions for evaluation mechanisms should be initiated for a sound policy on coordination. These best practices may include systems for multiparty rulemaking apart from recommendations on using the process even when

the agency is not compelled to do so by law. Also, best practices may incorporate the creation of joint technical teams for cultivating the analytical foundation of the rule.

c) Supporting and Funding Interagency Consultation.

Optional or voluntary interagency consultation provisions can be fairly and effortless ignored by an agency. Consultation provisions are valuable instruments for providing important information that may affect the decision making process of an agency. Moreover, the inputs of other agencies are rarely of value as the solicited comments that are intended for the agency's considerations have, by the time of response, already been concluded. This problem may be regulated if the consultations are continuing and integrated instead of being intermittent and spontaneous. It is also imperative that consultations transpire in advance; before concepts are cooped up in the decision making process.

d) Increasing the Visibility of MOUs.

Practically informal, a Memorandum of Understanding is easily deployed by partnering agencies. The convenience of this self-regulating agreements, while enticing to most agencies, correspondingly renders them usually unenforceable and, in general, totally shielded from judicial review. Also, since MOUs deal with internal affairs of agencies, they need not be published. The problem with this is that arrangements that affect policies or the rights and interests of the general public are supposed to be conspicuous and easy for both legislature and the public to trace. The

openness of these documents to the public benefits other agencies who wish to learn from others, as well as offices or agencies that are deprived of any system to supervise the operation of MOUs.

e) The tracking of resources.

The development of approaches for checking the total funds expended on interagency consultations, MOUs, joint rules, and other similar instruments is necessary to appraise the costs of coordination. Initially, this attempt may perhaps be restricted to urgent and pressing interagency coordination efforts, such as critical two-way policymaking. With this data, it may well be viable to measure the expenditure on rules that are jointly produced against that of the budget on rules that are created by independent agencies.

5.3.3 Consistency

The concept of consistency is made manifest when similar facts yield similar outcomes. Consistency in the aspect of adjudication is considered to be a prelude of parity before the law and a requirement to the Rule of Law. According to Finlay & Ogden (2011), the strive for consistency ought to be poised against the other preconditions to the Rule of Law, i.e. the notions that decisions are to be entrenched from their particular actualities and be issued by the individuals who preside over the case.

Similar facts yielding similar outcomes, or consistency, could well be understood in a twofold connotation: substantive and procedural consistency.

Substantive consistency means that a dispute embracing a specific factual milieu will bring about an identical decision as in another dispute with the same factual milieu. Procedural consistency denotes that analogous cases are bound by the same extent of procedural mode or tactic. Within the adjudicatory perspective, consistency further implies that decisions are drawn from the same scale of polices and rules (Finlay & Ogden, 2011).

The concept of consistency, when applied in tribunal decision-making, needs to be aligned with two rudimentary and dovetailed ideologies. For the most part, the decision maker should come to terms with the appearance of independence and impartiality. It should be stressed that a blatant and open aspiration for consistency may be beget skepticisms on prejudice or partiality. Also, the decision maker who sits in judgment over the issue should be the same person who settles the case. An instance where third parties try to influence or induce the pronouncements in any given case enfeebles the decency and propriety of the decision maker's fortitude.

Apart from harmonizing consistency with the principles of neutrality and autonomy, consistency must also be inclined to respond to the rule-guided nature of administrative tribunals. This rule-guided nature of administrative tribunals indicates that the strictures and considerations of the idea of consistency in the tribunal framework are widely divergent from consistency as used in the judicial arena. To illustrate, Finlay & Ogden (2011) have laid down application of the doctrines of 'res judicata' and 'stare decisis.' Res judicata simply means that the earlier verdicts or pronouncements regarding the same persons do not hold sway

over a subsequent case between the parties. The non-adherence to the rule on res judicata sanctions tribunals to be more flexible in effectively regulating the subtleties and undercurrents between the parties to the dispute (Blake, 2011).

The doctrine of stare decisis entails that the whys and wherefores leading to a prior decision in a similar issue does not prompt nor persuade the pretext of a case in extant. Naturally, this rule is without any restriction or exception. Findings of facts ascertained in previous proceedings between the parties can be relied upon in a subsequent case. Decision makers could likewise be guided by other cases in the imposition of sanctions or penalties. Moreover, legal analysis from earlier decisions could equally be considered (Finlay & Ogden, 2011).

The pliancy accorded to administrative tribunals in the conduct of adjudicative processes is not absolute. Tribunals are confined within the limits of their enacting laws or the statutes that create them. Tribunals also function within the perimeters of judicial review. An individual who may be subjected to contradictory and incompatible burdens or decisions from different tribunals may ask for court intercession to ascertain which of them should dominate (Blake, 2011).

However, the judicial search for consistency in tribunal decision-making is not absolute. In the words of Finlay & Ogden (2011):

> "Notwithstanding the validity of the objective, courts are slow to review tribunal decisions where the sole requested ground is inconsistency. Such reviews undermine the decision-making autonomy, the expertise, and the effectiveness of those tribunals.

> As such, a direct conflict between two tribunal decisions is insufficient reason for the judicial review and quashing of either. Nor is consistency to be expected in all circumstances: a number of inconsistent decisions can exist before a consensus emerges."

To achieve and enhance consistency, Finlay & Ogden (2011) have advocated certain tools and implements in tribunal decision-making which are generally more functional than legal, given that they involve the exercise of tribunal managerial power rather than changes to the content of parties' rights. Listed below are the thrusts promoted by Finlay & Ogden:

(a) Jurisprudence

Despite the fact that the doctrine of *stare decisis* does not apply, perhaps the most effective tool to achieve and enhance consistency is a tribunal jurisprudence. Such a body of decisions has ample benefits:

- Losing parties know that they have been treated the same as other previously unsuccessful parties and so are more likely to accept their loss.
- Parties can assess their likelihood of success.
- Parties can prepare a focused case. This helps to avoid unnecessary interlocutory applications and reduce postponement and adjournment requests.
- Tribunal management can assess the tribunal members' performance in achieving consistency.
- The governing ministry, law society and law associations, and society in general, can assess the tribunal's institutional performance.

- Change over time in the understanding of a statute can occur more comfortably if the bases of prior understandings were explained in those earlier decisions.
- Any judicial review will be able to review the context of the reviewed decision.

A jurisprudence is of little or no use if it is not readily accessible to actual and potential parties, tribunal members, media, the public, academics, and others. Ideally, decisions should be (Finlay & Ogden, 2011):

- Organized and searchable. Indeed, organization and the ability to search may be prerequisites to the existence of a jurisprudence.
- Indexed.
- Summarized, for example, in the form of headnotes.
- Published, preferably electronically.

The publication of decisions are carried out by certain tribunals, some even do so in searchable layouts and catalogued by topic. Then again, a number of tribunals have elected not to publish their decisions on account of privacy regulations and statutes. Some other decisions are published as jurisprudential guides where only a section of the pronouncement is published. In these cases of selective publication, it is imperative to fashion a balanced procedure to control and regulate the sources these fragmented decisions. For instance, the Ontario Landlord and Tenant Board, which publishes selected sections of decisions, base their selections on decisions that:

- Interpret or explain an area of law;
- provide a clear analysis of a point of law;

- apply or distinguish decisions of a court of competent jurisdiction, including the Divisional Court;
- apply an Interpretation Guideline of the Board or provide clear reasons for not applying an Interpretation Guideline; and/or
- raise new or interesting issues.

(b) Leading Case Strategy

A "leading case strategy" is a premeditated attempt by the tribunal or its administrative agency to take on, plan, and then litigate a case in a manner that results in a decision that is persuasive not only on matters of law or mixed fact and law, but also on particular matters of fact. The result may be described as a "leading case".

In comparison, regular, unplanned and non-premeditated cases may be persuasive on matters of law or mixed fact and law, but not on matters of fact. Such "unplanned" cases may in practice become leading cases for the bar. Where a tribunal or administrative agency has identified these "unplanned" cases as persuasive on matters of law or mixed fact and law, they are described as "jurisprudential guides".

(c) Binding Rules

A constating or other statute may permit an agency that oversees a tribunal, or the tribunal itself, to create rules that are binding on that tribunal. If the statute grants a discretion and also an ability to introduce a rule respecting the exercise of that discretion, then the agency or tribunal can mold the exercise of the

discretion in a reasonable way that is consistent with the statute. Whether the rules are binding depends on the authorizing statute. Such rules will be binding where the statute specifically authorizes the agency to make rules concerning the tribunal's exercise of discretion.

These binding rules may include Rules of Practice. Rules of Practice promote consistency in approach because all decision-makers work from a clear set of standards. In addition, they signal to parties the types of information that the tribunal requires or expects (Gottheil & Ewart, 2010).

(d) Soft Law

A tribunal may issue and use policy statements, guidelines, manuals, handbooks and other similar material in order to influence the decision-making of its members. Such instruments are known in this context as "soft law" because while in form they do not bind tribunal members, in practice tribunal members tend to observe them.

These instruments enable a tribunal to deal with a widespread policy issue comprehensively and proactively, rather than on an incremental case-by-case basis. Because these instruments can be put in place relatively easily and adjusted in the light of experience, they are usually preferable to formal rules that typically require external approval and drafting appropriate for legislation. They are also particularly helpful for large tribunals that sit as panels, where tribunal members may otherwise have their individual preferences. Tribunal members must not slavishly follow guidelines; neither can they ignore them. A tribunal decision may

be set aside if it is made solely with reference to a prescription in a guideline, and made in spite of a request to deviate from that prescription. On the other hand, where there are guidelines, it may be a breach of the duty of fairness for the tribunal member to ignore those guidelines without providing reasons for doing so.

Whether a guideline is an impermissible fetter on the decision-making authority of a tribunal member depends on many factors, including the language of the guideline, the effect of the guideline, and the needs of the particular tribunal itself. In general, the language of the guideline will be a more important factor than its effect.

(e) Institutional Decision-Making Processes

A tribunal may establish internal processes whereby a group of tribunal members— often all members — will consider and comment on the draft decisions of individual members or panels in advance of the release of those decisions. One of the purposes of such processes is to ensure that "lone-ranger" tribunal members, who "conceive of themselves as occupying islands of justice within a tribunal's office", are not able to create a situation where the outcome of an appeal or application is different depending on which tribunal member hears it (Ellis, 2009).

Where there is such institutional review, adherence to the principle of deliberative secrecy will permit interaction between the members who have heard the case and those who have not. The principle of deliberative secrecy is

necessary in the tribunal context because it allows the members to deliberate in secret, enabling the institutional consultative process, and therefore enhancing consistency and predictability.

(f) Clustering of Tribunals

The clustering of tribunals provides an excellent opportunity to harmonize Rules of Practice, technology, and case management processes. Tribunal clustering is expected to increase the subject matter effectiveness of the individual tribunals and lead to greater consistency across the clustered tribunals. First, it combats the *ad hoc* evolution of administrative tribunal systems, which can lead to a lack of consistency through "discontinuities in how individuals' legal rights are determined" and disruption of the flow of knowledge between tribunal members themselves (Sossin & Baxter, 2012). Secondly, cross-appointments, cross-training and colocation improve subject-matter synergies, and recognize and emphasize the importance of common high standards of adjudicative practices (Gottheil & Ewart, 2010). In addition, clustering permits possible innovations that may improve the quality and consistency of decision-making on merits reviews (Sossin & Baxter, 2012). Such changes in tribunal operation in order to improve consistency of tribunal decision-making should be careful to take into account any desire to preserve a tribunal's distinct identity or culture.

(g) Culture of Consistency

The creation of a culture among tribunal members which values and seeks consistency is likely the most durable while also the most difficult to create. Such a culture should both foster continuous improvement across the organization and lead tribunal members to share a common understanding of the range of acceptable views on significant issues of procedure, law and policy (Whitaker, Gottheil, & Uhlmann, 2007). In keeping with most of the other tools for enhancing consistency, methods to foster a culture of consistency are, as stated, generally more "practical" than "legal".

- Interaction Between Members

  Casual interaction and exchange of ideas are encouraged in open office environments. Also, the establishment and reinforcement of best practices are aided during regular meetings for geographically disparate tribunal members. In a sense, the chairpersons in a tribunal would be given the opportunity for private conferences and consultations with the associates.

- New Member Recruitment

  The process of member recruitment or adding new memberships in the tribunal is a crucial mechanism in creating a culture of consistency. The candidate's aptitude and proficiency to complement the tribunal's internal culture and his understanding of the relevant issues of law and policy is assessed during recruitment.

- Member Training

  A notable tool for achieving consistency is member training, which must be done in the preliminaries and it must be continuing. Greater consistency will result from the creation of programs that regularly train the members collectively (Gottheil & Ewart, 2010). The designation of training officers, a combination of in-class and applied teaching, and offering constant direction and support, may also be considered (Goodman, 2011).

- Monitoring of Member Performance

  What good does the training of decision-makers have if their performance is not monitored? The sum total of a tribunal member's performance can be determined and reflected by the standards of his decisions, together with their decision's homogeneity with other members' decisions. Provisions which confer on the chair of a tribunal responsibility for supervision of performance may permit the chair to develop codes of conduct with professional and ethical responsibilities and with performance standards (Mullan, 2009).

- Review by Tribunal Counsel of Draft Decisions

  The supervision of the members of a tribunal as an instrument for boosting consistency in decision-making needs to concentrate more on the pronouncements themselves instead of the members individually. A tribunal counsel may be employed to control the quality of decisions drafted by a tribunal. The evaluation of rough copies of pronouncements

looks for consistency and an assessment of the applied laws and jurisprudence (Chiasson, 2001).

- Decision Writing

  In the drafting of decisions or of the reasons behind such pronouncements, guiding principles for writing designs, manners of articulation, and structuring of the draft will facilitate decision-makers in making an allowances for consistency. Moreover, a culture of consistency can be achieved and stimulated by the dissemination of draft decisions by members and commentaries derived from dialogues and consultations.

- Case Management and Case Treatment Patterns

  The identical or parallel routes by which analogous cases accede to are considered as case treatment patterns. These configurations and formations, together with customary case administration, can assist in heightening consistency both directly and indirectly by implying the tribunal's bated breath for control and timetabling of cases (Whitaker, Gottheil, & Uhlmann, 2007).

5.4 Political Systems Theory and Institutionalism

It is important to note as well that the existing policies currently being adopted by the Office of the Ombudsman are prompted by the Political Systems Theory and Institutionalism.

Easton (1965) describes a political system as a societal configuration of recognizable and interdepended organizations and undertakings that yield

commanding or imposing allotments of decisions that are binding on society. Outlying the boundaries of a political system, the social order encompass several other trends and occurrences such as the collective structures, the economic layouts, and the ecological set-up. With this is mind, no less than prudence suggests that the political system can be abstracted from all the other modules or units of a society. Society provides inputs into the political system in the form of demands and supports.

Demands are regarded as the assertions and entitlements that individuals and groups portray to satiate their concerns and trepidations. The responses to these demands are to be interpreted as supports. Support is provided when the members of society conform or adhere to the laws, rules, and regulations that are constituted by the political system. The measure of legitimacy, authority and enforceability of support is gauged by the quantity and expanse of support that a society confers to a political system.

Laws, rules, processes, and decisions are considered to be the outputs of the political system. These outputs represent a political system's public policy. The countenance of responses and criticisms to these outputs suggests that public policies modify the affairs within a society along with the resulting demands, as well as the nature and disposition of the political system itself. Stated differently, a new demand may be produced by a policy output, which in turn paves the way for more outputs, in an infinite cycle of public policy.

The expediency of systems theory in the study of public policy is constrained by its exceedingly broad and nonfigurative nature. Furthermore, it

does not explicate the methods and systems by which decisions are made and policy is established within the spectrum of the political system (Anderson, 2003). As such, political systems theory portrays the situation where the government merely responds to demands made upon it, and the outcomes can be branded as an "input-output studies" (Anderson, 2003).

On the other hand, institutionalism concerns the study of government institutions or organizations. The life of politics is largely influenced by governmental institutions such as legislative, executive, and judicial branches of the government, in concert with political parties. This collective body of government institutions commandingly determines and implements public policies. Introspections on the formal and legal configuration of government institutions have been the focus of traditional approaches in institutionalism which includes procedural rules, purposes or undertakings, legal sovereignties, and their formal structure. Hardly have studies been concerned in the way or by what means institutions virtually operate, neither have there been any diagnostics on the public policies generated by the institutions nor any findings of the relationships between institutional structure and public policies. In contrast, there abound a considerable number of scholarships on how institutions were *supposed* to operate. Consequently, political scientists spun their interest to the political procedures transpiring in the interior of governmental or political institutions. These studies centered the participants' comportment and on political realities instead of formalism. In the study of the legislatures, interest shifted from simply describing the legislature as an institution to analyzing and explaining its

operation over time, from its static to its dynamic aspects. Thus in the academic curriculum the course on the legislature often came to be about the legislative process (Anderson, 2003).

Policy analysis could very well engage the principles of institutionalism, particularly with its accentuation on the formal or structural characteristics of institutions. An institution is, in part, a set of regularized patterns of human behavior that persist over time and perform some significant social function or activity. It is their differing patterns of behavior that really distinguish courts from legislatures, from administrative agencies, and so on. These regularized patterns of behavior, which we often call rules or structures, can affect decision-making and the content of public policy. Rules and structural arrangements are usually not neutral in their effects; rather, they tend to favor some interests in society over others and some policy results over others. It is contended that some of the Senate rules (and traditions, which often have the effect of rules), such as those relating to unlimited debate and action by unanimous consent, favor the interests of legislative minorities over majorities. Many actions in the Senate, such as bringing bills up for consideration and closing off debate on them, are done by unanimous consent. Thus one senator, so inclined, can block action by the Senate (Anderson, 2003).

Institutional structures, arrangements, and procedures often have important consequences for the adoption and content of public policies. They provide part of the context for policymaking, which must be considered along with the more

dynamic aspects of politics, such as political parties, groups, and public opinion, in policy study (Anderson, 2003).

CHAPTER 6

FINDINGS AND DISCUSSIONS

6.1 Introduction

A theory that describes a pattern of behavior which is germane to those involved is the objective of a grounded theory study (Backman & Kyngäs, 1999, p. 151). A theory, on the other hand, is described as a set of suggestions with reference to the relationship among several concepts (Rice & Ezzy, 2000, p. 11). The grounded theory method was favored in this research on account of its capability to generate theory that could be used and be an aid in understanding of the concept of concurrence of jurisdiction with particular reference to the adjudication of administrative cases by the OMB-MOLEO, considering that no previous study had been made on this context. Given that the principle of engendering a theory is to explicate an occurrence or an observable fact, the relationships that were realized among the categories and their subcategories ought to be discussed. These relationships are what Glaser & Strauss (1967) calls "hypotheses" which are followed by a model that may well be deemed as a graphic illustration of all the rudiments of this grounded theory – the core theoretical variable, the categories and their corresponding subcategories.

6.2 Hypotheses

The core theoretical variable is regarded as the nucleus of the theory and must rationalize or justify most of the "variations" in the process of the research (Stern, Allen, & Moxley, 1984, p. 379). Glaser (2002, p. 15) portrays the core

theoretical variable as the kind of category that settles or resolves affairs and interests by organizing all of the other categories. It parks itself at the epicenter of the data, and is linked to all the other categories. The core theoretical variable must also justify the differences and disparities between and among the other categories. To boot, Stern et al. (1984) emphasizes that the core variable should be orderly and easy to comprehend.

The process of finding a variable that transcended the different categories proved to be challenging. Many times, a researcher may run into the phase where a grounded theory novice becomes exhausted and disenchanted with the categories and their seeming incapacity to iron out the data (Backman & Kyngäs, 1999, p. 151). Nevertheless, a constant evaluation of the practices involved in controlling all the stimuli and impetuses on the concurrence of jurisdiction in the adjudication of administrative cases resolved into a social process which, in this research, is termed *Crossing Boundaries*. This variable consists of the word 'Cross' which, when used as a verb means to pass, move, or reach from one side or spot to another. As an adjective, it means extending over or treating several groups, conditions, or classes. Crossing is an important point to consider in wanting to express the crux within the concept of concurrence in jurisdiction in that it is collaborative or concerted. The other part of this core variable is the word 'Boundary', which when used as a noun, simply means a point or limit that indicates where two things become different. This concept is equally as important since it serves to exemplify the facets observed in the processes and procedures employed by the OMB-MOLEO in the conduct of adjudications in administrative

cases. With these two concepts combined – Crossing Boundaries – they form the core variable.

The model that follows is a representative of the theory, crossing boundaries, grounded in the data taken from GIPOs of the OMB-MOLEO involving the concurrence of jurisdiction in the adjudication of administrative cases. Cognizant of the fact that grounded theories are readily modifiable, a claim on the theory of crossing boundaries as being complete cannot be maintained. In accord with Glaser and Strauss (1967), "the published word is not the final one, but only a pause in the never ending process of generating theory."

6.3 Theoretical Framework

Crossing boundaries developed as the dominant idea that characterizes the involvements of the GIPOs of the OMB-MOLEO. Crossing boundaries was selected as the core theoretical variable for the following reasons:

a) it is pivotal, as it can be correlated with the other theoretical categories;
b) it is widely referenced in the data;
c) it expounds on the theoretical make-up of the phenomena at issue; and
d) it is conceptually adequate to support supplementary studies in other significant areas associated to the concurrence of jurisdiction in administrative cases.

The figure presented below represents the primary components of the theoretical framework on the concurrence of jurisdiction in the adjudication of administrative cases.

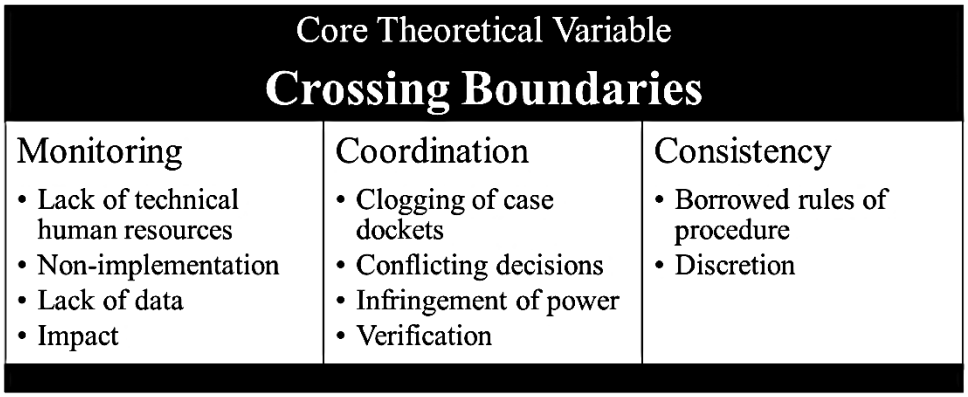

Figure 6.3 Theoretical Framework

In the sections that follow, each of these categories is discussed where the contribution of the theoretical variable to the theoretical framework is outlined.

6.4 Monitoring

Monitoring is concomitant to the political systems theory through the issue on implementation. The implementation of decisions issued by the OMB-MOLEO in administrative cases is one of the identifiable political processes that are binding and obligatory to the society. The political systems theory could very well be considered as the economics of public administration, such that demands for the satisfaction of individual or organizational interests and values are met by providing impermeable decisions in administrative cases and laying out a schematized sequence of actions. As a consequence and in keeping with the

political systems theory, the monitoring of the decisions issued by the OMB-MOLEO in administrative cases should be held with the highest import.

The lack of technical human resources to validate the status of cases referred or endorsed to the different government agencies proves to be one of the hindrances for the creation of an effective monitoring system. The total personnel compliment of the OMB-MOLEO based on the Plantilla of Positions as of 31 December 2012 is 100. This number is comprised of lawyers, investigators, and technical and other support staff, each of whom are given specific responsibilities as defined in their job description. Hence, any other additional tasks to be assigned in order to compensate for the lack of a monitoring body are added responsibilities to the already loaded duties being performed by each personnel. These added functions could undeniably have a bearing on the efficient discharge of duties and responsibilities to the detriment of the public's interests. It is by this notion that the lack of human resources impinge on the theoretical category of monitoring.

Data showing the statistics and figures with reference to the implementation of the decisions issued by the OMB-MOLEO is in short supply, and if at all, extant. Conformity reports or compliance records of the Orders for preventive suspensions and other administrative sanctions or penalties are not maintained by the OMB-MOLEO. There is no active measure to ascertain the observance and execution of the decisions issued by the OMB-MOLEO in administrative cases. The monitoring aspect of decisions issued in administrative cases could well be instrumental in acquiring information that indicates the

effectivity quotients of compliances, which in turn would allow for the application and enactment of conduits that propagates effective, relevant and recognized decisions.

As a mechanism for ensuring the actual and unbiased implementation of decisions, the theoretical category of monitoring represents one of the brittle gears reeling the clock of good governance. Monitoring is one of the instruments to be used in crossing the boundaries between implementation and concurrence of jurisdiction.

6.5 Coordination

Reaching a bottleneck from the stream of administrative cases filed in the OMB-MOLEO is rather inevitable. Considering the number of GIPOs conducting multifarious functions in the management and disposition of criminal and administrative cases, coupled with the interminable influx of complaints against erring officers and employees of the PNP and other law enforcement offices, it is not at all surprising that one GIPO would have his case dockets clogged by pending cases. The clogging of case dockets in the OMB-MOLEO signifies two things. First, there is a need to speed up the process of adjudication, either through the modification of the staffing patterns within the adjudication bureau or the allocation of additional GIPOs that conduct adjudication on administrative cases. Second, there is a need to screen cases that are being docketed. The screening process could very well be from within the organization itself or from the different agencies operating under the cloak of concurrent jurisdiction. The bridging of this

gap in administrative adjudication proceedings can be settled through coordination mechanisms.

The propensity of complainants to file multiple complaints based on the same cause of action and seeking for the same reliefs can be avoided through the implementation of stringent means of coordination. The filing of multiple suits arising from a single set of facts resulting to the issuance of decisions that may altogether be contradictory vitiates the credibility and integrity of these decisions and the offices that they represent. In order to preclude the frequency of this incidence, coordination between and among the different adjudicating bodies is imperative.

Limiting the scope of jurisdiction in administrative cases also need to be coordinated. It should be borne in mind that the introduction and promulgation of rules that bind and affect agencies in the government should be specifically authorized and must be consistent with their respective constating statute.

The processes, procedures and the acumen to issue decisions in administrative cases need to be harmonized. The synchronization of these issues can best be portrayed under the theoretical category of coordination.

6.6 Consistency

Drawing on the rules of procedure of other administrative adjudicating tribunals in the conduct of adjudication is completely acceptable and tolerable, much so when these rules of procedure apply by and large to the government in the effective management of its affairs. However, when these set of rules differ in

a way that an application of another would impinge on the integrity of the other, then a problem on consistency would evolve. The discrepancies in the application of these rules may not advance to a particular instant of total disparity, but to a certain extent, they impose punishments at a different expanse and degree.

The incongruous decisions from different adjudicating bodies and within the organization itself, where the likeliness of its occurrence on no account must be ignored, can nevertheless be prevented. Conflicting decisions arise because there is no uniform process in place to adhere to. Moreover, apart from the matter of processes and procedures, the decision-making aspect in administrative adjudications is subjective in nature. Discretion, preference and foresight are affairs that cannot be measured or even be placed under the clout of dominion, thus, the need for coordinated actions to at least diminish the incidence of discrepancies and contradictions.

6.7 The Theoretical Variable

When rolled into one, the three theoretical categories constitute the core theoretical variable of crossing boundaries. The theoretical categories of monitoring, coordination and consistency are the frames by which the conduct of administrative adjudication are being effected or performed. On their own, each of these categories signifies the ambiguities that need to be considered in improving and enhancing the concurrence of jurisdiction in the adjudication of administrative cases. Each of these categories may be operative and functional on their own and may produce the desired results, but when bridged together, they form a

methodical process that ensures mannerly adherence to procedures resulting to efficiency in the conduct of governmental functions, specifically those that relate to the adjudication of administrative cases.

The boundaries established in this research could be recognized in two aspects. When viewed from within, the boundaries could pertain to the internal rules, procedures and processes among the GIPOs or the different bureaus operating within the OMB-MOLEO. When regarded in the external concept, boundaries could mean the peripheries of inter-agency relations with particular regard to adjudicating tribunals and their sets of rules and procedures.

The crossing of boundaries then means the alignment of certain aspects of procedures between and among the players in the field of administrative adjudication. The configurations, patterns and designs defining the relationship of the different adjudicating bodies form viaducts that conjoin one tribunal to another in terms of policies and guidelines.

6.8 The Crossing of Boundaries

The core theoretical variable of crossing boundaries embraces the three other theoretical categories. Together, the theoretical categories represent the qualities of the schemes employed by the OMB-MOLEO that are crucial for the fluid operation of administrative adjudication processes taken in the context of concurrence in jurisdiction. The theoretical categories are, in this research, the boundaries that limit or constrain the activities undertaken in the adjudication of administrative cases. It is worthy to note that the idea of boundaries has been at

the fulcrum of significant and leading investigation designs in the areas of sociology, political science, anthropology, history, and psychology (Lamont & Molnar, 2002). Also, the idea of boundaries has become associated with scholarly work in cognition, social and collective identity, commensuration, census categories, cultural capital, cultural membership, racial and ethnic group positioning, hegemonic masculinity, professional jurisdiction, scientific controversies, group rights, immigration, and contentious politics (Lamont & Molnar, 2002).

The initial consideration of the categories suggested the kind of relationship that the OMB-MOLEO adjudication bureau has with its counterparts in the adjudication bodies of other law enforcement offices with adjudicatory powers. In reflecting how the theoretical categories are interrelated, it became evident that the theoretical categories spoke to the ways in which social actors conceptualize and categorize people, practices, perception of realities and symbolic resources (Lamont & Molnar, 2002). The theoretical categories then, were descriptive of the relational process at play in the interface between the different administrative adjudication bodies and within the adjudication bureau of the OMB-MOLEO itself.

The theory of crossing boundaries attempts to protect the integrity of individual institutions while at the same time, realizing the unity and oneness of policies, processes and procedures. From an inside perspective, the different adjudicating bodies are bound within the confines of their own zones that they: a) sometimes neglect to reach out and systematize the processes and procedures

(coordination); b) tend to work on their individual duties that they overlook important aspects (monitoring); and, c) fail to compare notes with and consult other offices (consistency). This concept may not be new or novel, but it is something that is exceedingly focal and influential. The crossing of boundaries posits the realization that the processes attendant to the different adjudicating bodies with concurrent jurisdiction are not separate, instead, they represent a manifestation of the larger whole.

The core theoretical variable established in this study can be regarded as the true symbol of the issues involved in the adjudication of administrative cases in the Office of the Ombudsman for the MOLEO. The office has been struggling to find the real roots of the problems or issues it has been facing in connection with the concurrence of its jurisdiction with the different administrative tribunals. The failure to understand the factual concepts encountered in this study has ultimately affected the kind of approaches that the office has in the adjudication of administrative cases.

CHAPTER 7

CONCLUSION

7.1 Introduction

The theory that has been generated in this research has been discussed in Chapter 6 and the narratives therein have, in essence, concluded the study. However, the purpose of grounded theory is to create theory as a starting point for discussion, research and action. Grounded theory is especially helpful in areas where little research exists because it casts a wide net out from inductively reasoned theoretical categories to points of connection with other lines of research and established theory. As such, the limitations of this study, the implications of the research, suggestions from the study, and final remarks are presented in this final chapter.

7.2 Limitations

As with any other research, this study is limited in certain ways. This research must be viewed in light of the foregoing. First, it is acknowledged that methods that involve verbal reports, such as interviews, share a problem with accuracy in that the researcher is dependent on the participant's ability to articulate and recall events related to the research. Second, this research is dependent upon the researcher's ability to provide theoretical sensitivity to the data gathered. Third, this research focuses on the generation of a theory, not in the testing of previously generated theories or hypotheses regarding jurisdiction and the concurrence thereof in administrative adjudications. Fourth, since the study

involved the administrative adjudication being conducted in OMB-MOLEO, all participants were GIPOs of the same office, a different group of GIPOs or adjudicators from other offices or agencies could produce different results. Fifth, a considerable reference to the PNP-IAS has been made as compared to the administrative adjudicating bodies of other law enforcement offices because of the volume of cases being handled by both OMB-MOLEO and PNP-IAS. Moreover, a greater part of the cases being handled by the OMB-MOLEO pertains to members of the PNP. Finally, the interview data set from which the theoretical categories were derived was small. While the requirement of theoretical saturation was met, engaging in a larger extent of participants could produce more theoretical categories resultant from the interviews. The sample taken from the GIPOs of the OMB-MOLEO was one of convenience.

7.3 Implications of this research

One of the implications evident in this research is that this research contributes to the isolation and conceptualization of the issues involved in the adjudication of administrative cases in the OMB-MOLEO specifically that of administrative cases involving the concurrence of jurisdiction with other administrative adjudicating bodies of law enforcement offices. As such, this theoretical research serves to add to the earlier body of knowledge regarding concurrence of jurisdiction in the adjudication of administrative cases.

The theoretical categories that developed as an outcome of this study represent the bounds by which the adjudication of administrative cases in the

OMB-MOLEO is constrained with. The theoretical categories and the resultant core variable emphasizes the need for gauging and reconsidering actions and measures that need to be undertaken in attempting to improve the manners and methods relating to the adjudication of administrative cases. The theoretical categories are the fissures that curtail the merits and practicality of administrative adjudication processes. Given that the concepts which developed from this research have been rooted from the actual actors in the field of administrative adjudication, it is of the essence to note the soundness and cogency of the results. Further studies in the areas of monitoring, coordination and consistency in administrative adjudication proceedings may bring about colossal transformations in the understanding, awareness and responses to and effectivity and efficiency of administrative proceedings.

This research offers a mild substantial theory on the concurrence of jurisdiction of the OMB-MOLEO with the other administrative tribunals of law enforcement offices in the adjudication of administrative cases. As such, it is a good starting point for further inquiry. While there had been limitations to this work, there also had been established abundant prospects for extensive inquiries and scholarly activities.

7.4 Suggestions for further research

While this research provides a validated substantial grounded theory revolving around the concurrence of jurisdiction in the adjudication of administrative cases, this research likewise opens the floodgates of extended

inquiries. The following areas of discussion and research are suggested to be undertaken relative to the concurrence of jurisdiction in the adjudication of administrative cases being handled by the Office of the Ombudsman:

1) This study focused on the perspectives of GIPOs of the OMB-MOLEO and did not study the perspectives of the adjudicators of the law enforcement agencies with concurrent jurisdiction. In this context, administrative adjudication has yet to be studied from this standpoint.
2) This study is descriptive in nature as it intended to generate theory rather than test an existing one. A more empirically based approach may be taken to measure the perceptions of adjudicators who handle administrative cases and the concepts, theory and ideas from this study may be subsequently used in developing a survey tool for this purpose.
3) An empirical approach may be initiated to ascertain the aspects that could be potentially used for understanding and further developing the guidelines for monitoring, coordination and consistency of administrative decisions.
4) A long term study could be undertaken to measure the impact, efficiency and effectiveness of the theoretical concepts generated in this research.
5) An exploratory study may be piloted to discover issues related to policy-making and implementation processes in the Office of the Ombudsman and/or in any of its sectoral offices.
6) Additional studies can include preliminary investigation on criminal cases.

7.5 Personal Reflections

This study intends to foster the groundwork in understanding of the state of the OMB-MOLEO's administrative adjudicatory function. At the heart of this theme, the need for a broader comprehension on the effects of its procedures, powers and functions – in relation to the other adjudicating tribunals – is a requisite component that should be particularized so that a deeper appreciation of matters relating to inter-agency relations would be realized. Also, it is assumed that this study would be able to provide insights into the current inter-agency policies that are indispensable for the OMB-MOLEO and the other administrative adjudicating bodies to successfully carry out the ends of social justice and to advance an effective and competent government. In this light, I find it appropriate to end this study with an excerpt that suitably sums up the concurrence of jurisdiction in the adjudication of administrative cases with particular reference to the three main categories that evolved during the conduct of this research. In the words of Martin Landau (1969):

> "In public administration the standard policy for improving the performance characteristics of an administrative agency has rested upon the classical axiom that the reliability and efficiency of an operating system, man or ma- chine, is dependent on the reliability and efficiency of each of its parts, including linkages. Improvement, therefore, calls for a system to be broken down (decomposed or analyzed) into its most basic units, these to be worked on to the point of infallibility. So much success has attended this procedure, especially as regards machine-based systems, that it not only constitutes a sound problem-solving paradigm, but is often generalized into a good commonsense rule.

About the only limitations which are imposed on its application are those which derive from market conditions, the law of diminishing returns, and the state of the art.”

Appendix 1 Subcategory Development: Lack of Technical human resources

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
We lack manpower.	Cry for help	Lack of technical human resources
Concurrence is a good thing, our workload could at least be lessened	Burden-sharing	
	Uneven distribution of cases	
I hope they expand our workforce soon.	Less people	
	Need for reinforcement	
Only a handful of persons do the work, and that is one of the reasons for the delays.	Technical job	
	Limited hiring of technical staff	
Considering the shortage of lawyers conducting adjudication, there is no one to pull-out to conduct monitoring.	Less people but more job	
	Overwhelmed workforce	
I don't personally know if the Decisions I have issued over the years have all been carried out.	Supervision of issued decisions needed	
	Lack of feedback	
Just add more people, it's that simple	Strengthen quantity of workforce	

Appendix 2 Subcategory Development: Non-implementation

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
I don't personally know if the Decisions I have issued over the years have all been carried out.	Supervision of issued decisions needed	Non-implementation
	Lack of feedback	
Wouldn't it bother you if your Decisions are not being implemented?	Feeling of weakness	
	Vulnerability of decision making process	
I would only learn of the respondent's receipt of the Decision once they file for a Motion for Reconsideration.	Slim prospect for confirmation	
	Awareness by chance	
I sometimes hear news from my friends in the PNP that orders for suspension are not being effected.	Toothless tiger	
	Disregard of decisions	
When I had a lecture at the PNP, I was shocked to know that one officer reports to work even after a decision was issued suspending him from the service.	Disregard of decisions	
	Awareness by chance	
	Indifference to decision-making power	

Appendix 3 Subcategory Development: Lack of data

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
Data like that exists before, I just don't know why it was discontinued.	Data collection previously done	Lack of data
We have some statistics, but sometimes, our (OMB-MOLEO) figures don't match the figures of the Central Office.	Inconcistencies in data	
	Variation in data collection	
The generation of data is a mechanical act; it is just a matter of adding up numbers. The problem is, no one is available to do it.	Data maintenance	
	Uncomplicated	
	Want of personnel	

Appendix 4 Subcategory Development: Impact

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
Wouldn't it bother you if your Decisions are not being implemented?	Feeling of weakness	Impact
	Vulnerability of decision making process	
When drafting decisions, you have to think about the effects that your Decision may have to the respondent's job and family.	Ethical considerations	
	Moral considerations	
Often do you hear people asking if the persons found guilty of an offense are really and actually disciplined.	Doubts and misgivings	
	Skepticism	
I think of every detail when I pen a Decision, and that consumes much of my time.	Meticulous work	
	Well thought out decisions	

Appendix 5 Subcategory Development: Clogging of Case Dockets

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
I still have a lot of cases to dispose.	Backlog	Clogging of Case Dockets
A lot more cases are being filed than those being disposed of.	Swamped by cases	
	Uneven ratio	
If there could only be a way to screen cases and determine their authenticity; this could prevent harassment suits from being docketed.	Filtering of cases	
	Strengthening the forefronts	
The evaluation of cases should be independent from and unattached to the CIPAAB.	Job assignment overload	
I think the records divisions of both units need to communicate with one another.	Harmonization of record keeping	

Appendix 6 Subcategory Development: Infringement of Power

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
To my mind, this would result to an infringement on the power vested upon the OMB and PNP by law.	Encroachment of power	Infringement of Power
I know about the existence of the MOA [Memorandum of Agreement], but the provisions therein are hardly ever followed.	Enforcement difficulties	
That is feasible, however, not only do we have concurrent jurisdiction with the PNP, but also with other adjudicating bodies.	Selective	
	Partiality	

Appendix 7 Subcategory Development: Conflicting Decisions

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
Some people are uninformed about the rule on forum shopping.	Need for awareness	Conflicting Decisions
The CNFS seems more like a formality.	Disregard to the objective	
There are instances where the complainants sign a CNFS, but would tell you that a similar case is pending, and some even promise to withdraw the earlier complaint filed.	Attempts of circumventing the procedures	
	Treading on multiple jurisdictions	
I often get asked why different penalties have been imposed to seemingly identical charges.	Confusion	
	Technicalities of the law	
It is quite funny to recall that complainants sometimes ask you which adjudicating body they could benefit more from.	Fishing	
	Unfamiliarity to the process	
Oftentimes, a counter-affidavit would be filed, alleging that the same case had already been filed with the IAS.	Palpable diregard to the rules	
	Same case filed and pending	
	Unknown existence of similar case	

Appendix 8 Subcategory Development: Verification

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
The CNFS seems more like a formality.	Disregard to the objective	Verification
The aggressiveness of complainants in filing the same suits in different tribunals is not deterred by the rules since the only penalty for forum shopping is the dismissal of the subsequently filed cases.	Ignoring rules	
	Leniency of the rule	
It is not practical to file suits for violation of the rule against forum shopping.	Unviable option	
	Need for stringent measures	
If there could only be a censoring body.	Necessity for repression	

Appendix 9 Subcategory Development: Borrowed Rules of Procedure

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
I have already asked that before, and they told me that the rules are under way, and that was years ago.	Need to expedite rules construction	Borrowed Rules of Procedure
I use the CSC rules as there are a lot of cases available on SCRA [Supreme Court Reports Annotated].	Recourse to alternatives	
I often ask myself, why is the penalty lower in the PNP rules?	Irreconcilability	
	Variation in rules	
It depends. Sometimes, the complainant himself would designate the offense.	Uninformed judgment	
	Misinterpretation of laws	
I do come across issuing different Decisions for the same offense, as the decision is contingent upon the facts.	Differing circumstances	
I sometimes take into account 'humanitarian considerations'.	Moral implications	
Why is it different?	Doubt	
	Hesitation	
	Uncertainty	

Appendix 10 Subcategory Development: Discretion

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)
I have previously attended trainings for the issuance of Decisions.	Acquired knowledge	Discretion
I often cite the SCRA as my reference.	Option	
	Preference	
I overheard some GIPOs talking once, they were discussing within themselves as to why my appreciation of the case is different.	Poles apart	
	Diversity	
We all have differing interpretations.	Diversity	
	Wide range of undertanding	
Here's the thing, if we both see an apple, you may say that the apple is small and heart-shaped, but for me, it is a medium sized apple that is tooth-shaped.	Personal preference	
	Predeliction	

Appendix 11 Category Development: Monitoring

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)	Axial Coding (Category Development)
We lack manpower.	Cry for help	Lack of technical human resources	Monitoring
Concurrence is a good thing, our workload could at least be lessened	Burden-sharing		
	Uneven distribution of cases		
I hope they expand our workforce soon.	Less people		
	Need for reinforcement		
Only a handful of persons do the work, and that is one of the reasons for the delays.	Technical job		
	Limited hiring of technical staff		
Considering the shortage of lawyers conducting adjudication, there is no one to pull-out to conduct monitoring.	Less people but more job		
	Overwhelmed workforce		
I don't personally know if the Decisions I have issued over the years have all been carried out.	Supervision of issued decisions needed		
	Lack of feedback		
Just add more people, it's that simple	Strengthen quantity of workforce		
I don't personally know if the Decisions I have issued over the years have all been carried out.	Supervision of issued decisions needed	Non-implementation	
	Lack of feedback		
Wouldn't it bother you if your Decisions are not being implemented?	Feeling of weakness		
	Vulnerability of decision making process		
I would only learn of the respondent's receipt of the Decision once they file for a Motion for Reconsideration.	Slim prospect for confirmation		
	Awareness by chance		
I sometimes hear news from my friends in the PNP that orders for suspension are not being effected.	Toothless tiger		
	Disregard of decisions		
When I had a lecture at the PNP, I was shocked to know that one officer reports to work even after a decision was issued suspending him from the service.	Disregard of decisions		
	Awareness by chance		
	Indifference to decision-making power		
Data like that exists before, I just don't know why it was discontinued.	Data collection previously done	Lack of data	
We have some statistics, but sometimes, our (OMB-MOLEO) figures don't match the figures of the Central Office.	Inconcistencies in data		
	Variation in data collection		
The generation of data is a mechanical act; it is just a matter of adding up numbers. The problem is, no one is available to do it.	Data maintenance		
	Uncomplicated		
	Want of personnel		
Wouldn't it bother you if your Decisions are not being implemented?	Feeling of weakness	Impact	
	Vulnerability of decision making process		
When drafting decisions, you have to think about the effects that your Decision may have to the respondent's job and family.	Ethical considerations		
	Moral considerations		
Often do you hear people asking if the persons found guilty of an offense are really and actually disciplined.	Doubts and misgivings		
	Skepticism		
I think of every detail when I pen a Decision, and that consumes much of my time.	Meticulous work		
	Well thought out decisions		

Appendix 12 Category Development: Coordination

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)	Axial Coding (Category Development)
I still have a lot of cases to dispose.	Backlog	Clogging of Case Dockets	Coordination
A lot more cases are being filed than those being disposed of.	Swamped by cases		
	Uneven ratio		
If there could only be a way to screen cases and determine their authenticity; this could prevent harassment suits from being docketed.	Filtering of cases		
	Strengthening the forefronts		
The evaluation of cases should be independent from and unattached to the CIPAAB.	Job assignment overload		
I think the records divisions of both units need to communicate with one another.	Harmonization of record keeping		
To my mind, this would result to an infringement on the power vested upon the OMB and PNP by law.	Encroachment of power	Infringement of Power	
I know about the existence of the MOA [Memorandum of Agreement], but the provisions therein are hardly ever followed.	Enforcement difficulties		
That is feasible, however, not only do we have concurrent jurisdiction with the PNP, but also with other adjudicating bodies.	Selective		
	Partiality		
Some people are uninformed about the rule on forum shopping.	Need for awareness	Conflicting Decisions	
The CNFS seems more like a formality.	Disregard to the objective		
There are instances where the complainants sign a CNFS, but would tell you that a similar case is pending, and some even promise to withdraw the earlier complaint filed.	Attempts of circumventing the procedures		
	Treading on multiple jurisdictions		
I often get asked why different penalties have been imposed to seemingly identical charges.	Confusion		
	Technicalities of the law		
It is quite funny to recall that complainants sometimes ask you which adjudicating body they could benefit more from.	Fishing		
	Unfamiliarity to the process		
Oftentimes, a counter-affidavit would be filed, alleging that the same case had already been filed with the IAS.	Palpable diregard to the rules		
	Same case filed and pending		
	Unknown existence of similar case		
The CNFS seems more like a formality.	Disregard to the objective	Verification	
The aggressiveness of complainants in filing the same suits in different tribunals is not deterred by the rules since the only penalty for forum shopping is the dismissal of the subsequently filed cases.	Ignoring rules		
	Leniency of the rule		
It is not practical to file suits for violation of the rule against forum shopping.	Unviable option		
	Need for stringent measures		
If there could only be a censoring body.	Necessity for repression		

Appendix 13 Category Development: Consistency

Text from the interviews	Open Coding	Focused Coding (Subcategory Development)	Axial Coding (Category Development)
I have already asked that before, and they told me that the rules are under way, and that was years ago.	Need to expedite rules construction	Borrowed Rules of Procedure	Consistency
I use the CSC rules as there are a lot of cases available on SCRA [Supreme Court Reports Annotated].	Recourse to alternatives		
I often ask myself, why is the penalty lower in the PNP rules?	Irreconcilability		
	Variation in rules		
It depends. Sometimes, the complainant himself would designate the offense.	Uninformed judgment		
	Misinterpretation of laws		
I do come across issuing different Decisions for the same offense, as the decision is contingent upon the facts.	Differing circumstances		
I sometimes take into account 'humanitarian considerations'.	Moral implications		
Why is it different?	Doubt		
	Hesitation		
	Uncertainty		
I have previously attended trainings for the issuance of Decisions.	Acquired knowledge	Discretion	
I often cite the SCRA as my reference.	Option		
	Preference		
I overheard some GIPOs talking once, they were discussing within themselves as to why my appreciation of the case is different.	Poles apart		
	Diversity		
We all have differing interpretations.	Diversity		
	Wide range of undertanding		
Here's the thing, if we both see an apple, you may say that the apple is small and heart-shaped, but for me, it is a medium sized apple that is tooth-shaped.	Personal preference		
	Predeliction		

Appendix 14 Theory Generation

Focused Coding (Subcategory Development)	Axial Coding (Category Development)	Theory Generation
Lack of technical human resources	Monitoring	Crossing Boundaries
Non-implementation		
Lack of data		
Impact		
Clogging of Case Dockets	Coordination	
Infringement of Power		
Conflicting Decisions		
Verification		
Borrowed Rules of Procedure	Consistency	
Discretion		

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