

FELIXBERTO C. STA. MARIA, PETITIONER, VS. SALVADOR P. LOPEZ, THE BOARD OF REGENTS OF THE UNIVERSITY OF THE PHILIPPINES, AND NEMESIO CERALDE, RESPONDENTS.*G.R. No. L-30773. February 18, 1970*

Ponente: SANCHEZ, J.

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Directly under attack in this an original action for certiorari, prohibition and mandamus is the validity of the transfer of petitioner Felixberto C. Sta. Maria from his post of Dean, College of Education, University of the Philippines (UP), to the Office of respondent UP President Salvador P. Lopez, there to become Special assistant in charge of public information and relations.

Petitioner, a professor of English and Comparative Literature (formerly Dean of the UP College in Baguio), was elected Dean of the College of Education on May 5, 1967 by the Board of Regents, on nomination of the UP President. His appointment as such Dean was for a five-year term, "effective May 16, 1967 until May 17, 1972, unless sooner terminated, with all the rights and privileges as well as the duties and obligations attached to the position in accordance with the rules and regulations of the University and the Constitution and laws of the Republic of the Philippines."

The issues in this case can be better understood if framed in its proper setting, viz:

As far back as February 11, 1969, the graduate and under-graduate students of the UP College of Education presented to President Salvador P. Lopez a number of demands having a bearing on the general academic program[1] and the physical plant and services,[2] with a cluster of special demands.[3] In response, President Lopez created a committee composed of eight graduate students, two undergraduate students, and four faculty members. This committee met 9 times with Dean Sta. Maria in February and March 1969. On March 17, 1969, Dean Sta. Maria gave President Lopez a written summary of the dialogues he had with the committee and enumerated in connection with the demands, the steps taken,[4] the steps being taken,[5] and the steps to be taken in consultation with the faculty.[6] He also recommended to the UP President the following: a more adequate budget responsive to the needs of the college, taking into account its expanding graduate program; improvement of the library service in terms of a better book collection and more adequate space and reading rooms, particularly for graduate students; appointment of more faculty members on the senior level to handle the large graduate program, and to meet the acute need for more graduate advisers, critics, and committee members; improvement of the water system of the college; improvement of the physical plant of the college, including its classrooms, offices, toilets, sidewalks and surrounding landscape; and construction of a graduate students' dormitory.

But the students were not to be appeased. For, Dean Sta. Maria, according to them, did not act on some of their demands. Respondents herein have stressed that in the meetings of the education graduate committee, Dean Sta. Maria neither included in the agenda nor consulted the faculty about the students' demands on "foreign language proficiency examination" and on "research and thesis writing procedures". They have brought out the fact that

many members of the faculty shared the students' grievances on the absence of definite standards and procedures on academic work, including teaching load, administrative and committee assignments, faculty evaluation, and favoritism and discrimination.

On July 16, 1969, Adelaida E. Masuhud, President of the UP Graduate Education Student Organization, led a group who visited President Lopez and submitted to him a progress report on the students' demands taken up with Sta. Maria since March 26, 1969. She acknowledged that the dean had granted ten demands^[7] but deplored the fact that the dean had ignored the following: submission to the faculty for decision, of the demand for abolition of foreign language requirements and Comprehensive examinations; fixing the criteria for selection, admission, appointment and promotion of faculty members; formulation of clear-cut policies on thesis advising, faculty teaching load, and faculty membership on standing committees; and appointment of a permanent director for the Graduate Education Studies of the SPED Program. She thus stated: "I appreciate the efforts of the Dean in acting on some of our demands. However, the Dean has failed to take further action on the demands that have far reaching implications for the students, faculty and the College as a whole. As a consequence problems, confusion and demoralization of students and faculty have cropped up anew in the college."

The students threatened to boycott their classes the next day, July 17. President Lopez asked that they desist, suggested that they instead attend a student-faculty meeting the next day in his office.

But on July 17, the Education Graduate Student Organization boycotted their classes just the same. The President met the striking students' representatives and the faculty members of the College of Education. Charges of favoritism were allegedly hurled by some of the faculty members against Sta. Maria. On the other hand, the dean offered to sit down with the students. The latter, however, refused to enter into a dialogue unless he (the dean) were first ousted.

In a separate development, the faculty members of the College of Education convened in the afternoon of July 22. They resolved, amongst others, to recognize the right of a college dean to his position from which he cannot be removed unless for cause (44 in favor, 2 abstained), and not to endorse the students' demand for the forced resignation of Sta. Maria (36 in favor, 5 against, 3 abstained).

The boycott fever infected other colleges. On July 22, 1969, the newly installed members of the UP Student Council voted to support the education students' strike. The next day, July 23, the main avenues leading to the university gates were barricaded, buses denied entrance, and students cajoled into joining the strike. It was thus on that day that all academic activity in the university came to a complete standstill. In the morning of July 23, at 10:00 o'clock, the UP President called a meeting of the faculty of the College of Education. Those present gave him a vote of confidence (40 in favor, 7 abstained) to resolve the issue on hand as he sees fit.

Armed with the vote of confidence of the education faculty, on the same day, July 23, 1969, President Lopez issued the transfer order herein challenged, Administrative Order 77. That order, addressed to Dean Sta. Maria, reads:

"By special authority vested in me by the Board of Regents and pursuant to the Civil Service Law and the University Code, you are hereby transferred from the College of Education to the Office of the President as Special Assistant^[8] with the rank of Dean, without reduction in salary, in the interest of the service.

This transfer involves your administrative position only and in no way affects your status as professor of the University.

This order shall take effect immediately."

Simultaneously, President Lopez appointed ad interim Professor Nemesio R. Ceralde as "acting Dean of the

College of Education, without additional compensation, effective July 23, 1969".

President Lopez was to explain in a press statement of July 23, 1969 that he "cannot permit the continued disruption of the academic life of the institution"; that the transfer order was made "[i]n the interest of the service" and "as an emergency measure" because the meetings with the faculty, students, Sta. Maria and the UP President had "proved fruitless in the face of the refusal of the College of Education students to discuss any further their demands unless and until Dean Sta. Maria resigns his position"; and that, therefore, "the complete shut-down of classes in the Diliman campus has compelled" him to "transfer Dean Sta. Maria to other duties".

Having received the transfer order on the same day, July 23, Sta. Maria forthwith wrote a letter, which he himself hand carried to President Lopez, requesting that "(a) a formal investigation be conducted by the Board of Regents on the circumstances which led to the promulgation of the above order, and on the basis thereof; and (b) said order be reconsidered and set aside for being manifestly unjust, unfair, unconstitutional, and contrary to law, and, therefore, null and void."

The next day, July 24, Sta. Maria announced to the education students and faculty, through Memorandum 17, that the transfer order "is now the subject of a pending request for recon-sideration x x x and, for this reason, its effectivity is necessarily suspended", and that he shall continue "to be the Dean x x x pur-suant to his appointment as such for the period from January 1, 1968 to May 15, 1972."

On July 25, 1969, the education faculty signed a "Decla-ration of Concern" stating, amongst others, that when they gave President Lopez a vote of confidence, they "did so in the belief and confidence that he x x x will uphold the democratic processes in the solution of the problem and will respect the fundamental rights of the individual." Similar declarations of concern came from the faculties of law, medicine, arts and sciences, and nursing.

At President Lopez' request, a special meeting of the Board of Regents was held on July 25, 1969. President Lopez there reported Dean Sta. Maria's transfer and Professor Ceralde's ad interim appointment as Acting Dean of the College of Education. He told the board that because of "failure of leadership in the College of Education, a crisis of confidence emerged in that institution"; that the ultimate result was the boycott of classes by the students "starting on July 17, 1969 in protest against the inaction of Dean Sta. Maria on their demands submitted months ago"; and that this situation impelled him to issue Administrative Order 77 "as demanded by the prevailing crisis."

The board confirmed Dean Sta. Maria's transfer and Professor Ceralde's appointment, considered as premature Sta. Maria's Memorandum 17 heretofore mentioned, but gave due course to his plea for reconsideration and granted him a chance to be heard at the next board meeting on July 29, 1969.

In the said meeting of July 29, Sta. Maria did not per-sonally appear. He sent his counsel who manifested that Sta. Maria was not recognizing the board's jurisdiction unless, without further hearing, the board first revoke the transfer order. The board resolved: "x x x to take cognizance and consider as a new petition of Dean Sta. Maria, submitted through counsel, his decla-ration that the efficacy of the President's Administrative Order No. 77 transferring him should first be suspended by the Board and held in abeyance as a prerequisite for the hearing being prayed for. In this connection, Dean Sta. Maria will be asked to file a Memorandum with the Board in support of his new petition."

The foregoing had been the developments when Sta. Maria filed the present petition for certiorari, prohibition and mandamus in this Court on July 31, 1969 against respondents Salvador P. Lopez, the Board of Regents and Nemesio R. Ceralde.

The case is now ripe for decision.

1. Discussion of the issues herein involved necessarily has to start with the examination of the terms of employment, the covenant which binds petitioner with the university. The contract, it bears repeating, stipulates that the dean's five-year term is qualified by the clause: "unless sooner terminated, with all the rights and privileges as well as the duties and obligations attached to the position in accordance with the rules and regulations of the University and the Constitution and laws of the Republic of the Philippines." The authority for this appointment is found in Article 79 of the university code providing that "[t]he term of office of all deans x x x shall be five years from the date of their appointment without prejudice to reappointment and until their successors shall have been appointed."

We first look into the meaning of the phrase "unless sooner terminated" embodied in the contract of employment. Right at the start, it would seem to us that the term "unless sooner terminated" cannot be equated or tied up with some such terms as "terminable at will", or "removable at pleasure".

A number of reasons there are why petitioner may not be removed at pleasure before the expiry of his term. First. Petitioner's contract of employment has a fixed term of five years. It is not an appointment in an acting capacity.[9] Nor is petitioner's designation that of an officer-in-charge as it is known in administrative practice. Second. Nothing in the rules and regulations of the university or its charter would indicate that a college dean appointed with a term can be separated with-out cause. On the contrary, reason there is to believe that the university policy points quite to the contrary. An instance is the resolution of the Board of Regents of June 14, 1961, fixing the term of office of the UP President. It was there stated that "uncertainty of tenure and frequency of change in the incumbent of the position are not for the best interests of the University." This concept is self-evident. Third. Again, there is nothing either in the UP charter or code empowering the UP President or the Board of Regents to insert such a clause - unless sooner terminated - as would authorize dismissal at will. Fourth. As this Court, in *Lacson vs. Roque*, 92 Phil. 456, 463, ruled, "strict construction of law relating to suspension and removal, is the universal rule." Petitioner, with a definite term of employment, may not thus be removed except for cause. The reasons being that the removal was not expressly declared to be exercisable at pleasure or at will; and that the fixity of the term of office gives rise to the inference that he may be removed from office only for misbehavior as to which he shall be entitled to notice and hearing. As was well pointed out in *Lacson vs. Roque*, [a]n inferential authority to remove at pleasure can not be deduced, since the existence of a defined term, ipso facto negatives such an inference and implies a contrary presumption, i.e., that the incumbent shall hold office to the end of his term subject to removal for cause." [10]

The foregoing paves the way for the consideration of what we believe is the overriding question: Was Sta. Maria removed?

2. Respondents stand on the premise that Sta. Maria was not removed; he was just temporarily assigned to another position.

We may well start with the statement that a dean of a UP college holds a non-competitive or unclassified civil service position.[11] As such, and upon the provisions of his contract of employment, he is protected by constitutional and statutory provisions on security of term.[12] He cannot be removed during the term except for cause and after prior hearing and investigation.[13] Which requisites are also embodied in the university Charter[14] and in the university code.[15]

But is there really need for a formal prior hearing? No need, respondents say. For, the Civil Service Law requires prior hearing only in cases of removal, dismissal or suspension. Sta. Maria, respondents underscore, was not suspended, dismissed or removed; he was merely transferred to another position without reduction in salary or rank in the interest of public service.[16] Respondents proceed to aver that the transfer was neither disciplinary

nor punitive.[17] A promotion, so they claim, because in the new position he would be an officer of the university not just of one college;[18] he would enjoy a rank at par with senior college deans;[19] and that he would be in line for one of the vice-presidencies of the university.[20] Respondents also say that such transfer was an emergency measure to stave off a crisis that gripped the campus - the paralyzing disruption of classes.[21] They emphasize that there was an urgent and genuine need for petitioner's talents and services in the newly created Public Affairs and University Relations Office.

Quite interesting it is to inquire whether Dean Sta. Maria was transferred, promoted, demoted, or removed without his consent.

3. A transfer is a "movement from one position to another which is of equivalent rank, level or salary, without break in service." [22] Promotion is the "advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary." [23]

A transfer that results in promotion or demotion, advancement or reduction [24] or a transfer that aims to "lure the employee away from his permanent position", cannot be done without the employee's consent. [25] For that would constitute removal from office. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position. [26]

When an officer is reduced in rank or grade and suffers a big cut in pay, he is demoted; [27] and when he is demoted, he is removed from office. [28] But a demotion means something more than a reduction in salary; there may be a demotion in the type of position though the salary may remain the same. [29] A transfer that aims by indirect method to terminate services or to force resignation also is removal. [30]

4. Concededly, transfers there are which do not amount to removal. Some such transfers can be effected without the need for charges being preferred, without trial or hearing, and even without the consent of the employee.

The clue to such transfers may be found in the "nature of the appointment." [31] Where the appointment does not indicate a specific station, an employee may be transferred or reassigned provided the transfer affects no substantial change in title, rank and salary. Thus, one who is appointed "principal in the Bureau of Public Schools" and is designated to head a pilot school may be transferred to the post of principal of another school. [32]

And the rule that outlaws unconsented transfers as anathema to security of tenure applies only to an officer who is appointed - not merely assigned - to a particular station. [33] Such a rule does not prescribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency. [34] The use of approved techniques or methods in personnel management to harness the abilities of employees to promote optimum public service cannot be objected to. [35] Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him; [36] or to the transfer of an employee from his assigned station to the main office, effected in good faith and in the interest of the service pursuant to Section 32 of the Civil Service Act. [37]

5. The next point of inquiry is whether or not Administrative Order 77 would stand the test of validity vis-a-vis the principles just enunciated.

That the university is vested with corporate powers exercised by the board of regents and the President is a proposition which is not open to question. [38] The board, upon recommendation of the President, is clothed with authority to hire and fire after investigation and hearing. [39] The President, on the other hand, may fill vacancies temporarily, [40] transfer faculty members [41] from one department to another, [42] and make arrangements to meet emergencies occurring between board meetings so that the work of the university may not suffer. [43]

To be stressed at this point, however, is that the appointment of Sta. Maria is that of "Dean, College of Education, University of the Philippines." He is not merely a dean "in the university" His appointment is to a specific position; and, more importantly, to a specific station.

A line of distinction must be drawn between the office of dean and that of professor, say, of English and Comparative Literature. A professor in the latter capacity may be assigned to handle classes from one college to another or to any other unit in the university where English is offered. He may even be transferred from graduate school to undergraduate classes. He cannot complain if such was done without his consent. He has no fixed station.[44] As for him, it can always be argued that the interests of the service are paramount.

But a college dean holding an appointment with a fixed term stands on a different plane. He cannot, without his consent, be transferred before the end of his term. He cannot be asked to give up his post. Nor may he be appointed as dean of another college. Much less can he be transferred to another position even if it be dignified with a dean's rank.[45]

6. We now come to the problem of whether or not petitioner's transfer from the College of Education to the Office of the President as special assistant with the rank of dean without reduction in salary was permanent. Facts there are which would show that far from being a temporary measure, petitioner's transfer was in fact a removal.

Respondent university president himself admitted that the transfer order was an ad interim appointment. That the transfer was a removal has been confirmed by the UP President's reference to Sta. Maria's deanship of the College of Education as his "former position". This plainly indicates that Sta. Maria ceased to be dean of the college. Thus:

"The validity of Dean Sta. Maria's designation or appointment as Special Assistant to the President rests upon two acts:

(a) The transfer order of July 23, 1969, which operates as an ad interim appointment under Art. 44(e) of the Revised U.P. Code; and

(b) The confirmation on such appointment by the Board of Regents in its special meeting on July 25, 1969."[46]

And again:

"The position of Special Assistant to the President with the rank of Dean carries equal, if not higher, rank than the position of Dean of the College of Education. As Special Assistant to the President, Dean Sta. Maria has become an officer of the University while in his former position, he was merely an officer of the college in the University."[47]

Not that the foregoing stand alone. The reasons advanced by respondents to justify such transfer are quite revealing. They pictured Sta. Maria as a bungling administrator, incompetent, inefficient, unworthy, a miscast. They averred that he did not act on the petitions and grievances of graduate students; that he caused widespread dissatisfaction amongst faculty members and students because of his "inaction", his "lack of sincerity and candor in dealing" with them; that he was guilty of "inflexible, arrogant attitude and actuation" as dean; that he miserably failed to avert a boycott that was caused by a "crisis of confidence" and "failure of leadership" in his college; that he abandoned his post when he was most needed; that he refused to accept solutions even as he failed to advance his own to mitigate the crisis; that in sum, he was a miscast in the College of Education.[48] Of course, these are merely charges. But they collectively reflect the thinking of respondents toward petitioner. In the picture thus presented, it would not be unreasonable to say that Sta. Maria's transfer was with the character of permanence to take him away from his duties and responsibilities as dean, in all of which allegedly he was a failure.

And if more were needed to show that the transfer of Sta. Maria was permanent, there is the fact that Nemesio Ceralde was appointed "ad interim" acting dean of the College of Education. And, Ceralde's appointment was confirmed by the Board of Regents on July 25, 1969. Again, there is respondents' averment that petitioner's new position as special assistant to the President could be a stepping-stone to a higher position - that of Vice Presidency of the university. Were his appointment but temporary, there would be no occasion to say that he could be elevated to another position of a higher category.

More than this, the transfer was a demotion. A demotion, because: First. Deanship in a university, being an academic position which requires learning, ability and scholarship, is more exalted than that of a special assistant who merely assists the President, as the title indicates. The special assistant does not make authoritative decisions. Second. The position of dean is a line position where the holder makes authoritative decisions in his own name and responsibility. A special assistant does not rise above the level of staff position. Third. The position of dean is created by law, the university charter, and cannot be abolished even by the Board of Regents. That of special assistant, upon the other hand, is not so provided by law; it was a creation of the university president.

It will not avail respondents any to say that Sta. Maria retained "the rank of Dean". In actual administrative practice, the term "with rank of" dean is meaningless. He is no dean at all. He of course, basks in the trappings of the dean. A palliative it could have been intended to be. But actually he is a dean without a college.

7. Respondents nonetheless insist that the "interest of the service" is the primary reason for the transfer. They say that there was an urgent need to bring the academic life of the university back to normal and Sta. Maria's transfer was the only feasible solution. They point to the need for petitioner's services in the Office of Public Affairs and University Relations purportedly "to improve the relations of the University with its various constituencies." They cling to the principle of "least sacrifice".^[49] They urge that only three options were left to the university, namely: to keep Sta. Maria at all costs and risk an indefinite paralysis of the university life; to give due course to the charges filed against Sta. Maria, preventively suspend him during the investigation, and after hearing dismiss him if the evidence so warrants; and to transfer him as a non-disciplinary measure in the interest of the service. Respondents claim that the first option was out of the question. The reason they give is that the university could not afford an indefinite disruption of academic life. To respondents, the second was feasible but distasteful - the administration was in no mood to prejudice Sta. Maria through a proceeding that would reflect on his record. So the university administration opted for the third method, a solution said to be the most convenient and expeditious and based on the principle of "least sacrifice".

Implicit in the university's stand is that Dean Sta. Maria had to be uprooted from his position as a price to buy the peace of the students and induce them to return to their classes. Such could have been an easy way to climb out of difficulties. But transfer could be but a ploy to cover dismissal. And dismissal cannot be justified on grounds of expediency. Appropriately to be remembered here is that due process is associated with the sporting idea of fair play;^[50] it shuns oppression and eschews unfair dealing; it obeys the dictates of justice and is ruled by reason. The Scriptures no less remind us to hear before we condemn.^[51] Fidelity to this cardinal principle must have impelled Congress, just recently, to clarify the authority to transfer subordinate officers and employees, an authority so often misused and abused to ride roughshod over hapless civil servants. As amended, the Civil Service Law provides that "if the employee believes that there is no justification for the transfer, he may appeal his case *x x x* and pending his appeal and decision thereon, his transfer shall be held in abeyance." This was intended to fortify the protective wall built around the employee's right to security of tenure, to guard against unbridled encroachments masquerading in the "interest of the service". And, to think that this amendment came just a few days after Sta. Maria was transferred without prior hearing.

The current climate of activism of the young people, recognized to be worldwide, whether on or off campus, is a phenomenon in this country that commands attention. Demonstrations and boycotts which are manifestations of such activism are constitutionally protected. But there are limits. A fundamental precondition to the exercise of such rights, we perceive, is that the activity should not impair the rights of others whose roots are as deep and as equally protected by iron-clad guarantees. A high regard to a man's dignity is the hallmark of our law.

The students demanded Sta. Maria's ouster. The President of the university acceded to their demand. But Sta. Maria's right to be removed only, in the words of the law, "after due process" was disregarded. That Sta. Maria's right alone was impaired is not justification for the action taken against him. Unless, of course, justice be replaced by collective action as the test for validity. And, unless we admit that arbitrariness is permissible if it comes from an impersonal multitude.

Nor may it be assumed that emergency could justify disregard of constitutional rights. It would seem pertinent to observe that a fundamental charter is for all times and for all conditions. Eloquent are these passages from the declaration of concern from the College of Law faculty:

"We, the faculty of the College of Law, University of the Philippines, view with the utmost concern the removal of Felixberto Sta. Maria from his position as Dean of the College of Education by the President of the University of the Philippines.

As members of the academic community that is the University, as members of the Philippine Bar, and as citizens of our Republic, we speak out in protest against this violation of the Rule of Law in our midst and the clear disregard of the fundamental rights of one of our colleagues.

A member of the faculty of the University of the Philippines, pleading for his day in court, asking to be heard in his defense, desirous to confront his accusers, and appealing for a hearing by a disinterested body, has been summarily condemned without trial. He has been punished without evidence formally presented. He has been stripped of his powers and prerogatives as Dean, in violation of that most basic and fundamental right - that no person shall be deprived of his life, liberty, or property without due process of law and in accordance with the regularly established procedures.

Our concerns has nothing to do with the merits of the case against Felixberto Sta. Maria. We protest the procedure that was followed in disregard of due process. Under a legal system like ours, there are established procedures to settle disputes. The arbitrary rule of one or the mob rule of the many are alien to our free institutions. Under existing university rules and practice, charges against students, no matter how minor, are formally investigated. Why should a dean be entitled to less?

We are aware that the action against Dean Sta. Maria was denominated a transfer to other duties in the University without reduction in rank or salary. This thin veneer of legalism, this transparent attempt to follow the letter but not the spirit of the Constitution, the University Charter, the U.P. Revised Code, the Civil Service Law, and the Civil Service Rules and Regulations deceives no one. Who can, in good conscience, honestly say that Dean Sta. Maria has not been reduced in rank, privileges and prerogatives? Who can discount his moral anguish and suffering?

The vote of confidence given by the faculty of the College of Education notwithstanding, the President of the University remains bound by and can act only in consonance with, the Rule of Law.

We agree with the President that there should be no disruption of the academic life of the community. Like him, we want peace, but not at any price. Peace secured at the expense of Constitutional principles is no peace at all; and the peace just now obtained is no more than a transitory lull, a precarious interlude that could lead to even more serious disorders and disregard of fundamental rights.

We also regard with alarm this action against Dean Sta. Maria because of its consequences on the morale of the

faculty. The exercise of independent judgment the performance of academic responsibilities is imperilled where the force of numbers can replace the rational solution to a controversy.

Believing that the action taken against Dean Sta. Maria is not irreversible, we submit to the President of the University this declaration of concern, urging him to reconsider his action."[52]

8. The argument that the transfer of Sta. Maria was made in the interest of public service has dwindled in strength on the face of the circumstances. Of course, the university is under compulsion to bring normalcy to the campus, to end the boycott of classes. The decision to transfer could really refract the temper of the times. We do say, however, that emotion or muscle need not displace reason.

Nor do we believe it too difficult for the UP authorities to hew to the line drawn by the due process clause, to cause charges to be formalized, Sta. Maria suspended, and given a fair chance to defend himself. This procedure does not necessarily bring about humiliation. On the contrary, it exudes the spirit of fairness.

The baneful effects of Sta. Maria's transfer were easily and promptly felt. The professors in different faculties were alarmed. Obviously they felt that to compel a professor to give up his constitutional right is beyond tolerance. A declaration of concern was expressed not only by the faculty of the College of Law as aforesaid but also the Colleges of Education, Arts and Sciences, Medicine and PGH School of Nursing, all of the UP.

More than these, such transfer undermined the integrity of UP. The university buckled under strain, yielded where it should have upheld its commitment to the rule of law. Peace may not be secured at the expense of consecrated constitutional principles. A contrary rule could lead to more serious disorders.

9. Respondents urge that "the traditional concepts and requirements of due process could not be made to apply to every kind of administrative action, without the consequent inefficiency and frustration of legislative purpose." They argue that certain types of administrative action may be taken without prior hearing and still satisfy the requirements of due process. The existence of a public emergency, they insist, would suffice to justify summary action. To prop up their stand, respondents cite such summary administrative actions as distraint of a delinquent taxpayer's property;[53] abatement of a nuisance per se;[54] cancellation of a passport of one who absconds to another country to evade criminal prosecution.[55]

No question that a summary administrative action is appropriate in the cases cited. Examples can be multiplied. Thus, without providing for a prior hearing, a bank conservator may seize a distressed bank;[56] the Food and Drug Administrator may confiscate harmful drugs whose Labels are allegedly misleading;[57] the Civil Aeronautics Board may suspend a letter of registration;[58] and the Securities and Exchange Commission may suspend the license of a securities dealer to deal in small offerings.[59] In all these cases, the courts have uniformly ruled that due process does not require judicial inquiry as a condition to the exercise of administrative discretion. "It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing and a judicial determination."[60]

We can go on citing cases where regulatory agencies, in a manner of speaking, shoot first before asking questions without offending against due process. But it is pointless to cite them here, much less rely upon them to support Sta. Maria's unconsented transfer. For central to those cases is that they involve the exercise of regulatory authority pursuant to a delegated police power. The reason these agencies are given such summary powers is that they come to grip with issues that are mostly scientific and technical, issues that are "perhaps not readily reducible to the simple question-and-answer method so dearly beloved by lawyers." [61] Hence, in place of a formal hearing they resort to inspection, examination and testing - techniques regarded as sufficient substitutes upon which to base an administrative action.[62] Whether poultry is putrid, or drug is harmful, or a ship is unseaworthy, are matters better left to scientific analysis or technical inspection without the need of a formal

hearing. Based on such examination and inspection, summary orders for condemnation or confiscation may follow.

But the UP President's decision to summarily take the deanship away from Sta. Maria cannot, by any stretch of imagination, be cast in the same type of administrative actions that regulatory agencies exercise under a delegated police power. The UP President's action here is unlike that, for instance, of the Central Bank in removing the officers of a floundering bank in order to take over its management.[63] Not even the so-called emergency situation in the campus could be invoked to firm up his summary action. Seemingly, the decision to transfer Sta. Maria was dictated by the howling protest of demonstrating students who wanted to muscle in their demands for curriculum changes. But precisely, it is in situations such as this that one should be on guard lest reason and justice be overwhelmed by excitement and passion.

10. Again, respondents cite the so-called "crisis of confidence" and "failure of leadership" in the College of Education. Allegedly, these factors caused the student boycott which UP tried to avert by the expedient of banishing Sta. Maria from, and effectively depriving him of his deanship, of the College of Education.

The boycott, we are made to understand, was called because Sta. Maria resisted the pressures exerted by the graduate students. He refused to give in to their demands - demands that sought to eliminate or influence the direction of curricular requirements, specifically those which pertain to foreign languages and comprehensive examinations. The graduate students, it is alleged, considered these requirements as "obsolete vestiges of colonial education, x x x activities which do not in any way add to the learning activity of the student." [64]

Of course, students are entitled to petition school administrators for change in curriculum, faculty, and school regulations.[65] Elders should listen to what they say, and respond to their plea for university instructions that have relevance in their education.[66]

This is a fast changing age of ferment and activism. Every day new discoveries change man's life, morals, and attitude. The university therefore cannot remain aloof to the contemporary scene.[67] Perhaps the Wilsonian description of the ideal university as a place where "calm science" sits "not knowing that the world passes", a place where past and present are discussed "with knowledge and without passion", a place "slow to take excitement" and unlike the world outside "in its self-possession x x x" [68] would now appear to be anachronistic.

The students are "probably right in much of what they say, however wrong their prescriptions for righting matters." [69] When they protest whether against the college administration or against the Establishment, they should be accorded the full scope of the constitutional protection to free speech and assembly.[70] On the other hand, any decision or action to give in to their demands must not be dictated solely by their "readiness x x x to shout down and in other ways to stifle the free expression of opinion of those with whom they disagree." [71] Otherwise, the probability exists that a minority group of students may succeed in their attempt to impose, by disruptive action, their views or their will on the majority. What indeed is deplorable is "when we are confronted only with violence for violence's sake, and with attempts to frighten or intimidate an administration into doing things for which it can itself see neither the rationale nor the electoral mandate; when we are offered, as the only argument for change, the fact that a number of people are themselves very angry and excited; and when we are presented with a violent objection to what exists, unaccompanied by any constructive concept of what, ideally, ought to exist in its place." [72]

Compelling is the need to adhere to the traditional democratic processes and procedures to secure action and redress. Decisions that are prodded by ultimatums and tantrums are generally regarded with apprehension.

It was in the face of student revolt that the university officials buckled under and gave in to the students' protest against the continued presence of Dean Sta. Maria in the College of Education.

11. And yet, a close look into the so-called unfulfilled demands - abolition of foreign language and comprehensive examination - would reveal that Dean Sta. Maria could not have unilaterally granted them.

On the foreign language requirement, the students manifested that it is -

"x x x absurd and obsolete. Foreign students fulfill this requirement by an examination in their language. Many of us take Spanish for the sake of completing the requirements. We understand that these requirements in other universities equip the students for his research. So if a student is doing research on Spanish laws governing the educational system and would need to use Spanish, therefore he has to have a reading knowledge of Spanish. Such is not the case with us. We demand that this requirement be abolished in the graduate's level." [73]

On the comprehensive examination requirements, the students say:

"x x x The present practice is by subject, excluding the cognates. Graduate students believe that they are taking another final examination in a subject they have already passed. We question the absence of policy as to who should give comprehensive examination. We demand that the College consider the use of qualifying examination aside from the Dean's proposed admissions test." [74]

These requirements, we believe, are aimed at the development of the student's depth of insight and breadth of view. This, after all, is an end that a university education strives to attain: Foreign languages, should be conceded, widen a man's world. Spanish, in particular, is one of the links to our past. We can but surmise that Dean Sta. Maria had cogent reasons to sidetrack the demands. It is within the realm of probabilities that the dean wanted to preserve the high standards of professional scholarship in the college. Perhaps he was loathe to turn his college into a factory for half-baked graduates. The University of the Philippines, we must remember, has set a standard and established a tradition for learning and leadership.

Consider, too, the fact that the education students are the future mentors of the youth. Necessarily, they are expected to come through college with as thorough and extensive preparation as possible if they are to serve as educational leaders and models for scholarship.

On top of all, Dean Sta. Maria cannot single-handedly do away with these requirements. The responsibility for fixing the academic requisites for graduation and the receiving of a degree is lodged not in the dean but in the university council, composed of the President of the university and all faculty members from assistant professor to full professor. [75] The Dean may only recommend proposals affecting courses of study. [76]

But Dean Sta. Maria had not been remiss in his duties. Truth to tell, the students admit that Dean Sta. Maria was not after all unreasonably inflexible, intransigent. He sympathetically listened to them, and broadly satisfied those demands that were within his power as Dean to give, short of compromising the academic standards of the university. Indeed, the President of the Education Graduate Student Organization appreciated the Dean's efforts to meet "some of our demands". But Dean Sta. Maria could go no further. He went along with the students as far as the limits of his power and discretion would allow him to go. Only the University Council and the Board of Regents could recast the academic requirements in the way the students wanted them to be. If so, why did they not act on the issue to avert the crisis? But perhaps the university administration would not want to risk the downgrading of the university's academic standards.

The editor of the Philippine Collegian, writing the valedictory editorial, said:

"We criticized an administration which seemed to sway to the tune of student power as a sheer force. The administration cannot act only because of a show of might; it must have reasons for any act. And it must make

these reasons known, acting because of them without waiting for the prodding of power.

No decision of the President should be forced by emergency, or consideration of expediency. If emergency, or expediency, or the fear of student power muscle are the only reasons for a decision, then the decision should not be taken at all.

On the other hand, if a decision is impending, and is going to be taken anyway, then the decision-makers should not wait to be forced into the decision by an emergency situation. They should decide, and avert that situation which is so costly in terms of class hours and the integrity of the decision. And then, in terms of the reaction of the people involved by that dubiously-taken decision.

Because we cannot allow it to appear that the University is being ruled by the considerations of expediency, or by the dictates of emergency. The University must be guided by things less base and more basic. It must be ruled by reason, by justice, by the search for truth. This should always be made clear, and always be respected. The University can be neither a self-designed social instrument nor an institution ruled by force. It is there, if anywhere, that we must be true to reason."[77]

It is because of all the foregoing that we are left under no doubt that petitioner Felixberto Sta. Maria is entitled to be restored to his position as Dean of the College of Education.

12. Just as we are about to draw this opinion to a close, our attention is drawn to the alleged non-exhaustion of administrative remedies. A sufficient answer would be that Dean Sta. Maria asked that he be restored to his position pending investigation of any charge against him. But the board refused. Instead, it confirmed the ad interim appointment of respondent Prof. Nemesio Ceralde as "acting Dean" in place of Sta. Maria. Virtually the door was closed. Nothing was left for Sta. Maria to do but go to Court.[78]

Of course, Sta. Maria stood pat on his right to keep his position as Dean. This is perfectly understandable. Hindsight now reveals that further pursuit of administrative remedy before the Board of Regents would be but an act of supererogation. At any rate, there is no compelling reason to resort to this remedy.[79] Here, the claimed right is the constitutionally protected due process. Mandamus will lie.[80]

For the reasons given, the writ of certiorari and prohibition prayed for is hereby granted; the transfer of petitioner Felixberto C. Sta. Maria from his position as Dean of the College of Education, University of the Philippines, to the position of Special Assistant to the President, University of the Philippines, as well as the ad interim appointment of Prof. Nemesio Ceralde "as acting Dean" of the College of Education, University of the Philippines, are hereby set aside and declared null and void; the writ of mandamus prayed for is hereby granted, and the President and the Board of Regents of the University of the Philippines are hereby ordered to restore said petitioner Felixberto C. Sta. Maria to his position of Dean, College of Education, University of the Philippines.

No costs.

SO ORDERED.

Dizon, Zaldivar, and Teehankee, JJ., concur.

Concepcion, C.J., and Makalintal, J., took no part.

Ruiz Castro and Fernando, JJ., concur in separate opinions.

Reyes, J.B.L., J., did not take part.

Barredo, J., concurs and dissents in a separate opinion.

Villamor, J., joins Justice Barredo in his separate concurring and dissenting opinion.

[1] Specifically, they are: (a) Inadequacies of the Education library; (b) Student representation in the board of editors of the Education Quarterly; (c) Inadequate information to graduate students regarding policies affecting their academic work; (d) Inadequate guidelines and policies regarding thesis advising and other aspects of faculty work, which prejudice students; (e) Restrictions on enrollment in certain graduate courses; (f) Abolition of foreign language requirements; (g) elimination of topic panel for research courses; (h) Superfluity of comprehensive examinations for graduate students; (i) Reexamination of agreements with the Bureau of Public Schools towards standardization of terms of scholarships; and (j) Student representation in college committees. Answer, p. 10.

[2] These are: (a) Contributions from students for preparation of hand-outs; (b) Deterioration of facilities in the College; (c) Opening of the graduate office during regular hours; (d) Orientation program for new graduate students and new faculty members; and (e) Dormitory for graduate students. Answer, pp. 10-11.

[3] These are: (a) Protest against assignment of Prof. Rionda to teach a subject not in her area of specialization; (b) Assessment of procedures on faculty assignments and faculty competencies; (c) Need for coordinator in the Special Education Program (SPED); (d) Recruitment of more instructors for the SPED Program; (e) Facilities for practicum supervisors; (f) No threat of court suits against complaining students; (g) Information to teacher students on grading system and values; (h) Re-evaluation of a grade should extend to all requirements of the course, not merely the final examination; (i) Board review of the fusion of a special education and programmed instruction into one department; and (j) Possible institution of a separate Department of Filipino in the College of Arts and Sciences. Answer, p. 11.

[4] To meet the students' demands, he took the following steps: (a) Issued Memorandum No. 20 on monetary contributions; (b) Issued Memorandum No. 22 on the revised hours of the College library; (c) Issued Memorandum No. 26 on consultation hours and the final examination schedule; (d) Issued Memorandum No. 21 assigning a temporary officer-in-charge of the Special Education Program; (e) Secured a car for the urgent practicum assignment of the Special Education supervisors; (f) Sent a letter to the President requesting for the services of a janitress, and subsequently secured one, who started working on March 17, 1969; (g) Sent a letter to the President recommending the relocation of non-education offices, such as the Community Development Research Council and the Department of Psychology; (h) Sent a letter to the President urging the equitable settlement of the water and electric bills of the College; (i) Sent recommendations for permanency of status and adjustment of salaries of deserving academic and non-academic personnel; (j) Mediated between the students and Miss Carolina Rionda, who was complained against by students in Education 124. The students agreed to meet face-to-face with Miss Rionda in an amicable settlement of the dispute. Miss Rionda agreed to accommodate the students in most cases. Annex 2, Answer.

[5] These steps are: (a) Inclusion of two student representatives (one graduate and one undergraduate) in the editorial board of the Education Quarterly, upon nomination by the students; (b) Reiteration of the recommendation of the College of Education for the organization of a Graduate Studies program with a director, to help solve many problems in the graduate program. Original proposal was made on August 15, 1968, but deferred by the Board of Regents in its meeting on October 24, 1968; (c) Holding a formal orientation program, both undergraduate and graduate students, at the beginning of each academic year; (d) Abolition of the topic panel in graduate work; (e) Representation of the students, both graduate and undergraduate, in college committees which concern them. (Examples: Curriculum Committee, Student-Faculty Relation Committee, Library Committee, Social and Cultural Committee); (f) Replacement of the classroom chairs (initial delivery of 600 chairs expected within two weeks). Original request for these chairs was made on September 24, 1968; a previously approved requisition in 1967 was cancelled. Annex 2, Answer.

[6] These are: (a) Recommendation to review the foreign language requirement in the graduate program.

Sentiment is for substituting other requirements for the formal language requirement on the master's degree level. Student representatives will be invited during the discussion of this particular item in the curriculum committee meeting as well as the faculty meeting, if necessary; (b) Recommendation to review the comprehensive examination requirement for work on the master's degree level. Sentiment is to retain this particular requirement, but excluding the part on cognates; (c) Recommendation to institute a system of faculty evaluation by students, using an appropriate instrument; (d) Recommendation for an appropriate faculty committee to look into instruction practices, with students' opinion taken into account in the meetings of the student-faculty relations Committee; (e) The institution of a Graduate Record Examination for admission to candidacy on the master's level and admission to the doctoral program; (f) The issuance of a brochure or an equivalent guide to clarify the procedures to be followed in graduate work in both the masteral and doctoral levels. Annex 2 of Answer; Annex B of Reply.

[7] The demands which had been granted by Dean Sta. Maria were: (a) Longer library hours; (b) Employment of a janitress for the ladies comfort room; (c) Purchase of new chairs; (d) Installation of proper lighting facilities; (e) Repainting of classrooms; (f) Cleaner corridors, classrooms and surroundings; (g) Free choice of thesis advisers and organization adviser; (h) Abolition of topic panel; (i) Temporary appointment of coordinator for SPED Program; and (j) Representation of students in the college standing committees.

[8] Annex 11, Answer.

[9] *Austria vs. Amante*, 79 Phil. 780, 784(1948).

[10] *Supra*, at p. 467, citing *State ex rel. Gallagher vs. Brown*, 57 Mo. Ap., 203, expressly adopted by the Supreme Court in *State ex rel. vs. Maroney*, 191 Mo. 548; 90 S.W., 141; *State vs. Crandell*, 269 Mo. 44; 190 S.W. 889; *State vs. Salval*, 450, 2d. 995; 62 C.J.S., 947.

[11] *Tapales vs. President of the University of the Philippines*, L-17523, March 30, 1963, 7 SCRA 553, 557. Also Article II, Section 5(e), Republic Act 2260, Civil Service Act of 1959, which states: "The following specific officers and employees shall be embraced in the non-competitive or unclassified service: x x x (e) Members of the various faculties and other teaching force of the University of the Philippines and other government colleges offering courses in the collegiate level, including the business directors and registrars of said institution."

[12] *Lacson vs. Romero*, 84 Phil. 740(1949); *Garcia vs. Lejano*, L-12220, August 8, 1960; *Santos vs. Mallare*, 87 Phil. 289(1950); *Rodriguez vs. Del Rosario*, 93 Phil. 1070 (1953).

[13] Section 4, Article XII, Constitution: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." Section 32, Article VII, Civil Service Act of 1959: "Disciplinary Action. - No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process: Provided, That a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service: Provided, further, That no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant: And provided, finally, That the respondent shall be entitled to a formal investigation if he so elects in which case he shall have the right to appear and defend himself at said investigation in person or by counsel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compulsory process of subpoena or subpoena duces tecum."

[14] Section 6(e), Act 1870.

[15] Article 263, UP Revised Code.

- [16] Answer, p. 27, paragraph c; Annex 18, Appendix A-1.
- [17] Answer, p. 27, paragraph e.
- [18] Answer, p. 20, paragraph 5; Annex 15.
- [19] Answer, p. 20, paragraph 6.
- [20] Answer, p. 21, paragraph 7. Press statements would indicate that of late the UP President appointed four Vice Presidents. Sta. Maria was not one of them.
- [21] Answer, p. 25, paragraphs 1-3; Annex 18 and Appendix A-1.
- [22] Section 1, Rule V-F, Civil Service Rules.
- [23] Section 1, Rule VII, *id.*
- [24] *Reed vs. City Council of City Of Roseville*, 141 Pac. 2d. 459, 463.
- [25] *Garcia vs. Lejano*, L-12220, August 8, 1960.
- [26] *Lacson vs. Romero*, *supra*; *Nicolas vs. Alberto*, 51 Phil. 370, 377 (1928), reversed in 73 L. ed. 642; *Borromeo vs. Mariano*, 41 Phil. 323, 328 (1921); *Branin vs. Township of Delaware*, 3 A 2d. 806.
- [27] 47 Am. Jur., p. 394.
- [28] *Branin vs. Township of Delaware*, *supra*; *McNeal vs. Avoyelles Parish School Board*, 7 So. 2d 165, 167; *McCarthy vs. Stein-keeler*, 270 N.W. 550, 554.
- [29] *Reed vs. City Council of City of Roseville*, *supra*.
- [30] *State vs. Montoya*, 386 Pac. 2d. 253, 257. See also: *Mitchell vs. Board of Trustees of Visalia Union High School*, 42 Pac. 2d. 397; *State ex rel. Ging vs. Board of Education of City of Duluth*, 7 N.W. 2d. 544, 561; *Neal vs. Board of Education*, 181 S.E. 541, 542; *White vs. Board of Education*, 184 S.E. 264, 268; *State vs. Yoakum*, 297 S.W. 2d. 635. These cases recognize the power of the Board of Education to assign teachers to particular classes provided that the power is exercised in good faith and for the best interest of the school district and is based upon actually existing conditions and not for the purpose of compelling a teacher's resignation.
- [31] *Hojilla vs. Mariño*, L-20574, February 26, 1965, 13 SCRA 293, 296.
- [32] *Brillantes vs. Guevarra*, L-22586, February 27, 1969, 27 SCRA 138, 143.
- [33] *Ibañez vs. Commission on Elections*, L-26558, April 27, 1967, 19 SCRA 1002, 1012, citing *Miclat vs. Ganaden*, L-11459, May 30, 1960; *Jaro vs. Valencia*, L-18352, August 30, 1963, 8 SCRA 729, See also: *Suarez vs. Commission on Elections*, L-26605, July 27, 1967, 20 SCRA 797; *Co vs. Commission on Elections*, L-27121, July 21, 1967, 20 SCRA 761; *Real vs. Commission on Elections*, L-27266, September 29, 1967, 21 SCRA 331; *Amponin vs. Commission on Elections*, L-27420, September 29, 1967, 21 SCRA 389, 391.
- [34] Section 12 of the Tax Code: "The Collector of Internal Revenue may, with the approval of the Secretary of Finance, assign internal revenue agents and other officers and employees of the Bureau of Internal Revenue without change in their official character or salary to such special duties connected with the administration of laws as the best interest of service may require."
- [35] *Castro vs. Hechanova*, L-23635, August 31, 1966, 17 SCRA 1023, 1028.
- [36] *Subido vs. Gopengco*, L-25618, March 28, 1969, 27 SCRA 455, 461.

[37] *Garcia vs. Teehankee*, L-29113, April 18, 1969, 27 SCRA 937 and *Garcia vs. Teehankee*, L-28747, April 28, 1969, 27 SCRA 1142, a Court Stenographer reassigned to the main office to enable her to transcribe her notes of cases on appeal; *Quiocho vs. Abrera*, L-22260, August 20, 1967, 20 SCRA 1151, a cost accountant reassigned from the Iligan Plant to Manila.

[38] Section 5, Act 1870.

[39] Section 6(e), Act 1870; Articles 160-171, 263-265, UP Revised Code.

[40] Article 43, UP Revised Code.

[41] Faculty members include the deans and directors, Article 71, UP Revised Code.

[42] Article 44(g), UP Revised Code.

[43] Article 43, *id.*

[44] *Brillantes vs. Guevarra*, *supra*.

[45] *Lacson vs. Romero*, *supra*; *Borromeo vs. Mariano*, *supra*.

[46] Annex J, Reply, Rollo, pp. 149, 164.

[47] Annex J, Reply, Rollo, pp. 149, 165.

[48] Annex K, Reply of Petitioner; Memorandum for Respondent, pp. 54-57; Answer of Respondents, pp. 6-8.

[49] Respondents' Memorandum p. 58.

[50] *Alzate vs. Mabutas (CA)*, 51 O.G. 2451, 2462, citing *Frankfurter*, Justice Holmes and the Supreme Court, pp. 34, 47.

[51] The Gospel according to St. John, 7:51: "Does our Law judge a man unless it first give him a hearing, and know what he does?" Also, Deut, 1:17, 17:8, and 19:15. See also: *The King vs. The Chancellor*, etc., 1 Strange 557, 567: "Besides, the objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also." *Loc. cit.* Gellhorn and Byse, *Administrative Law*, Fourth Edition, p. 711.

[52] Annex H of the Petition, Rollo, pp. 32-33.

[53] *Cornejo vs. Gabriel*, 41 Phil. 188, 193.

[54] *Iloilo Ice and Cold Storage Company vs. Municipal Council of Iloilo*, 24 Phil. 471, 475; *Sitchon vs. Aquino*, 98 Phil. 458, 466; *Halili vs. Lacson*, 98 Phil. 772, 775; also *City of Manila vs. Garcia*, L-26053, February 21, 1967, 19 SCRA 413, 420.

[55] *Suntay vs. People*, 101 Phil. 833, 838, citing *Bauer vs. Acheson*, 106 F. Supp. 445; *Nathan vs. Dulles*, 129 F. Supp. 951; and *Schachtman vs. Dulles*, 225 F. 2d. 938.

[56] *Fahey vs. Mallonee*, 91 L. ed. 2030; *State Savings and Commercial Bank vs. Anderson*, 132 Pac. 755; *Greater Delaware Valley Fed. Savings & Loan Ass'n. vs. Federal Home Bank Board*, 262 F. 2d. 371, 374.

[57] *Ewing vs. Mytinger & Casselberry, Inc.*, 94 L. ed. 1088; also *North American Cold Storage Co. vs. Chicago*,

53 L. ed. 195; *Reduction Company vs. Sanitary Works*, 199 U.S. 306-352, 50 L. ed. 205; *Adams vs. Milwaukee*, 57 L. ed. 971; *Balch vs. Glenn*, 110 Pac. 67; *Lemmon vs. Rumsey*, 150 S.E. 725; *Flem-ing vs. Florida Citrus Exchange*, 358 U.S. 153.

[58] *Standard Airlines vs. Civil Aeronautics Board*, 177 F. 2d. 18; also *State Board of Examiners vs. Weiner*, 172 A. 2d. 661, where it was held that a medical board may suspend a license pending formal hearing.

[59] *R.A. Holman & Co. vs. SEC*, 299 F. 2d. 127.

[60] *Ewing vs. Mytinger & Casselberry, Inc.*, supra, at p. 1094. See also: *People vs. Diamond*, 135 N.E. 200, temporary seizure pending judicial action; *Mehlos vs. City of Milwaukee*, 51 L.R.A. NS 1009, stopping a public dance without a hearing.

[61] *Gellhorn & Byse, Administrative Law, Cases and Comments*, 4th ed., p. 729.

[62] *Davis, Treatise on Administrative Law, Vol. I, Sec. 7.09*, p. 447. See also: *North American Cold Storage Co. vs. Chi-cago*, 53 L. ed. 195 (destruction of poultry, without prior hearing, after it was found to be putrid upon inspection); *Lawton vs. Steele*, summary destruction of fishnets, 38 L. ed. 385; *People ex rel. Cupcutt vs. Board of Health*, 35 N.E. 320; *State vs. Schriber*, 205 Pac. 2d. 149, destruction, without advance hearing, of animals suffering from infectious diseases; *U.S. ex rel. Johnson vs. Shaugh-nessy*, 93 L. ed. 1054; *Scalarides vs. Shaughnessy*, 180 F. 2d. 687, where a board of special inquiry was held bound by the certification of the medical board under a statute calling for medical examina-tion of an alien for mental defect; *Wyant vs. Figy*, 66 N.W. 2d. 240, destruction of bees.

[63] See: *Rural Bank of Lucena, Inc. vs. Arca*, L-21146, September 20, 1965.

[64] *A Call to Action, Manifesto II, Annex 9 of Answer*.

[65] Cf. *American Civil Liberties Union-Academic Freedom and Academic Responsibility*, Emerson and Haber, *Political and Civil Rights in the United States*, 2d. ed., p. 1006.

[66] *Clark Kerr, The New Involvement with Society, Dialogue, Vol. 1, No. 1*, pp. 34, 43.

[67] *George F. Kennan, Democracy and the Student Left, Dialogue, Vol. 2, No. 2*, p. 13.

[68] *Ibid.*

[69] *Daniel D. Moynihan, The New Left and Liberal Values, Dialogue, Vol. 2, No. 3*, pp. 71, 77.

[70] *Baldwin, George D., Justice Fortas on Dissent and Civil Dis-obedience, Wisconsin Law Review, No. 1 (1969)*, p. 221.

[71] *Steven Kelman, A Slightly Skeptical View, Dialogue, Vol. 1, No. 1*, p. 48.

[72] *George F. Kennan, Democracy and Student Left, supra*.

[73] *Annex 1, p. 2 of Answer*.

[74] *Annex 1, p. 3 of Reply*.

[75] Section 6, Act 1870: "The Board of Regents shall x x x (f) approve the courses of study and rules of discipline drawn up by the University Council x x x." Also, Section 9.

Chapter 2, Section 1, Article 19, University Code: "The Council shall have the following powers: (a) To prescribe the courses of study and rules of discipline, subject to the approval of the Board of Regents."

[76] Chapter 6, Section 2, Article 93, University Code: "The Dean or Director shall transmit, with his comment or recommendation, all proposals affecting courses of study, instructions, scholarships, x x x as well as his own proposals on the aforesaid matters, to the President for whatever action the latter may deem proper)".

[77] The Philippine Collegian, Thursday, July 31, 1969.

[78] State vs. Yoakum, 297 S.W. 2d. 635; Currie vs. Weld, 40 N.W. 561; Regan vs. Babcock, 247 N.W. 12.

[79] National Development Co. vs. Collector of Customs, L-19180, October 31, 1963, 9 SCRA 429, 434; Alzate vs. Aldana, 107 Phil. 298, 301-302.

[80] Gleason vs. University of Minnesota, 116 N.W. 650.

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CONCURRING AND DISSENTING OPINION

BARREDO, J.:

In view of the fact that Mr. Justice Sanchez, the writer of the main opinion is due to retire and it is best that the decision in this case be promulgated before he leaves this Court, I am constrained to express briefly now my views on the issues before Us, reserving my right to make a more extended opinion later should I find it necessary to do so.

On the basis of the main facts related in the main opinion, I agree that respondents Lopez and Board of Regents acted beyond the scope of their authority in permanently transferring petitioner from his position as Dean of the College of Education to that of Special Assistant in the Office of the President, even with rank of dean and without reduction of salary, for the simple reason that such a transfer, taking all attendant circumstances into account, did not comply with the requirements of Section 32 of the Civil Service Act of 1959, invoked by said respondents, if only because, as the majority holds, the position of Special Assistant in the Office of the President, even with the empty trappings of a deanship without any particular college to be dean of, can-not be considered as not a reduction in rank, even if there be some element of interest of the service in the cause thereof. In this concept, I vote that the order of transfer in question should be stricken down as repugnant to the Constitution, that petitioner is still the Dean of the College of Education of the University of the Philippines and that the appointment of respondent Ceralde, even in an ad interim capacity has no legal basis and is, therefore, void. Parenthetically, this is not to admit that petitioner has never had an opportunity to be heard, for conferences, meetings, dialogues, long and deliberative, there had been many times for months - it is only that We are not satisfied that such chances as petitioner might have had to air his views on those occasions conform precisely with the requirements of due process.

I find it difficult, however, to agree that Dean Santamaria be returned to the vortex of controversy and thereby bring back the University to the chaotic condition obtaining at the time the questioned order was issued, unless, in the meantime, prudence and sobriety have regained their hold and the fire of excessive student activism has already sufficiently cooled down because they have come to understand the inimical consequences of anything done to excess. If the majority position of completely setting aside the said order appears to be somehow

justified, it is only because in the face of riotous situation the authorities were lost in confusion as to how to meet the problem at hand. To my mind, the crisis of leadership was not a monopoly of the petitioner, it pervaded even the higher strata of the university hierarchy. To be more precise, it is not clear to me what exactly is the position of the respondents. If they are serious in invoking Section 32 abovementioned, then it must be admitted that the ordered transfer is permanent, and since as we view it, the requisites of the law for such a transfer have not been met, the petitioner is right in contending that he is still the Dean of the College of Education. On the other hand, all throughout the pleadings of the respondents, iterations and reiterations are made of the emergency and temporary character of the transfer, to meet a crisis that could result in the complete paralyzation of the activities in the University. Is this the real nature of the measure taken? If this is true, then I find no valid reason why the majority should insist on completely striking down the order in question. Precedents there are where the court in passing upon acts questioned as merely in excess of authority has sanctioned them only to the extent that they could be construed consistently within the limits of legitimate authority and the fundamental law of the land. I consider it as a prudent measure of public administration that in the face of the student demands, which I am afraid this court is not in a position to pass upon with the same competence as the Board of Regents and the university authorities can, it is legally possible to detail petitioner in the position given to him under the order, without removing him as Dean of the College of Education, only for such duration as may be needed, which must be as speedily as possible, by the Board of Regents to clear up the matter of the demand of the students.

In the deliberations, the majority pointed out that no formal charges have been filed against petitioner. For the purposes, I have indicated, I believe that as a consequence of the principle and policy embodied in Section 32, no such charges are needed, considering the urgency of the circumstances. Otherwise stated, if a permanent transfer can be made in the interest of the service, provided there is no reduction in rank and salary, without the need of any charges being filed and any formal investigation undertaken, it should follow that a temporary detail may also be legally made to the same end. Moreover, I do not find in the position taken by petitioner in his last letter to respondent Board of Regents that he is raising this point. What he wants is only a formal investigation. I believe the Board is willing to do that, but petitioner wants to be returned first to his position before any investigation is started. My answer is, it is right that he should be restored his rank and position as Dean of the College of Education, but in the interest of the service and for broader considerations arising from the unusual situation obtaining which calls for a little less of legalism and formalism, he should be amenable to being provisionally detailed elsewhere, with the double advantage that he is removed as I said, temporarily, from the vortex of controversy, and at the same time his acknowledged special qualifications can be made use of by the university in another aspect of its functions, to the enhancement of the purposes for which it exists. This is certainly less than being suspended, which, under the circumstances stated in the main opinion and in the pleadings of respondents, not effectively rebutted, in my view, by petitioner, would have been legally possible, had formal charges been filed against him under Section 34 of the Civil Service Act.[1]

Before closing, I wish to emphasize that nothing said above favorable to respondents' position is intended to condone, much less encourage, mob rule. In fact, my considered view is that this case can be and ought to be decided without taking into account, speaking in the language of civilists when referring to contracts, as a consideration, rather than as a mere reason or motive, the urgency of placating the students' intransigent attitude, and that what should concern us only is whether or not there was enough substantial basis in the demands of the students to warrant remedial measures by the university authorities within the confines of the constitution and the settled principles of free speech vis-a-vis the interest of the service and the accomplishment of the ends of university education which is exactly what the students are there for. Stated differently, with or without student riots, if the demands of the demonstrators were flimsy and capricious, the respondents should have firmly stood their ground. On the other hand, with or without such show of force, the university administration has the power

and, indeed, the duty to take adequate legal steps to meet the situation with emergency measures that will pave the way for ultimate permanent solutions more or less acceptable to all reasonable men.

I would also add that the security of tenure consecrated in the constitution should not be construed as placing the government in a position as if it owed all officers and employees their respective positions. On the other hand, under this constitutional mantle, persons in the government service are not mere beasts of burden, much less inanimate pawns on a chessboard to be moved at will by their administrators. I feel very strongly that public service or employment in the government is not just a means of living - it carries with it a sense of mission, a tinge of patriotism and a considerable degree of the spirit of sacrifice readily to be offered in the altar of the commonweal, as long as there is no trampling of human dignity. I recognize no primacy in any of the rights enshrined in the constitution - rather, I hold that it is the inescapable peculiar function and duty of the courts to determine in appropriate instances, given God's light, where one ends and where only the other begins.

In conclusion, I hold that the order in question should be construed as a mere temporary measure that does not in any manner minimize the status of petitioner as Dean of the College of Education and as merely a temporary detail of said petitioner to the Office of the President until the Board of Regents has acted on his petition filed therewith, action on which he impeded by somehow prematurely coming to this Court. I vote that the petition be denied and the transfer order in question upheld only in the character and nature explained in this opinion, that is, as a temporary detail, without removing petitioner as Dean of the College of Education.

[1] As a matter of fact, it is perhaps even possible to hold that because petitioner Sta. Maria accepted his appointment as Dean of the College of Education for a term of five years together with the qualification "unless sooner terminated", he is not entitled to invoke security of tenure, just as "a civil service eligible who accepts a position in a temporary capacity is not entitled to the protection accorded by Republic Act No. 557 (Hortillosa vs. Ganzon, L-11169, Jan. 30, 1959) nor to the protection of security of tenure in office guaranteed by the Constitution. (Taboada vs. Municipality of Badian, et al., L-14604, May 31, 1961). The undisturbed unanimity of the cases is that one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated any time at the pleasure of the appointing power without need to show that it is for cause. (Hojilla vs. Mariño, et al., L-20574, Feb. 26, 1965; Aguila vs. Castro, et al., L-23778, Dec. 24, 1965; Serrano, et al. vs. Nat. Science Dev. Board, et al., L-19349, March 31, 1964; Cuñado and Vallecera vs. Gamus, et al., L-16782-83, May 30, 1963; Taboada vs. Mun. of Badian, supra; Azuelo vs. Arnaldo, et al., L-15144, May 26, 1969; Madrid vs. Auditor General, et al., L-13523, May 31, 1960 (citing Mendez vs. Ganzon, et al., L-10483, April 12, 1957; University of the Philippines, et al. vs. Court of Industrial Relations, et al., L-15416, April 28, 1960; Agapuyan vs. Ledesma, L-10535, April 25, 1957); Quitiquit vs. Villacorta, supra; Montero, et al. vs. Castejanes, L-12694, June 30, 1960; Ferrer vs. De Leon, L-15076, Aug. 29, 1960 (citing Austria vs. Amante, 79 Phil. 780); Villanosa, et al. vs. Alera, et al., supra, Elegida vs. Gacutara, supra; Cuadra vs. Cordova, etc., L-11602, April 21, 1958, 54 O. G. 8063; Castro vs. Solidum, L-7750, June 30, 1955)" (Jimenea vs. Guanzon, January 22, 1968, 22 SCRA 227, 229, PHILD 1968-A, pages 220,224)

I feel, however, that the main position I have taken would suffice to uphold the order in question on broader foundations of principle in the law of public officers and public administration.

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CONCURRING OPINION

RUIZ CASTRO, J.:

As the sole question posed in this case is whether the petitioner Felixberto C. Sta. Maria was removed from his position as Dean of the College of Education of the University of the Philippines, I deem it appropriate to begin this concurrence with the text of the transfer order issued by the respondent Salvador P. Lopez on July 23, 1969:

"UNIVERSITY OF THE PHILIPPINES
Quezon City

"Office of the President

July 23, 1969

"ADMINISTRATIVE ORDER NO. 77

"TO: Dean Felixberto C. Sta. Maria

College of Education

"SUBJECT: TRANSFER TO THE OFFICE OF THE PRESIDENT

"By special authority vested in me by the Board of Regents and pursuant to the Civil Service Law and the University Code, you are hereby transferred from the College of Education to the Office of the President as Special Assistant with the rank of Dean, without reduction in salary, in the interest of the service.

"This transfer involves your administrative position only and in no way affects your status as professor of the University.

"This order shall take effect immediately.

"(Sgd.) Salvador P. Lopez

President"

To me the meaning of this order is unmistakable: Sta. Maria was relieved as Dean of the U.P. College of Education and was assigned to the Office of the President as a Special Assistant "with the rank of Dean." That was how the action of the respondent Lopez was understood by certain thoughtful and knowledgeable elements of the University of the Philippines.[1] Now the respondents would minimize it as no more than a mere "temporary transfer" or, more accurately, a detail, which does not involve removal in the constitutional sense of the petitioner from the deanship of the College of Education.

I find myself hard put to give the disputed order the meaning now ascribed to it by the respondents. In the first place, if the petitioner was not removed as dean of the College of Education, I do not see why it was necessary to invest him with the "rank of Dean." Was he not already a dean of a college? To say that as Special Assistant to the University President the petitioner would have "the rank of Dean" is to say that he was not actually a Dean, in the same way that to say that one has the rank of a judge is to say, albeit impliedly, that one is not a judge -- else why give him the rank of an officer which he already is?[2]

In the second place, the issuance of an ad interim appointment to the respondent Nemesio Ceralde as Acting Dean of the U.P. College of Education underscores the fact that the petitioner had ceased to be the dean of the college. It meant, simply, that the respondent Ceralde was appointed dean vice the petitioner. For unless the

position of Dean of the College of Education was vacant there could be no appointment to it. Could it be considered vacant if the petitioner had merely been temporarily detailed to the Office of the President of the University?

And finally, that the petitioner was appointed to a new position and not merely detailed thereto was confirmed by the respondent Lopez's own counsel who, at the hearing on July 29, 1969 before the Board of Regents of the University, admitted that the transfer order constituted an ad interim appointment of the petitioner as Special Assistant to the U.P. President.[3]

There are other overriding circumstances, already pointed out in the opinion of the Court, which completely negate the respondents' claim that the petitioner was not removed from his post but merely temporarily assigned to another office, but I think the best and final refutation of the respondents' pretense is to be found in the press statement given by the respondent Lopez himself on the same day (July 23, 1969) he issued the transfer order. The statement reads in part:

"After long and careful consideration, I have come to the conclusion that as President of the University I cannot permit the continued disruption of the academic life of the institution. In the interest of the service, therefore, and availing myself of the authority vested in me by law, I have issued an order transferring Dean Felixberto C. Sta. Maria of the College of Education to other duties in the University, without reduction in rank or salary, pursuant to the Civil Service Law and the University Code. ...

"In an effort to persuade the students to return to their classes pending negotiation of their demands, the Administration has called a series of meetings between the faculty, the students, Dean Sta. Maria and the President of the University. These meetings, however, proved fruitless in the face of the refusal of the College of Education students to discuss any further their demands unless and until Dean Sta. Maria resigns his position. ...

"[T]he complete shut-down of classes in the Diliman campus has compelled me, much to my regret, to take the decision to transfer Dean Sta. Maria to other duties. In taking this difficult decision, I was encouraged by the vote of confidence which was unanimously adopted by the faculty of the College of Education this morning, in any decision which the President might take in the best interest of the University."[4]

Again, in a press release issued the following day, July 25, 1969, he emphasized:

"I proposed to the striking students that Dean Sta. Maria be not made to resign under pressure but that he should remain in his post until the end of the semester. They turned this down.

"In the circumstances, I decided that the only course left open to me in order to keep the University open was to transfer Dean Sta. Maria to other duties, in the same rank and salary, as provided by the Civil Service Law and the University Code.

"I deeply regret that I have had to take this difficult decision, but I had no choice. As President Truman once said, 'The buck stops here,' and I must add, 'the U.P. is greater and more important than any man.'"[5]

These statements made right on the heels of the issuance of the disputed order, rather than the later statements of the respondent Lopez, reveal, I believe, the true nature of the petitioner's relief. They demonstrate beyond cavil that the petitioner's head was the price demanded by the striking students and that the petitioner's head was precisely and exactly the price paid in exchange for peace on the campus. For if the intended result of the action taken in this case was no more than a mere "detail" of the petitioner, then it hardly deserved the characterization as "this difficult decision" which the U.P. President "with deep regret" had to take, "encouraged" by the thought that he had the vote of confidence of the college's faculty.

It may indeed be that the position of Special Assistant to the President of the University is of a higher category than that of a college dean and that for that reason the petitioner was not demoted. But to view the matter from this angle of vision is to miss completely the point at issue, namely, that the transfer of an employee from one post in the civil service to another, if objected to by him, can be justified only if there be some cause recognized by law.

Is not this what this Court meant when it ruled that the un-consented transfer of a civil service employee, no matter how well-intended, as a promotion, is "equivalent to a removal," and, if made without prior hearing, is violative of the Constitution?[6] As this Court noted:

"But in justice to the President and the Commission on Appointments, let it be stated once again that it would seem that the transfer of the petitioner to Tarlac was not meant and intended as a punishment, a disciplinary measure or demotion. It was really a promotion, at least at the time the appointment was made. Only, that later, due to a change in the category of Oriental Negros as a province, the transfer was no longer a promotion in salary. And yet the respondent and the Solicitor General insisted on the transfer despite the refusal of the petitioner to accept his new appointment."[7]

The rule in *Lacson* is now embodied in statute:

"[A] transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service, in which case the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission on Civil Service through the Department Head. Pending appeal and decision thereof, his transfer shall be held in abeyance. ..." [8]

This statutory provision reflects the view that because by nature a transfer (as distinguished from a mere detail) involves a removal from one position and an appointment to another, there must first be a hearing. And so, while the respondents *Lopez* and *U.P. Board of Regents* might not be expected to follow the precise procedure for transfer as outlined in the amendment to the statute, since this did not take effect until August 4, 1969 (a few days after the petitioner's relief), they were, to my mind, nevertheless bound to observe those "canons of decency and fairness"[9] of which the due process clause is the "summarized constitutional guarantee of respect." [10] And due process of law requires at the very least that there be notice and hearing,[11] lest the summary transfer of a civil service employee offend "a sense of justice." [12]

Is to uphold the petitioner's right to a hearing to overlook the larger interests of society, to exalt the individual at the expense of the community? Is it nineteenth-century bourgeois thinking, so wanting in relevance as to be regarded as outmoded or obsolete in an age of mass demonstrations and confrontations?

The respondent *Lopez* justifies his action in terms of what he conceives to be the interest of the community that is the University which had been completely shut down by student boycott. As he stressed, "the U.P. is greater and more important than any man."

But the respect due the integrity of the individual is by no means antithetical to the interests of society. On the contrary, one reinforces the other, as the philosopher Reinhold Niebuhr has so beautifully brought out in his book, "The Children of Light and the Children of Darkness." [13] While bourgeois democracy, with its enshrining of the individual at the center stage of society, has now generally been replaced by a new social consciousness, its emphasis on liberty nevertheless contains an element of validity that transcends its excessive individualism. [14] Perhaps it would be closer to the truth to say that the community requires liberty as much as does the individual and the individual requires Community more than bourgeois thought comprehended. [15] As Dr. Niebuhr explains:

"The man who searches after both meaning and fulfillments beyond the ambiguous fulfillments and frustrations of history exists in a height of spirit which no historical process can completely contain. This height is not irrelevant to the life of the community, because new richness and a higher possibility of justice come to the community from this height of awareness. But the height is destroyed by any community which seeks prematurely to cut off this pinnacle of individuality in the interest of the community's peace and order." [16]

And what was the community interest involved here? If it was that of the community of students who massed in front of the University administration building, then it was obviously in their interest that the strike continued until the respondent Lopez yielded to their demand. If, on the other hand, it was that of the community of students who very much wanted to attend classes but were prevented from doing so, or that of the community of professors and other scholars who could not get inside the classrooms because they were barred by the demonstrating students, then the protection of their rights is to be found in some solution of a police character and not in the summary removal of the petitioner. The issue would always thus narrow down to the vindication of a principle: the rational solution of any controversy.

Of more than passing relevance are these sentiments [17] articulated by Dr. Sidney Hook of the Department of Philosophy of the New York University, a thoughtful commentator on the contemporary university scene: "Due process in the academic community is reliant upon the process of rationality. It cannot be the same as due process in the political community as far as the mechanisms of determining the outcome of rational activity. For what controls the nature and direction of due process in the academic community is derived from its educational goal -- the effective pursuit, discovery, publication, and teaching of the truth. In the political community all men are equal as citizens not only as participants in, and contributors to, the political process, but as voters and decision-makers on the primary level. Not so in the academic community. What qualifies a man to enjoy equal human or political rights does not qualify him to teach equally with others or even to study equally on every level. There is an authoritative, not authoritarian, aspect of the process of teaching and learning that depends not upon the person or power of the teacher, but upon the authority of his knowledge, the cogency of his method, the scope and depth of his experience. But whatever the differences in the power of making decisions flowing from legitimate differences in educational authority, there is an equality of learners, whether of teachers or students, in the rational processes by which knowledge is won, methods developed, and experience enriched."

And on the rule of reason in a liberal educational regimen, Professor Hook gives us pause with his incisive observations: "In a liberal educational regimen, everything is subject to the rule of reason, and all are equals as questioners and participants. Whoever interferes with academic due process either by violence or threat of violence places himself outside the academic community, and incurs the sanctions appropriate to the gravity of his offenses from censure to suspension to expulsion. The peculiar deficiency of the ritualistic liberal educational establishments is the failure to meet violations of rational due process with appropriate sanctions or to meet them in a timely and intelligent manner. There is a tendency to close an eye to expressions of lawless behavior on the part of students who, in the name of freedom, deprive their fellow students of the freedom to pursue their studies. It is as if the liberal administration sought to appease the challenge to its continued existence by treating such incidents as if they had never happened. There is no panacea that can be applied to all situations. It is not a question of a hard line or a soft line, but of an intelligent line. It is easy to give advice from hindsight, to be wise and cocksure after the event. But it is always helpful for the faculty to promulgate in advance fair guidelines for action, so that students will know what to expect. In general, no negotiations should be conducted under the threat of coercion, or when administrators or faculty are held captive."

[1] This view was shared by the newspapers and columnists. E. g., "Editorial," Taliba, July 27, 1969, p. 4; "UP

Dean Stirs Controversy," Manila Chronicle, July 26, 1969, p. 4, col. 2; Soc Rodrigo, "Kuro-Kuro," Taliba, July 26, 1969; Va-lencia, "Over a Cup of Coffee," Manila Times, July 25, 1969, pp. 4-A, 7-A, col. 1; id., July 26, 1969, p. 4-A, col. 1; Balein, "Another One," Manila Chronicle, July 26, 1969, p. 8, col. 1.

[2] Cf. *Noblejas v. Teehankee*, L-28790, April 29, 1968, 23 SCRA 405.

[3] Minutes of the 785th meeting of the U.P. Board of Regents, July 29, 1969, annex 21 of the respondents' answer.

[4] Appendix A -3 to annex 18 of the respondents' answer.

[5] Appendix A-4 to annex 18 of the respondents' answer.

[6] *Lacson v. Romero*, 84 Phil. 740, 745-46 (1949).

[7] *Id.*, at 755.

[8] Civil Service Act of 1959, sec. 32, as amended by Rep. Act 6040, sec. 11, effective Aug. 4, 1969.

[9] *Malinski v. New York*, 324 U.S. 401, 417 (1945) (Frankfurter, J., concurring).

[10] *Rochin v. California*, 342 U.S. 165, 169 (1952).

[11] E.g., *Gray v. De Vera*, L-23966, May 22, 1969, 28 SCRA 268; *Twining v. New Jersey*, 211 U.S. 78 (1908).

[12] See *Rochin v. California*, *supra*, note 10 at 173; *Brown v. Mississippi*, 297 U.S. 278, 285-6 (1936).

[13] A gifted scholar of American constitutional law, who himself is the author of an influential classic, *On Understanding the Supreme Court* (1949), considers Niebuhr's little volume more valuable for education than "many books many times its size written by constitutional lawyers about 'understanding the Supreme Court.'" P.A. Freund, Comment, *Judicial Method in Due Process Inquiry*, in *Government Under Law* 355, 358 (A. Sutherland ed. 1956).

[14] Niebuhr, *The Children of Light and the Children of Darkness* 3 (1944).

[15] *Id.*, at 3.

[16] *Id.*, at 85-86.

[17] "Who Is Responsible For Campus Violence?", *Atlantic Magazine*, February 1969, p. 45; *Newsweek*, May 12, 1969, p. 71; see also pp. 24 and 29 of Memorandum for the Petitioner.

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CONCURRING OPINION

FERNANDO, J.:

There is much in the exhaustive opinion of Justice Sanchez, impressive for its grasp of the law and breadth of scholarship, that commends itself for acceptance. Nonetheless, I feel called upon to express my concurrence separately as for me the question at issue could be viewed from a narrower perspective. It could also be said, and this is not intended by way of criticism, that the opinion of the Court could have accorded a more explicit recognition of the complexity of the problems that sorely beset the President of the University of the Philippines and thus result in greater understanding and sympathy for his efforts to arrive at a correct and just solution. As the question before us is one of power, however, even the best of motives cannot be a substitute. Not only must the objective sought to be attained be within the law, but the means employed must not suffer from a legal infirmity. To be more specific, in the case before us, I am unable to reach a conclusion other than that procedural due process had not been observed in the removal of petitioner.

The view I take of the matter is thus in conformity with that expressed in the opinion of the Court. Considering all the circumstances discussed with the fullness of detail by Justice Sanchez, the steps taken by the University administration, even if susceptible to the interpretation that they were equivocal at most, had not been purged of the taint of unfairness thus calling into operation the protection afforded by the due process guaranty. There should be by this time no need to stress the obvious that insofar as security of tenure and the right to the perquisites are concerned, a public office is indeed property of which the occupant cannot be deprived save in accordance with its dictates.^[1] Nonetheless, to erase any lingering doubts on the matter, there is nothing inappropriate in reaffirming such a principle. Nor is there anything incompatible with the principle thus reiterated with the fundamental postulate that a public office is preeminently a public trust, the exercise of the authority thus conferred being conditioned on the official having uppermost in mind what is best for public welfare.

Necessarily then in accordance with the security of tenure guaranty^[2] of the Constitution and its statutory implementation under the Civil Service Act,^[3] this Court has been committed to the principle that a public official may secure judicial redress for any suspension or removal contrary to such mandate so explicitly announced, irrespective of the motives that may have inspired such a move, if thereby the ground for such disciplinary action is untenable or the procedure followed is irregular. A host of decisions attests to such a long, unbroken, impressive course of adjudication.^[4] The decision reached by us in this case is therefore solidly buttressed in authoritative pronouncements. It is well that it is so. Whatever inconvenience may thus be visited on attempts concededly taken in the utmost good faith to resolve a critical impasse is more than offset by adherence to the rule of law.

The Constitution, being the supreme law, its supremacy must be upheld, its mandates deemed controlling. There is no justification for any of its commands being disregarded or set at naught. As so eloquently put in *Ex parte Milligan*:^[5] "The Constitution * * * is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. "Petitioner, if he could show that no deference was paid to his constitutional right to due process, could thus seek judicial relief, the courts being duty bound to maintain inviolate the provisions of the fundamental law.

Nor is such a remedy precluded by petitioner pursuing a course of conduct which apparently had given cause for grave dissatisfaction on the part of the student body. Much less could the expression of discontent on the part of the student body, immoderate in character, giving rise to what could plausibly be looked upon from the standpoint of the University administration as an emergency call for the application of a different principle. It is precisely under such circumstances that the paramount character of the Constitution must be accorded due recognition. As

so forcefully stressed by former Chief Justice Hughes: "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency." [6]

It is to the credit of the opinion of Justice Sanchez that while being fully cognizant of the amplitude of the constitutional right on the part of the students to assembly and petition, it reminds them of the limits thereof. The beneficial results that could be expected of student activism, expressed at times with more vehemence than the occasion would call for, might not come to pass if the boundaries of legally permissible conduct are overstepped. It would seem to me that the sense of maturity and the spirit of calm deliberation that should permeate an academic atmosphere should be antidotes to what at times may be the impatience and exuberance of the young carried to excess. The words of Justice Frankfurter come to mind: "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." [7]

To the possible objection that there is an air of unreality to the preceding observation as the University administration was confronted not by what ought to have been but what in fact was, it suffices to answer that even then deference to the rule of law was not thereby rendered impossible. It is to be admitted that it was much more difficult under the circumstances, but that of itself certainly could not justify its disregard. This is not to say that there was such an intent. Far from it. It must be conceded that on the facts as shown, there was no thought on the part of the University authorities to trample on the rights of petitioner. Their motive, as had been noted, was to solve the impasse with the best interests of the entire University constituency uppermost. Nonetheless, the purest of motives, to repeat, does not warrant a deviation from what the law prescribes.

Nor could reliance be had on the clause that did confer on the University administration the power to put an end to petitioner's continuance in his position as Dean. While the term was fixed at five years, it could be "sooner terminated." In entire good faith then, it could be interpreted as permitting what was done. If that were all, then no due process question would have arisen. Such was not the case though. Charges, not trivial in character, were in fact lodged against petitioner. To put an end to his term then without giving him a hearing was to condemn him, considering that apparently there was no indication that such a thing was previously contemplated, until the attitude of the students did assume such belligerent posture. It is one thing to inform an official that for the best interest of the service, and without reflection on his actuations, a new man should be placed at the helm. It is an entirely different matter, if subjected as he was to accusations reflecting on his performance as such official, he is summarily relieved without the formal hearing to which due process entitles him. It is on this precise ground that I vote for the granting of the petition and concur in the result reached by the Court.

[1] Cf. *Morfe v. Mutuc*, L-20387, 22 SCRA 424 (1968) citing *Lacson v. Romero*, 84 Phil. 740 (1949); *Lacson v. Roque*, 92 Phil. 456 (1953); *Meneses v. Lacson*, 97 Phil. 857 (1955); *Tabora v. Montelibano*, 98 Phil. 800 (1956); *Unabia v. City Mayor*, 99 Phil. 253 (1956); *Cammayo v. Vina*, 101 Phil. 1149 (1957); *Piñero v. Hechanova*, L-22562, 18 SCRA 417 (1966); *Abaya v. Subido*, L-25641, 18 SCRA 1034 (1966).

[2] Art. XII, Sec. 4, Constitution of the Philippines.

[3] Republic Act No. 2260 as amended (1959).

[4] Cf. *Lacson v. Romero*, 84 Phil. 740 (1949); *De los Santos v. Mallare*, 87 Phil. 289 (1950); *Lacson v. Roque*, 92 Phil. 456 (1953); *Batung-Bakal v. National Dev. Co.*, 93 Phil. 182 (1953); *Rodriguez v. Del Rosario*, 93 Phil. 1070 (1953); *Mission v. Del Rosario*, 94 Phil. 483 (1954); *Palamine v. Zagado*, 94 Phil. 494 (1954); *Inocente v. Ribo*, 94 Phil. 652 (1954); *Abella v. Rodriguez*, 95 Phil. 289 (1954); *Uy v. Rodriguez*, 95 Phil. 493 (1954); *Gorospe v. De Veyra*, 96 Phil. 545 (1955); *Olegario v. Lacson*, 97 Phil. 75 (1955); *Quintos v. Lacson*, 97 Phil. 290 (1955); *Meneses v. Lacson*, 97 Phil. 857 (1955); *Tabora v. Montelibano*, 98 Phil. 800 (1956); *Putulan v. Dizon*, 99 Phil. 168 (1956); *Unabia v. City Mayor*, 99 Phil. 253 (1956); *Faunillan v. Del Rosario*, 99 Phil. 758 (1956); *Claravall v. Paraan*, 100 Phil. 476 (1956); *Serarillos v. Hermosissima*, 100 Phil. 501 (1956); *Jose v. Lacson*, L-10477, May 12, 1957; *Cuyo v. City Mayor*, 101 Phil. 558 (1957); *Cammayo v. Viña*, 101 Phil. 1149 (1957); *Cabo Kho v. Rodriguez*, L-9032, Sept. 28, 1957; *Briones v. Osmeña*, 104 Phil. 588 (1958); *Dias v. Amante*, 104 Phil. 968 (1958); *Mangubat v. Osmeña*, L-12837, April 30, 1959; *Baguio v. Rodriguez*, L-11078, May 27, 1959; *Tan v. Gimenez*, 107 Phil. 17 (1960); *Subido v. Sarmiento*, L-14981, May 23, 1960; *Fernandez v. Cuneta*, L-14392, May 30, 1960; *Board of Directors v. Alandy*, L-15391, Oct. 31, 1960; *Vito v. Lacson*, L-16173, 3 SCRA 666 (1961); *Gonzalez v. Osmeña*, L-15901, 3 SCRA 841 (1961); *Dichoso v. Valdepeñas*, L-17448, 5 SCRA 1069 (1962); *Corpus v. Cuaderno*, L-17860, 4 SCRA 749 (1962); *Garcia v. Salcedo*, L-19748, 6 SCRA 1 (1962); *Fernandez v. Ledesma*, L-18878, 7 SCRA 620 (1963); *Libarnes v. Executive Secretary*, L-21505, 9 SCRA 261 (1963); *Jorge v. Mayor*, L-21776, 10 SCRA 331 (1964); *Diaz v. Raquid*, L-19158, 13 SCRA 339 (1965); *Tañala v. Legaspi*, L-22537, 13 SCRA 566 (1965); *Corpus v. Cuaderno*, L-23721, 13 SCRA 591 (1965); *City of Manila v. Subido*, L-25835, 17 SCRA 231 (1966); *Cariño v. ACCFA*, L-19808, 18 SCRA 183 (1966); *Piñero v. Hechanova*, 22562, 18 SCRA 417 (1966); *Abaya v. Villegas*, L-25641, 18 SCRA 1034 (1966); *Ferrer v. Hechanova*, L-24418, 19 SCRA 105 (1967); *Abellera v. City of Baguio*, L-23957, 19 SCRA 600 (1967); *Cruz v. Primicias*, L-28573, 23 SCRA 998 (1968); *Perez v. Subido*, L-26791, 23 SCRA 1074 (1968).

[5] 4 Wall. 2 (1866).

[6] *Home Building & Loan Association v. Blaisdell*, 290 US 398, 425 (1934).

[7] *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 US 287, 293 (1941).

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