EN BANC

[G.R. No. L-65366. November 9, 1983.]

JOSE B.L. REYES, in behalf of the ANTI-BASES COALITION (ABC), *petitioner*, ***vs.*** **RAMON BAGATSING, as Mayor of the City of Manila,** *respondent*.

Lorenzo M. Tañada, Jose W. Diokno and *Haydee B. Yorac* for petitioner.

The Solicitor General for respondent.

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY; LIBERTY TO DISCUSS AND MEET WITHOUT CENSORSHIP UNLESS THERE IS CLEAR DANGER OF A SUBSTANTIVE EVIL. — Free speech, like free press, may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment. There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a "clear and present danger of a substantive evil that the State has a right to prevent." Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent.

2. ID.; ID.; ID.; INSEPARABLE RIGHTS THE LIMITATION OF WHICH IS SUBJECT TO JUDICIAL EXAMINATION. — In Thomas v. Collins, 323 US 516 (1945), the American Supreme Court held that it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable. In every case, therefore, where there is a limitation placed on the exercise of the right, the judiciary is called upon to examine the effects of the challenged governmental actuation. The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, of other legitimate public interest (Cf. Schneider v. Irvington, 308 US 147 (1939).

3. ID.; ID.; ID.; RIOTOUS CONDUCT MUST BE AVOIDED IN THE EXERCISE OF THESE CONSTITUTIONAL RIGHTS. — What is guaranteed is peaceable assembly. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. The Constitution frowns on disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided. The utmost calm though is not required. As pointed out in an early Philippine case, penned in 1907 to be precise, United States v. Apurado, 7 Phil. 422, "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest

against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievances and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers." It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided. To give free rein to one's destructive urges is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty its our scheme of values.

4. ID.; ID.; ID.; NO VALID OBJECTION EXISTS ON THE CHOICE OF PLACE FOR THE MARCH AND RALLY, PROCUREMENT OF LICENSE FOR USE OF PUBLIC STREETS NOT AN UNCONSTITUTIONAL ABRIDGEMENT OF ONE'S CONSTITUTIONAL RIGHT. — There can be no valid reason why a permit should not be granted for the proposed march and rally starting from a public park that is the Luneta. Neither can there be any valid objection to the use of the streets to the gates of the US Embassy, hardly two blocks away at the Roxas Boulevard. Primicias v. Fugoso has resolved any lurking doubt on the matter. In holding that the then Mayor Fugoso of the City of Manila should grant a permit for a public meeting at Plaza Miranda in Quiapo, this Court categorically declared: "Our conclusion finds support in the decision in the case of Willis Cox vs. State of New Hampshire, 312 U.S. 569. . . ." The Supreme Court of the United States, in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that "a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not an unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance, to a consideration of the time, place, and manner of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license, . . . , " 80 Phil, at 78.

5. ID.; ID.; ID.; FREEDOM OF ACCESS TO PUBLIC PARKS AND STREETS; PURPOSE OF APPLICANT DETERMINATIVE OF THE USE THEREOF. — It is settled law that as to public places, especially so as to parks and streets, there is freedom of access. Nor is their use dependent on who is the applicant for the permit, whether an individual or a group. If it were, then the freedom of access becomes discriminatory access, giving rise to an equal protection question. The principle under American doctrines was given utterance by Chief Justice Hughes in these words: "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects" (De Jorge v. Oregon, 299 US 353, 364 (1937).

6. ID.; ID.; ID.; LICENSING AUTHORITIES ARE NOT INVESTED WITH ARBITRARY DISCRETION TO ISSUE OR REFUSE LICENSE. — There could he danger to public peace and safety if such a gathering were marked by turbulence. That would deprive it of its peaceful character. Even then, only the guilty parties should be held accountable. It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. White prudence requires that there be a realistic appraisal not of what may possibly occur but of what may probably occur, given all the relevant circumstances, still the assumption — especially so where the assembly is scheduled for a specific public place — is that the permit must he for the assembly being held there. The exercise of such a right, in the

language of Justice Roberta, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place."

7. ID.; ID.; ID.; ID.; NON-EXISTENCE IN CASE AT BAR A CLEAR AND PRESENT DANGER TO JUSTIFY A DENIAL OF A PERMIT. — While the general rule is that a permit should recognize the right of the applicants to hold their assembly at a public place of their choice, another place may be designated by the licensing authority if it be shown that there is a clear and present danger of a substantive evil if no such change were made. In the Navarro and the Pagkakaisa decisions, G.R. No. L-31687, February 26, 1970 and G.R. No. 60294, April 30, 1982, this Court was persuaded that the clear and present danger test was satisfied. The present situation is quite different. Hence the decision reached by the Court. The mere assertion that subversives may infiltrate the ranks of the demonstrators does not suffice.

8. ID.; ID.; ID.; ID.; REFUSAL OR MODIFICATION OF APPLICATION FOR PERMIT SUBJECT TO CLEAR AND PRESENT DANGER TEST. — The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent sad grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority.

9. ID.; ID.; ID.; RESPECT AND DEFERENCE ACCORDED TO THESE PREFERRED RIGHTS. — Free speech and peaceable assembly, along with other intellectual freedom, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, — even more so than on the other departments — rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitiously termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of suds rights, enjoying as they do precedence and primacy.

10. ID.; ID.; ID.; VIOLATION OF ORDINANCE 7295 NEED NOT BE PASSED UPON. — The issue of the applicability of Ordinance No. 7295 of the City of Manila prohibiting the holding or staging of rallies or demonstrations within a radius of five hundred (500) feet from any foreign mission or chancery; and for other purposes which finds support in Article 22 of the Vienna Convention on Diplomatic Relations need not be passed upon. There was no showing that the distance between the chancery and the embassy gate is less than 500 feet. Even if it could be shown that such a condition is satisfied, it does not follow that respondent Mayor could legally act the way he did. The validity of his denial of the permit sought could still be challenged. It could be argued that a case of unconstitutional application of such ordinance to the exercise of the right of peaceable assembly presents itself. As in this case there was no proof that the distance is less than 500 feet, the need to pass on that issue was obviated.

TEEHANKEE, J., concurring:

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION AND

PEACEFUL ASSEMBLY; DOCTRINE OF PRIMICIAS vz. FUGOSO. — The Chief Justice's opinion of the Court reaffirms the doctrine of Primicias vs. Fugoso, 80 Phil. 71 that "the right to freedom of speech and to peacefully assemble and petition the government for redress of grievances are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries" and that the city or town mayors are not conferred "the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held."

2. ID.; ID.; ID.; CLEAR AND PRESENT DANGER RULE, THE SOLE JUSTIFICATION FOR A LIMITATION ON THE EXERCISE THEREOF. — The procedure for the securing of such permits for peaceable assembly is succinctly set forth in paragraph 8 of the Court's opinion, with the injunction that "the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do, precedence and primacy." The exception of the clear and present danger rule, which alone would warrant a limitation of these fundamental rights is therein restated in paragraph 1, thus: "The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest."

3. ID.; ID.; ID.; ID.; BEFORE DENIAL OF PERMIT, LICENSING AUTHORITY MUST SHOW EXISTENCE OF REASONABLE GROUND TO BELIEVE THAT THE DANGER APPREHENDED IS IMMINENT. — The burden to show the existence of grave and imminent danger that would justify adverse action on the application lies on the mayor as the licensing authority. There must be objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger. As stated in the Court's Resolution of October 25, 1983, which granted the mandatory injunction as prayed for, "It is essential for the validity of a denial of a permit which amounts to a previous restraint or censorship that the licensing authority does not rely solely on his own appraisal of what public welfare, peace or safety may require. To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test. The possibility that subversives may infiltrate the ranks of the demonstrators is not enough."

4. ID.; ID.; ID.; ASSEMBLY LEADERS SHOULD TAKE NECESSARY MEASURES TO ENSURE PEACEFUL MARCH AND ASSEMBLY; ISOLATED ACTS OF DISTURBANCE SHOULD NOT CHARACTERIZE ASSEMBLY AS TUMULTUOUS. — The leaders of the peaceable assembly should take all the necessary measure" to ensure a peaceful much and assembly and to avoid the possibility of infiltrators and troublemakers disrupting the same, concommitantly with the duty of the police to extend protection to the participants "staying at a discreet distance, but ever ready and alert to perform their duty." But should any disorderly conduct or incidents occur, whether provoked or otherwise, it is well to recall former Chief Justice Ricardo Paras` injunction in his concurring opinion in Fugoso, citing the 1907 case of U.S. vs. Apurado, 7 Phil. 422, 426, per Carson, J. that such instances of "disorderly conduct by individual members of a crowd (be not seized) as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities" and render illusory the right of peaceful assembly.

PLANA, J., separate opinion:

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY; THE ORDINANCE BEING UNCONSTITUTIONAL CANNOT BE

VALIDLY INVOKED, THE DISTANCE OF THE CHANCERY FROM THE SITUS OF THE RALLY BEING IMMATERIAL. — In my view, without saying that the Ordinance is obnoxious per se to the constitution, it cannot be validly invoked whenever its application would collide with a constitutionally guaranteed right such as freedom of assembly and/or expression, as in the case at bar, regardless of whether the chancery of any foreign embassy is beyond or within 500 feet from the situs of the rally or demonstration.

D E C I S I O N

FERNANDO, *C.J* :

This Court, in this case of first impression, at least as to some aspects, is called upon to delineate the boundaries of the protected area of the cognate rights to free speech and peaceable assembly, [1] against an alleged intrusion by respondent Mayor Ramon Bagatsing. Petitioner, retired Justice J.B.L. Reyes, on behalf of the Anti-Bases Coalition, sought a permit from the City of Manila to hold a peaceful march and rally on October 26, 1983 from 2:00 to 5:00 in the afternoon, starting from the Luneta, a public park, to the gates of the United States Embassy, hardly two blocks away. Once there, and in an open space of public property, a short program would be held. [2] During the course of the oral argument, [3] it was stated that after the delivery of two brief speeches, a petition based on the resolution adopted on the last day by the International Conference for General Disarmament, World Peace and the Removal of All Foreign Military Bases held in Manila, would be presented to a representative of the Embassy or any of its personnel who may be there so that it may be delivered to the United States Ambassador. The march would be attended by the local and foreign participants of such conference. There was likewise an assurance in the petition that in the exercise of the constitutional rights to free speech and assembly, all the necessary steps would be taken by it "to ensure a peaceful march and rally." [4]

The filing of this suit for mandamus with alternative prayer for writ of preliminary mandatory injunction on October 20, 1983 was due to the fact that as of that date, petitioner had not been informed of any action taken on his request on behalf of the organization to hold a rally. On October 25, 1983, the answer of respondent Mayor was filed on his behalf by Assistant Solicitor General Eduardo G. Montenegro. [5] It turned out that on October 19, such permit was denied. Petitioner was unaware of such a fact as the denial was sent by ordinary mail. The reason for refusing a permit was due to "police intelligence reports which strongly militate against the advisability of issuing such permit at this time and at the place applied for." [6] To be more specific, reference was made to "persistent intelligence reports affirm[ing] the plans of subversive/criminal elements to infiltrate and/or disrupt any assembly or congregations where a large number of people is expected to attend." [7] Respondent Mayor suggested, however, in accordance with the recommendation of the police authorities, that "a permit may be issued for the rally if it is to be held at the Rizal Coliseum or any other enclosed area where the safety of the participants themselves and the general public may be ensured." [8]

The oral argument was heard on October 25, 1983, the very same day the answer was filed. The Court then deliberated on the matter. That same afternoon, a minute resolution was issued by the Court granting the mandatory injunction prayed for on the

ground that there was no showing of the existence of a clear and present danger of a substantive evil that could justify the denial of a permit. On this point, the Court was unanimous, but there was a dissent by Justice Aquino on the ground that the holding of a rally in front of the US Embassy would be violative of Ordinance No. 7295 of the City of Manila. The last sentence of such minute resolution reads: "This resolution is without prejudice to a more extended opinion." [9] Hence this detailed exposition of the Court's stand on the matter.

1. It is thus clear that the Court is called upon to protect the exercise of the cognate rights to free speech and peaceful assembly, arising from the denial of a permit. The Constitution is quite explicit: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." [10] Free speech, like free press, may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment. [11] There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits, [12] prosecution for sedition, [13] or action for damages, [14] or contempt proceedings [15] unless there be a "clear and present danger of a substantive evil that [the State] has a right to prevent." [16] Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. [17] It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent. [18] Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. [19] To paraphrase the opinion of Justice Rutledge, speaking for the majority of the American Supreme Court in Thomas v. Collins, [20] it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable. In every case, therefore, where there is a limitation placed on the exercise of this right, the judiciary is called upon to examine the effects of the challenged governmental actuation. The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest. [21]

2. Nowhere is the rationale that underlies the freedom of expression and peaceable assembly better expressed than in this excerpt from an opinion of Justice Frankfurter: "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." [22] What was rightfully stressed is the abandonment of reason, the utterance, whether verbal or printed, being in a context of violence. It must always be remembered that this right likewise provides for a safety valve, allowing parties the opportunity to give vent to their views, even if contrary to the prevailing climate of opinion. For if the peaceful means of communication cannot be availed of, resort to non-peaceful means may be the only alternative. Nor is this the sole reason for the

expression of dissent. It means more than just the right to be heard of the person who feels aggrieved or who is dissatisfied with things as they are. Its value may lie in the fact that there may be something worth hearing from the dissenter. That is to ensure a true ferment of ideas. There are, of course, well-defined limits. What is guaranteed is peaceable assembly. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. The Constitution frowns on disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided. The utmost calm though is not required. As pointed out in an early Philippine case, penned in 1907 to be precise, United States v. Apurado: [23] "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers." [24] It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided. To give free rein to one's destructive urges is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty in our scheme of values.

3. There can be no legal objection, absent the existence of a clear and present danger of a substantive evil, on the choice of Luneta as the place where the peace rally would start. The Philippines is committed to the view expressed in the plurality opinion, of 1939 vintage, of Justice Roberts in Hague v. CIO: [25] "Whenever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." [26] The above excerpt was quoted with approval in Primicias v. Fugoso. [27] Primicias made explicit what was implicit in Municipality of Cavite v. Rojas, [28] a 1915 decision, where this Court categorically affirmed that plazas or parks and streets are outside the commerce of man and thus nullified a contract that leased Plaza Soledad of plaintiff-municipality. Reference was made to such plaza "being a promenade for public use," [29] which certainly is not the only purpose that it could serve. To repeat, there can be no valid reason why a permit should not be granted for the proposed march and rally starting from a public park that is the Luneta.

4. Neither can there be any valid objection to the use of the streets to the gates of the US Embassy, hardly two blocks away at the Roxas Boulevard. Primicias v. Fugoso has resolved any lurking doubt on the matter. In holding that the then Mayor Fugoso of the City of Manila should grant a permit for a public meeting at Plaza Miranda in Quiapo, this Court categorically declared: "Our conclusion finds support in the decision in the case of Willis Cox vs. State of New Hampshire, 312 U.S., 569. In that case, the statute of New Hampshire P. L. chap. 145, section 2, providing that `no parade or procession upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town or from licensing committee,' was construed by the Supreme Court of New Hampshire as not conferring upon the licensing board unfettered discretion to refuse to grant the license, and held

valid. And the Supreme Court of the United States, in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that `a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not an unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license, . . .'" [30] Nor should the point made by Chief Justice Hughes in a subsequent portion of the opinion be ignored. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestricted abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is desired to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection." [31]

5. There is a novel aspect to this case. If the rally were confined to Luneta, no question, as noted, would have arisen. So, too, if the march would end at another park. As previously mentioned though, there would be a short program upon reaching the public space between the two gates of the United States Embassy at Roxas Boulevard. That would be followed by the handing over of a petition based on the resolution adopted at the closing session of the Anti-Bases Coalition. The Philippines is a signatory of the Vienna Convention on Diplomatic Relations adopted in 1961. It was concurred in by the then Philippine Senate on May 3, 1965 and the instrument of ratification was signed by the President on October 11, 1965, and was thereafter deposited with the Secretary General of the United Nations on November 15. As of that date then, it was binding on the Philippines. The second paragraph of its Article 22 reads: "2. The receiving State is under a special duty to take appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity." [32] The Constitution "adopts the generally accepted principles of international law as part of the law of the land, . . ." [33] To the extent that the Vienna Convention is a restatement of the generally accepted principles of international law, it should be a part of the law of the land. [34] That being the case, if there were a clear and present danger of any intrusion or damage, or disturbance of the peace of the mission, or impairment of its dignity, there would be a justification for the denial of the permit insofar as the terminal point would be the Embassy. Moreover, respondent Mayor relied on Ordinance No. 7295 of the City of Manila prohibiting the holding or staging of rallies or demonstrations within a radius of five hundred (500) feet from any foreign mission or chancery; and for other purposes. Unless the ordinance is nullified, or declared *ultra vires*, its invocation as a defense is understandable but not decisive, in view of the primacy accorded the constitutional rights of free speech and peaceable assembly. Even if shown then to be applicable, that question still confronts this Court.

6. There is merit to the observation that except as to the novel aspects of a litigation, the judgment must be confined within the limits of previous decisions. The

law declared on past occasions is, on the whole, a safe guide. So it has been here. Hence, as noted, on the afternoon of the hearing, October 25, 1983, this Court issued the minute resolution granting the mandatory injunction allowing the proposed march and rally scheduled for the next day. That conclusion was inevitable in the absence of a clear and present danger of a substantive evil to a legitimate public interest. There was no justification then to deny the exercise of the constitutional rights of free speech and peaceable assembly. These rights are assured by our Constitution and the Universal Declaration of Human Rights.[35] The participants to such assembly, composed primarily of those in attendance at the International Conference for General Disarmament, World Peace and the Removal of All Foreign Military Bases would start from the Luneta, proceeding through Roxas Boulevard to the gates of the United States Embassy located at the same street. To repeat, it is settled law that as to public places, especially so as to parks and streets, there is freedom of access. Nor is their use dependent on who is the applicant for the permit, whether an individual or a group. If it were, then the freedom of access becomes discriminatory access, giving rise to an equal protection question. The principle under American doctrines was given utterance by Chief Justice Hughes in these words: "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects."[36] There could be danger to public peace and safety if such a gathering were marked by turbulence. That would deprive it of its peaceful character. Even then, only the guilty parties should be held accountable. It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may *probably* occur, given all the relevant circumstances, still the assumption — especially so where the assembly is scheduled for a specific public place — is that the permit must be for the assembly being held there. The exercise of such a right, in the language of Justice Roberts, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place."[37]

7. In fairness to respondent Mayor, he acted on the belief that Navarro v. Villegas[38] and Pagkakaisa ng Manggagawang Pilipino (PMP) v. Bagatsing,[39] called for application. While the general rule is that a permit should recognize the right of the applicants to hold their assembly at a public place of their choice, another place may be designated by the licensing authority if it be shown that there is a clear and present danger of a substantive evil if no such change were made. In the Navarro and the Pagkakaisa decisions, this Court was persuaded that the clear and present danger test was satisfied. The present situation is quite different. Hence the decision reached by the Court. The mere assertion that subversives may infiltrate the ranks of the demonstrators does not suffice. Not that it should be overlooked. There was in this case, however, the assurance of General Narciso Cabrera, Superintendent, Western Police District, Metropolitan Police Force, that the police force is in a position to cope with such emergency should it arise. That is to comply with its duty to extend protection to the participants of such peaceable assembly. Also from him came the commendable admission that there were at least five previous demonstrations at the Bayview Hotel Area and Plaza Ferguson in front of the United States Embassy where no untoward event occurred. It was made clear by petitioner, through counsel, that no act offensive to the dignity of the United States Mission in the Philippines would take place and that, as mentioned at the outset of this opinion, "all the necessary steps would be

taken by it `to ensure a peaceful march and rally.'" [40] Assistant Solicitor General Montenegro expressed the view that the presence of policemen may in itself be a provocation. It is a sufficient answer that they should stay at a discreet distance, but ever ready and alert to cope with any contingency. There is no need to repeat what was pointed out by Chief Justice Hughes in Cox that precisely, it is the duty of the city authorities to provide the proper police protection to those exercising their right to peaceable assembly and freedom of expression.

8. By way of a summary. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place *where* and the time *when* it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, — even more so than on the other departments — rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitiously termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy. Clearly then, to the extent that there may be inconsistencies between this resolution and that of Navarro v. Villegas, that case is *pro tanto* modified. So it was made clear in the original resolution of October 25, 1983.

9. Respondent Mayor posed the issue of the applicability of Ordinance No. 7295 of the City of Manila prohibiting the holding or staging of rallies or demonstrations within a radius of five hundred (500) feet from any foreign mission or chancery; and for other purposes. It is to be admitted that it finds support in the previously quoted Article 22 of the Vienna Convention on Diplomatic Relations. There was no showing, however, that the distance between the chancery and the embassy gate is less than 500 feet. Even if it could be shown that such a condition is satisfied, it does not follow that respondent Mayor could legally act the way he did. The validity of his denial of the permit sought could still be challenged. It could be argued that a case of unconstitutional application of such ordinance to the exercise of the right of peaceable assembly presents itself. As in this case there was no proof that the distance is less than 500 feet, the need to pass on that issue was obviated. Should it come, then the qualification and observation of Justices Makasiar and Plana certainly cannot be summarily brushed aside. The high estate accorded the rights to free speech and peaceable assembly demands nothing less.

10. Ordinarily, the remedy in cases of this character is to set aside the denial or the modification of the permit sought and order the respondent official to grant it. Nonetheless, as there was urgency in this case, the proposed march and rally being scheduled for the next day after the hearing, this Court, in the exercise of its conceded authority, granted the mandatory injunction in the resolution of October 25, 1983. It

may be noted that the peaceful character of the peace march and rally on October 26 was not marred by any untoward incident. So it has been in other assemblies held elsewhere. It is quite reassuring such that both on the part of the national government and the citizens, reason and moderation have prevailed. That is as it should be.

WHEREFORE, the mandatory injunction prayed for is granted. No costs.

Concepcion, Jr., Guerrero, Melencio-Herrera, Escolin, Relova *and* Gutierrez, Jr., JJ., *concur.*

Abad Santos, J., *to add anything to the learned opinion of the Chief Justice is like bringing coal to Newcastle. I just want to state for the record that I voted for the issuance ex-parte of a preliminary mandatory injunction.*

De Castro, J., *is on sick leave.*

Separate Opinions

MAKASIAR, *J., concurring:*

With the justification that in case of conflict, the Philippine Constitution — particularly the Bill of Rights — should prevail over the Vienna Convention.

AQUINO, *J., dissenting:*

Voted to dismiss the petition on the ground that the holding of the rally in front of the US Embassy violates Ordinance No. 7295 of the City of Manila.

TEEHANKEE, *J.*, *concurring:*

The Chief Justice's opinion of the Court reaffirms the doctrine of *Primicias vs. Fugoso* [1] that "*the right to freedom of speech* and to *peacefully assemble* and *petition the government for redress of grievances* are *fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries*" and that the city or town mayors are not conferred "the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held." The most recent graphic demonstration of what this great right of peaceful assembly and petition for redress of grievances could accomplish was the civil rights march on Washington twenty years ago under the late assassinated black leader Martin Luther King, Jr. (whose birthday has now been declared an American national holiday) which "subpoenaed the conscience of the nation," and awakened the conscience of millions of previously indifferent Americans and eventually (after many disorders and riots yet to come) was to put an end to segregation and discrimination against the American Negro.

The *procedure* for the securing of such permits for peaceable assembly is succinctly set forth in the summary given by the Chief Justice in paragraph 8 of the Court's opinion, with the injunction that "the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do, precedence and primacy." The exception of the clear and present danger rule, which alone would warrant a limitation of these fundamental rights, is therein restated in paragraph 1, thus: "The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and

imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest."

It bears emphasis that the *burden* to show the existence of grave and imminent danger that would justify adverse action on the application lies on the mayor as licensing authority. There must be *objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger.* As stated in our Resolution of October 25, 1983, which granted the mandatory injunction as prayed for, "It is *essential* for the validity of a denial of a permit which amounts to a previous restraint or censorship that *the licensing authority does not rely solely on his own appraisal of what public welfare, peace or safety may require. To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test. The possibility that subversives may infiltrate the ranks of the demonstrators is not enough.*" As stated by Justice Brandeis in his concurring opinion in *Whitney vs. California*[2]

> "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. *It is the function of speech to free men from the bondage of irrational fears.* To justify suppression of free speech there must be reasonable ground to fear that *serious evil* will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is *imminent*. There must be reasonable ground to believe that the evil to be prevented is a serious one . . .
>
> "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty . . .
>
> "Moreover, even imminent danger cannot justify resort to prohibition of these functions essential (for) effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to a society . . . The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the *probability of serious injury to the state. Among freemen, the deterrents ordinarily to be applied to prevent crimes are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly.*" (Emphasis supplied)

The Court's opinion underscores that the exercise of the right is not to be "*abridged* on the plea that it may be exercised in *some other place*" (paragraph 6), and that "it is the duty of the city authorities to provide the *proper police protection* to those exercising their right to peaceable assembly and freedom of expression," (at page 14) The U.S. Supreme Court's pronouncement in *Hague vs. Committee for Industrial Organization*[3] cited in *Fugoso* is worth repeating:

> ". . .Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. *Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens*. The privilege of a citizen . . . to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but *it must not, in the guise of regulation be abridged or denied*.

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent `riots, disturbances or disorderly assemblage.' It can thus, as the record discloses, be made the *instrument of arbitrary suppression of free expression of views on national affairs* for the prohibition of all speaking will undoubtedly `prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." (Emphasis supplied)

Needless to say, the leaders of the peaceable assembly should take all the necessary measures to ensure a peaceful march and assembly and to avoid the possibility of infiltrators and troublemakers disrupting the same, concommitantly with the duty of the police to extend protection to the participants "staying at a discreet distance, but ever ready and alert to perform their duty." But should any disorderly conduct or incidents occur, whether provoked or otherwise, it is well to recall former Chief Justice Ricardo Paras' injunction in his concurring opinion in *Fugoso*, citing the 1907 case of *U.S. vs. Apurado*, [4] that such instances of "disorderly conduct by individual members of a crowd (be not seized) as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities" and render illusory the right of peaceable assembly, thus:

"It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will the disciplinary control of the leaders over their irresponsible followers. *But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultous rising against the authorities,* then the right to assemble ,and to petition for redress of grievances would become a *delusion and snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities.* If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor." (Emphasis supplied)

As it turned out, the demonstration was held on October 26, 1983 peaceably and without any untoward event or evil result, as pledged by the organizers (like at least five previous peaceful demonstrations in the area). However, even if there had been any incidents of disorder, this would in no way show the Court's mandatory injunction to have been wrongfully issued. The salutary desire on the part of respondent to prevent disorder cannot be pursued by the unjustified denial and suppression of the people's basic rights, which would thereby turn out to be mere paper rights.

PLANA, ***J.,*** *concurring:*

On the whole, I concur in the learned views of the distinguished Chief Justice. I would like however to voice a reservation regarding Ordinance No. 7295 of the City of Manila which has been invoked by the respondent.

The main opinion yields the implication that a rally or demonstration made within

500 feet from the chancery of a foreign embassy would be banned for coming within the terms of the prohibition of the cited Ordinance which was adopted, so it is said, precisely to implement a treaty obligation of the Philippines under the 1961 Vienna Convention on Diplomatic Relations.

In my view, without saying that the Ordinance is obnoxious *per se* to the constitution, it cannot be validly invoked whenever its application would collide with a constitutionally guaranteed right such as freedom of assembly and/or expression, as in the case at bar, regardless of whether the chancery of any foreign embassy is beyond or within 500 feet from the situs of the rally or demonstration.

Footnotes

1. Section 9, Article IV of the Constitution.
2. Petition, par. 4.
3. Petitioner was represented by Professor Haydee Yorac of the College of Law, University of the Philippines, assisted by former Senator Jose W. Diokno. Respondent was represented by Assistant Solicitor General Montenegro.
4. Petition, 2.
5. He was assisted by Solicitor Roberto A. Abad.
6. Answer of Respondent, 2, Annex 1.
7. Ibid, Annex 1-A.
8. Ibid, Annex 1.
9. Minute resolution dated October 25, 1983, 4.
10. Article IV, Section 9 of the Constitution.
11. Cf. Thornhill v. Alabama, 310 US 88 (1940). Justice Malcolm identified freedom of expression with the right to a full discussion of public affairs." (U.S. v. Bustos, 37 Phil. 731, 740 [1918]). Justice Laurel was partial to the ringing words of John Milton, "the liberty to know, to utter, and to argue freely according to conscience, above all liberties." (Planas v. Gil, 67 Phil. 81 [1939]). Justice Johnson spoke of freedom of expression in terms of "a full and free discussion of all affairs of public interest." For him then, free speech includes complete liberty to "comment upon the administration of Government as well as the conduct of public men." (U.S. v. Perfecto, 43 Phil. 58, 62 [1922]). When it is remembered further that "time has upset many fighting faiths" there is likely to be a more widespread acceptance of the view of Justice Holmes "that the ultimate good desired is better reached by free trade in ideas, - that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out." (Abrams v. United States, 250 US 616, 630 [1919]).
12. U.S. v. Bustos, 37 Phil. 731 (1918); Quisumbing v. Lopez, 96 Phil. 510 (1935).
13. People v. Alarcon, 69 Phil. 265 (1939); Cabansag v. Fernandez, 102 Phil. 152 (1957 U.S. v. Perfecto, 43 Phil. 58 (1922).
14. Yap v. Boltron, 100 Phil. 324 (1956).

15. P); People v. Castelo H. Abaya, 114 Phil. 892 (1962); Bridges v. California, 314 US 252 (1941); Pennekamp v. Florida, 328 US 331 (1946); Craig v. Harney, 331 US 367 (1947); Woods v. Georgia, 370 US 375 (1962).

16. Gonzales v. Commission on Elections, L-27833, April 18, 1969, 27 SCRA 835, 857.

17. Cf. Ibid.

18. Ibid.

19. Cf. United States v. Bustos, 37 Phil. 731 (1918).

20. 323 US 516 (1945).

21. Cf. Schneider v. Irvington, 308 US 147 (1939).

22. Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, Inc., 312 US 287, 293 (1940).

23. 7 Phil. 422.

24. Ibid, 426.

25. 307 US 495.

26. Ibid, 515.

27. 80 Phil. 71 (1948).

28. 30 Phil. 602.

29. Ibid, 606.

30. 80 Phil. at 78.

31. 312 US at 524.

32. Cf. Brownlie, Principles of Public International Law, 2nd ed., 339-341.

33. Article II, Section 3 reads in full: "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.".

34. The Philippines can rightfully take credit for the acceptance, as early as 1951, of the binding force of the Universal Declaration of Human Rights even if the rights and freedoms therein declared are considered by other jurisdictions as merely a statement of aspirations and not law until translated into the appropriate covenants. In the following cases decided in 1951, Mejoff v. Director of Prisons, 90 Phil. 70; Borovsky v. Commissioner of Immigration, 90 Phil. 107; Chirskoff v. Commissioner of Immigration, 90 Phil. 256; Andreu v. Commissioner of Immigration, 90 Phil. 347, the Supreme Court applied the Universal Declaration of Human Rights.

35. According to its Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers." The first paragraph of Article 20 reads: "Everyone has the right to freedom of peaceful assembly and association.".

36. De Jorge v. Oregon, 299 US 353, 364 (1937).

37. Schneider v. Irvington, 308 US 147, 163 (1939).

38. G.R. No. L-31687, February 26, 1970, 31 SCRA 731. Two justices dissented, Justice, later Chief Justice, Castro and the present Chief Justice, then a Justice.

39. G.R. No. 60294, April 30, 1982.

40. Opinion citing par. 4 of Petition.

TEEHANKEE, *J.*, concurring:

1. 80 Phil. 1.

2. 71 U.S. Law ed., 1105-1107.

3. 307 U.S. 496, 515, 83 Law ed., 1423.

4. 7 Phil. 422, 426, per Carson, J.