CONCLUSION

The position of Mr. Osmeña, Jr. is rather difficult to assess. We cannot say with firm conviction that he accused the President with nothing but malice in his mind. Mr. Osmeña may have been motivated by his sincere desire to help rid the government of the evils that plague it. And for sure, the President is not above censure. But one count against Mr. Osmeña is his failure to explain or even attempt to explain the charges and offer evidence in his behalf. This gives rise to the presumption that there was not a bit of truth to what he said and that he said it with malice and intent to defame. For all we know, he might have only wanted to attract public attention to suit his political ambitions.

These are indeed times of "political passion" when "dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed." Political influence was visible in the move to expel Mr. Osmeña. If an action for defamation were brought in court, it would most probably fail. But by all indications, the resolution of the House of Representatives may not be annulled by the Supreme Court. At any event, Mr. Osmeña still has to redeem himself from the aspersion cast against him. Fundamental rules of fair play demand that he prove his charges or retract them.

CENSORSHIP OF THE MAILS

SAMILO N. BARLONGAY *

I. INTRODUCTION

It was not until the dispute arose between U. P. President Vicente G. Sinco and Postmaster General Enrico Palomar over communist mail that the subject of postal censorship was accorded close attention and thoughtful scrutiny particularly by lawyers, law students and legal minds in the Philippines.[1] Perhaps it was because, in the Philippines, unlike in the United States, foreign communist propaganda in the mails is not so voluminous and addressees of such mails are not too equally assertive of their rights to receive them. The case therefore, is rather novel. The Bureau of Posts, however has been confiscating communist publications markably at least since 1957.[2]

Scope—This paper deals with relevant Philippine statutes on the matter and, since Philippine jurisprudence insofar as it is pertinent to the topic, is scant, study is here made of the American program and procedure of the impounding and seizure of mails of like nature for a better elucidation of the subject and with occasional references to the case under comment in order to show how the case stands in relation to the views and principles obtaining. Discussion centers on the problems of legality of summary administrative action as against freedoms and personal rights guaranteed by the Constitution.

II. THE SINCO-PALOMAR CASE

Factual Background—Certain periodicals sent to U. P. President Vicente G. Sinco from two communist countries were seized by order of Postmaster General Enrico Palomar. A legal assistant of the U. P. President questioned the legality of Postmaster General Palomar's refusal to release the periodicals.

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* Member, Student Editorial Board, PHILIPPINE LAW JOURNAL, 1960-61.
[1] *The Manila Times*, Aug. 3, 1960.
[2] *The Manila Times*, Aug. 7, 1960.

Palomar contended that the use of the mails by private persons is in the nature of a privilege and that the government has a right to regulate it to prevent its abuse. Palomar made the statement in a letter to the U. P. head, who had asked if there was "any law authorizing one in this coustry to keep letters and other communications away from those to whom sent."

Quoting a court decision, Palomar said that "persons possess no absolute right to put into the mail anything they please regardless of its character." [3]

Then Palomar dared Sinco to seek court action declaring as illegal the seizure of Sinco's mail. The publications, according to Palomar, were withheld from release after they had been declared as subversive by the NBI and NICA experts.[4] Palomar ordered that all communist publications confiscated by the Bureau of Posts since 1957 be burned and he directed Manuel J. Romero, Chief postal investigator, and Porfirio Rigor, detailed with the NBI and NICA evaluation team, to inventory all Red propaganda in the dead letter section of the bureau. Palomar however agreed to release on "borrowed basis" two magazines said to contain communist propaganda literature to Sinco.[5] Subsequently, the mails were released.

III. THE PHILIPPINE POSTAL LAW

Secs. 1928-2038 of the Revised Administrative Code is the Postal Law of the Philippines.[6]

Sec. 1930 provides that the Bureau of Posts, subject to the approval of the Secretary of Public Works and Communications, shall have exclusive authority to control all mail and postal business conducted in the Philippines, as well as waters within the maritime jurisdiction of the Philippine Government as upon land.

Sec. 1935 ordains that the Director of Posts and inspectors of the Bureau of Posts shall have authority to make seizures under the Postal Law and to make arrests *in flagrante* for violation of the penal provisions connected therewith, or upon warrant, subject in all respects to the same restrictions as prevail in regard to arrests by peace officers in general.

Sec. 1936 authorizes the making of searches for mailable matter transported in violation of laws and whenever such agent or officer has reason to believe that mailable matter transported contrary to law, may therein be found. Searches and seizures on board vessels are also allowed.[7]

Mail matters are classified into three categories, viz.:[8]

(a) First-class mail matter, which includes letters, postal cards, and all other matter wholly or partly in writing, or which is sealed or otherwise closed against inspection or which is not wrapped and packed as prescribed by the regulations of the Bureau of Posts for matter of the class to which it would otherwise belong.

(b) Second-class mail matter which includes all newspapers and other publications, within the conditions named in the next succeeding section hereof.

(c) Third-class mail matter which includes all matter not declared nonmailable by law or regulation, the same not being included in the first or second class.

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[3] *The Manila Times*, Aug. 3, 1960.
[4] *The Manila Times*, Aug. 4, 1960.
[5] *The Manila Times*. Aug. 7, 1960; But the *Daily Mirror*, Aug. 8, 1960 says 3 magazines.
[6] Act No. 2711.
[7] Sec. 1937 Rev. Adm. Code.
[8] Sec. 1945 Rev. Adm. Code.

Any first-class mail matter when found to be undeliverable by reason of the insufficiency or inaccuracy of the address on the outside of the envelope, may be opened at the dead letter office of the Bureau of Posts.[9]

Among those absolutely nonmailable matters are those containing scurrilous libels against the Government of the Republic of the Philippines, or containing any statement which tends to disturb or obstruct any lawful officer in executing his office or in performing his duty, or which tends to instigate others to cabal or meet together for unlawful purposes or which suggests or incites rebellious conspiracies or tends to disturb the peace of the community or to stir up the people against the lawful authorities.[10]

All matter which is absolutely nonmailable by reason of its nature and which is deposited in any post office for transmission or delivery by mail, shall be forfeited to the Government.[11]

Also, no message shall be transmitted by telegraph, cable or wireless telegraphy or delivered to its addressee by any officer or employee of the Bureau of Posts, which contains scurrilous libels against the Government of the Philippines, or contains any statement which tends to disturb or obstruct any lawful officer in the administration of his office or in the performance of his duty, or which tends to instigate others to cabal and meet together for unlawful purposes, or which suggests or incites rebellious conspiracies or tends to disturb the peace of the community or to stir up the people against the lawful authorities.[12]

When any article which is dangerous to be kept or handled or which is devoid of value or incapable of legitimate use is forfeited under the provisions of the Postal Law, it may upon seizure be forthwith destroyed.[13] In case of seizure of a forfeited article which is of value and capable of legitimate use, notice shall be given to the owner or sender if known.

IV. THE LAW AND PROCEDURE IN THE UNITED STATES

United States officials have ruled that when publications contain "foreign political propaganda," they are "nonmailable": they violate a complex of legislation composed of the Espionage Act [15] and the Foreign Agents Registration Act.[16]

The justification of the program appears to be two-fold: to protect the American public from being swamped and seduced by subversive material and to prevent the United States from subsidizing propaganda efforts by totalitarian enemies whom the United States is spending billions, at deficits, to combat.[17]

A. *Origin of the Program*—During World War I fear of subversion by propagandist, using the mails recurred. German and left wing propaganda was suppressed and some of the suppression was never expressly authorized by any statute. In 1917, by the Espionage Act,[19] Congress outlawed mailings

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[9] Sec. 1952 Rev. Adm. Code.
[10] Sec. 1954 (b), Rev. Adm. Code.
[11] Sec. 1956 Rev. Adm. Code
[12] Sec. 1978-A par. (b), Rev. Adm. Code; See in this connection Com. Act No. 616 (June 4, 1941) and Art. 117, Rev. Penal Code
[13] Sec. 1984 Rev. Adm. Code.
[14] Sec. 1985 Rev. Adm. Code.
[15] Chap. 30, 40 Stat. 217 (1917) (codified in scattered secs. of 18 U.S.C.).
[16] 52 Stat. 631 (1938) as amended, 22 U.S.C. secs. 611-21 (Supp. V, 1958).
[17] M. L. Schwartz, J. C. N. Paul "Foreign Communist Propaganda in the Mails: A Report on Problems of Federal Censorship," Univ. of Pennsylvania Law Review, Vol. 107, p. 621, March 1959
[18] See U.S. ex. rel. Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. 407.
[19] See note 15 *supra*.

advocating treason or forcible resistance to the laws of the United States. In 1930, Congress authorized more of this censorship, declaring that materials advocating treason or insurrection should also be denied entry into the country, and custom officials were authorized to seize it for libeling wherever they found it.[20] Finally a select committee of the United States Congress produced a bill which Congress adopted in 1938: The Foreign Agents Registration Act.[21]

In essence the law said: Every "agent" of a "foreign principal" must file statements with the Secretary of State giving information about himself, his activities and his "foreign principal." "Foreign principal" meant practically everyone from an impersonal government to an individual who was not located in the United States. An "agent of a foreign principal" was defined equally broadly, including public-relations counsel, servant, representative, or attorney for a foreign principal or for any domestic organization, subsidized by a foreign principal. Failure of any "foreign agent" to register was a crime, but the Act did not, in terms at least, permit stoppage of the things he sent through the post. Thus the Act was intended to compel disclosure, not authorize censorship.[22]

Postmaster General Frank Walker then requested the opinion of Attorney General Robert H. Jackson and the latter in his opinion noted that the Espionage Act renders "nonmailable" not only treason materials but also all material which violates its own section 22. That section imposes criminal penalties upon anyone who "in aid of any foreign government, knowingly and wilfully possesses or controls any property or papers used or designed or intended for use in violating any penal statute . . ." Continued the Attorney General: If any propaganda were mailed by a non-registered agent in this country, this activity (i.e., acting as agent, in the United States, without registering) would constitute a violation of the penal code. Then followed the tour de force of the ruling whereby foreign disseminators, men who had never set foot on the United States soil, became unregistered agents engaged in criminal activity in the United States.[23]

The ruling was backed by reasoning which was vulnerable. Overlooked was the fact that the purpose of the Registration Act was disclosure, not censorship. The Registration Act was designed to uncover domestic conduits for the propaganda of foreign nations—disclosure of the links between an agent operating here and his foreign backers. So the Attorney General's "opinion" was executive lawmaking in a grand manner.[24]

In 1942 the Registration Act was substantially amended.[25] "Foreign agents," were required to label their "propaganda." The transmittal of unlabeled propaganda through the mails by a foreign agent was declared unlawful.

The breadth of this authority, the absence of any *modus operandi* planned in advance to enforce it, the absence of any published procedures (including the absence of any notification to addresses of propaganda material), the emergency character of the operation and the novelty of the whole problem—these caused immediate, serious problems.[26]

B. *The Confiscation Program in Operation*—The legal authority invoked to engage in such censorship was then both broad and presumably difficult for

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[20] U.S. Tariff Act, ch. 497, 46 Stat. 688 (1930).
[21] 52 Stat. 631 (1938) as amended, 22 U.S.C. secs. 611-621 (Supp. V, 1958).
[22] See note 17, pp. 624, 626.
[23] See note 17, pp. 626-627.
[24] See note 17, pp. 627-628.
[25] Chap. 263, 56 Stat. 248
[26] See note 17, p. 633.

local postmasters to understand. The criteria for "propaganda" were so broad that enforcement officials in the field were able to find suspect matter in Soviet published work on art, religion, philosophy, and nineteenth century literature and even so political a subject as "Chess for Beginners." [27]

The power which Attorney General Jackson had marked out in 1940 sometimes seemed tantamount to a power to impound any book coming from any foreign country if it contained the proscribed ingredients. Indeed, books which admittedly were neither pro-communist nor anti-United States in theme, but which still seemed to be "propaganda" under the statutory definition were occasionally stopped.[28]

A number of important American research libraries gradually came to the conclusion that many items in the vast variety of Russian, Czech, Polish, and Chinese materials on current events and cultural developments which they had been regularly receiving on an exchange basis were no longer coming through; there were gaps in the collections; some of the missing materials were irreplaceable. Specialized departments of universities, e.g., those dealing with Russian or Slavic affairs, as well as non-university agencies experienced frustrating losses. Numerous political scientists and free-lance writers and other experts on current event as current shifts in the "party line" behind the Iron Curtain failed to receive current journals and newspapers such as Pravda, which were of utmost importance to their work.

Unwritten law developed during the period 1951-1955 which curtailed the scope of the Attorney General's ruling. The exclusionary program came to be limited to more patent communist propaganda, sent unsolicited and in quantity from behind the Iron Curtain or Communist controlled agencies outside it. The power to impound came to depend on three administration criteria; these tests have to do with: (1) the character of the addressee of the material, (2) the source of the mailing, and (3) the character of the material.[29]

1. *The Character of the Addressee*—As a result of the urgent complaints by many scholars, librarians and others, it was soon perceived that at least some addressees should be allowed to receive otherwise non-mailable "propaganda"; such addressees were known as the "white list." Thus, where publications addressed to a university or one of its departments were being withheld, a letter was sent to the institution's president. Those materials already exempt from seizure were those addressed to a registered agent of a foreign government and to members of the diplomatic staffs. The condition attached was that the materials were to be used only for study and in no way promote its dissemination. If the addressee desires to receive it then it was sent to the addressee. The president of one state university assured postal lawyers that all materials sent to his school would be segregated, under security protection, in a locked area of the library stacks.

Aside from universities, the Post Office also directed letters to a few, selected individuals asking whether Communist propaganda addressed to them should be delivered. But at this earlier state in the program's resolution, some people who wanted mail from the Communist world and who asked for prompt delivery were still denied it. One person reports that he was told by the Post Office that he was not sufficiently "educated." Several faculty members were obliged to have their college presidents "clear" them with the Post Office before their publications were delivered.[30]

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[27] *Ibid.*
[28] See note 17, pp. 634-635.
[29] See note 17, p. 636
[30] See note 17, p. 638.

The Department of Justice finally promulgated its rule 6 in December 1956, which declared by implication that the Government was permitting transmittal of propaganda to persons who have "ordered . . . or otherwise solicited such material." In practice it appears that anyone (other than a domestic disseminator) is entitled to receive foreign Communist propaganda if he requests it—even if the material was not ordered in advance.

But the Government still occasionally exercises outright censorship controls against persons who are not registered under the Foreign Agents Registration Act, but who import propaganda material in bulk for general distribution to the public at large. Libraries are apparently free to import what they want, even though the material is thereafter made freely available to the public at large.[31]

2. *Source of the Mailing*—While criteria exempting "solicited" materials emerged only after many case incidents, criteria exempting non-Iron Curtain materials were developed more sharply, late in 1955, largely as a result of one case incident—the Post Office's dealings with the American Friends Service Committee. The Post Office impounded 500 copies of a leaflet called "Guatemala: The Fate of a Small Country" which was imported from England by this organization. The Postal Solicitor admitted that a lawsuit by the organization against the Government might play havoc with the Government's program which, he declared, should be aimed at unsolicited vast volumes of Red propaganda from the Soviet bloc, and not such propaganda from other sources.[32]

3. *The Character of the Material*—Publications emanating from the Communist world have varied greatly as to style, content and level of intellectual appeal. Typical examples of propaganda include newspapers depicting "progress" in the communist world, the Communist position on the issues of the day, some sharp and hard-hitting, others just plain comic books, etc. Custom officials have also stopped vast quantities of so-called "Back to the Homeland" mailings in which a writer allegedly a friend or kin of the addressee, urged defection—often physical return to the "Homeland" or sometime a donation of money.

All mail from the Iron Curtain was closely screened and while attempts were made to make discriminations, to release materials devoid of propaganda, gross mistakes obviously occurred. Thus books and journals of every sort, some utterly lacking in any possible propaganda overtones, were seized and destroyed. Gradually, there was a relaxation of bans once put upon a number of Soviet-published books. Thus, historical and scientific texts, works of literature and art, and other materials which once were seized, came to be released without inquiry as to whether they were solicited.[33]

VI. THE PHILIPPINE AND AMERICAN LAW DISTINGUISHED

The Philippines has its counterpart of the American Espionage Act.[34] It is Commonwealth Act No. 616. Section 3 of the Act provides in part:

> Sec. 3. *Disloyal acts or words in time of peace.*—It shall be unlawful for any person with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military, naval, or air forces of the Philippines: (a) (b) to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty,

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[31] See note 17, pp. 640-641
[32] See note 17, pp. 642-643
[33] See note 17, p. 645, 647
[34] See note 15, *supra*

> mutiny, or refusal of duty by any member of the military, naval, or air forces of the Philippines. Violation . . punished by imprisonment for not more than 10 years, or by a fine of not more than ₱10,000 or both."

Section 4 of the same Act also punishes similar acts in times of war.

In this connection, Section 1954 paragraph (b) of the Revised Administrative Code makes such kind of written or printed matter absolutely nonmailable.[35] But there is no Foreign Agents Registration Act in the Philippines. If, therefore, the United States Law (FARA) requires registration of a "foreign agent" and that failure to register is considered a crime there, and we have no such law in the Philippines, then there could be no violation of such a law by anyone in the Philippines since there is no law to violate. Furthermore, even if such law exists here in the Philippines as in the United States, censorship but not disclosure is its purpose. The power of the Postmaster General in the Philippines in that respect is consequently weaker than that possessed and exercised by the United States Postmaster General in the impounding and seizure of communist propaganda.

VI. QUESTIONS ON LEGALITY

The intent to authorize a censorship operation of this kind should hardly be inferred from ambiguous statutory authority and negligible evidence of congressional purpose. Enforcement officials of the Postal, Treasury and Justice Departments have recognized their precarious legal position. Bills to confirm the Attorney General's 1940 ruling have been suggested. One was introduced and pressed by the Department of Justice in 1956, but was not successfully acted upon by both Houses of Congress of the United States.

Today's extensive, censorial, exclusionary program in the United States is based solely on an Attorney General's opinion issued in 1940. The legal validity of that ruling is clearly doubtful, and the opinion was promulgated at a time of a world-wide, shooting war and directed in large part against "domestic" propagandists who were receiving quantities of Nazi propaganda for further distribution. The principal justification was based on wartime necessity.

It is a poor precedent for Congress to permit censorship of the sort now employed without a plain legislative mandate.[36]

It is commonly asserted that the program is justified in part because of the expense of delivering the propaganda, it may still be advisable to learn more about these costs: how much expense is involved here? How does it compare with the cost of managing a censorship operation designed to prevent delivery?[37]

Since there is no statute which definitely and adequately lays down the procedure in the impounding and seizure of mails, what would be the legal objections if certain alternative kinds of statutes were passed in the United States or in the Philippines?

One such kind of statute may be an absolute confiscation statute. Thousands of Americans and Filipinos have professional need for propaganda publications. We put to one side the question whether nonresident aliens have any right under the Constitution to use the mails to circulate propaganda. The right to obtain publications should be as important under the rationale of our

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[35] See note 10, *supra*.
[36] See note 17, p. 655
[37] See note 17, pp. 657-658.

Constitution [38] as the right to create and publish them in the first place.[39] And under this rationale there should be no reason for discrimination between ideas which are born abroad and those which find their origins in this country. That law would be probably unconstitutional.

A statute codifying present practice in the United States, e.g., a statute authorizing summary seizure of propaganda mailed from Communist-controlled sources but for release of any publications to persons who come forward and request delivery is also constitutionally suspect. There should be no distinction between solicited and unsolicited materials. A great portion of all mail daily received is probably unsought for *ab initio*. But it would seem to be part of a person's constitutional freedom to decide for himself what he wishes to do with it. There is an interest worthy of protection and that interest is the freedom of the people to read what they choose to read, and to enjoy the opportunity to exercise that choice.[40] This freedom is basic under the rationale of free speech and there seems to be no persuasive basis to distinguish between geographical sources of mail—domestic or foreign.[41]

The statute should require personal service to every addressee. By resort to summary procedures, how can post office officials know whether material addressed to an individual is solicited and urgently needed? How can their assumption that material is "propaganda" be adequately tested? Also, absence of personal notice procedure puts a burden on every citizen who wants to be sure of receiving mail addressed to him from anywhere behind the Iron Curtain; he must come forward and identify himself to some appropriate postal or customs official. This burden is in itself a deterrent to enjoyment of what we assume should be a constitutionally protected right.[42]

A statute that would add the additional requirement that no propaganda could be seized unless the addressee, after personal notification, waived his right to delivery, may also be adopted but it can be criticized in that the fear of stigma might well deter many persons from exercising the right to receive their mail—a right which must be granted, not simply as a matter of statutory dispensation, but as a matter of constitutional necessity. Congress would thereby be creating a barrier to the free flow of information.[43]

A statute which would provide for the automatic delivery of propaganda once the recipient paid a "postage due" type exaction for its carriage within the country would be the imposition of a "tax" on the distribution of speech.[44]

VII. THE CONSTITUTIONAL RIGHTS OF THE ADDRESSEE

A. *Right to Due Process of Law*—U. P. President Sinco is entitled to the constitutional protection that "No person shall be deprived of . . his property without due process of law."[45] He has a property right in his mails. The Postmaster General apparently based his actions on Secs. 1930, 1935, 1954, 1956, and 1984 of the Revised Administrative Code.[46] But the said provisions of law are too broad and do not lay a definite and adequate procedure to be followed in the seizure and impounding of mails. The Postmaster General has inferred from the absence of statutory provision for procedures a license to

[38] Phil. Const. Art. III, Sec. 1, par. 8.
[39] Cf., i.e. Marsh v. Alabama, 326 U.S. 501; Thornhill v. Alabama, 310 U.S. 88.
[40] See, e.g. Martin v. City of Struthers, 319 U.S. 141, 145.
[41] See note 17, pp. 662-663.
[42] Cf. NAACR v. Alabama ex. rel. Patterson, 357 U.S. 449; Thomas v. Collins, 329 U.S. 516.
[43] See note 17, p. 664.
[44] See note 17, p. 665.
[45] Phil. Const. Art. III, Sec. 1, par. 1.
[46] See notes 7-11, 13-14.

apply the administrative sanctions without offering an opportunity for formal and administrative hearing and adjudication.[47]

The power to determine the nonmailability of mails and therefore its being subject to seizure is lodged in his discretion—without any sufficient standard to guide him in the resolution of the issue. In view of the fact that the notification of the unmailability contains no specific grounds for the order, the person subject to the sanctions has hardly been allowed sufficient opportunity to prepare an adequate objection. Not only is he kept ignorant of the particular manner in which his material is alleged to have offended the statutes, he is allowed a brief period in which to prepare his defense.[48] With no firm substantive standard to refer to, it is difficult to see on what ground the addressee can argue in his favor. There is no statutory authority for the Bureau of Posts to impound mail without a hearing and before there has been any final determination of illegality.[49] Mere silence of the law does not confer power and authority especially when personal rights are concerned. Demands of due process require a full and formal hearing before postal sanction may be applied. As there is no express authority for the employment of sanction prior to hearing and final determination of illegality, the courts, if they are to uphold this power, must read into the statutes provision for it.[50]

In the Philippine case of *Ang Tibay v. CIR*,[51] the Supreme Court held that the fact that an administrative body may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administative character. Among the cardinal primary rights which must be respected are: first, the right to a hearing which includes the right of a party interested or affected to present his own case and submit evidence in support thereof; second, the right to adduce evidence tending to establish the rights which he asserts and which evidence must be considered by the tribunal. Under Section 1985 of the Revised Adm. Code, notice of seizure of a forfeited mail should be given to the owner or sender if known. Under all instances, the notice must be reasonable and adequate.

In the American case of *Greene v. Kern*,[52] plaintiff brought suit to enjoin enforcement of an interim impounding order. The court held that the fraud order statute in force does not give the Postmaster General authorization, express or implied, to issue impounding orders pending a departmental hearing. The court stated that premature impounding of mail would involve the imposition of a penalty upon the addressee without an opportunity to be heard and an adjudication upon evidence. Such interim impounding would also affect a deprivation of property without just cause and without fair compensation.[53] The use of the mail is not a privilege but a right.[54]

B. *The Freedom of Speech and of the Press*—The Bill of Rights of the Constitution[55] declares that no law shall be passed abridging the freedom of speech, or of the press. The Postmaster General cannot deprive U. P. President Sinco of his freedom of information. The constitutional guaranty of liberty of

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[47] Postal Sanctions: A Study of the Summary Use of Adm. Powers, Indiana Law Journal, Vol. 31, pp. 257-258.
[48] See note 47
[49] Stanard v. Olesen, 74 Sup. Ct. 768, 771, 98 L. Ed. 1151, 1153 (1954).
[50] See Cahill Judicial Legislation, pp. 1-18 (1952).
[51] 69 Phil. 635.
[52] 174 F. Supp. 480 (D.N.J.)
[53] 174 F. Supp. at 484 (dictum).
[54] See Hannagan v. Esquire, Inc. 327 U.S. 146, 156 (1946) (by implication) Olesen v. Stanard, *supra*
[55] See note 38.

the press is one of the strongest bulwarks of democracy.[56] It consists largely of the right, without any previous license or censorship, to publish the truth with good motives and for justifiable ends, whether it respects government, magistracy, or individuals.[57]

In its broadest sense, the phrase "freedom of the press" includes not only exemption from censorship, but security against laws enacted by the legislative department of the government or measures resorted to by either of the other branches for the purpose of stifling just criticism or muzzling public opinion.[58]

The freedom from previous restraint upon publication implied in the constitutional guaranty of the liberty of the press does not depend on proof of truth.[59]

The right or privilege of free speech and publication, it is conceded, has its limitations.[60] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that will bring about the substantive evils that Congress or the State has the right to prevent, under American jurisdiction, or which will bring about a dangerous tendency to the security of the state, under Philippine rule. We have grave doubts as to whether the mails of U.P. President Sinco fall under the limitation, and at any rate, it was for the Postmaster General to show by proof and not by groundless fear that it endangered the security of the state.

In every situation, however, the principle must be taken into consideration that the power of the State to abridge freedom of speech is the exception rather than the rule. It must find justification in a reasonable apprehension of danger to organized government, the limitation upon individual liberty must have appropriate relation to the safety of the state.[61]

In the United States, postal fraud orders were upheld as legal by the United States Supreme Court because the constitutional guaranty of freedom of speech does not protect the distribution of fraudulent material. An interim impounding order, however, restrains communications before it has been found fraudulent. Until such determination, the communication should fall within the conduit of the First Amendment of the United States Constitution. Thus, an interim impounding order may be regarded as a prior restraint on freedom of speech.[62]

At this juncture, we recapitulate some other arguments in favor of U.P. President Sinco, aside from his constitutional right to due process of law and freedom of speech and press. It has been stated that the trend of practice in the United States is to allow otherwise nonmailable "propaganda" to be received by professionals, scholars, librarians and other addressees whose sense of responsibility and status in the community precludes the idea that their receipt of Communist publications would imperil the security of the state.[63] As President of the University of the Philippines, Sinco possesses that qualification and those materials may in one way or another add to, refresh, or give a new perspective to the existing stockpile of knowledge of the University—the constituency and the administration as well. Democracy does not monopolize the best systems in the various sciences and fields of study. Not all things taken from the Communist world are obnoxious.

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[56] Cincinnati Gazette Co. v. Timbulake, 10 Ohio. St. 548, 78 Am. Dec. 285.
[57] Masses Pub. Co. v. Patton 246 F. 24.
[58] Near v. Minnesota 283 U.S. 697.
[59] *Ibid*
[60] *Ibid.*
[61] Herndon v. Lowry, 301 U.S. 242.
[62] See Leach v. Carlile 258 U.S. 128, 140 (dissenting opinion of Holmes and Brandeis, JJ.).
[63] See notes 29 and 30.

The peril to our national security in this case is very remote considering that the Communist materials involved are not so voluminous nor is there any well-grounded fear that they would be recklessly disseminated, granting that they did really contain subversive communist propaganda. The government already knows the responsible person or persons who receive them. The danger if any is lessened to a minimum taking into consideration that the element of surprise is eliminated.

VIII. CONCLUSION

The question involved in the Sinco-Palomar case became purely academic from the moment the Postmaster General finally released the Communist mails in question to U.P. President Sinco.[64] Though the problem became moot, nevertheless, this study may be helpful in resolving similar questions which may arise in the future. It may also serve as a reminder to administrative officials, or post office personnel in particular, to go slow in delicate cases like the present where the constitutional liberties of private individuals are at stake.

It is suggested that a definite rule of procedure be enacted by Congress regulating the exercise of the Postmaster General's power and control over the mails, particularly with respect to mails containing Communist propaganda in order to settle many legal questions and to protect individual freedom.

A statute might be enacted which would require uthe addressee, or, alternatively, authorize the Bureau of Customs to fix a label to disclose the source of publications sent here in bulk from behind the Iron Curtain whenever the publications themselves give no clear indication of the publisher and country of origin. The purpose of the statute would be to disclose the fact that these publications originated behind the Iron Curtain; it would provide, not for confiscation or censorship, but simply for compulsory labeling.[65]

There is an analogy for such a law in the tariff and customs law which require that foreign merchandise commercially imported to be labelled.[66] A labeling requirement of this sort would supply both a more efficient means of alerting the ultimate recipient to meet the threat of deception in the activities of the domestic propagandist, and a postal control more consistent with the constitutional guaranties to private persons.[67] As Mr. Justice Black once wrote:[68]

> "Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and false, the (Foreign Agents Registration Act) is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment."

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[64] See note 5, *supra*.
[65] M. L. Schwartz and J. C. N. Paul "Propaganda in the Mails: A Postscript", Univ. of Pennsylvania Law Review, Vol. 107, p. 801, April 1959.
[66] See sec. 2530 (i), Tariff and Customs Code (Rep. Act No. 1937).
[67] See note 65, *supra*.
[68] Viereck v. United States, 318 U.S. 251 (1943).