## COMMENT ON STONEHILL v. DIOKNO

### I

Liberty is fundamental not only to the theory of democracy but also to its practice. This is the reason for the enumeration in the Constitution of a citizen's basic rights[1] without which democracy cannot exist and without which liberty merely becomes another hypocritical cant. These rights therefore are to be regarded as of the very essence of constitutional liberty — to be safeguarded in a manner compatible and consistent with democracy itself.

Under the Constitution, the duty of safeguarding and protecting the citizen's rights lies with the Supreme Court. Its solicitude for the citizen has never been questioned, for as a rule, the Supreme Court has always been chary about the gradual encroachment of the government on every aspect of the life and activities of its citizens. Especially during these times when government intervention has become the rule rather than the exception, and official lawlessness, a necessary concommittant of big government has been excused as expediency, a state of affairs which has been further aggravated by public apathy, it is the courts alone, as the watchdogs of democracy, who can maintain that state of "ordered liberty" implicit in the bill of rights.

It is perhaps sobering to note that in a very delicate area of law, i.e., in the area of law enforcement in relation to the law on search and seizures, the Supreme Court has at last interposed a bar to police and other forms of official lawlessness to maintain at least a semblance of sanity in the enforcement of the law and to maintain legal standards in the procurement of evidence. The Supreme Court has perhaps come to realize that in this modern age where sophistication is the by-word even among criminal elements it has become more and more difficult to enforce strict compliance with the letter of the law. Police enforcement methods must of necessity move with the rapid technological changes and the alarming incidence of illegal search and seizures is but a reflection of the inability of enforcement officers to cope with this progress. They are faced with a very difficult choice on how to keep in step with progress and still at the same time be within the reasonable bounds of the law. So more often than not, these officers, sworn to support the

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[1] Constitution, Art. III.

Constitution and the laws, without fear of criminal punishment or other discipline, frankly admit their deliberate and flagrant acts in violation of both the Constitution and the laws enacted thereunder and casually regard such acts as nothing more than the performance of their ordinary duties. Of course, the Supreme Court has not considered this as sufficient justification to violate a citizen's rights and so, in the case of STONEHILL v. DIOKNO, G.R. 19550, promulgated in June 19, 1967, the Court noting the circumstances attending the search and seizure of documents and papers in petitioners' residences declared that the search and seizure was violative of petitioners' constitutional right to be secure in their homes, papers and effects against unreasonable search and seizures.

In the *Stonehill v. Diokno* case, warrants were issued authorizing the search of petitioners' residences and offices. The validity of such warrants were questioned by petitioners on the ground that the same were issued without a determination of probable cause and that the things described therein to be searched were not described with particularity. This being the case, the search warrants were in the nature of general warrants and accordingly were contrary to the Constitution. Petitioners therefore prayed that the search warrants be quashed and the documents and papers be returned to them. Respondents, in answer to the petition, contended that the illegality of the search warrants notwithstanding, the documents and papers can not be returned to petitioners and relying on the ruling in the case of *People v. Moncado*,[2] alleged that the same may be admitted in evidence in the deportation cases then pending against petitioners.

The Supreme Court however, upheld petitioners and declared that the search warrants insofar as directed to petitioners' residences were null and void because these were contrary to the Constitution. Accordingly, the seizures effected upon the authority thereof were also null and void. The Court, speaking through Chief Justice Concepcion ruled that to uphold the validity of the warrants would wipe out completely one of the most fundamental rights guaranteed by the Constitution for it would place the sanctity of the domicile and privacy of communication and correspondence at the mercy of the whim, caprice or passion of peace officers. This, according to the Court, is precisely the evil sought to be remedied by the constitutional provision — to outlaw general warrants.[3]

Adverting to the Moncado ruling relied upon by respondents, the Court ruled that the same should be abandoned. The Moncado

[2] 80 Phil 1 (1948).
[3] Stonehill v. Diokno, G.R. L-19550, June 19, 1967.

case, it should be remembered was decided on the basis of the common law rule which states that "the admissibility of evidence is not affected by the illegality of the means by which they were obtained." According to the Court, the consensus of judicial decisions in the United States is that evidence which has been illegally obtained are inadmissible and henceforth, the rule should be applied in the Philippines.

It is therefore now settled in this jurisdiction that illegally obtained evidence is inadmissible. This ruling of the Court, to our mind is fraught with serious implications — which implications we choose to believe have not escaped the Court's notice. But to better understand the matter, we will seek here in this paper to examine the rationale of the exclusionary rule.

## II

The question of admitting or excluding illegally obtained evidence has come to occupy a very large area in legal thought. As a general rule, jurisprudence in this matter, both here and in the United States, is still in a state of flux. In the United States for instance, in spite of an apparent consensus in judicial decisions, the federal and state courts have been hopelessly divided on the issue and even legal luminaries and writers have ranged themselves either for or against the rule. While the same schism is not so apparent in Philippine cases so far decided on the same issue, we believe that the Supreme Court may still temper the absolutist flavor of the exclusionary rule as enunciated in the *Stonehill* case. We say this may be so because we have noted that there exist striking similarities in the development of the exclusionary rule in the United States as well as in the Philippines. We have for one noted that the reversal of the *Moncado* ruling followed closely the trend and pattern set by the early American cases on illegal search and seizures. We will give here a brief sketch of the history of the exclusionary rule to demonstrate this fact.

Traditionally, illegality in getting evidence had no bearing upon the propriety of their evidential use. Admitting that these evidences were illegally obtained, still courts have not found this as a legal objection to their admission as evidence, if they were pertinent to the issue. "When papers are offered in evidence, the Court can take no notice how they were obtained whether lawfully or unlawfully — nor would they form a collateral issue to determine that question."[4] And as one court held:

> "We are not prepared to impose on the courts of this state the duty and burden of injecting into a criminal prosecution the colla-

[4] Com. v. Dana, 2 Metc. 329 (1841); for a discussion of the common law-rule, see 8 Wigmore, EVIDENCE, p. 31 et seq., sec. 2184 (3rd ed. 1940).

> teral investigation of every objection that may be raised as to the Source from which and the manner in which evidence in the hands of public prosecutors has been obtained.... Neither can the prosecution be required to justify the methods by which it obtained its evidence."[5]

This rule, called the common law rule was enunciated in the cases of *Stevison v. Barnest*[6] and *William v. State.*[7] Our Supreme Court prior to the Stonehill ruling has consistently applied this rule. Thus, in *Alvero v. Dizon,*[8] the Supreme Court held:

> "The purpose of the constitutional provisions against unlawful searches and seizures is to prevent the violation of the private security in person and property and unlawful invasion of the sanctity of the home by officers of the law acting under legislative or judicial sanction.... But it does not prohibit the government from taking advantage of unlawful searches made by a private person or under authority of state law."

The Court of Appeals has also sustained the admissibility of evidence illegally seized. Thus, in *People v. Fernandez*[9] and *People v. Remojo,*[10] the Court held that evidence no matter how they were procured, whether legally or illegally are admissible and the court will not take notice or inquire how they were obtained nor form collateral issue to determine that question. The Court further observed that "a standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore."

Then in the case of *People v. Moncado,* the Supreme Court, in a closely decided decision, declared that "it is well established that the admissibility of evidence is not affected by the illegality of the means by which the party has availed himself of to obtain them. The Constitutional limitations to the power of the authorities or agents of authorities could not go to the extreme of excluding evidence illegally or wrongfully obtained."[11]

For nineteen years, the Moncado ruling stood unquestioned in our casebooks and for that matter remained the rule on the issue of the admissibility of illegally obtained evidence. But with the Stonehill ruling, the common law rule as enunciated in these early cases is now totally discredited.

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[5] People v. Mayen, 205 P 435, 442 (1922); State v. Tonn, 191 NE 530, 531 (1923).
[6] 80 Ill. 513 (1875); see footnote 4, *supra.*
[7] 28 SE 624 (1841); see also footnote 4, *supra.*
[8] 76 Phil 637 (1946).
[9] G.R. L-582585, February 15, 1947.
[10] 40 O.G. 11th Suppl. 40.
[11] See footnote 2, *supra.*
[12] 116 US 616 (1885).

In the United States, the common law rule was never doubted until the appearance of what Professor John Wigmore calls the "ill-starred" majority opinion in the case of *Boyd v. United States*[12] which advanced the proposition that evidence obtained in violation of the Fourth Amendment (prohibiting against unreasonable searches and seizures) could be excluded as a consequence thereof. The Boyd doctrine or more popularly known as the exclusionary rule, remained unquestioned for twenty years in spite of the fact that it met great disfavor in the state courts which still clung tenaciously to the traditional common-law rule.

Then in the case of *Adams v. New York*,[13] the Boyd doctrine was virtually repudiated in the United States Supreme Court and the precedents recorded in the state courts were expressly approved. After another twenty years, in 1914, the United States Supreme Court in the case of *Weeks v. United States*[14] reverted to the original doctrine of the Boyd case but with the condition that the illegality of the search and seizure should first have been directly litigated and established by a motion made before trial for the return of the things seized; so that after such motion and then only, the illegality would be noticed in the main trial and the evidence thus obtained would be excluded. This is now the rule which obtains in a majority of the states of the United States and the Federal Supreme Court.[15]

In spite of this however the exclusionary rule has met disfavor not only from members of the bench but also of the bar. Proponents of the rule have sought nevertheless to justify it by invoking the due process clause, arguing that the concept of due process not only subsumed freedom from unreasonable searches and seizures but also the particular rule of evidentiary exclusion.[16] They assert that "observance of due process has to do not with questions of guilt or innocence but with the mode by which the guilt is ascertained. When a conviction is secured by methods which offend elementary standards of justice, the victim of such methods may invoke the protection of the due process clause because this guarantees him a trial fundamentally fair in the sense in which this idea is incorporated in due process."[17] To them, it is no answer to say that the

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[13] 192 US 585 (1903).

[14] 232 US 383, 58 L. ed. 652 (1914); Silverthorne Lumber v. US, 251 US 383 (1920).

[15] For a more exhaustive discussion of the development of the exclusionary rule, see Elkins v. US, 364 US 206, 4 L. ed. 2d 1669 (1960) and the cases cited thereunder.

[16] McGUIRE, EVIDENCE OF GUILT, p. 169 (1959).

[17] Irvine v. Calif., 347 US 128, 148-151 (1954); Rochin v. Calif., 342 US 165, 177 (1952); see also Barrett, *Exclusion of Evidence*, 43 Calif., L. Rev., 579 (1955).

offending policemen and prosecutors who utilize such outrageous and reprehensible methods should be punished for their misconduct.

Furthermore, according to the proponents of the rule, the exclusionary rule is the only method effective in curbing police lawlessness. Their theory here is that the inherent limitations on the direct remedies, i.e., civil action for damages or criminal suit for violation of domicile, are so great that they will never act as a sufficient deterrent to police illegality. It is their sincere and well-justified belief that the exclusionary rule will at least combat the ingrained habit of unlawful and unconstitutional enforcement of the law through unreasonable searches and seizures; and that it is the only way that the police can be forced to act more generally in conformity with the law.[18]

On the other hand, the opponents of the exclusionary rule have equally persuasive and respectable arguments. It is their "favorite and supposedly paralyzing dialectic gambit to echo Justice Cardozo's derisive statement 'The criminal is to go free because the constable has blundered.' "[19] They argue that illegality in the procurement of evidence should be punished directly, if at all, instead of being used as the foundation of an impedimental doctrine permitting suppression of truth. According to them, rules of evidence have been designed precisely to enable the courts to reach the truth and in criminal cases, to secure a fair trial to those accused of crime. Evidence obtained by an illegal search is ordinarily just as reliable as evidence lawfully obtained. It should not therefore be excluded unless strong considerations of public policy demand it and in this case, there are no such considerations.[20]

Furthermore, they argue that the application of the exclusionary rule under present conditions where we find criminals so ably equipped to evade the law in other respects is unjustified because it creates an extra burden (releasing the guilty when their conviction is dependent upon the use of evidence illegally obtained) which far outweighs the benefit that it renders to society (protecting the citizen from illegal search and seizures).[21]

Neither can the exclusionary rule be said to afford protection or recompense to the defendant or punishment to the officers for the illegal search and seizure. It does not protect the defendant from the search and seizure since that illegal act has already occurred. If he is innocent or if there is ample evidence to convict him without the illegally obtained evidence, exclusion thereof gives him no remedy at all. Thus, the only persons who stand to benefit

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[18] Barrett, *op. cit. supra.*
[19] People v. Defore, 150 NE 585, 364 US 217 (1926).
[20] McGuire, op. cit., note 16 at 176.
[21] *Ibid.*

by the exclusionary rule are those criminals who could not be convicted without the illegally obtained evidence. Allowing such criminal to escape punishment is not appropriate recompense for the invasion of their constitutional rights. Indeed, the absurdity of the exclusionary rule is highlighted by the fact that while the innocent is merely limited to complaints seeking to induce disciplinary or criminal action or to a civil suit for damages, the guilty may be acquitted because of police illegality in the obtaining of evidence to convict him.[22]

Weighing the arguments for and against the exclusionary rule in terms of the social needs involved — on the one side, the social need that crime shall be repressed and on the other side, the social need that the law shall not be flouted by the insolence of office and at the expense of the rights of the citizen, we believe that the exclusionary rule is more in consonance with the constitutional inhibition against unreasonable searches and seizures and the inviolability of domicile, papers and effects of the citizens.

The security of one's privacy against arbitrary intrusion by the police which is the core of the constitutional provision is basic to free society. It is implicit in the concept of "ordered liberty"[23] itself and the framers of the Constitution has so sought to include it among the rights of the citizen. The constitutional provision contemplates that in *no* case shall this right to privacy be violated and therefore the contention that unreasonable searches and seizures are justified by the necessity of bringing violators of the law to justice cannot be accepted. "It was rejected when the constitutional provision was adopted and the choice was made that all the people, guilty and innocent alike, should be secure from unreasonable police intrusions even though some criminals should escape."[24] Thus, Justice Jackson said:

> "Of course, this, like each of our constitutional guarantees often may afford a shelter for criminals. But the forefathers thought this was not too great a price to pay for that decent privacy of home, papers and effects which is indispensable to the individual dignity and self-respect. They may have overvalued privacy but I am not disposed to set their command at naught."[25]

Hence, arguments against the wisdom of these constitutional provision may not be invoked to justify a failure to enforce them while they remain the law of the land.

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[22] CORNELIUS, SEARCH AND SEIZURE, 45 (1930).

[23] Palko v. Connecticut, 302 US 319 (1937) cited in People v. Cahan, 282 P 2d 905 (1955).

[24] People v. Cahan, *supra* at 907.

[25] Justice Jackson in US v. Harris, 331 US 145 (1946), dissenting.

[26] Justice Brandeis in Olmstead v. US, 277 US 485 (1928), dissenting.

Neither is it material that the illegal search and seizure is in aid of law enforcement. To hold otherwise would permit a quibbling distinction to overturn a principle which was precisely designed to protect the fundamental right of the citizen to be secure in their homes, papers and effects. Besides, experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficient. The path paved with good intentions in the long run often proves to be treacherous and likewise, the greatest danger to liberty "lurks in the insiduous encroachment by men of zeal, well-meaning but without understanding."[26]

Moreover, it is rather morally incongruous for the government or the state to flout constitutional rights and at the same time demand that its citizens observe the law. The end that the state seeks may be a laudable one but it no more justifies unlawful acts than a laudable end justifies unlawful means. The Machiavellian principle that the end justifies the means has no place in a democracy where the rule of law and not of men is one of its fundamental principles.

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, the existence of government will be imperilled if it fails to observe the law scrupulously. Our government is the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites man to become law unto himself; it invites anarchy. To declare that in the administration of the criminal law, the end justifies the means is to declare that the government may commit crime in order to secure the conviction of a private citizen — would bring terrible retribution."[27]

Of course, we have not overlooked the fact that the question of admissibility is of great importance in the administration of the laws, parctiularly our penal laws. Admittedly, the problem is a complicated one and the wisdom of laying down a categorical rule on the matter and say that *this* is the rule, is open to question. Be that as it may, we believe that no compromise is possible in this matter where the rights of the citizen are involved, nor ought there be any compromise. To submit to one will be one step back to the *status quo ante* and police lawlessness.

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[27] *Ibid.*

## VALIDITY OF FOREIGN DIVORCE DECREES

On November 20, 1965, the Supreme Court of the Philippines promulgated its decision on the *Tenchavez v. Escaño*[1] case. The main issue in this case centers on the validity of a foreign divorce decree secured by the defendant-appellee in a foreign country. The Court, in summing up its decision, ruled:

(1) That a foreign divorce decree between Filipino citizens, sought and decreed after the effectivity of the present Civil Code (Rep. Act 386), is not entitled to recognition as valid in this jurisdiction; and neither is the marriage contracted with another party by the divorced consort, subsequent to the foreign decree of divorce, entitled to validity in the country;

(2) That the remarriage of the divorced wife and her cohabitation with another person other than the lawful husband entitled the latter to a decree of legal separation conformable to Philippine law;

(3) That the desertion and procurement of an invalid divorce decree by one consort entitle the other to recover damages; and

(4) That an action for alienation of affections against the parents of one consort does not lie in the absence of proof of malice or unworthy motives on their part.

Pastor B. Tenchavez, the plaintiff-appellant and Vicenta F. Escaño, the defendant-appellee, were married before a Catholic chaplain on February 24, 1948. The marriage, celebrated in secret, was discovered by the parents of Vicenta, who sought the advice of a priest. The priest suggested a recelebration to validate what he believed to be an invalid marriage, from the standpoint of the Church, due to the lack of authority from the Archbishop or the parish priest for the officiating chaplain to celebrate the marriage. Vicenta however refused to go on with the recelebration of the marriage. Vicenta continued living with her parents. She later went to Misamis Occidental where she filed a petition to annul the marriage. The case was however dismissed. On June 24, 1950, she left for the United States. On August 22, 1950, she filed a complaint for divorce against the plaintiff Pastor in Nevada on the ground of "extreme cruelty, entirely mental in character." On October 21, 1950, a decree of divorce, "final and absolute" was issued by the said Court.

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[1] G.R. No. 19671, November 29, 1965.