Case Comment

MALABANAN v. RAMENTO: PERMISSIBLE LIMITATION ON STUDENT DEMONSTRATIONS WITHIN SCHOOL PREMISES

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INTRODUCTION

The past few years have been a time of turmoil and turbulence in the Philippines. The economy has been on a downswing and the political structure has been precariously teetering on the brink of collapse. The brutal slaying of Sen. Benigno S. Aquino, Jr. on August 21, 1983 exposed the dire straits the country was in and heralded the impending chaos. The people were jolted from the stupor induced by a decade of authoritarian rule. All of a sudden the people were out on the streets protesting against the present regime. Collective protest became an everyday occurrence.

Students, imbued with the idealism and dynamism of youth, were, as they have always been, at the forefront of the protest movement. They were, as expected, one of the first groups to take to the streets. Student mass actions, however, were not limited to marching in the streets. They also engaged in militant protest actions within the premises of their schools, more often than not, voicing their demands and grievances on issues close to the heart of the student—tuition fee increases, student councils, student publications, school policies, and school facilities. The campus, it seems, is a most appropriate venue for student protest.

Protesting within the confines of the school takes on a different dimension from protesting in the streets. Whereas in street protests the conflict is between the right of the individual against the interest of the State, in school demonstrations it is between the right of the individual as student and the interests of the school administration and that of the State. Furthermore, the venue for protest is of a different nature. Streets and parks are public property while school premises, as is usually the case in the Philippines, may be private property. Another point to consider is the relationship between the student and the school which undoubtedly takes on a more structured and restrictive character than that between the individual and the State.

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It is in the light of these considerations that the question inevitably arises: What are the permissible restrictions on a student demonstration or rally held within school premises? Because the exercise of rights appurtenant to the expression of grievances is involved, the question necessarily takes on a constitutional character. Undoubtedly, students are also entitled to constitutional protection.

A recent decision of the Supreme Court provides a general answer to the question propounded. In the case of *Malabanan v. Ramento*,[1] five student leaders of a private university were suspended for one academic year for leading a rally that was held in a place other than that specified, and that went beyond the period of time provided, in a permit issued by school authorities, thus causing disruption to both academic and non-academic activities. The Supreme Court, upholding the right of the students to free speech and peaceable assembly,[2] reduced the penalty imposed on the student leaders to one week suspension. This decision has far-reaching effects because of the renewed student activism being felt all over the country. It gives the students something to fall back on when they are prevented from or penalized for holding rallies and demonstrations in their schools. The decision defines in clear-cut terms the constitutionally protected rights of students and provides broad guidelines for their implementation. It has likewise put school officials on the defensive, they being, by virtue of the decision, hard-pressed to justify a limitation of the exercise of these rights. Thus, some school officials have resorted to remedies beyond suspension and expulsion.[3] Students who lead demonstrations and boycotts of classes are being sued for damages.[4] Others are denied entry into their schools, upon orders of school authorities, when demonstrations or rallies are scheduled. Still others are reportedly harassed and maltreated by school security personnel. But some schools take the easy way out. When a boycott or a rally is scheduled to be held by the students they just suspend classes and close down the school for the day. The mantle of protection offered by the Constitution has, it seems, been observed more in the breach.

There is thus an immediate need to analyze, clarify, and concretize the permissible restrictions on student rallies and demonstrations held within school premises, if only to contribute within a legal framework in reversing the steady erosion of students' rights.

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[1] G.R. No. 62270, May 21, 1984, 129 SCRA 359; hereinafter cited as *Malabanan*.

[2] CONST., art. IV, sec. 9, which reads: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

[3] But some schools have adopted the "no permit, no rally" rule and have expelled students who violated it. *See Bulletin Today*, July 24, 1984, p. 20, col. 8.

[4] *See Bulletin Today*, Sept. 24, 1984, p. 8, col. 4. Fourteen students and their parents were sued for half a million pesos in damages by their school for holding rallies and demonstrations within and outside the school.

MALABANAN V. RAMENTO

The petitioners were officers of the student council of the Gregorio Araneta University Foundation (GAUF). To protest the proposed merger of the Institute of Animal Science and the Institute of Agriculture they obtained a permit from university authorities to hold an assembly. The permit authorized an assembly from 8 a.m. to 12 noon on August 27, 1982, to be held at the Veterinary Medicine and Animal Science basketball court. A rally was instead held by the students at the Life Science building. Furthermore, it was continued for a period longer than that specified in the permit. It was carried on until late in the afternoon. Due to the noise created by the rally (megaphones were used), classes were disrupted and even non-academic personnel were forced to discontinue their work.

The petitioners were asked on the same day by school officials to explain why they should not be penalized for holding an illegal assembly. For failure to explain they were preventively suspended. The petitioners challenged the validity of their suspension before the Court of First Instance. On October 20, 1982, Director Ramento of the Ministry of Education, Culture and Sports, National Capital Region, found the petitioners guilty of holding an illegal assembly under Paragraph 146(c) of the Manual for Private Schools and a penealty of suspension for one academic year was meted out. The petitioners then instituted certiorari, prohibition, and mandamus proceedings before the Supreme Court against Director Ramento, the university, and its officers, assailing the constitutionality of their suspension.

The Supreme Court, through Chief Justice Fernando, ruled that "respect for the constitutional rights of peaceable assembly and free speech calls for the setting aside of the decision of respondent Ramento, the penalty imposed being unduly severe."[5] It concluded that a penalty of one week suspension would be sufficient.

To support its conclusion, the Court first established the students' enjoyment of constitutional rights. It said:

> Petitioners invoke their rights to peaceable assembly and free speech. They are entitled to do so. They enjoy like the rest of the citizens the freedom to express their views and communicate their thoughts to those disposed to listen in gatherings such as was held in this case. They do not, to borrow from the opinion of Justice Fortas in *Tinker v. Des Moines Community School District*,[6] "shed their constitutional rights of speech or expression at the school house gate."[7] While, therefore, the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards.[8]

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[5] *Malabanan*, 129 SCRA at 366.
[6] 393 U.S. 503 (1969) [hereinafter cited as *Tinker*.]
[7] *Id.*, at 507.
[8] *Malabanan*, 129 SCRA at 367-368.

It then went on to apply the standard laid down in *Tinker* that "conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of free speech,"[9] to the conduct of the petitioners. The Court found that although there was indeed a violation of their rights of free speech and peaceable assembly, because of the undue severity of the penalty they nevertheless cannot be entirely absolved from liability because their conduct violated the permit and resulted in the disruption of classes and the stoppage of the work of non-academic personnel in the vicinity of the rally. In accordance with the concept of proportionality between the offense committed and the sanction imposed, the Court reduced the penalty to one week suspension.

But what was of greater significance than the resolution of the case itself were the principles set forth by the Court to guide school authorities and students in the conduct of rallies, demonstrations and other assemblies in school premises. It said:

> The rights to peaceable assembly and free speech are guaranteed students of educational institutions. Necessarily, their exercise to discuss matters affecting their welfare or involving public interest is not to be subjected to previous restraint or subsequent punishment unless there be a showing of a clear and present danger of a substantive evil that the state has a right to prevent. As a corollary, the utmost leeway and scope is accorded the content of the placards displayed or the utterances made. The peaceable character of an assembly could be lost, however, by an advocacy of disorder under the name of dissent, whatever grievances that may be aired being susceptible to correction through the ways of the law. If the assembly is to be held in school premises, permit must be sought from its school authorities, who are devoid of power to deny such request arbitrarily or unreasonably. In granting such permit, there may be conditions as to the time and place of the assembly to avoid disruption of classes or stoppage of work of the non-academic personnel. Even if, however, there be violations of its terms, the penalty incurred should not be disproportionate to the offense.[10]

These principles, though intended to be couched in generalities, belie the strong influence of the factual situations in the case. There is a danger that the principles might be of limited application considering the intolerant attitude to student actions against school policies being espoused by a great any schools. The granting of a permit by the administrators of GAUF in this case is a considerably uncommon gesture of tolerance.

From the above discussion of the Court, the following standards can be culled:

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[9] *Tinker*, 393 U.S. at 513-514.
[10] *Malabanan*, 129 SCRA at 372.

1. Students enjoy the rights of free speech and peaceable assembly within the school.

2. School authorities may require that a permit be secured before any assembly may be held within the school.

3. School officials cannot deny a permit except when there is "a showing of a clear and present danger of a substantive evil that the state has a right to prevent."

4. The permit granted may impose conditions as to the time and place of the assembly in order to avoid the disruption of normal school activities.

5. The students responsible may be punished for violating the terms of the permit if such violation results in the commission of acts that would constitute a substantive evil that the state has a right to prevent, i.e., material and substantial disruption of academic and non-academic activities.

6. The penalty imposed must be proportionate to the offense committed.

These standards will be treated separately in order to provide for a more systematic discussion.

THE STUDENTS' RIGHTS TO FREE SPEECH AND PEACEABLE ASSEMBLY

The recognition of the students' freedom of speech and right to assemble stems from the proposition that these rights are basic conditions of scholarship,[11] and therefore essential for a healthy academic environment. The rationale is that since the school is supposed to train young people to think independently, then the whole campus and not just the classroom should provide appropriate conditions for the free expression of ideas.[12] The classroom, being heavily dominated by the teacher, may not provide the most conducive environment for free discussion, and thus, to make independence of thought operative, it must be pursued even beyond the classroom.[13] As declared by the U.S. Supreme Court: "First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights of speech or expression at the school house gate."[14] With all the more reason should free speech and the right to peaceable assembly be recog-

[11] Monypenny, *Toward a Standard for Student Academic Freedom*, 28 LAW & CONTEMP. PROB. 625, 627-628 (1963).

[12] *Ibid.*

[13] Schwartz, *The Student, the University and the First Amendment*, 31 OHIO STATE L. J. 635, 670-671 (1970).

[14] *Tinker*, 393 U.S. at 506.

nized and encouraged within the school, open and free discussion being a basic element of education.

But freedom of speech and the right of assembly, like other constitutionally guaranteed rights, are not absolute. They may be subjected to limitations when their exercise would clash with the interests of the State or would come into conflict with the rights of other individuals. Within the confines of the school, the interest of the State and of school authorities is to maintain order and prevent the disruption of the normal course of school activities. To achieve this end, rules are promulgated by the school and by the State in its supervisory and regulatory capacity. The problem arises when the conduct of students, in the exercise of their constitutional rights, collide with these rules.[15]

PERMITS

School officials, in the exercise of their authority to prescribe and control conduct in the school,[16] may require that a permit be obtained before students can hold an assembly. The authorities may require that advance notice of a planned demonstration be given to them so that the school administration and the students could be afforded an opportunity to work out detailed methods for the conduct of the protest action with the end that it be conducted in a manner compatible with the interests of both the administration and the students.[17] This requirement for prior notice must not, however, be used as an excuse for prior restraint. Furthermore, the school cannot impose a flat ban on all campus demonstrations.[18] Also, the issuance of permits may not be exercised in a discriminatory fashion so as to confer monopolistic use of school premises for assemblies to certain groups or impede equal access to school facilities.[19] The authority to regulate must be exercised uniformly. Discriminatory regulations would violate not only the freedom of speech and the right of assembly but also the equal protection guarantee of the Constitution.[20]

DENIAL OF PERMITS: THE CLEAR AND PRESENT DANGER RULE

According to the Supreme Court in *Malabanan,* a permit for an assembly within the school cannot be denied arbitrarily or unreasonably. It can be denied only if there is a showing of a clear and present danger of a substantive evil that the state has a right to prevent. This is a very liberal approach which favors the students. It requires a very high pro-

15 *Id.,* at 507.
16 *Ibid.*
17 Powe v. Miles, 407 F. 2d 73 (1968).
18 Hammond v. South Carolina State College, 272 F. Supp. 947 (1967).
19 Reyes, *Emerging Student Rights and the School's Disciplinary Authority,* 45 PHIL. L. J. 543, 564 (1970).
20 CONST., art. IV, sec. 1, which reads: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

bability of serious disruption before the freedom of speech of students may be curtailed.[21] The burden imposed upon school officials of proving a clear and present danger is mandatory. Absent such a showing, a permit cannot be denied.

The clear and present danger rule has been described as follows:

> The clear and present danger rule means that the evil consequences of the comment or utterance must be extremely serious and the degree of imminence extremely high before the utterance can be punished. The danger to be guarded against is the substantive evil sought to be prevented. This test then, as a limitation on freedom of expression, is justified by the danger or evil of a substantive character that the state has a right to prevent. Unlike the dangerous tendency rule, the danger must not only be clear but also present. The term "clear" seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. "Present" refers to the time element. It is used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable. The word "present" has been defined by jurisprudence as meaning imminent, urgent and impending. It will require an unusual quantum of proof to establish a present danger.[22]

It has been held that to support a finding of a clear and present danger, "it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."[23] likelihood of destruction or destruction of property,[24] public inconvenience or annoyance,[25] and allegations by the police that the ranks of demonstrators may be infiltrated by subversive elements[26] were held not sufficient to limit the freedom of speech. These instances however referred to the exercise of free speech in venues other than the school. But in one case it was ruled that absent a showing that a speaker's appearance would lead to violence or disorder, or that the school would be otherwise disrupted, the ground that the speaker was a convicted felon and hence might advocate lawlessness would not justify the school authorities' barring him from speaking after he has been invited by students and the assembly before which he was to speak has been approved by the school.[27]

As stated earlier, the adoption of the clear and present danger rule in the determination of whether a permit should be denied is favorable to the students. It imposes a great burden on the shoulders of school officials. This test, which finds primary application in sedition cases, would make the denial of a permit almost impossible. The remedy of the school ad-

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[21] Garvey, *Children and the First Amendment*, 57 TEX. L. REV. 321, 352 (1979).
[22] Velasco, *The Right of Free Speech and Assembly: Re Navarro v. Villegas*, 45 PHIL. L. J. 501, 533-534 (1970).
[23] Whitney v. California, 274 U.S. 357, 367 (1927).
[24] *Id.*, at 378.
[25] Terminello v. Chicago, 337 U.S. 1, 4 (1947).
[26] Reyes v. Bagatsing, G.R. No. 65366, Nov. 9, 1983, 125 SCRA 553, 568.
[27] Brooks v. Auburn University, 412 F. Supp. 1171 (1969).

ministration then is virtually limited to punishing infractions of rules of conduct, after the disruptive act has been done. School administrators may question the wisdom of applying the clear and present danger rule to schools. They may argue that the application of the rule effectively curtails their authority to control the conduct of students and maintain order. It is perhaps because of this that some school administrators have resorted to measures designed to discourage students from holding assemblies and questioning school policies. The damage suit against student demonstrators appears to be an offshoot of this.[28] Other extra-legal means may be just as effective. Lest it be forgotten, speech outside the classroom can be punished within it. Passing or failing a course can be determined by many factors, "conduct" being an immeasurable but commonly used determinant.

But there should be no compromise. The clear and present danger rule must be applied religiously if the students' constitutional rights are to be preserved. The purpose of schools, which is to develop independent, critical thinking among the young, must not be lost sight of. Free speech is essential for the realization of this objective.

CONDITIONS

A permit for holding an assembly may provide for conditions as to time and place for the purpose of preventing the disruption of the normal course of activities of the school, as laid down by the Supreme Court in *Malabanan*. Other courts have extended the scope of the conditions to include "manner"[29] while others have included "duration,"[30] although the latter can properly be subsumed under the condition as to time. It is understood that these conditions have to be reasonable. They should not be so restrictive as to result in a virtual denial of the permit to hold an assembly. Overly restrictive conditions, like a broad prohibition, are constitutionally defective.[31] These conditions should be measured by the minimum requirements of safety, traffic, the protection of school property from misuse,[32] and other conditions that would "preserve an atmosphere conducive to intellectual pursuits."[33]

But although "time" and "place" are easy to define, what is meant by "manner' is not very clear.[34] It has been observed that conditions as to the manner of holding assemblies may provide "the handle for regulation of speech content under the guise of ostensibly procedural restric-

[28] *See* note 4, *supra.*
[29] Healy v. James, 408 U.S. 169, 192-193 (1972).
[30] Sullivan v. Houston Independent School District, 307 F. Supp. 1328, 1340 (1969). (1969).
[31] Schwartz, *supra,* note 13 at 637.
[32] Monypenny, *supra,* note 11 at 628.
[33] *Developments in the Law — Academic Freedom,* 81 HARVARD L. REV. 1045, 1131 (1968).
[34] Reyes, *supra,* note 19 at 565-566.

tions."[35] For example, prohibiting the use of streamers and placards beyond a certain size or the use of megaphones or other amplification apparatus may work to render the right to speech and assembly nugatory. These aids to the dissemination of ideas are indispensable especially if a large audience is being addressed. The purpose of the assembly is precisely to disseminate the students' views. By prohibiting the means, the speech is effectively curtailed.

MATERIAL AND SUBSTANTIAL DISRUPTION

As stated earlier, the exercise by students of their rights to free speech and peaceable assembly is not without limitations. Even if a permit is granted to hold an assembly, disciplinary action may be taken by school authorities for conduct which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."[36] This test, derived from the leading case of *Tinker,* has been the accepted standard applied by American courts in limiting the exercise of the students' freedom of expression.

Material and substantial disruption was found to have existed in the following instances: wearing a Confederate flag patch in a racially integrated high school where there is a history of tense racial conflict;[37] wearing anti-war buttons in a school that has undergone a drastic change of racial composition from all white to seventy percent (70%) black;[38] wearing "freedom buttons" that caused an unusual degree of commotion and boisterous conduct among black students;[39] wearing armbands bearing the words "strike," "rally," and "stop the killing" to protest the killing of Kent State University students who demonstrated against U.S. involvement in the Viet Nam War where the local high school was divided on the war issue and the situation in the school was tense;[40] physical obstruction of school buildings to prevent the entry of recruiting officers from a chemical company[41] and the Central Intelligence Agency (CIA);[42] when students protesting against school policies went into the stands during a football game and harassed the college president and some officials who were then watching, forcing them to leave the game under the protection of police escorts;[43] and when student demonstrators burned effigies of school officials, halted traffic, rocked automobiles and forced the occupants out into the streets, and stoned the windows of school buildings.[44] In all these cases the concerted action of a large group of students was observed.

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35 *Ibid.*
36 *Tinker,* 393 U.S. at 513.
37 Melton v. Young, 465 F. 2d 1332 (1972).
38 Guzick v. Drebus, 431 F. 2d 594 (1970).
39 Blackwell v. Issaquena County Board of Education, 363 F. 2d 749 (1966).
40 Wise v. Sauers, 345 F. Supp. 90 (1972).
41 Soglin v. Kauffman, 418 F. 2d 163 (1969).
42 Buttny v. Smiley, 281 F. Supp. 280 (1968).
43 Barker v. Hardway, 283 F. Supp. 228 (1968).
44 Esteban v. Central Missouri State College, 415 F. 2d 1077 (1969).

Cases where the courts held that the disruption, if any, was not sufficient to warrant an abridgment of the the freedom of speech were: wearing "freedom buttons" which because of the small number of students who wore them and the scant attention given to them by other students did not hamper the school's regular activities;[45] wearing black armbands to protest the Viet Nam War where no disturbance or disorder occured;[46] the distribution of leaflets which criticized school officials where the interruptions of classes caused by the leaflets were minor and relatively few in number, the leaflets not having been distributed during school hours;[47] and the printing of a publication criticizing school policies and state authorities and the sale of these to students and faculty members, the publication having been written off campus.[48] These instances did not result in the high degree of disruption sufficient to curtail speech because they were not coupled with an assembly of a large number of students. The actions were taken by individuals or at the most they involved small groups of students. It is perhaps the small number of student protesters and the circumstance that there was no widespread reaction which convinced the courts to consider these actions and the attendant disruptions inconsequential. Isolated acts produce only disturbances of a minimal degree. To be punishable the disturbance must be more than just "the discomfort and unpleasantness that always accompany an unpopular viewpoint."[49]

Disruptive conduct to be punishable must be material and substantial. It is material when it causes serious interference with the normal course of school activities, either academic or non-academic, or when it amounts to a violation of the rights of other students, faculty members, officials, or other school personnel. It is substantial if the disruption is of such a degree that a large number of persons are prejudiced by the conduct of the student. It must be remembered that the disruptive conduct comes under the protective mantle of freedom of speech and should not generally be abridged. Limitations on this right are not favored. Thus, restrictions on expressional exercises by students on campus should be viewed as unacceptable restraints on the freedom of speech except when absolutely necessary for the protection of school activities from disruption.[50] This permissible limitation has reference to the manner or mode of the exercise of speech. It has been proposed that contentwise, student expression should be restricted only if it is obscene or libelous or if it is violative of another person's right to privacy or if it advocates racial, religious or ethnic pre-

[45] Burnside v. Byars, 363 F. 2d 744 (1966).
[46] *Tinker*, 393 U.S. at 503.
[47] Sullivan v. Houston Independent School District, 307 F. Supp. 1328 (1969).
[48] Scoville v. Board of Education, 425 F. 2d 10 (1970).
[49] *Tinker*, 393 U.S. at 509.
[50] Schwartz, *supra*, note 13 at 671.

judice or discrimination.[51] But this last instance contemplates an environment that is peculiarly American and may not be at all relevant to the Filipino context. Student expression in the Philippines, especially in the urbanized areas of the country, tends to assume a political color. Even issues like tuition fee increases are seen in the light of national politics.

A PENALTY PROPORTIONATE TO THE OFFENSE

The final guideline enunciated by the Supreme Court was that the penalty imposed by school officials on the student must be proportionate to the offense committed. Otherwise, it said, there would be a violation of the constitutional guarantees of speech and assembly. Applying this to *Malabanan,* the Court reduced the penalty from suspension for one year to only one week in an effort to strike a balance.

It is not perhaps possible to provide for hard and fast rules on the proper penalty to be imposed for each possible infraction. The conduct of the student must be weighed in the light of the circumstances surrounding it, with every opportunity given to he student to defend or explain his conduct. It is not enough that the penalty imposed on the student be proportionate to the misconduct. Fair procedures must also be adopted in reaching a decision on what administrative action should be taken with regard to the student's behavior. Due process must be accorded the student.

The minimum requirement is that there be a pre-existing set of published rules to govern conduct. To provide a basis for imposing penalties, the rules should describe with specificity the conduct prohibited and the sanctions that may be imposed for violations of the rules.[52] To require that the sanctions be administered according to pre-existing rules does not place an unwarranted burden upon school administrators.[53] The strict standards in criminal statutes are not required in school codes of conduct.[54] The rules must however be couched in such terms as to sufficiently apprise the student of punishable conduct and the corresponding sanction so that his actions may be guided accordingly. Rules of conduct are for the guidance of students. They must not be mistaken for licences to impose penalties arbitrarily.

A student who is charged with violating the rules of his school is entitled to notice and to a hearing.[55] The right to notice and hearing is available whether or not a dispute as to the facts exists. Even when the

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[51] JACOBS, INDIVIDUAL RIGHTS AND INSTITUTIONAL AUTHORITY: PRISONS, MENTAL HOSPITALS, SCHOOLS AND MILITARY 53-54 (1979).

[52] *Id.*, at 116. *See* Esteban v. Central Missouri State College, 415 F. 2d at 1087, where a contrary view was held. There the court saw little basically or constitutionally wrong with flexibility and reasonable breadth, rather than meticulous specificity.

[53] Soglin v. Kauffman, 418 F. 2d at 168.

[54] *Ibid.*

[55] *Development, supra,* note 33 at 1138-1139.

only issue is whether the sanction imposed is warranted by existing rules, he should still be given an opportunity to justify his behavior so that the administrative body hearing the case can appreciate the arguments of both sides and make a balanced judgment.[56]

NO DISTINCTION BETWEEN PUBLIC AND PRIVATE SCHOOLS

A notable circumstance sets apart American decisions regarding the student's freedom of expression from the *Malabanan* decision. In the former the schools involved were public schools. American courts have been reluctant to interfere in cases where the educational institution involved is private. In *Malabanan,* however, the institution, the Gregorio Araneta University Foundation (GAUF), is private. The question thus arises: Is it significant to establish a distinction between public and private schools in the matter of the exercise of the rights to speech and assembly by students? It must be borne in mind that the premises of a private school is private property.

It is believed that there should be no distinction. The school cannot assert an interest of private property over the campus in order to prevent the exercise of the students' rights to speech and assembly.[57] "Title to property as defined by state law controls property relations; it cannot control issues of civil liberties," as declared by Justice Frankfurter.[58] When what is involved is an individual's constitutional rights, property relations cannot take precedence. Furthermore, it cannot be denied that education is a matter of public interest. This is true whether it is offered in a public or private institution.[59] This our Constitution recognizes and so it states that "all educational institutions shall be under the supervision of, and subject to regulation by the State."[60] And it is also noteworthy that under the Constitution no distinction is made when it provides that "all institutions of higher learning shall enjoy academic freedom."[61] If no distinction is made with regard to academic freedom, neither should there be one made as to the freedom of speech and the right of peaceable assembly.

The most compelling reason to find no distinction between public and private institutions is the fact that the rationale for the exercise by students of free speech is the same whether the school be public or private.[62] As was further explained:

> The parallels of constitutional liberties which should exist for students on campus are not easy for all administrators to accept, since the

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[56] *Ibid.*
[57] Schwartz, *supra,* note 13 at 672.
[58] Concurring opinion in *Marsh v. Alabama,* 326 U.S. 501, 511 (1956).
[59] Guillory v. Administrators of Tulane University, 203 F. Supp. 855, 858-859 (1962).
[60] CONST., art. XV, sec. 8(1).
[61] CONST., art. XV, sec. 8(2).
[62] Monypenny, *supra,* note 11 at 628.

> view is still strong, even in public institutions, that educational institutions are essentially proprietary enterprises where owners and managers have the right to determine what to do with their property and whose good name is bound up with the uses to which it may be put. The only rejoinder is that the legal rights of ownership are an insufficient basis for determining what policies should be put into effect in an educational institution. If it is to achieve its purpose as an educational enterprise, then it must observe the conditions which its educational purpose requires. As we have said, the basic assumption which we make is that in higher education the conditions are best summed up by regarding the educational enterprise as a community of scholars devoted to the discovery and propagation of knowledge. These persons who have the legal responsibility for the creation of such a community best fulfill their responsibilities by giving its educational processes the largest measure of autonomy that they can.[63]

Free speech is essential to the educational process whether in a public or private institution.

CONCLUSION

The preceding discussion on the constitutional rights of students to free speech and peaceable assembly and the permissible limitations thereon should be viewed in the context of the general exercise of the right as guaranteed by the Constitution to all individuals, in whatever situation they might be.

> A system of free expression can be successful only when it rests upon the strongest possible commitment to the positive right and the narrowest possible basis for exceptions. And any such exceptions must be clear-cut, precise and readily controlled. Otherwise the forces that press toward restriction will break through the openings, and the freedom of expression will become the exception rather than the rule.[64]

For the student, the recognition of his freedom of speech may have been a little late in coming, it having been judicially recognized after the foundations of institutional authoritarian dominance has become firmly rooted. The student has for years been silenced within the boundaries of the school. His liberty to speak out was to be found beyond the walls of the academe. It is believed that such should not have been and should never ever be the case. The seeds of knowledge are found in thoughts that through free expression and discussion are tested and verified. This is the essence of education, the reason why young minds are trained in schools. If free expression is to be denied, the years of hard study will be without meaning.

It is hoped that the recognition of students' rights within the school would not be limited to words on paper. The pronouncements of the courts

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[63] *Ibid.*

[64] Emerson, *Towards a General Theory of the First Amendment*, 72 YALE L. J. 877, 889 (1963).

will be to no avail if the denial of students' rights are not abated. An active recognition of these rights is required of schools. Administrators should shed their fears of criticism from their students. Never should they forget that they have taken on the arduous task of guiding the youth in their quest for knowledge, wherein the free exchange of ideas is indispensable.