

FILM CENSORSHIP LAW REVISITED

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I. INTRODUCTORY

The Philippine Constitution, in its Bill of Rights provides:

"No law shall be passed abridging the freedom of speech or of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances."¹

This constitutional guaranty of freedom of the press is not confined in its application to newspapers and periodicals, but necessarily embraces pamphlets, leaflets, and every sort of publication affording a vehicle of information and opinion.² Motion picture films no doubt, fall within this category, inasmuch as they are undeniably vehicles of information, if not of opinion.³ The tremendous growth of the moving picture industry and the increased popularity of this form of entertainment, have necessarily resulted in legislations to prevent the exhibition of immoral and indecent pictures, or such as would tend to produce a harmful influence in the minds of children. The motion picture business is of recent origin and its capacity for good as for evil is immense. It is an instrument of education such that the public welfare demands that it be kept clean and its influence be geared towards the good and not the evil. It may be an inestimable asset for human improvement or deterioration, as the case may be.⁴ And this is the rule notwithstanding the fact that motion pictures are on a large scale business conducted for private profit and the alleged fact that moving pictures possess a greater capacity for evil, particularly among the youth of the community, than other modes of expression.⁵

II. THE BOARD OF CENSORS FOR MOVING PICTURES

A. CREATION

A system of censorship has been with us since 1929 when the Philippine Legislature passed Act No. 3582, creating the "Philippine Board of Censorship for Moving Pictures." Subsequently in

* Member, Student Editorial Board, *Philippine Law Journal*, 1962-63.

¹ Art. III, Sec. 1(8).

² *Lovell v. City of Griffith* Ga. 303 U.S. 444 (1938).

³ *Mutual Film Corp. v. Industrial Commission of Ohio*, 236 U.S. 230 (1914).

⁴ *American Feature Film v. Trumbull*, 269 U.S. 597 (1925).

⁵ *Burnstyn Inc. v. Wilson*, 343 U.S. 495 (1952).

1938, by virtue of Commonwealth Act No. 305, the name of the Board was changed to "Board of Review for Moving Pictures." And again, on June 17, 1961, Congress enacted Republic Act No. 3060, finally changing its name to "Board of Censors for Moving Pictures."

B. COMPOSITION AND ORGANIZATION

The Board is composed of a chairman and twenty-four other members appointed by the President with the consent of the Commission on Appointments. The chairman of the Board shall hold office for a term of four years, provided that the members first appointed shall hold office as follows: eight members for two years; eight members for three years; and the other eight members for four years from the date they assume office, and thereafter, the term of office of the Board shall all be four years. And any person to fill a vacancy in the Board shall serve only for the unexpired term of the member he succeeds. Each member shall receive a compensation of ten pesos per preview session payable every month and the chairman shall receive an additional compensation of fifty pesos a month.⁶

C. QUALIFICATIONS OF MEMBERS

No person shall be appointed to the Board unless he is a native-born citizen of the Philippines, not less than thirty-five years of age; of good moral standing in the community; and not directly connected with the motion picture or television industries; provided, that the President shall appoint as members of the Board, at least three nominees from each of the following:

- a. Professional Organizations
- b. Religious Organizations
- c. Educational Associations
- d. Child and/or Welfare Organizations
- e. Civic Organizations
- f. Cultural Organizations
- g. Associations of Newspapermen⁷

D. POWERS AND DUTIES

The important powers and duties of the Board are the following:

- (a) To screen, censor, examine and supervise the examination of, approval or disapproval, or delete portions from and/or prohibit the introduction and exhibition of all motion pictures, imported or

⁶ Rep. Act No. 2060, Par. 1, sec. 2.

⁷ *Ibid.*, par. 2, sec. 2.

produced in the Philippines, for non-theatrical, theatrical and television distribution, which in its judgment are immoral, indecent, contrary to law and/or good customs, or injurious to the prestige of the Philippines or its people;

(b) To classify the motion pictures approved for exhibition into those for general patronage and those for adults only;

(c) To screen, review, delete portions from, approve or disapprove and censor all publicity materials in connection with any motion pictures including trailers, stills and other advertising materials which in their judgment are immoral, indecent, contrary to law and/or good customs or injurious to the prestige of the Republic of the Philippines or its people;

(d) To promulgate its own rules of procedure and operation in general, including matters of quorum, of organization and appointment of subcommittees for censoring motion pictures and motion picture advertisements throughout the Philippines and to keep a record of its proceedings with reference to the motion pictures examined by it whether passed or not, and if passed, the classification thereof.*

The Board, therefore, is empowered to prohibit the showing and even the introduction in the Philippines, of motion pictures, including trailers, stills and other advertising materials which in its judgment are (1) immoral, (2) indecent or (3) contrary to law and/or good customs or (4) injurious to the prestige of the Republic of the Philippines or its people.

As it is extremely difficult to devise any hard and fast rule as to what films should or should not be approved, the "Board of Review for Motion Pictures" (under C.A. No. 305) adopted a "Code of Motion Pictures" defining objectionable scenes, thus:

1. Immoral scenes—obscene, indecent, lewd and lascivious, tending to corrupt public morals;
 - (a) Excessive fondling and caressing;
 - (b) Prolonged kissing, kissing parts of the body other than the face;
 - (c) Indecent exposure—too much nakedness.
 1. Bosom exposed, showing cleavage between a woman's breast.
 2. Woman exhibited in a state of undress, showing inside of thigh.
 - (d) Vivid picturization of sadistic, lustful and intense sexual abandon.
 - (e) Suggestive, exaggerated and lascivious dances.
 - (f) Scenes of passion when so presented as to stimulate the lower and baser emotions.

* *Ibid.*, sec. 8.

- (g) Unwed motherhood except when the mother and/or father suffers.
 - (h) Adultery presented when not necessary to the plot or in such a way as to create disrespect or low regard for the sanctity of the institution of marriage.
 - (i) Seduction or rape when not essential to the plot, or when pictured at length instead of being merely suggested.
 - (j) Sex perversion or any inference of it.
2. Scenes that are vulgar—show poor taste or lack of propriety.
- (a) Bedroom scenes that are suggestive and immodest.
 - 1) A double bed except when only one person is occupying it.
 - 2) Scenes of undressing, except when essential to the plot.
 - (b) Drunkenness made attractive and not followed by a hangover.
 - (c) Scenes showing use of narcotics or traffic in drugs.
 - (d) Obscenity in dialogue, gesture, song or joke.
 - (e) Vulgar, profane and indecent language.
 - (f) Medical and scientific films dealing with sex and surgical subjects, except when shown to scientific or educational groups.
3. Scenes that tend to create disrespect for law and constituted authorities, and which incite crime.
- (a) Law defied, circumvented, or defeated successfully.
 - (b) Juvenile crime presented in a manner that prompts imitation.
 - (c) Crimes of all kinds and degrees, presented extensively or in detail—brutal killings; robbery; safe-cracking; and dynamiting of trains, buildings, etc.
 - (d) Gangster scenes, especially those that glorify exploits of bandits and gangsters.
 - (e) Gambling scenes, when too long and in detail.
4. Scenes which offend racial, national or religious sensibilities.
- (a) Scenes which are offensive to the dignity and honor of the Government and people of the Philippines or any of its law-enforcing agencies.
 - (b) Scenes that show disrespect for, or improper or unnecessary use of flag.
 - (c) Scenes that are contrary to the good customs of the Filipino people—lack of respect for old people, irreligiousness, and disregard for filial love and devotion to family.
 - (d) Scenes that ridicule any religious faith.
 - (e) Scenes showing ministers of religion in their character as such as comic characters or as villains.
5. Repellant Subjects
- (a) Actual hanging or electrocution as legal punishment of crime.
 - (b) Third degree methods.
 - (c) Excessive brutality.
 - (d) Cruelty to children or animals.

For the purpose of comparison, the Code adopted by the Motion Picture Association of America is reproduced below. It is significant

to note that the Philippine "Board of Censors for Moving Pictures" has time and again adopted this Code in many isolated cases.

MOTION PICTURE PRODUCTION CODE

Motion Picture Association of America 1956

GENERAL PRINCIPLES

1. No picture shall be produced which will lower the moral standards of those who see it. Hence, the sympathy of the audience shall never be thrown to the side of crime, wrongdoing, evil or sin.
2. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented.
3. Law—divine, natural or human, shall not be ridiculed nor shall sympathy be created for its violation.

PARTICULAR APPLICATIONS

I. Crime:

1. Crime shall never be presented in such a way as to throw sympathy with the crime as against law and justice, or to inspire others with a desire for imitation.
2. Methods of crime shall not be explicitly presented or detailed in a manner calculated to glamorize crime or to inspire imitation.
3. Action showing the taking of human life is to be held to the minimum. Its frequent presentation tends to lessen regard for the sacredness of life.
4. Suicide, as a solution of problems occurring in the development of screen drama, is to be discouraged, unless absolutely necessary for the development of the plot and shall never be justified or glorified, or used specifically to defeat the ends of justice.
5. Excessive flaunting of weapons by criminals shall not be permitted.
6. There shall be no scenes of law-enforcing officers dying at the hands of criminals, unless such scenes are absolutely necessary to the plot.
7. Pictures dealing with criminal activities in which minors are related, shall not be approved, if they tend to incite demoralizing imitation on the part of the youth.
8. Murder
 - a) The technique of murder must not be presented in such a way that will inspire imitation.
 - b) Brutal killings are not to be presented in detail.
 - c) Revenge in modern times shall not be justified.
 - d) Mercy killings shall never be made to seem right or permissible.
9. Drug addiction or the illicit traffic in addiction-producing drugs shall not be shown, if the portrayal:
 - a) Tends in any manner to encourage, stimulate or justify the use of such drugs; or
 - b) Stresses, visually or by dialogue, their temporarily attractive effects; or

- c) Suggests that the drug habit may be quickly or easily broken;
or
 - d) Shows details of drug procurement or of the taking of drugs in any manner; or
 - e) Emphasizes the profits of the drug traffic; or
 - f) Involves children who are shown knowingly to use or traffic in drugs.
10. Stories on the kidnapping or illegal abduction of children are acceptable under the Code only (1) when the subject is handled with restraint and discretion and avoids details, gruesomeness and undue horror; and (2) the child is returned unharmed.

II. Brutality:

Excessive and inhuman acts of cruelty and brutality shall not be presented. This include all detailed and protracted presentation of physical violence, torture and abuses.

III. Sex:

The sanctity of the institution of marriage and the home shall be upheld. No film shall infer that casual or promiscuous sex relationships are the accepted or common thing.

1. Adultery and illicit sex, sometimes necessary plot material, shall not be explicitly treated, nor shall they be justified or made to seem right and permissible.
2. Scenes of passion:
 - a. These should not be introduced except where they are definitely essential to the plot.
 - b. Lustful and open-mouth kissing, lustful embraces, suggestive postures and gestures are not to be shown.
 - c. In general, passion should be treated in such a manner as not to stimulate the baser emotions.
3. Seduction or Rape
 - a. These should never be more than suggested, and then only when essential to the plot. They should never be shown explicitly.
 - b. They are never acceptable subject matter for comedy.
 - c. They should never be made to seem right and permissible.
4. The subject of abortion shall be discouraged, shall never be more than suggested, and when referred to shall be condemned. It must never be treated lightly or made the subject of comedy. Abortion shall never be shown explicitly or by inference, and a story must not indicate that the abortion has been performed. The word "abortion" shall not be used.
5. The methods and technique of prostitution and white slavery shall never be presented in detail, nor shall the subjects be presented unless shown in contrast to right standards of behaviour. Brothels in any clear identification as such may not be shown.
6. Sex perversion or any inference of it is forbidden.
7. Sex hygiene and venereal diseases are not acceptable subject matter for theatrical motion pictures.
8. Children's sex organs shall never be exposed. This provision shall not apply to infants.

IV. Vulgarity: Vulgar expressions and double meanings having the same effect are forbidden. This shall include but not limited to such words and expressions as "chippee," "fancy," "goose," "nuts," "pancy," "S.O.B.," "son of a bitch." The treatment of low, disgusting, unpleasant, though not necessarily evil subjects should be guided always by the dictates of good taste and a proper regard for the sensibilities of the audience.

V. Obscenity:

1. Dances suggesting or representing sexual actions or emphasizing indecent movements are to be regarded as obscene.
2. Obscenity in words, gestures, reference, song, jokes, or suggestions, even when likely to be understood by only part of the audience is forbidden.

VI. Blasphemy and Profanity:

1. Blasphemy is forbidden. Reference to the Deity, God, Lord, Jesus Christ shall not be irreverent.
2. Profanity is forbidden. The word "hell" and "damn" while sometimes dramatically valid, will if used without moderation be considered offensive by many members of the audience. Their use shall be governed by discretion and prudent advice of the Code Administration.

VII. Costumes:

1. Complete nudity, in fact or in silhouette, is never permitted, nor shall there be any licentious notice by characters in the film of suggested nudity.
2. Indecent or undue exposure is forbidden.
 - a. The foregoing shall not be interpreted to exclude actual scenes photographed in foreign and, of the natives of that land, showing native life, provided:
 1. Such scenes are included in a documentary film or travelogue depicting exclusively such land, its customs and civilization; and
 2. Scenes are not in themselves intrinsically objectionable.

VIII. Religion:

1. No film or episode shall throw ridicule on any religious faith.
2. Ministers of religion, or persons posing as such, shall not be portrayed as comic characters or as villains so as to cast disrespect on religion.
3. Ceremonies of any definite religion shall be carefully and respectfully handed.

IX. Special Subjects: The following subjects must be treated with discretion and restraint and within the careful limits of good taste.

1. Bedroom scenes.
2. Hanging and executions.

3. Liquor and drinking.
4. Surgical operations and childbirths.
5. Third degree methods.

X. National Feelings:

1. The use of the flag shall be consistently respectful.
2. The history, institutions, prominent people and citizenry of all nations shall be represented fairly.
3. No picture shall be produced that tends to incite bigotry or hatred among peoples of different races, religions or national origin. The use of such offensive words as "Chink," "Dago," "Frog," "Greaser," "Hunkie," "Hibe," "Nigger," "Spig," "Wop," "Yid," should be avoided.

XI. Titles: The following titles shall not be used:

1. Titles which are salacious, indecent, obscene, profane, or vulgar.
2. Titles which violate any other clause.

XII. Cruelty to animals: In the production of motion pictures involving animals, the producer shall consult with the authorized representative of the American Human Association, and invite him to be present during the staging of such animal action. There shall be no use of any contrivance or apparatus for tripping or otherwise treating animals in any unacceptably harsh manners.

E. DECISION OF THE BOARD

The decision of the Board either approving or disapproving for exhibition in the Philippines a motion picture, stills, or other pictorial advertisement submitted to it for examination and review, must be rendered within a period of ten days which shall be counted from the date of the receipt by the Board of an application for that purpose, and actual receipt of the motion picture, stills or other pictorial advertisements to be reviewed. A decision of the Board disapproving a motion picture for exhibition in the Philippines must be in writing and shall state the reasons or grounds for such disapproval, and no film or motion picture intended for exhibition at movie houses or theaters or in television shall be disapproved by reason of its topic, theme or subject matter, but upon the merit of its picture considered in its entirety.⁹ An appeal from a decision of the Board shall be made to a committee composed of the Undersecretaries of Justice, Defense and Education, within fifteen days from receipt of notice of the decision appealed from.¹⁰

⁹ *Ibid.*, sec. 4.

¹⁰ *Ibid.*, sec. 5.

The Board was under the supervision and control of the Office of the Secretary of the Interior until the abolition of the latter when all offices under it, including the "Board of Review for Moving Pictures" came under the control of the Office of the President of the Philippines. The decision of the committee composed of the Undersecretaries of Justice, Defense and Education may therefore be appealed to the President, and the appeal according to Act No. 3582, must be made within sixty days from the receipt of the decision appealed from. The law is silent as to the availability of judicial review. The silence of the law however, should not be understood as denying judicial relief to any aggrieved party. The supremacy of the law, said the court in *St. Joseph Stockyard Co. v. United States*,¹¹ demands that there be opportunity to have some court decide whether an erroneous rule of law was applied and whether the proceedings in which the facts were adjudicated were conducted regularly. The administrative remedies prescribed in the law however, must first be exhausted before resort can be had to the courts in order to comply with the rule of exhaustion of administrative remedies.

F. PENAL CLAUSE

Republic Act No. 3060 makes it unlawful for any person or entity to exhibit or cause to be exhibited in any motion picture theater or place, or by television within the Philippines, any motion picture, including trailers, stills and other pictorial advertisements in connection with motion picture, not duly passed by the Board; or to print or cause to be printed on any motion picture to be exhibited in any theater or public place or by television, a label or notice showing the same to have been officially passed by the Board when the same has not been previously authorized, except imprinted or exhibited by the Philippine Government and/or its departments and agencies, and newsreels.¹² Any violation of the provision shall be punished by imprisonment of not less than six months but not more than two years or by a fine of not less than six hundred pesos nor more than two thousand pesos at the discretion of the Court. If the offender is an alien, he shall be deported immediately. The license to operate the movie theater or television shall also be revoked.¹³ Republic Act No. 3060 also makes it unlawful for any person below eighteen years of age to enter, to make use of any misrepresentation or false evidence about his or her age in order to gain admission

¹¹ 298 U.S. 38, 84 (1936).

¹² Rep. Act No. 3060, sec. 7.

¹³ *Ibid.*, sec. 11.

into a moviehouse or theater for the showing of a motion picture classified as "for adults only." In case of doubt as to the age of the person seeking admission, the latter shall be required to exhibit his or her residence certificate or other proof of age.¹⁴ Any violation of this provision shall be punished by imprisonment of not less than one month nor more than three months or a fine of not less than one hundred pesos nor more than three hundred pesos.¹⁵ And in the event a motion picture, after examination and review by the Board, is declared unfit for exhibition in the Philippines, the said motion picture shall be returned by the importer or distributor to the country of origin or to any other place outside the Philippines within a period of thirty days, which shall be counted from the date of receipt by the importer or distributor of the decision of the Board banning the motion picture for exhibition in the Philippines, and all customs duties and internal revenue taxes paid by the importer or distributor on account of the importation to and entry into the Philippines of the said motion picture shall be automatically refunded by the government office concerned to the said importer or distributor. A copy of the decision of the Board banning a motion picture for exhibition in the Philippines shall be furnished to the Commissioner of Internal Revenue and to the Collector of Customs of the port of entry of the said motion picture and the same shall constitute a sufficient authority to the Commissioner of Internal Revenue and to the Collector of Customs concerned to refund the internal revenue taxes and customs duties paid by the importer or distributor on account of the importation of the banned motion picture.¹⁶

III. CONSTITUTIONAL ASPECTS OF FILM CENSORSHIP

A. PRIOR CENSORSHIP

Is the system of censorship which consists in the obligation of submitting films for prior examination, within the ambit of constitutionally-protected speech and press? In other words, is prior censorship constitutional? The constitutionality of the system as a prior restraint has not been brought up so far before our courts. In the United States, however, this important question was categorically answered in the affirmative by the United States Supreme Court only recently, in *Times Film Corp. v. Chicago et al.*¹⁷ In this case, the petitioner challenged on constitutional grounds the validity on its face of that portion of Sec. 155-4 of the Municipal Code of

¹⁴ *Ibid.*, sec. 9.

¹⁵ *Ibid.*, sec. 11.

¹⁶ *Ibid.*, sec. 12.

¹⁷ 365 U.S. 43 (1961).

the City of Chicago which required submission of all motion pictures for examination prior to their public exhibition. The challenged section provides that such permit shall be granted only after the motion picture film for which said permit is requested, has been produced at the office of the Commissioner of Police for examination or censorship, and if a picture or series of pictures for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality or lack of virtue of a class of citizen of any race, color, creed or religion, and exposes them to contempt, derision or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being, it shall be the duty of the Commissioner of Police to refuse such permit; otherwise, it shall be his duty to grant such permit. The petitioner applied for a permit to publicly exhibit in Chicago, the film "Don Juan" and tendered the license fee but refused to submit the film for examination. It claimed that the production of the film at the office of the Commissioner of Police is invalid as a previous restraint on freedom of speech. Petitioner's narrow attack upon the ordinance does not require that any consideration be given to the validity of standards set out therein. The nature and content of "Don Juan" according to the petitioner is irrelevant, and that even if the film contains the basest type of pornography, or incitement to riot or forceful overthrow of orderly government, it may nonetheless be shown without prior submission for examination. The challenge here therefore, was the censor's basic authority. It did not go to any statutory standards employed by the censor or procedural requirements as to the submission of the film. Hence the court here had no occasion to determine the nature and content of "Don Juan." Said the court in overruling the petitioner's contention:

"Prior decisions of this court touching on this problem never held that liberty of speech is absolute, nor has it been suggested that all previous restraint on speech are invalid."¹⁸

And to show the contrary, the Supreme Court traced its decisions since 1931. It pointed out that in *Near v. Minnesota*,¹⁹ Chief Justice Hughes, in discussing the classic statement concerning the immunity of the press from censorship, observed that:

. . . the principle of forbidding previous restraint is stated too broadly, if every such restraint is deemed to be prohibited, the protection even as to previous restraint is not absolutely unlimited. But the limitation has

¹⁸ *Ibid.*, 48.

¹⁹ 283 U.S. 697, 715, 716 (1931).

been recognized only in exceptional cases. These included utterances creating a hindrance to the governments war effort and actual obstruction to its recruiting service in the public, with the sailing dates of transport or the number and location of troops. And the primary requirement of decency may be enforced against obscene publication, and the security of the community life may as well be protected against incitement to acts of violence and overthrow by force of orderly government.²⁰

Some years later, the court continued, a unanimous court speaking through Justice Murphy in *Chaplinsky v. New Hampshire*²¹ held that:

There are well-defined or narrowly limited classes of speech the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and the obscene, the profane, the libelous and the insulting or fighting words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.²²

Thereafter in *Joseph Burstyn v. Wilson*,²³ the same court found motion pictures to be within the guarantee of the freedom of speech and the press. It does not follow however, according to the court that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times in all places.

And five years later in *Roth v. United States*²⁴ it was held that in the light of history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance. Even the dissenting opinion found that freedom of expression can be suppressed if and to the extent that it is so clearly brigaded with illegal action as to be an inseparable part of it. It was specifically held in this case that obscenity is not within the area of constitutionally protected speech or press. Chicago emphasized here, its duty to protect its people against the dangers of obscenity in the public exhibition of motion pictures. To this argument, petitioner's only answer was that regardless of the capacity for, or extent of such an evil, previous restraint cannot be justified. The Court could not agree with this contention. Reiterating the *Burnstyn* case, the Court said that capacity for evil may be relevant in determining the permissible scope of community control and that motion pictures were not necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems.

²⁰ 365 U.S. 48 (1961).

²¹ 315 U.S. S 68 (1941).

²² *Ibid.*, 48, 49.

²³ *Supra*, n. 5.

²⁴ 354 U.S. 476 (1957).

And in *Kingsley Books Inc. v. Brown*,²⁵ this same court took notice that *Near v. Minnesota*²⁶ left no doubt that liberty of speech and of the press is also not an absolute right, the protection even as to previous restraint is not absolutely unlimited. Said the court:

"The judicial angle of vision in testing the validity of a statute is the operation and effect of the statute in substance. The phrase 'prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test."²⁷

This case therefore, unmistakably holds that censorship *per se* is constitutional.

B. SUFFICIENCY OF STANDARDS

If the constitutionality of censorship as a prior restraint was ever doubted prior to the *Times Film Corp.*²⁸ case, the doubt was obviously generated by decisions of the Supreme Court declaring several censorship statutes and ordinances unconstitutional. But as aptly stated by Justice Frankfurter in *Kingsley International Inc. v. Regents of the University of New York*,²⁹ "the real problem is the formulation of constitutionally allowable safeguards which society may take against evil, without impinging upon the necessary dependence of a free society upon the fullest scope of free expression." He added:

"The legislation must not be so vague, the language so loose, as to leave those who have to apply it, too wide a discretion for sweeping within its condemnation what is permissible expression as well as what society may permissibly prohibit. Always remembering that the widest scope of freedom is to be given to the adventurous and imaginative exercise of the human spirit, we have struck down legislation phrased in language intrinsically vague, unless it be responsible to the common understanding of men even though not susceptible of explicit definition. The ultimate reason for invalidating such laws is that they lead to timidity and inertia and thereby discourage the boldness of expression indispensable for a progressive society."³⁰

Thus, it has been held that statutes and ordinances providing for the examination and censorship of moving pictures films before their public exhibition, violate constitutional guaranties of freedom of speech and of the press where an unlimited power restraining control of such films is vested in the censor. It has also been held

²⁵ 354 U.S. 436 (1957).

²⁶ *Supra*, note 19.

²⁷ 365 U.S. 49 (1961).

²⁸ *Supra*, n. 17.

²⁹ 360 U.S. 684 (1959).

³⁰ *Ibid.*, 695.

that there is a limited field in which decency and morals may be protected from the impact of offending motion picture films by prior restraint under proper criteria and standards.³¹ A statute forbidding the operation of a theater in certain places without a license discretionary with the specified individuals violate the constitutional guaranty of freedom of speech.³²

In *Burnstyn v. Wilson*,³³ the constitutionality of a New York statute which permitted the banning of motion picture films on the ground that they were sacrilegious was challenged. The law made it unlawful to exhibit, to sell, or lend for exhibition at any place, any motion picture film or reel, unless there is at the time in full force and effect, a valid license or permit therefore of the education department. The statute further provided that the director of the motion picture division of the education department should examine every motion picture film and, unless such film or part thereof is obscene, indecent, immoral, inhuman, sacrilegious or is of such a character that its exhibition would tend to corrupt morals or incite to crime, should issue a license therefor. In this case, the public showing of the "The Miracle" was banned on the ground that it was sacrilegious. So the appellant brought this action claiming that the statute violated the freedom of speech and press, and that the term "sacrilegious" is too vague and indefinite as to offend due process. After holding that the Constitution does not recognize absolute freedom to exhibit every motion picture of every kind at all times and all places, the court nevertheless struck down the statute as unconstitutional. Referring to the term "sacrilegious," the court said that "it was too broad and all-conclusive such that the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious view, with no charts but those provided by the most vocal and powerful orthodoxies. New York could not vest such unlimited restraining control over motion pictures in a censor."³⁴ Under such standard, the court continued, "the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority."³⁵

And in *Geling v. Texas*,³⁶ an ordinance of Marshall, Texas, empowering the City Board of Censors to refuse a license to exhibit a

³¹ R.K.O. Pictures v. Hissing Com. Pl., 123 N.E. 2nd 441 (1954).

³² Central States Theater Corp. v. San, 66 N.W. 2nd 450 (1954).

³³ *Supra*, n. 5.

³⁴ *Ibid.*, 505.

³⁵ *Ibid.*, 506.

³⁶ 343 U.S. 960 (1952).

movie if such exhibition would be "prejudicial to the best interest" of the city, was likewise declared violative of the freedom of speech and press, for the same reason stated in the *Burnstyn* case.

In *Commercial Pictures v. Board of Regents*,³⁷ the Censorship Board banned the picture "La Ronde" on the ground that it was "immoral" and would "tend to corrupt morals" within the meaning of the state law. The court summarized the picture as follows:

"The film from the beginning to end deals with promiscuity, adultery, fornication and seduction. It portrays ten episodes, with a narrator. Except for the husband and wife episode, each deals with an illicit amorous adventure between two persons, one of the two partners becoming the principal in the next . . . At the very end, the narrator reminds the audience of the author's thesis. It's the story of everyone."³⁸

One of the issues involved was whether the words "immoral" and "tends to corrupt morals" in the law, provided an adequate standard to satisfy the requirements of due process. The state court did not find the standards of the New York statute offensive on the score of indefiniteness. The words "immoral" and "morals" said the court, must be taken to refer to the moral standards of the community, so that the standards of any given segment of the whole population are not controlling. According to it, "immorality" means "Sexual immorality"—a moral concept about which our own people do not widely differ; sexual immorality is condemned throughout the land.

"It is not a valid criticism that such general moral standards may vary slightly from generation to generation. Such variations are inevitable and do not affect the application of the principle at a particular period of time . . . Neither may a standard be criticized on the ground that individual opinions may differ as to a particular application thereof. There is no principle or standard not subject to that infirmity."³⁹

And in *Superior Films v. Department of Education*,⁴⁰ the constitutionality of a provision in the Ohio Code which provides that "Only such films as are in the judgment and discretion of the Board of Censors, of moral, educational, or amusing and harmless character shall be passed." The film "M" was rejected on the grounds that: "(1) There is a conviction that the effect of this picture on unstable persons of any age level, could lead to a serious increase in immorality and crime; (2) Presentation of actions and emotions

³⁷ 346 U.S. 587 (1954).

³⁸ 113 N.E. 2nd 502, 503 (1953).

³⁹ *Ibid.*, 506.

⁴⁰ 346 U.S. 587 (1954).

of child killer emphasizing complete perversion without serving any valid educational purpose; and (3) Treatment of perversion creates sympathy rather than a constructive plan for dealing with perversion."

The Ohio Supreme Court held that although a motion picture may be rejected for being "sacrilegious," there still remained a limited field in which decency and morals may be protected from the impact of an offending motion picture film by prior restraint under proper criteria. Said the court:

"There can be no inherent right to publicity which tends to destroy the very special fabric of community, and consequently in such instances, there is no right of free speech or free press to be infringed. In these times of alarming rise in juvenile delinquency and of increasing criminality in this country, attributed by social agencies, at least in part, to the character of the exhibition put on the show houses of the country, criminal prosecution after the fact is a weak and ineffective remedy to meet the problem at hand. In the war against crime and delinquency, there must be some effective defensive weapons against immoral publicity, whereby the social fabric may be protected as it is by law from other methods of attack

"And as we view it, the United States Supreme Court has not *ipso facto* taken away all community control of moving pictures by censorship, and this court will not do so under the claim of complete unconstitutionality of censorship laws."

The United States Supreme Court however did not see eye to eye with the state courts. It reversed these rulings in a laconic *per curiam* decision: "Reversed. *Burnstyn v. Wilson*."

And in *Kingsley International v. Board of Regents*,⁴² an application for the public exhibition of the film "Lady Chatterly's Lover" was rejected on the ground that it portrays acts of sexual immorality as desirable, acceptable or proper pattern of behaviour, and presented adultery as being right and desirable for people under certain circumstances. The New York statute makes it unlawful "to exhibit or to sell, lease or lend for exhibition at any place of amusement for pay or in connection with any business in the state of New York, any motion picture or reel . . . unless there is at the time in full force and effect a valid license or permit therefor of the education department." The law further provides that a license shall issue "unless such film or part thereof is obscene, indecent, immoral, inhuman, sacrilegious or is of such a character that its exhibition would tend to corrupt morals or incite to crime," and the term "immoral"

⁴¹ 112 N.E. 2nd 318 (1953).

⁴² 360 U.S. 684 (1959).

and the phrase "of such a character that its exhibition would tend to corrupt morals," according to a recent statutory amendment, shall denote a motion picture film or part thereof, the dominant purpose or effect of which is erotic or pornographic or which portrays acts of sexual immorality, perversion or lewdness or which expressly or impliedly present such acts as desirable, acceptable, or proper pattern of behavior."

In declaring the statute unconstitutional, the court said:

"What New York has done, therefore, is to prevent the exhibition of a motion picture because that picture advocates an idea . . . that adultery under certain circumstances may be proper behaviour. Yet the first Amendment's basic guaranty is of freedom to advocate ideas. The state quite simply, has thus struck at the very heart of constitutionally protected liberty. It is contended that the state's action is justified because the motion picture attractively portrays a relationship which is contrary to the moral standards, the religious precepts and the legal code of its citizenry. This argument misconceives what it is that the Constitution protects. Its guarantee is not confined to the expression of ideas that are conventional or shared by a majority. It protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single tax. And in the realm of ideas, it protects expression which is eloquent, no less than that which is unconvincing.

Advocacy of conduct prescribed, is not, as Mr. Justice Brandeis long ago pointed out, a justification for denying free speech where the advocacy falls short of incitement, and there is nothing to indicate that the advocacy would be immediately acted on. Among free men, the deterrents ordinarily to be applied to prevent crime are education and the punishment for the violation of the law, not abridgment of the rights of free speech." (*Whitney v. People of the State of California*, 47 S. Ct. 649)⁴³

And Justice Black, writing a separate concurring opinion, after positing the view that prior censorship is unconstitutional, intimated that the Supreme Court is most incompetent to act as a Board of Censors. He said:

"Prior censorship of moving pictures like prior censorship of newspapers and books, violates the First and Fourteenth Amendments. If despite the Constitution however, this nation is to embark on the dangerous road of censorship, my belief is that this court is about the most inappropriate Supreme Board of Censors that could be found. So far as I know, judges possess no special expertise providing exceptional competency to set standards and to supervise the private morals of the nation. In addition, the Justices of this court seem especially unsuited to make the kind of value judgments as to what movies are good or bad for local communities . . . We are told that the only way we can decide whether a state

⁴³ *Ibid.*, 688.

or municipality can constitutionally bar movies is for this court to view and appraise the circumstances, every member of the court must exercise his own judgment as to how bad a picture is, a judgment which is ultimately based at least, in large part on his own standard of what is immoral. The end result of such decisions seems to me to be a purely personal determination by individual Justices as to whether a particular picture viewed is too bad or to allow it to be seen by the public. Such an individualized determination cannot be guided by reasonably fixed and certain standards. Accordingly, neither states nor moving picture makers can possibly know in advance, with any fair degree of certainty, what can or cannot be done in the field of movie making and exhibiting. This uncertainty cannot easily be reconciled with the rule of law which our Constitution envisages."⁴⁴

C. PHILIPPINE LAW

In the light of these decisions of the United States Supreme Court, does our censorship law meet the above requirements?

As previously indicated, the criteria used in Rep. Act No. 3060 are: "immoral," "indecent," "contrary to law and/or good customs," and "injurious to the prestige of the Government of the Philippines or its people."

In view of the definite and concise interpretation by the Board of these terms as shown by its "Code of Moving Pictures," it is possible that our Supreme Court will find no objection to the above standards of Republic Act No. 3060.

It is gratifying to note at this point, that only a few days ago our "Board of Censors for Moving Pictures" banned the showing of the film "Huwag Kang Papatay." According to the report of one of the censors, newsman and movie columnist Jose A. Quirino, the Board found out that the film "Huwag Kang Papatay" instead of playing up the "Thou Shalt Not Kill" theme as the title would have us believe, actually "tends to glorify crime and outlaws." Second: It also contains "Excessive brutality. Almost every scene had killing and shooting sequences." Third. "The killing of defenseless persons, including women with some of the characters shot in the back." And fourth: "The film tends to glorify sedition."

A ruling of the Supreme Court in this case, if and when it is brought up before that court, will be a monumental landmark in film censorship laws in this jurisdiction.

⁴⁴ *Ibid.*, 690, 691.

IV. SUMMARY

A. Motion picture films come within and is protected by the free speech and press guaranty of our Constitution against previous restraint.

B. Censorship *per se*, i.e., the system of requiring examination of films previous to their showing, is constitutional, provided the statute is clearly drawn and limited.